

Q. Evidence of the Company page 3-6

- (a) The Mercer pension study does not lay out the underlying economic assumptions used in the valuation of the going concern pension other than the assumption of 6.0% on total assets minus a margin for adverse deviations.
Please indicate the specific forecast returns for each of the asset classes listed on page 15 of the Mercer Report.
Please indicate the magnitude of the “margin for adverse deviations” and how it was estimated.
- (b) On page 3-7 the average embedded debt cost is given as 7.60% for 2008 and increases to 7.69% for 2009 even though \$65 m was issued in mortgage bonds at 6.61%, please explain how this happened?
- (c) Please provide a table with all the outstanding debt, its maturity and cost with an explanation of how the 7.69% was estimated.
- (d) Please provide the relevant extracts of the covenant restriction mentioned in footnote 37.
- (e) Please provide full information of the credit facility from the banks (F-12) in terms of standby fees, upfront fees, credit spreads and drawdown costs.

- A. (a) Table 1 shows the long term expected returns for the asset classes listed on page 15 of the Mercer Report.

Table 1
Long Term Expected Returns

Asset Class	Long Term Expected Return
Canadian Equities	8.50%
US Equities	8.50%
Non-North American Equities	8.50%
Fixed Income	4.40%
Cash and short term	1.90%

The margin for adverse deviations is calculated to be 1.09% as at December 31, 2008. The selection of the margin takes into account the target asset mix of the pension fund, the asset classes in which the fund is invested and the risk associated with those asset classes.

- (b) In May 2009, Newfoundland Power issued \$65 million in First Mortgage Sinking Fund Bonds at a rate of 6.61% to finance its ongoing capital programs. The debt was issued for a term of 30 years representative of the average life of the assets being financed. The bond issue essentially refinanced existing short-term debt. The forecast average short-term borrowing rate for 2009 is 1.36%. Attachment A provides details of Newfoundland Power's forecast average cost of debt for 2009.
- (c) Attachment A provides details of Newfoundland Power's forecast average cost of debt for 2009.
- (d) The relevant passage from the Company's First Mortgage Bond Trust Deed is found in Article 6.2, which states as follows:
- 6.2 Earnings Test. No Additional Bonds shall be certified and delivered hereunder unless the Net Earnings of the Company for the Earnings Period selected by the Directors shall have been at least two (2) times the maximum annual interest charges on all Bonds to be outstanding after the proposed issue of Additional Bonds.*
- (e) In Order No. P.U. 1 (2005), the Board approved Newfoundland Power's issue of a \$100,000,000 committed revolving term credit facility (the "Committed Credit Facility"). In Order No. P.U. 4 (2006), the Board approved an amendment to the Committed Credit Facility that extended the maturity date to January 1, 2009 and established the current pricing grid for drawdowns against the credit facility. In Order No. P.U. 22 (2008), the Board approved a second amendment to the Committed Credit Facility that extended the maturity date to August 29, 2011.
- Attachment B is the original Committed Credit Facility agreement issued in January 2005. Attachment C is the January 2006 amendment to the Committed Credit Facility, which includes the current pricing grid as Schedule G. Attachment D is the August 2008 second amendment to the Committed Credit Facility.
- Table 2 shows a summary of Newfoundland Power's credit facility costs based on the current pricing grid of the Committed Credit Facility.

Table 2
Committed Credit Facility Pricing
(%)

Stamping Fee	.675
Prime Rate Margin	0
Standby Fee	.1375
Utilization Fee	.0750

2009 Forecast Average Cost of Debt

Newfoundland Power Inc.
2009 Forecast Average Cost of Debt
(\$000's)

First Mortgage Sinking Fund Bonds

Series	Maturity	Cost	Amount
AD	2014	10.550%	30,553
AE	2016	10.900%	32,800
AF	2022	10.125%	33,200
AG	2020	9.000%	34,000
AH	2026	8.900%	34,835
AI	2028	6.800%	44,500
AJ	2032	7.520%	69,750
AK	2035	5.441%	57,000
AL	2037	5.901%	67,900
AM	2039	6.606%	64,350
			<u>468,888</u>

Credit Facility Debt	3,907
Less: Deferred Debt Issue Costs	<u>(3,050)</u>
Total Debt Outstanding at December 31, 2009	<u>469,745</u>

Total Debt Outstanding at December 31, 2008	<u>438,154</u>
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Average Debt 2009	453,950	A
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Finance Charges 2009	<u>34,917</u>	B
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Average Cost of Debt 2009	<u>7.69%</u>	B/A
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Original Committed Credit Facility Agreement
January 2005

NEWFOUNDLAND POWER INC.

as Borrower

and

ROYAL BANK OF CANADA

**as Sole Lead Arranger
Bookrunner and Administrative Agent**

and

The Several Lenders from Time to Time Parties Hereto

CREDIT AGREEMENT

Dated as of January 21, 2005

**FASKEN
MARTINEAU** 

**66 Wellington Street West
Suite 4200, Toronto Dominion Bank Tower
P.O. Box 20, Toronto-Dominion Centre
Toronto, Canada M5K 1N6**

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CREDIT AGREEMENT dated as of January 21, 2005 among Newfoundland Power Inc., a corporation incorporated under the laws of the Province of Newfoundland and Labrador (the "**Borrower**"), the lending institutions from time to time parties hereto as Lenders (each a "**Lender**" and, collectively, the "**Lenders**") and Royal Bank of Canada in its capacity as administrative agent of the Lenders (the "**Agent**").

WHEREAS the Borrower has requested the Lenders to provide to it a certain revolving/non-revolving term credit facility for general working capital, capital expenditure and commercial paper backup requirements of the Borrower;

AND WHEREAS the Lenders are each willing to provide such credit facility to the Borrower for the aforesaid purposes upon the terms and conditions contained herein;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant and agree as follows:

ARTICLE 1

INTERPRETATION

1.1 Defined Terms. The following defined terms shall for all purposes of this Agreement, or any amendment, substitute, supplement, replacement, addition or schedule hereto, have the following respective meanings unless the context otherwise specifies or requires or unless otherwise defined herein:

"Affiliate" shall have the meaning ascribed to the term "affiliate" in the CBCA in effect on the date hereof.

"Agreement" shall mean this Credit Agreement, as the same may be amended, modified, supplemented, restated or replaced from time to time.

"Applicable Margin" means, at any particular time, the applicable interest rate margin or fee rate, as the case may be, expressed as a percentage per annum which are in effect at such time based upon the Pricing Rating at such time as set forth in the table in Schedule G hereto, with changes thereto to be effective in the manner set forth in Section 7.6. On and after the Conversion Date, each amount in Levels I, II and III of the table in Schedule G shall be increased by 0.25% per annum and each amount in Levels IV and V of the table in Schedule G shall be increased by 0.50% per annum. Notwithstanding the foregoing, for so long as an Event of Default has occurred and is continuing, the Applicable Margin with respect to Prime Rate Loans shall be 2.00% per annum.

"Authorization" means, with respect to any Person, any authorization, order, permit, approval, grant, licence, consent, right, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree, by-law, rule or regulation of any Governmental Authority having jurisdiction over such Person, whether or not having the force of Law.

"Available Credit" means, as at a particular date, the amount, if any, by which the amount of the Credit Facility as at the close of business on such date exceeds the amount of credit outstanding under the Credit Facility as at the close of business on such date.

"BA Discount Rate" shall mean:

- (a) with respect to an issue of Bankers' Acceptances with a particular maturity date to be accepted by a Schedule I Lender hereunder, the CDOR Rate at or about 10:00 a.m. (Toronto time) on the date of issuance and acceptance of such Bankers' Acceptance for bankers' acceptances having a comparable face value and an identical maturity date to the face value and maturity date of such issue of Bankers' Acceptances;
- (b) with respect to an issue of Bankers' Acceptances with a particular maturity date to be accepted by a Schedule II Lender or a Schedule III Lender hereunder, the lesser of:
 - (i) the annual interest rate equivalent to the arithmetic average of the discount rates of the Non-Schedule I Reference Lenders determined by them in accordance with their normal practice at or about 10:00 a.m. (Toronto time) on the date of issue and acceptance of such Bankers' Acceptances for bankers' acceptances having a comparable face value and an identical maturity date to the face value and maturity date of such Bankers' Acceptances; and
 - (ii) the CDOR Rate plus 0.1% per annum at or about 10:00 a.m. (Toronto time) on the date of issue and acceptance of such Bankers' Acceptances for bankers' acceptances having a comparable face value and an identical maturity date to the face value and maturity date of such Bankers' Acceptances; and
- (c) with respect to a BA Rate Loan with a particular maturity date to be advanced by a Lender, the CDOR Rate plus 0.1% per annum at or about 10:00 a.m. (Toronto time) on the date of advance of such BA Rate Loan for bankers' acceptances having a comparable face value and an identical maturity date to the principal amount and maturity date of such BA Rate Loan.

"BA Discounted Proceeds" means, in respect of any Bankers' Acceptances to be accepted by a Lender on any day, an amount (rounded to the nearest whole cent and with one-half of one cent being rounded up) calculated on such day by multiplying:

- (a) the aggregate face amount of such Bankers' Acceptances; by
- (b) the price, where the price is determined by dividing one by the sum of one plus the product of:

- (i) the BA Discount Rate which is applicable to such Bankers' Acceptance (expressed as a decimal); and
- (ii) a fraction, the numerator of which is the number of days remaining in the term of such Bankers' Acceptances and the denominator of which is 365;

with the price as so determined being rounded up or down to the fifth decimal place and .000005 being rounded up.

"BA Gross Proceeds" means, with respect to particular Bankers' Acceptances:

- (a) if the Borrower has elected that such Bankers' Acceptances be purchased by the Lenders accepting them, the aggregate BA Discounted Proceeds with respect thereto; or
- (b) if the Borrower has elected that such Bankers' Acceptances be purchased by someone other than the Lenders accepting them, the aggregate purchase price therefor.

"BA Net Proceeds" means, with respect to a particular Bankers' Acceptance, the BA Gross Proceeds with respect thereto less the amount of the acceptance fees in respect of such Bankers' Acceptance calculated in accordance with Section 7.4.

"BA Rate Loan" shall have the meaning ascribed thereto in Section 3.5.

"Bankers' Acceptance" means (x) a depository bill under the *Depository Bills and Notes Act* (Canada) or (y) a bill of exchange under the *Bills of Exchange Act* (Canada), in either case (a) drawn by the Borrower and accepted by a Lender, (b) denominated in Canadian dollars, (c) having a term of less than one month or of one, two, three, six or twelve months (subject to availability and subject to the right of the Agent, in its discretion, to restrict the term or maturity dates applicable to Bankers' Acceptances) and (d) issued and payable only in Canada.

"Borrower Documents" means this Agreement, the Fee Letter and all other documents, instruments and agreements executed and delivered by the Borrower in favour of the Agent, the Lenders or any of them in connection with this Agreement.

"Borrower Obligations" means all present and future indebtedness, liabilities and obligations, direct or indirect, matured or contingent, of the Borrower to the Lenders, the Agent or any of them under the Borrower Documents.

"Branch of Account" means the Agency Services Group of Royal Bank of Canada located at Royal Bank Plaza, 200 Bay Street, Toronto, Ontario or such other branch of the Agent located in Canada as the Borrower and the Agent may agree upon.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in any of St. John's, Newfoundland and Labrador and Toronto, Ontario are authorized or required by Law to remain closed.

"Canadian Qualified Lender" means a Lender which (i) is not a "non-resident" within the meaning of the Tax Act, or (ii) is an "authorized foreign bank" within the meaning of the Tax Act, but only in respect of an amount payable with respect to any outstanding credit or portion thereof that is paid or credited in respect of its "Canadian banking business" within the meaning of the Tax Act.

"Capitalization" means, on any date, an amount equal to Debt on such date plus Shareholders' Equity on such date.

"CBCA" means the *Canada Business Corporations Act*.

"CDOR Rate" shall mean, as of any day with respect to an issue of Bankers' Acceptances or a BA Rate Loan with a particular maturity date, the average interest rate equal to:

- (a) the average of the rates for Canadian dollar bankers' acceptances quoted at approximately 10:00 a.m. (Toronto time) on such day on the Reuters Monitor Money Rates Service, CDOR page "Canadian Interbank Bid BA Rates"; and
- (b) if such rate is not available on such day, the rate for such date will be the annual discount rate (rounded upward to the nearest whole multiple of 1/100 of 1%) as of 10:00 a.m. (Toronto time) on such day at which the Agent is then offering to purchase Canadian dollar bankers' acceptances with an identical maturity date accepted by it.

"Closing Date" means the date of the execution and delivery of this Agreement, such date to be no later than January 22, 2005.

"Control" means, in respect of a particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or the policies of such Person, whether through the ability to exercise voting power, by contract or otherwise. **"Controlling"** and **"Controlled"** have meanings correlative thereto.

"Conversion Date" means January 20, 2006, as such date may be extended pursuant to Section 9.2.

"Conversion Notice" shall have the meaning ascribed thereto in Section 6.3.

"Credit Facility" means the revolving/non-revolving term credit facility established by the Lenders in favour of the Borrower pursuant to Section 2.1.

"DBRS" means Dominion Bond Rating Service Limited or any successor by merger or consolidation to its business.

"Debt" means, on any date, an amount equal to the aggregate of all Indebtedness for Borrowed Money of the Borrower on such date, determined in accordance with GAAP, plus the redemption amount of all shares of the Borrower which are retractable or redeemable at the option of the holder on such date.

"Debt to Capitalization Ratio" means, on any date, the ratio of Debt on such date to Capitalization on such date.

"Default" means any event or condition which constitutes an Event of Default or which, upon notice, lapse of time or both, would, unless cured or waived, become an Event of Default.

"Designated Account" means, with respect to transactions under the Credit Facility, an account of the Borrower maintained by the Agent at the Branch of Account for the purposes of transactions under the Credit Facility.

"\$" denotes Canadian dollars, unless otherwise referenced.

"Drawdown Notice" shall have the meaning ascribed thereto in Section 4.1.

"Environmental Laws" means all Laws relating in any way to the protection of the environment, the preservation or reclamation of natural resources, or the management, release or threatened release of any Hazardous Material or to occupational health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment, or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Event of Default" shall have the meaning ascribed thereto in Section 13.1.

"Existing Facilities" means the credit facilities established in favour of the Borrower pursuant to:

- (a) the credit agreement made as of August 22, 2002 between the Borrower and Royal Bank of Canada, as amended, modified, supplemented or replaced from time to time; and
- (b) the credit agreement made as of December 17, 2003 between the Borrower and Canadian Imperial Bank of Commerce, as amended, modified, supplemented or replaced from time to time.

"Existing Subsidiaries" means Newfoundland Light & Power Co. Limited, Newfoundland Electric Limited and Newfoundland Industries Limited.

"Fee Letter" means the fee letter dated November 1, 2004 made between the Borrower and the Agent, as the same may be amended, modified, supplemented or replaced from time to time.

"Financial Officer" means the Vice-President, Finance; Chief Financial Officer; Manager, Finance; or other officers of the Borrower having similar responsibilities from time to time.

"Fiscal Quarter" means any of the three-month fiscal periods of the Borrower ending on the last day of March, June, September and December in each year.

"Fiscal Year" means any of the twelve-month fiscal periods of the Borrower ending on the last day of December in each year.

"GAAP" means generally accepted accounting principles as published from time to time in the Handbook of the Canadian Institute of Chartered Accountants, applied on a consistent basis.

"Governmental Authority" means the Government of Canada, any other nation or any political subdivision thereof, whether provincial, state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, fiscal or monetary authority or other authority regulating financial institutions and any other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including the Bank Committee on Banking Regulation and Supervisory Practices of the Bank of International Settlements and the Newfoundland and Labrador Board of Commissioners of Public Utilities.

"Guarantee" of or by any Person means any obligation, contingent or otherwise, of the Person guaranteeing or having the economic effect of guaranteeing any Indebtedness for Borrowed Money of any other Person.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including without limitation, petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Indebtedness for Borrowed Money" of any Person includes, without duplication, (a) all obligations of such Person for borrowed money or with respect to advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes, letters of credit or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all capital lease obligations of such Person, (e) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, letters of credit and letters of guarantee, and (f) all Guarantees by such Person of Indebtedness for Borrowed Money of others in each case determined in accordance with

GAAP; provided that, for greater certainty, trade payables do not constitute Indebtedness for Borrowed Money.

"Individual Commitment" means, with respect to a particular Lender and the Credit Facility, the amount set forth in Schedule A attached hereto, as reduced or amended from time to time pursuant to Sections 2.4, 8.3, 9.2 and 15.6, as the individual commitment of such Lender under the Credit Facility, provided that, upon the termination of the Credit Facility pursuant to Section 2.5, the Individual Commitment of each Lender under the Credit Facility shall thereafter be equal to the amount of outstanding credit extended to the Borrower by such Lender under the Credit Facility immediately prior to the termination of the Credit Facility.

"Laws" means all federal, provincial, municipal, foreign and international statutes, codes, ordinances, decrees, treaties, rules, regulations, guidelines, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, directives, decisions, rulings or awards or any provisions of the foregoing, including general principles of common and civil law and equity, and all policies, practices and guidelines of any Governmental Authority binding on or affecting the Person referred to in the context in which such word is used; and **"Law"** means any one or more of the foregoing.

"Lien" means, with respect to any property or asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge, security interest, adverse claim or defect of title in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities, (d) any netting arrangement, defeasance arrangement or reciprocal fee arrangement, and (e) any other arrangement having the effect of providing security.

"Loans" means Prime Rate Loans and BA Rate Loans.

"Major Credit Rating Agencies" means S&P, Moody's and DBRS.

"Majority Lenders" means, at any particular time, such group of Lenders whose Individual Commitments aggregate at least 66 2/3% of the aggregate of the Individual Commitments of all the Lenders at such time.

"Material Adverse Change" means, in respect of the Borrower, any change (including, without limitation, any legislative or regulatory change) having a material adverse effect on:

- (a) the business, assets, liabilities, operations, results of operations or condition (financial or other) of the Borrower or which would reasonably be expected to result in an impairment of the ability of the Borrower to perform any of the Borrower Obligations; or

- (b) the validity or enforceability of any of the Borrower Documents or the rights and remedies of the Agent, the Lenders or any of them thereunder,

as determined by the Majority Lenders, acting reasonably. For certainty, any disruption of the Borrower's operations as a result of adverse weather conditions shall not, in and of itself, constitute a Material Adverse Change.

"Maturity Date" means the date which is the first anniversary following the Conversion Date.

"Moody's" means Moody's Investors Service, Inc. or any successor by merger or consolidation to its business.

"Non-Schedule I Reference Lenders" means up to two Schedule II Lenders and Schedule III Lenders designated as such by the Agent and the Borrower.

"Parent" means the Person that, as of the date hereof, owns all of the issued and outstanding common shares of, and Controls, the Borrower.

"Permitted Liens" means, as of any particular time, any of the following Liens, privileges, charges, encumbrances or other rights:

- (a) Liens or privileges for Taxes, rates, assessments or governmental charges or levies which are not due or delinquent or which are due and delinquent but the validity of which is being contested in good faith by appropriate action promptly initiated and diligently conducted and do not in the aggregate materially adversely affect the Borrower's financial condition or operations;
- (b) Liens for the excess of the amount of any past due Taxes for which a final assessment has not been received over the amount of such Taxes as estimated and paid by the Borrower acting prudently and reasonably;
- (c) undetermined or inchoate liens, including statutory Liens, arising or potentially arising which have not at the time been filed or registered in accordance with applicable Law or Environmental Law or served upon the Borrower or which, although filed and registered, relate to obligations not due or delinquent the validity of which is being contested in good faith by appropriate action promptly initiated and diligently conducted and do not in the aggregate materially adversely affect the Borrower's financial condition or operations;
- (d) easements, rights of way, servitudes, licences, zoning or other similar rights in real property (including easements, rights of way and servitudes for sewers, drains, steam, gas and oil pipelines, gas and water mains, electric light and power and telephone or telegraph lines and other forms of communication, conduits, poles, wires or other incidental equipment) granted to or reserved or taken by other Persons which will not in the

aggregate materially adversely affect the use of the property for the purposes for which it is held by the Borrower and mortgages of and other Liens against the said easements, rights of way, servitudes, licences, zoning or other similar rights in real property;

- (e) the rights reserved to or vested in municipalities or governmental or other public authorities or agencies by statutory provisions or by the terms of leases, licences, franchises, grants or permits, which affect any land, to terminate the leases, licences, franchises, grants or permits or to require annual or other periodic payments as a condition of the continuance thereof;
- (f) reservations, limitations, conditions, exceptions and provisos in any original grants from the Crown of any land or interest therein, statutory exceptions to title, and reservations of mineral rights (including coal, oil and natural gas) in any grants from the Crown or from any other predecessors in title;
- (g) security given to public utilities or to any municipalities or governmental or other public authorities when required by the utility, municipality, governmental or other public authority in connection with the supply of services or utilities to the Borrower;
- (h) Liens and privileges arising out of claims filed, judgments or awards with respect to which (i) the validity of which is being contested in good faith by appropriate action promptly initiated and diligently conducted and do not in the aggregate materially adversely affect the Borrower's financial condition or operations or (ii) an appeal or proceedings for review is being prosecuted in good faith and with respect to which there shall have been secured a stay of execution pending the appeal or proceedings for review or for which security acceptable to the Agent has been posted by the Borrower;
- (i) Liens or deposits in connection with bids, tenders, contracts or expropriation proceedings of the Borrower or to secure utilities, workers' compensation, unemployment insurance or other similar statutory assessments, or to secure costs of litigation when required by Law, and surety or appeal bonds in connection with such litigation;
- (j) warehouseman's, carriers' or other similar common law Liens or privileges, where the action to enforce the same has not proceeded to final judgment, is being defended in good faith by the Borrower and in respect of which it shall have set aside on its books reserves required in accordance with GAAP;
- (k) any other Liens or privileges or other title irregularities, encroachments or encumbrances of a nature similar to the foregoing which are of a minor

nature and will not in the aggregate materially and adversely affect the use of the property for the purposes for which it is held by the Borrower;

- (l) deposits of cash or securities (i) posted in the ordinary course of business other than in relation to Indebtedness for Borrowed Money or (ii) in connection with any Liens referred to in paragraphs (a), (c) and (h) above;
- (m) assignments of insurance provided to landlords (or their mortgagees) pursuant to the terms of any lease and Liens or rights reserved in or exercised under any lease for rent or compliance with the terms of such lease;
- (n) mechanics', workers', repairers' or other like possessory Liens, arising in the ordinary course of business for amounts the payment of which is either not delinquent or is being contested in good faith by appropriate proceedings;
- (o) subject to paragraph (w), Liens on personal property created, issued or assumed to secure any indebtedness and any replacement or renewal thereof, in respect of conditional sales contracts, hire-purchase agreements, chattel mortgages, title retention agreements and leases in the nature of title retention agreements and other similar instruments containing or creating Liens upon any personal property owned by the Borrower to secure the purchase price of such property or the repayment of money borrowed to pay such purchase price or any vendor's lien or privilege on such property securing the whole or any part of such purchase price;
- (p) subject to paragraph (w), Liens in connection with indebtedness in respect of services rendered or to be rendered or goods or products provided or to be provided to the Borrower, including rent and other payments under leases, contracts, hire-purchase agreements and agreements for sale;
- (q) plans of subdivision, site plans, municipal agreements or restrictive covenants affecting the use to which lands may be put, provided that such covenants are complied with and do not materially detract from the value of the land concerned or materially impair its use in the operation of the business of the Borrower;
- (r) rights and interests created by notice registered by any Department of Highways or similar authorities with respect to proposed highways and which do not materially detract from the value of the land concerned or materially impair its use in the operation of the business of the Borrower;
- (s) zoning and building laws and ordinances, municipal by-laws (including site specific by-laws) and regulations;

- (t) certificates of pending litigation that may be registered against any real property or interests therein of the Borrower in respect of any action or proceeding against the Borrower or in which it is a defendant, but with respect to which action or proceeding no judgment, award or attachment against the Borrower has been granted or made and which the Borrower is defending in good faith and in respect of which the Borrower has posted security satisfactory to the Agent, acting reasonably;
- (u) the granting by the Borrower in the ordinary course of its business of any lease, sub-lease, tenancy or right of occupancy to any Person in respect of property owned or leased by the Borrower;
- (v) subject to paragraph (w), Purchase Money Security Interests;
- (w) any other Liens which secure indebtedness or other obligations, provided that the aggregate indebtedness or other obligations secured by all Liens contemplated by this paragraph (w), together with all Liens contemplated by paragraphs (o), (p) and (v) above, shall not exceed \$5,000,000 at any time;
- (x) any Lien granted by the Borrower with the prior written consent of the Majority Lenders;
- (y) any netting agreement, defeasance agreement or reciprocal fee arrangement and any other arrangement having the effect of providing security, in each case that was in existence on the date hereof;
- (z) any other Lien which, as of the Closing Date, is, in the case of lands comprising the land rights which are held by way of fee simple estate, registered against the title to those lands or, in the case of the other land rights, registered in priority to the land rights where the foregoing would not reasonably be expected to, in the aggregate, materially adversely affect the Borrower's financial condition or operations; and
- (aa) the Trust Deed Liens.

"Person" includes any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Pricing Rating" means Levels I, II, III, IV or V, as applicable, which is determined, as of any date, by the highest Rating of the Borrower as at such date; provided, however, if at such time there are two or more Ratings of the Borrower and there is more than one tier difference between the two highest Ratings, the Applicable Margin shall be the arithmetic average of the amounts determined for each of such two Levels.

"Prime Rate" means the greater of (i) the variable rate of interest per annum equal to the rate of interest determined by the Agent from time to time as its prime rate for Canadian dollar loans made by the Agent in Canada from time to time, being a variable per annum

reference rate of interest adjusted automatically upon change by the Agent, calculated on the basis of a year of 365 days or 366 days in the case of a leap year and (ii) the sum of (a) the CDOR Rate for a one month term and (b) $\frac{1}{2}$ of 1% per annum.

"Prime Rate Loan" means monies lent by the Lenders to the Borrower hereunder in Canadian dollars and upon which interest accrues at a rate referable to the Prime Rate.

"Pro Rata Share" means, at any particular time with respect to a particular Lender, the ratio of the Individual Commitment of such Lender at such time to the aggregate of the Individual Commitments of all of the Lenders at such time.

"Purchase Money Obligation" means any Indebtedness for Borrowed Money, assumed as part of, or issued or incurred to provide funds to pay, in whole or in part, the purchase price, which shall be deemed to include any cost of installation, of movable or immovable property acquired before or after the date of this Agreement. In the case of property so acquired, the purchase price shall be deemed to include expenditures made for any repairs or alterations, construction, development or improvements performed thereon or added thereto within a period of 12 months after the acquisition thereof.

"Purchase Money Security Interest" means any Lien on a property or asset created, issued or assumed to secure the purchase price giving rise to the Purchase Money Obligation in respect of such property or asset and includes any extension, renewal or refunding thereof so long as the principal amount outstanding on the date of such extension, renewal or refunding is not increased; provided, however, that such encumbrance does not exceed the purchase price giving rise to the Purchase Money Obligation and is limited to the property acquired in connection with the assumption, issuance or incurring of such Purchase Money Obligation and is created, issued or assumed concurrently with or within 180 days following the acquisition of such property, except in the case of property on which repairs or alterations, construction, development or improvements are performed or added after the acquisition thereof, in which case the same shall be created or issued within a period of 180 days after the acquisition of such property.

"Rating" means, with respect to a particular Major Credit Rating Agency at a particular time, the rating ascribed by such Major Credit Rating Agency to the senior secured indebtedness of the Borrower at such time.

"Responsible Officer" means, with respect to any corporation, the chairman, the president, any vice president, the secretary, the chief executive officer or the chief operating officer, and, in respect of financial or accounting matters, any Financial Officer of such corporation; unless otherwise specified, all references herein to a Responsible Officer mean a Responsible Officer of the Borrower.

"Restricted Payment" means, with respect to any Person, any payment by such Person (i) of any dividends, other than stock dividends, on any shares of its capital, (ii) on account of, or for the purpose of setting apart any property for a sinking or other analogous fund for, the purchase, redemption, retirement or other acquisition of any

shares of its capital or any warrants, options or rights to acquire any such shares, or the making by such Person of any other distribution in respect of any shares of its capital, or (iii) of any principal of or interest or premium on or of any indebtedness of such Person ranking in right of payment subordinate to any liability of such Person under the Borrower Documents, or the payment of any amount in respect of a sinking or analogous fund or defeasance fund for any such indebtedness.

"Rollover Notice" shall have the meaning ascribed thereto in Section 5.2.

"Schedule I Lenders" shall mean, at any time, the Lenders that are listed in Schedule I to the *Bank Act* (Canada) at such time.

"Schedule II Lenders" shall mean, at any time, the Lenders that are listed in Schedule II to the *Bank Act* (Canada) at such time.

"Schedule III Lenders" shall mean, at any time, the Lenders that are listed in Schedule III to the *Bank Act* (Canada) at such time.

"Secured Bonds" means the bonds of the Borrower issued pursuant to either Trust Deed outstanding as at the date hereof and any other such bonds of the Borrower issued pursuant to either Trust Deed after the date hereof in accordance with Section 11.3(c)(vi).

"S&P" means Standard & Poor's Rating Service or any successor by merger or consolidation to its business.

"Shareholders' Equity" means, on any date, the shareholders' equity of the Borrower on such date, determined in accordance with GAAP.

"Subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, Controlled or held by the parent or one or more subsidiaries of the parent, or (b) that is, as of such date, otherwise Controlled by the parent or one or more subsidiaries of the parent.

"Tax Act" means the *Income Tax Act* (Canada), as amended from time to time, and regulations promulgated thereunder.

"Taxes" means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments, or similar charges in the nature of a tax including Canada Pension Plan and provincial

pension plan contributions, unemployment insurance payments and workers' compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties with respect thereto, imposed, levied, collected, withheld or assessed by any Governmental Authority (including federal, state, provincial, municipal and foreign Governmental Authorities), and whether disputed or not.

"Trust Deeds" means the deeds of trust and mortgage made as of September 15, 1966 between the Borrower (then known as Newfoundland Light & Power Co. Limited) and Montreal Trust Company, as amended, modified or supplemented from time to time.

"Trust Deed Indebtedness" means the Indebtedness for Borrowed Money owing by the Borrower under the Trust Deeds and the Secured Bonds.

"Trust Deed Liens" means Liens against any property or assets of the Borrower granted by the Borrower as collateral security for the payment and performance of the Trust Deed Indebtedness.

1.2 Other Usages. References to "this Agreement", "the agreement", "hereof", "herein", "hereto" and like references refer to this Credit Agreement and not to any particular Article, Section or other subdivision of this Agreement. Any references herein to any agreements or documents shall mean such agreements or documents as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

1.3 Plural and Singular. Where the context so requires, words importing the singular number shall include the plural and vice versa.

1.4 Headings. The division of this Agreement into Articles and Sections and the insertion of headings in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.5 Currency. Unless otherwise specified herein, all statements of or references to dollar amounts in this Agreement shall mean lawful money of Canada.

1.6 Applicable Law. This Agreement shall be governed by and construed in accordance with the Laws of the Province of Ontario and the federal Laws of Canada applicable therein. Any legal action or proceeding with respect to this Agreement may be brought in the courts of the Province of Ontario and, by execution and delivery of this Agreement, the parties hereby accept for themselves and in respect of their property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts. Nothing herein shall limit the right of any party to serve process in any manner permitted by Law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction.

1.7 Time of the Essence. Time shall in all respects be of the essence of this Agreement.

1.8 Non-Business Days. Whenever any payment to be made hereunder shall be stated to be due or any action to be taken hereunder shall be stated to be required to be taken on a day other than a Business Day, such payment shall be made or such action shall be taken on the

next succeeding Business Day and, in the case of the payment of any amount, the extension of time shall be included for the purposes of computation of interest, if any, thereon.

1.9 Consents, Approvals and Documentation. Whenever the consent or approval of a party hereto is required in a particular circumstance, unless otherwise expressly provided for herein, such consent or approval shall not be unreasonably withheld or delayed by such party.

1.10 Amount of Credit. Any reference herein to the amount of credit outstanding shall mean, at any particular time:

- (a) in the case of a Prime Rate Loan or a BA Rate Loan, the principal amount thereof at such time; and
- (b) in the case of a Bankers' Acceptance, the face amount thereof at such time.

1.11 Schedules. Each and every one of the schedules which is referred to in this Agreement and attached to this Agreement shall form a part of this Agreement.

1.12 Statute References. Any reference in this Agreement to any statute or any Section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or Section as amended, restated or re-enacted from time to time.

1.13 Paramountcy. In the event of any conflict or inconsistency between a particular provision of any other Borrower Document and a particular provision of this Agreement and to the extent said provision of such other Borrower Document purports to impose obligations on the Borrower that are more onerous than the said provision of this Agreement, then the said provision of this Agreement shall prevail and be paramount.

1.14 Extension of Credit. For the purposes hereof, each drawdown, rollover and conversion shall be deemed to be an extension of credit to the Borrower hereunder.

ARTICLE 2 CREDIT FACILITY

2.1 Establishment of Credit Facility. Subject to the terms and conditions hereof, the Lenders hereby establish in favour of the Borrower a revolving/non-revolving term credit facility (the "Credit Facility") in the amount of \$100,000,000.

2.2 Credit Restrictions. Notwithstanding any other provision hereof, the Borrower shall be entitled to obtain credit by way of BA Rate Loans or Bankers' Acceptances only in such amounts so as to ensure that no Lender is required to make a BA Rate Loan for a principal amount other than an integral multiple of \$1,000 or to accept a Bankers' Acceptance having a face amount other than an integral multiple of \$1,000. Any extension of credit by way of Bankers' Acceptance shall be in a minimum of \$2,000,000 and otherwise in multiples of \$100,000.

2.3 Lenders' Commitments. Subject to the terms and conditions hereof, the Lenders severally agree to extend credit to the Borrower hereunder from time to time provided that the

aggregate amount of credit extended by each Lender under the Credit Facility shall not at any time exceed the Individual Commitment of such Lender and further provided that the aggregate amount of credit outstanding under the Credit Facility shall not at any time exceed the amount of the Credit Facility referred to in Section 2.1 as the same may be reduced pursuant to Section 2.4. All credit requested under the Credit Facility shall be made available to the Borrower contemporaneously by all of the Lenders. Each Lender shall provide to the Borrower its Pro Rata Share of each credit in accordance with the terms hereof, whether such credit is extended by way of drawdown, rollover or conversion. No Lender shall be responsible for any default by any other Lender in its obligation to provide its Pro Rata Share of any credit nor shall the Individual Commitment of any Lender with respect to the Credit Facility be increased as a result of any such default of another Lender in extending credit thereunder. The failure of any Lender to make available to the Borrower its Pro Rata Share of any credit under the Credit Facility shall not relieve any other Lender of its obligation hereunder to make available to the Borrower its Pro Rata Share of such credit thereunder.

2.4 Reductions of Credit Facility. The Borrower may, from time to time and at any time prior to the Conversion Date, by three Business Days' notice in writing to the Agent, permanently reduce the amount of the Credit Facility to the extent it is not utilized; provided, however, that any such permanent reduction of the amount of the Credit Facility shall be by an amount of no less than \$1,000,000 and otherwise in multiples of \$100,000. The amount of the Credit Facility will not be reduced by any repayment or prepayment pursuant to Section 9.3 or 9.4 before the Conversion Date or pursuant to Section 9.5 but will be permanently reduced by any repayment or prepayment pursuant to (x) Section 9.1 or (y) on or after the Conversion Date, Section 9.3 or 9.4, each such reduction to be in an amount equal to the amount of the repayment or prepayment and to be effective from the time of the repayment or prepayment. On the Conversion Date, the amount of the Credit Facility shall be permanently reduced to an amount equal to the amount of credit outstanding thereunder at such time. Any repayment of outstanding credit under the Credit Facility which forms part of any rollover under Article 5 or any conversion from one type of credit to another type of credit under Article 6 shall not cause any reduction in the amount of the Credit Facility. Upon each permanent reduction in the amount of the Credit Facility, the Individual Commitment of each Lender shall thereupon be reduced by an amount equal to such Lender's Pro Rata Share of the amount by which the Credit Facility is permanently reduced.

2.5 Termination of Credit Facility

- (a) The Credit Facility shall terminate upon the earliest to occur of:
 - (i) January 22, 2005 if the Closing Date has not occurred by that date;
 - (ii) the Maturity Date;
 - (iii) the date on which the amount of the Credit Facility has been permanently reduced to zero pursuant to Section 2.4; and
 - (iv) the termination of the Credit Facility pursuant to Section 13.1.

- (b) Upon the termination of the Credit Facility, the right of the Borrower to obtain any credit under the Credit Facility and all of the obligations of the Lenders to extend credit under the Credit Facility shall automatically terminate.

ARTICLE 3 PROVISIONS RELATING TO CREDITS

3.1 Types of Credit Availments. Subject to the terms and conditions hereof, the Borrower may obtain credit under the Credit Facility by way of one or more Bankers' Acceptances, BA Rate Loans and Prime Rate Loans.

3.2 Funding of Prime Rate Loans under Credit Facility. Each Lender shall make available to the Agent its Pro Rata Share of the principal amount of each Prime Rate Loan under the Credit Facility prior to noon (Toronto time) on the date of the extension of credit. The Agent shall, upon fulfilment by the Borrower of the terms and conditions set forth in Article 12, make such funds available to the Borrower on the date of the extension of credit by crediting the Designated Account in immediately available funds unless otherwise irrevocably authorized and directed in the Drawdown Notice. Unless the Agent has been notified by a Lender prior to noon (Toronto time) on the date of the extension of credit that such Lender will not make available to the Agent its Pro Rata Share of such Prime Rate Loan, the Agent may assume that such Lender has made such portion of the Prime Rate Loan available to the Agent on the date of the extension of credit in accordance with the provisions hereof and the Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Agent has made such assumption, to the extent such Lender shall not have so made its Pro Rata Share of the Prime Rate Loan available to the Agent, such Lender agrees to pay to the Agent, forthwith on demand, such Lender's Pro Rata Share of the Prime Rate Loan and all reasonable costs and expenses incurred by the Agent in connection therewith together with interest thereon at the then prevailing interbank rate for each day from the date such amount is made available to the Borrower until the date such amount is paid or repaid to the Agent; provided, however, that notwithstanding such obligation, if such Lender fails so to pay, the Borrower shall, without prejudice to any rights that the Borrower might have against such Lender, repay such amount to the Agent forthwith after demand therefor by the Agent. The amount payable by such Lender to the Agent pursuant hereto shall be set forth in a certificate delivered by the Agent to such Lender and the Borrower (which certificate shall contain reasonable details of how the amount payable is calculated) and shall constitute *prima facie* evidence of such amount payable. If such Lender makes the payment to the Agent required herein, the amount so paid shall constitute such Lender's Pro Rata Share of the Prime Rate Loan for purposes of this Agreement and shall entitle such Lender to all rights and remedies against the Borrower in respect of such Loan.

3.3 Failure of Lender to Fund Prime Rate Loan under Credit Facility. If any Lender fails to make available to the Agent its Pro Rata Share of any Prime Rate Loan under the Credit Facility as required under Section 3.2 (such Lender being herein called the "**Defaulting Lender**") and the Agent has not funded pursuant to Section 3.2, the Agent shall forthwith give notice of such failure by the Defaulting Lender to the Borrower and the other Lenders and such notice shall state that any Lender may make available to the Agent all or any portion of the Defaulting Lender's Pro Rata Share of such Prime Rate Loan (but in no way shall any other Lender or the Agent be obliged to do so) in the place and stead of the Defaulting Lender. If

more than one Lender gives notice that it is prepared to make funds available in the place and stead of a Defaulting Lender in such circumstances and the aggregate of the funds which such Lenders (herein collectively called the **"Contributing Lenders"** and individually called the **"Contributing Lender"**) are prepared to make available exceeds the amount of the advance which the Defaulting Lender failed to make, then each Contributing Lender shall be deemed to have given notice that it is prepared to make available its *pro rata* share of such advance based on the Contributing Lenders' relative commitments to advance in such circumstances. If any Contributing Lender makes funds available in the place and stead of a Defaulting Lender in such circumstances, then the Defaulting Lender shall pay to any Contributing Lender making the funds available in its place and stead, forthwith on demand, any amount advanced on its behalf together with interest thereon at the then prevailing interbank rate for each day from the date of advance to the date of payment, against payment by the Contributing Lender making the funds available of all interest received in respect of the Prime Rate Loan from the Borrower. In addition to interest as aforesaid, the Borrower shall pay all amounts owing by the Borrower to the Defaulting Lender hereunder (with respect to the amounts advanced by the Contributing Lenders on behalf of the Defaulting Lender) to the Contributing Lenders in accordance with Section 3.7 until such time as the Defaulting Lender pays to the Agent for the Contributing Lenders all amounts advanced by the Contributing Lenders on behalf of the Defaulting Lender.

3.4 Funding of Bankers' Acceptances

- (a) If the Agent receives a Drawdown Notice, Rollover Notice or Conversion Notice requesting a drawdown of, a rollover of or a conversion into Bankers' Acceptances, the Agent shall notify each of the Lenders, prior to noon (Toronto time) on the first Business Day prior to the date of such extension of credit of such request of each Lender's Pro Rata Share of such extension of credit. The Agent shall also at such time notify the Borrower of each Lender's Pro Rata Share of such extension of credit.
- (b) If, by noon (Toronto time) on the first Business Day prior to the date of extension of credit, the Borrower has not advised the Agent in writing that it will be arranging its own sale of the Bankers' Acceptances, each Lender shall purchase each Bankers' Acceptance accepted by it (forthwith after the acceptance thereof) as herein provided. If, by the aforesaid time, the Borrower does advise the Agent in writing that it will be arranging its own sale of the Bankers' Acceptances, the Borrower shall, not later than 11:00 a.m. (Toronto time) on the date of the extension of credit, irrevocably notify the Agent of the name of the purchaser or purchasers of the Bankers' Acceptances accepted by each Lender, the purchase price therefor and the denominations thereof and the Agent shall forthwith notify each Lender accordingly.
- (c) Subject to Section 3.5, each Lender shall, not later than noon (Toronto time) on the date of each extension of credit by way of Bankers' Acceptance, accept drafts of the Borrower which are presented to it for acceptance and which have an aggregate face amount equal to such Lender's Pro Rata Share of the total extension of credit being made available by way of Bankers' Acceptances on such date, as advised by the Agent. Subject to the provisions hereof, the Agent shall be

responsible for making all necessary arrangements with each of the Lenders with respect to the stamping of Bankers' Acceptances.

- (d) Each Lender may at any time and from time to time hold, sell, rediscount or otherwise dispose of any or all Bankers' Acceptances accepted and purchased by it. With respect to Bankers' Acceptances which are not purchased by the accepting Lenders, the accepting Lenders shall deliver the Bankers' Acceptances accepted by them to the purchasers thereof against receipt of the purchase price therefor as advised by the Agent.
- (e) The Borrower shall provide for payment to the accepting Lenders of the face amount of each Bankers' Acceptance at its maturity, either by payment of such amount or through an extension of credit hereunder or through a combination of both. The Borrower hereby waives presentment for payment of Bankers' Acceptances by the Lenders and any defence to payment of amounts due to a Lender in respect of a Bankers' Acceptance which might exist by reason of such Bankers' Acceptance being held at maturity by the Lender which accepted it and agrees not to claim from such Lender any days of grace for the payment at maturity of Bankers' Acceptances. In the event that the Borrower fails to deliver a Conversion Notice or Rollover Notice and fails to make payment to the Agent in respect of the maturing Bankers' Acceptances, the face amount of the maturing Bankers' Acceptances shall be deemed to be converted to a Prime Rate Loan on the relevant maturity date pursuant to Section 6.4.
- (f) In the case of a drawdown by way of Bankers' Acceptance, each Lender shall, forthwith after the acceptance of drafts of the Borrower as aforesaid, make available to the Agent the BA Net Proceeds with respect to the Bankers' Acceptances accepted by it. The Agent shall, upon fulfilment by the Borrower of the terms and conditions set forth in Article 12, make such BA Net Proceeds available to the Borrower on the date of such extension of credit by crediting the Designated Account.
- (g) In the case of a rollover of or conversion into Bankers' Acceptances:
 - (i) if the Borrower has elected that the Lenders shall purchase the Bankers' Acceptances accepted by them, each Lender shall retain the Bankers' Acceptance accepted by it and shall not be required to make any funds available to the Agent for deposit to the Designated Account; however, forthwith after the acceptance of drafts of the Borrower as aforesaid, the Borrower shall pay to the Agent on behalf of the Lenders an amount equal to the aggregate amount of the acceptance fees in respect of such Bankers' Acceptances calculated in accordance with Section 7.4 plus the amount by which the aggregate face amount of such Bankers' Acceptances exceeds the aggregate BA Discounted Proceeds with respect thereto; or
 - (ii) if the Borrower has elected that the Lenders shall not purchase the Bankers' Acceptances accepted by them, each Lender shall retain the

purchase price paid for the Bankers' Acceptances which it has accepted and it shall not be required to make any funds available to the Agent for deposit to the Designated Account; however, forthwith after the acceptance of drafts of the Borrower as aforesaid, the Borrower shall pay to the Agent on behalf of the Lenders an amount equal to the aggregate amount of the acceptance fees in respect of such Bankers' Acceptances calculated in accordance with Section 7.4 plus the amount by which the aggregate face amount of such Bankers' Acceptances exceeds the aggregate purchase price for such Bankers' Acceptances.

- (h) Any Bankers' Acceptance may, at the option of the Borrower, be executed in advance by the Borrower by mechanically reproduced or facsimile signatures of any two officers of the Borrower who are properly so designated and authorized by the Borrower from time to time. Any Bankers' Acceptance so executed and delivered by the Borrower to the Lenders shall be valid and shall bind the Borrower and may be dealt with by the Lenders to all intents and purposes as if the Bankers' Acceptance had been signed in the executing officers' own handwriting.
- (i) The Borrower shall notify the Lenders as to those officers whose signatures may be reproduced and used to execute Bankers' Acceptances in the manner provided in Section 3.4(h). Bankers' Acceptances with the mechanically reproduced or facsimile signatures of designated officers may be used by the Lenders and shall continue to be valid, notwithstanding the death, termination of employment or termination of authorization of either or both of such officers or any other circumstance.
- (j) The Borrower hereby indemnifies and agrees to hold harmless the Lenders against and from all losses, damages, expenses and other liabilities caused by or attributable to the use of the mechanically reproduced or facsimile signature instead of the original signature of an authorized officer of the Borrower on a Bankers' Acceptance prepared, executed, issued and accepted pursuant to this Agreement, except to the extent determined by a court of competent jurisdiction to be due to the gross negligence or wilful misconduct of the relevant Lender.
- (k) Each of the Lenders agrees that, in respect of the safekeeping of executed drafts of the Borrower which are delivered to it for acceptance hereunder, it shall exercise the same degree of care which it gives to its own property, provided that it shall not be deemed to be an insurer thereof.
- (l) All Bankers' Acceptances to be accepted by a particular Lender shall, at the option of such Lender, be issued in the form of depository bills made payable originally to and deposited with The Canadian Depository for Securities Limited pursuant to the *Depository Bills and Notes Act* (Canada).
- (m) In order to facilitate the issuance of Bankers' Acceptances pursuant to this Agreement, the Borrower hereby authorizes each of the Lenders, and appoints

each of the Lenders as the Borrower's attorney, to complete, sign and endorse drafts or depository bills (as defined in the *Depository Bills and Notes Act* (Canada)) on its behalf in handwritten form or by facsimile or mechanical signature or otherwise in accordance with the applicable Drawdown Notice, Conversion Notice or Rollover Notice and, once so completed, signed and endorsed to accept them as Bankers' Acceptances under this Agreement and then if applicable, purchase, discount or negotiate such Bankers' Acceptances in accordance with the provisions of this Agreement. Drafts or depository bills so completed, signed, endorsed and negotiated on behalf of the Borrower by a Lender shall bind the Borrower as fully and effectively as if so performed by an authorized officer of the Borrower. Each draft of a Bankers' Acceptance and each depository bill completed, signed or endorsed by a Lender shall mature on the last day of the term thereof.

3.5 BA Rate Loans. If, in the sole judgment of a Lender, such Lender is unable to extend credit by way of Bankers' Acceptances in accordance with this Agreement, such Lender shall give an irrevocable notice to such effect to the Agent and the Borrower prior to 11:00 a.m. (Toronto time) on the date of the requested credit extension and shall make available to the Borrower prior to noon (Toronto time) on the date of such requested credit extension a Canadian dollar loan (a "**BA Rate Loan**") in the principal amount equal to such Lender's Pro Rata Share of the total credit to be extended by way of Bankers' Acceptances, such BA Rate Loan to be funded in the same manner as a Prime Rate Loan is funded pursuant to Sections 3.2 and 3.3. Such BA Rate Loan shall have the same term as the Bankers' Acceptances for which it is a substitute and shall bear such rate of interest per annum throughout the term thereof as shall permit such Lender to obtain the same effective rate as if such Lender had accepted and purchased a Bankers' Acceptance at the same acceptance fee and pricing at which the Agent would have accepted and purchased, on the bid side of the market, such Bankers' Acceptance at approximately 1:00 p.m. (Toronto time) on the date such BA Rate Loan is made, on the basis that, and the Borrower hereby agrees that, for such a BA Rate Loan, interest shall be payable in advance on the date of the extension of credit by the Lender deducting the interest payable in respect thereof from the principal amount of such BA Rate Loan. All terms of this Agreement applicable to Bankers' Acceptances shall apply equally to BA Rate Loans with such changes as the Agent may in the context deem to be necessary.

3.6 Timing of Credit Availments. No Bankers' Acceptance or BA Rate Loan under the Credit Facility may have a maturity date later than the Maturity Date.

3.7 Time and Place of Payments. Unless otherwise expressly provided herein, the Borrower shall make all payments pursuant to this Agreement or pursuant to any document, instrument or agreement delivered pursuant hereto by deposit to the Designated Account before 1:00 p.m. (Toronto time) on the day specified for payment and the Agent shall be entitled to withdraw the amount of any payment due to the Agent, the Lenders or any of them from such account on the day specified for payment. Any such payment received on the day specified for such payment but after 1:00 p.m. (Toronto time) thereon shall be deemed to have been received prior to 1:00 p.m. (Toronto time) on the Business Day immediately following such day specified for payment.

3.8 Remittance of Payments. Forthwith after the withdrawal from the Designated Account by the Agent of any payment of principal, interest, fees or other amounts for the benefit of all of the Lenders pursuant to Section 3.7, the Agent shall, subject to Sections 3.3 and 8.3, remit to each Lender, in immediately available funds, such Lender's Pro Rata Share of such payment; provided that if the Agent, on the assumption that it will receive, on any particular date, a payment of principal (including, without limitation, a prepayment), interest, fees or other amount hereunder, remits to each Lender its Pro Rata Share of such payment and the Borrower fails to make such payment, each of the Lenders agrees to repay to the Agent, forthwith on demand, to the extent that such amount is not recovered from the Borrower on demand and after reasonable efforts by the Agent to collect such amount (without in any way obligating the Agent to take any legal action with respect to such collection), such Lender's Pro Rata Share of the payment made to it pursuant hereto together with interest thereon at the then prevailing interbank rate for each day from the date such amount is remitted to the Lenders until the date such amount is paid or repaid to the Agent, the exact amount of the repayment required to be made by the Lenders pursuant hereto to be as set forth in a certificate delivered by the Agent to each Lender, which certificate shall constitute *prima facie* evidence of such amount of repayment.

3.9 Evidence of Indebtedness. The Agent shall open and maintain accounts wherein the Agent shall record the amount of credit outstanding, each advance and each payment of principal and interest on account of each Loan, each Bankers' Acceptance accepted, purchased and cancelled and all other amounts becoming due to and being paid to the Agent or the Lenders hereunder and under any of the other Borrower Documents. The Agent's accounts constitute, in the absence of manifest error, *prima facie* evidence of the indebtedness of the Borrower to the Agent and the Lenders hereunder and under the other Borrower Documents.

3.10 Notice Periods. Each Drawdown Notice, Rollover Notice and Conversion Notice shall be given to the Agent:

- (a) prior to 10:00 a.m. (Toronto time) on the first Business Day prior to the date of a drawdown of, rollover of, conversion of or conversion into a Bankers' Acceptance or BA Rate Loan; and
- (b) prior to 10:00 a.m. (Toronto time) on the date of any other drawdown, rollover or conversion.

ARTICLE 4 DRAWDOWN

4.1 Drawdown. Subject to the terms and conditions hereof and provided that all of the applicable conditions precedent set forth in Article 12 have been fulfilled by the Borrower or waived by the Agent, the Borrower may obtain credit under the Credit Facility from time to time by way of drawdown on or before the Conversion Date by giving to the Agent an irrevocable notice (the "**Drawdown Notice**") in accordance with Section 3.10, in substantially the form of Schedule D hereto, which notice shall specify:

- (a) the date of the drawdown;

- (b) whether the credit is to be extended by way of Prime Rate Loan or Bankers' Acceptance or a combination thereof;
- (c) to the extent credit is to be extended by way of Prime Rate Loan, the principal amount thereof;
- (d) to the extent credit is to be extended by way of Bankers' Acceptances, the aggregate face amount of the Bankers' Acceptances to be issued and the term of the Bankers' Acceptances to be issued; and
- (e) the details of any irrevocable authorization and direction pursuant to Section 3.2.

ARTICLE 5 ROLLOVERS

5.1 Bankers' Acceptances. Subject to Section 3.5 and provided that the Borrower has, by giving notice to the Agent in accordance with Section 5.2 requested the Lenders to accept its drafts or accept and purchase its drafts, as the case may be, to replace all or a portion of outstanding Bankers' Acceptances as they mature, each Lender shall, on the maturity of such Bankers' Acceptances, accept or accept and purchase, as the case may be, the Borrower's draft or drafts having an aggregate face amount equal to its Pro Rata Share of the aggregate face amount of the matured Bankers' Acceptances or the portion thereof to be replaced in accordance with Section 3.4.

5.2 Rollover Notice. The notice to be given to the Agent pursuant to Section 5.1 (the "Rollover Notice") shall be irrevocable, shall be given in accordance with Section 3.10 and be in substantially the form of Schedule E hereto and shall specify:

- (a) the maturity date of the maturing Bankers' Acceptances;
- (b) the face amount of the maturing Bankers' Acceptances and the portion thereof to be replaced; and
- (c) the number of new Bankers' Acceptances to be issued, the face amount of each new Bankers' Acceptance and the term of each new Bankers' Acceptance.

ARTICLE 6 CONVERSIONS

6.1 Converting Prime Rate Loans to Bankers' Acceptances. Subject to Section 3.5 and provided that the Borrower has, by giving notice to the Agent in accordance with Section 6.3, requested the Lenders to accept its drafts or accept and purchase its drafts, as the case may be, to replace all or a portion of an outstanding Prime Rate Loan and provided further that no Default has occurred and is continuing, each Lender shall, on the date of conversion, accept or accept and purchase, as the case may be, the Borrower's draft or drafts having an aggregate face amount equal to its Pro Rata Share of the aggregate principal amount of such Loan or the portion thereof which is being converted, such acceptance or acceptance and purchase, as the case may be, to be in accordance with Section 3.4.

6.2 Converting Bankers' Acceptances and BA Rate Loans to Prime Rate Loans.

Each Lender shall, on the maturity date of a Bankers' Acceptance which such Lender has accepted, pay to the holder thereof the face amount of such Bankers' Acceptance. Provided that the Borrower has, by giving notice to the Agent in accordance with Section 6.3, requested the Lenders to convert all or a portion of outstanding maturing Bankers' Acceptances into a Prime Rate Loan or, in accordance with Section 6.4 or 6.5 there is a deemed conversion into a Prime Rate Loan, upon the maturity date of such Bankers' Acceptance, each Lender shall, upon the payment by such Lender to the holders of such maturing Bankers' Acceptances of the aggregate face amount thereof, extend credit to the Borrower by way of the requested Prime Rate Loan in the principal amount equal to its Pro Rata Share of the aggregate amount of credit represented by such maturing Bankers' Acceptances or the portion thereof which is being converted. Where a particular Lender has funded the Borrower by way of a BA Rate Loan rather than by way of Bankers' Acceptances, the provisions of this Section 6.2 as they relate to Bankers' Acceptances shall apply mutatis mutandis to such BA Rate Loan.

6.3 Conversion Notice. The notice to be given to the Agent pursuant to Section 6.1 or 6.2 (the "**Conversion Notice**") shall be irrevocable, shall be given in accordance with Section 3.10 and be in substantially the form of Schedule F hereto and shall specify:

- (a) whether an outstanding Prime Rate Loan or Bankers' Acceptances are to be converted;
- (b) the date on which the conversion is to take place;
- (c) the face amount of the Bankers' Acceptances or the portion thereof which is to be converted or the principal amount of the Prime Rate Loan or the portion thereof which is to be converted;
- (d) the amount of the Prime Rate Loan into which the outstanding Bankers' Acceptances are to be converted; and
- (e) if an outstanding Prime Rate Loan is to be converted into Bankers' Acceptances, the number of new Bankers' Acceptances to be issued, the aggregate face amount of the new Bankers' Acceptances to be issued and the term or terms of the new Bankers' Acceptances.

6.4 Absence of Notice. In the absence of a Rollover Notice or Conversion Notice within the appropriate time periods referred to herein, a maturing Bankers' Acceptance or BA Rate Loan shall be automatically converted to a Prime Rate Loan as though a notice to such effect had been given in accordance with Section 6.3.

6.5 Conversion after Default. If a Default has occurred and is continuing at 11:00 a.m. (Toronto time) on the first Business Day prior to the maturity of a Bankers' Acceptance or BA Rate Loan, such Bankers' Acceptance or BA Rate Loan shall automatically convert into a Prime Rate Loan as though a notice to such effect had been given in accordance with Section 6.3.

ARTICLE 7 INTEREST RATES AND FEES

7.1 Interest Rates. The Borrower shall pay to the Lenders, in accordance with Section 3.7, interest on the outstanding principal amount from time to time of each Prime Rate Loan made to it under the Credit Facility from time to time at the rate per annum equal to the Prime Rate plus the Applicable Margin.

7.2 Calculation and Payment of Interest

- (a) Interest on the outstanding principal amount from time to time of each Prime Rate Loan and on the amount of overdue interest outstanding thereon from time to time shall accrue from day to day from and including the date on which the credit is obtained by way of such Loan or the date on which such payment of overdue interest was due, as the case may be, to but excluding the date on which such Loan or such overdue interest, as the case may be, is repaid in full (both before and after maturity and as well after as before judgment) and shall be calculated on the basis of the actual number of days elapsed divided by 365 or 366, as the case may be.
- (b) Accrued interest shall be paid, in the case of interest on Prime Rate Loans, in arrears on the last Business Day of each calendar month.
- (c) Interest on each BA Rate Loan shall be paid in advance as provided in Section 3.5.

7.3 General Interest Rules. If the Borrower fails to pay any principal, interest, interest equivalent, fee or other material amount of any nature payable by it hereunder on the due date therefor, the Borrower shall pay to the Lenders interest on such overdue amount in the same currency as such overdue amount is payable from and including such due date to but excluding the date of actual payment (as well after as before judgment) at the rate per annum, calculated and compounded monthly, which is equal to the Prime Rate plus 2% per annum. Such interest on overdue amounts shall become due and be paid on demand by the Agent.

7.4 Acceptance Fees. Upon the acceptance of any draft of the Borrower pursuant hereto, the Borrower shall pay to the Lenders in advance, in the manner provided in Sections 3.4(f) and (g) and 3.7, an acceptance fee calculated at the rate per annum, on the basis of a year of 365 days, equal to the Applicable Margin on the face amount of such Bankers' Acceptance for its term, the term of such Bankers' Acceptance being the actual number of days in the period commencing on the date of acceptance of the Borrower's draft and ending on but excluding the maturity date of the Bankers' Acceptance. With respect to each drawdown by way of Bankers' Acceptances, such acceptance fees shall be paid by the Lenders deducting the amount thereof from the BA Gross Proceeds received by the Lenders before the Lenders remit the BA Net Proceeds to the Agent as provided in Section 3.4(f). With respect to each rollover of and conversion into Bankers' Acceptances, such acceptance fees shall be paid by the Borrower to the Agent as provided in Section 3.4(g). Each such payment is non-refundable and fully earned when due.

7.5 Standby Fees. Upon the first Business Day of each Fiscal Quarter commencing after the Closing Date and on the Conversion Date, the Borrower shall pay to the Lenders, in arrears, a standby fee, calculated and accruing daily from and including the Closing Date at the rate per annum, calculated on the basis of a year of 365 days or, in the case of a leap year, 366 days, equal to the Applicable Margin on the amount of the Available Credit.

7.6 Interest and Fee Adjustment. Subject to the limitations expressed in this Section, the changes in the interest rate margins and fee rates contemplated in the definition of Applicable Margin shall be effective on (i) the effective date for any change in the Pricing Rating (as announced by the applicable Major Credit Rating Agency); (ii) the date of the occurrence of an Event of Default; or (iii) the Conversion Date, as the case may be (and, for greater certainty with respect to clauses (i) and (ii), in the case of acceptance fees shall not be effective for that portion of the remaining term of any outstanding Bankers' Acceptances or BA Rate Loans on and after such date but shall only be effective on the last day of such term and for greater certainty with respect to clause (iii), in the case of acceptance fees shall be effective for that portion of the remaining term of any outstanding Bankers' Acceptances or BA Rate Loan on such date). No change in the Applicable Margin which would result in a reduction of applicable interest rate margins and fee rates hereunder shall be permitted at any time that an Event of Default has occurred and is continuing hereunder.

ARTICLE 8

CAPITAL, INDEMNITY AND TAX PROVISIONS

8.1 Conditions of Credit. The obtaining or maintaining of credit hereunder shall be subject to the terms and conditions contained in this Article 8.

8.2 Change of Circumstances

- (a) If, after the date hereof, the introduction of or any change in or in the interpretation of, or any change in its application to any Lender (the "**Affected Party**"), any Law of any Governmental Authority (whether or not having the force of Law but, if not having the force of Law, one with which a responsible Canadian chartered bank would comply), including, without limitation, any reserve or special deposit requirement or any tax (other than tax on an Affected Party's income) or any capital requirement, has, due to an Affected Party's compliance, the effect, directly or indirectly, of (i) increasing the cost to such Affected Party of performing its obligations hereunder or under any Bankers' Acceptance; (ii) reducing any amount received or receivable by such Affected Party hereunder or its effective return hereunder or under any Bankers' Acceptance or on its capital; or (iii) causing such Affected Party to make any payment or to forego any return based on any amount received or receivable hereunder or under any Bankers' Acceptance by such Affected Party, then, upon demand (which demand shall be accompanied by a certificate setting out the reason for and the calculation of the relevant amount) from time to time the Borrower shall pay such amount as shall compensate such Affected Party for any such cost, reduction, payment or foregone return accruing to the date of the aforesaid demand from a date not exceeding 60 days prior to such date of demand

(the "**Additional Compensation**"); provided that the Borrower shall be obligated under this Section 8.2(a) to compensate such Affected Party for any increase in such Affected Party's capital adequacy requirements measured against its outstanding obligations hereunder only to the extent such capital adequacy requirements are in excess of the capital adequacy requirements as of the date hereof. Any certificate of an Affected Party in respect of the foregoing will be conclusive and binding upon the Borrower, except for manifest error, provided that such Affected Party shall determine the Additional Compensation owing to it in good faith using any reasonable averaging and attribution methods.

- (b) Each Affected Party agrees that, as promptly as practicable after it becomes aware of the occurrence of an event or the existence of a condition that would cause it to seek Additional Compensation from the Borrower pursuant to Section 8.2(a), it will use reasonable efforts to make, fund or maintain the affected credit through another lending office or take such other actions as it deems appropriate if as a result thereof the Additional Compensation which would otherwise be required to be paid in respect of such credit pursuant to Section 8.2(a), would be reduced and if, as determined by such Affected Party in its sole discretion, the making, funding or maintaining of such credit through such other lending office or the taking of such other actions would not otherwise adversely affect such credit or such Affected Party and would not, in such Affected Party's sole discretion, be commercially unreasonable. Each Affected Party further agrees that if such Affected Party subsequently recovers all or part of the Additional Compensation paid by the Borrower, it shall repay an equal amount to the Borrower. The Borrower shall be entitled to prepay any outstanding credit hereunder (provided that Bankers' Acceptances and BA Rate Loans may only be prepaid on their maturity) which is the subject of a demand for Additional Compensation under this Section 8.2 without notice, bonus or penalty. Additional Compensation shall only be payable by the Borrower pursuant to this Section 8.2 if similar compensation is being claimed as a general practice from customers of such Affected Party who by agreement are liable to pay similar compensation.
- (c) Notwithstanding the foregoing provisions, a Lender shall only be entitled to rely upon the provisions of this Section 8.2 if and for so long as it is not treating the Borrower in any materially different or in any materially less favourable manner than is applicable to any other customers of the relevant Lender, where such other customers are bound by similar provisions to the foregoing provisions of this Section 8.2.

8.3 Failure of Lenders to Fund as a Result of Change of Circumstances. If any Lender but not all of the Lenders seeks Additional Compensation pursuant to Section 8.2(a) (in each case, the "**Affected Lender**"), then the Borrower may indicate to the Agent in writing that it desires to replace the Affected Lender with one or more of the other Lenders, and the Agent shall then forthwith give notice to the other Lenders that any Lender or Lenders may, in the aggregate, assume all (but not part) of the Affected Lender's Individual Commitment and obligations hereunder and, in the aggregate, acquire all (but not part) of the rights of the Affected Lender hereunder and assume all (but not part) of the obligations of the Affected Lender under

each of the other Borrower Documents (but in no event shall any other Lender or the Agent be obliged to do so). If one or more Lenders shall so agree in writing (herein collectively called the "**Assenting Lenders**" and individually called an "**Assenting Lender**") with respect to such acquisition and assumption, the Individual Commitment and the obligations of such Assenting Lender under this Agreement and the rights and obligations of such Assenting Lender under each of the other Borrower Documents shall be increased by its respective *pro rata* share (based on the relative Individual Commitments of the Assenting Lenders) of the Affected Lender's Pro Rata Share of such credit and Individual Commitment and obligations under this Agreement and rights and obligations under each of the other Borrower Documents on a date mutually acceptable to the Assenting Lenders and the Borrower. On such date, the Assenting Lenders shall pay to the Affected Lender the advances of the Affected Lender then outstanding, together with all interest accrued thereon and all other amounts owing to the Affected Lender hereunder, and, upon such payment by the Assenting Lenders, the Affected Lender shall cease to be a "**Lender**" for purposes of this Agreement and shall no longer have any obligations hereunder. Upon the assumption of the Affected Lender's Individual Commitment or portion thereof as aforesaid by an Assenting Lender, Schedule A hereto shall be deemed to be amended to increase the Individual Commitment of such Assenting Lender by the respective amounts of such assumption. If all of the Affected Lender's rights and obligations under the Borrower Documents have not been acquired and assumed by Assenting Lenders, the Borrower may locate other financial institutions ("**Substitute Lenders**") who are satisfactory to the Agent, acting reasonably, and who acquire and assume all of the balance of the rights and obligations of the Affected Lender under the Borrower Documents on a date mutually acceptable to the Borrower and the Substitute Lenders, any such assignment and assumption to be effected in accordance with the procedures set out in Section 15.6(c). If all of the Affected Lender's rights and obligations under the Borrower Documents have not been acquired and assumed by Assenting Lenders and Substitute Lenders, then provided there does not then exist any Default and no Event of Default has occurred and not been remedied or waived, the Borrower may, at its election, repay all outstanding amounts due to such Affected Lender (or such portion which has not been acquired by Assenting Lenders and Substitute Lenders, as the case may be) and thereupon the Individual Commitment of the Affected Lender shall be permanently cancelled and the aggregate amount of Individual Commitments shall be permanently reduced by the same amount and the Individual Commitment of each of the other Lenders shall remain the same.

8.4 Indemnity Relating to Credits. Upon notice from the Agent or a Lender (which notice shall be accompanied by a detailed calculation of the amount to be paid by the Borrower), the Borrower shall pay to such Lender such amount or amounts as will compensate the Agent or such Lender for any loss, cost or expense incurred by it:

- (a) in the liquidation or redeposit of any funds acquired by the Lender to fund or maintain any portion of a Loan as a result of:
 - (i) the failure of the Borrower to borrow or make repayments on the dates specified under this Agreement or in any notice from the Borrower to the Agent; or
 - (ii) the repayment or prepayment of any amounts on a day other than the payment dates prescribed herein; or

- (b) with respect to any Bankers' Acceptance, arising from claims or legal proceedings, and including reasonable legal fees and disbursements, respecting the obtaining of credit by the Borrower by way of such Bankers' Acceptance, the collection of amounts owed by the Borrower hereunder in respect of such Bankers' Acceptance or the enforcement of the Agent's or any Lender's rights hereunder in respect of such Bankers' Acceptance including, without limitation, legal proceedings attempting to restrain the Agent or any Lender from paying any amount under such Bankers' Acceptance.

8.5

Indemnity for Transactional and Environmental Liability

- (a) The Borrower hereby agrees to indemnify, exonerate and hold the Agent, each Lender and each of their respective shareholders, officers, directors, employees and agents (collectively, the "**Indemnified Parties**") free and harmless from and against any and all claims, demands, actions, causes of action, suits, losses, costs (including, without limitation, all documentary, recording, filing, mortgage or other stamp taxes or duties), charges, liabilities and damages, and reasonable expenses in connection therewith (irrespective of whether such Indemnified Party is a party to the action for which indemnification hereunder is sought), and including, without limitation, reasonable legal fees and reasonable out-of-pocket disbursements and amounts paid in settlement of any and every kind whatsoever (collectively, in this Section 8.5(a), the "**Indemnified Liabilities**"), paid, incurred or suffered by, or asserted against, the Indemnified Parties or any of them as a result of, or arising out of, or relating to (i) the extension of credit contemplated herein, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any credit extended hereunder, (iii) any actual or threatened investigation, litigation or other proceeding relating to any credit extended or proposed to be extended as contemplated herein or (iv) the execution, delivery, performance or enforcement of any Borrower Document and any instrument, document or agreement executed pursuant hereto or thereto, except for any such Indemnified Liabilities (x) that a court of competent jurisdiction determines arose on account of the relevant Indemnified Party's gross negligence or wilful misconduct or (y) that constitute loss of profit, loss of income or revenue or loss of business opportunity of such Indemnified Party.
- (b) Without limiting the generality of the indemnity set out in Section 8.5(a), the Borrower hereby further agrees to indemnify, exonerate and hold the Indemnified Parties free and harmless from and against any and all claims, demands, actions, causes of action, suits, losses, costs, charges, liabilities and damages, and reasonable expenses in connection therewith, including, without limitation, reasonable legal fees and reasonable out-of-pocket disbursements, and amounts paid in settlement, of any and every kind whatsoever (collectively, in this Section 8.5(b), the "**Indemnified Liabilities**"), paid, incurred or suffered by, or asserted against the Indemnified Parties or any of them for, with respect to, or as a direct or indirect result of, (i) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, any real property legally or beneficially owned (or any estate or interest which is owned), leased, occupied or

operated by the Borrower of any Hazardous Material or (ii) the breach or violation of any Environmental Law by the Borrower, regardless of whether caused by, or within the control of, the Borrower, except for any such Indemnified Liabilities (x) that a court of competent jurisdiction determines arose on account of the relevant Indemnified Party's gross negligence or wilful misconduct, (y) that constitute loss of profit, loss of income or revenue or loss of business opportunity of such Indemnified Party or (z) that would have been paid, incurred or suffered by or asserted against the Indemnified Parties or any of them in the absence of the Borrower Documents and the arrangements contemplated thereby.

- (c) Each Indemnified Party shall notify the Borrower as soon as reasonably practicable upon becoming aware of facts which the Indemnified Party believes in good faith could give rise to a claim under this Section 8.5. No Indemnified Party shall settle or pay any third party claim for which indemnification may be sought except with the prior written consent of the Borrower. The Borrower shall have the right to participate in or assume control of the defence of any third party claim, with the advice of counsel satisfactory to the Borrower. To the extent an Indemnified Party shall have rights against any third party, including an insurer, with respect to an indemnified matter hereunder, such Indemnified Party shall make such claim and promptly remit the proceeds thereof to reimburse the Borrower for amounts paid by it under this Section 8.5 in respect of such matter; provided, however, that such Indemnified Party shall only be obligated to remit any such proceeds to the extent it has received payment in full from the Borrower with respect to such indemnified matter.
- (d) All obligations provided for in this Section 8.5 shall survive the permanent repayment of all of the outstanding credit hereunder and the termination of the Credit Facility and this Agreement and shall not be reduced or impaired by any investigation made by or on behalf of the Agent, the Lenders or any of them.
- (e) The Borrower hereby agrees that, for the purposes of effectively allocating the risk of loss placed on the Borrower by this Section 8.5, the Agent and each Lender shall be deemed to be acting as the agent or trustee on behalf of and for the benefit of their respective shareholders, officers, directors, employees and agents.
- (f) If, for any reason, the obligations of the Borrower pursuant to this Section 8.5 shall be unenforceable, the Borrower agrees to make the maximum contribution to the payment and satisfaction of each obligation that is permissible under applicable Law, except to the extent that a court of competent jurisdiction determines such obligations arose on account of the gross negligence or wilful misconduct of any Indemnified Party.

8.6

Gross-Up for Taxes

- (a) (i) All payments made by the Borrower under this Agreement shall be made free and clear of, and without deduction or withholding for or on account

of, any Taxes except to the extent that such deduction or withholding is required by any applicable Law, as modified by the administrative practice of any relevant Governmental Authority then in effect. If any such Taxes are required to be withheld from any amount payable to the Agent or any Lender hereunder, or if the Agent or any Lender is subject to Taxes under Part XIII of the Tax Act (or any successor part) in respect of any such amount but such Taxes are not levied by way of deduction or withholding ("**Part XIII Tax Payable**"), the Borrower shall:

- (A) promptly notify the Agent of such requirement;
- (B)
 - (I) pay to the relevant Governmental Authority the full amount required to be deducted or withheld (including the full amount of Taxes required to be deducted or withheld from any additional amount paid by the Borrower to the Agent or such Lender under this Section 8.6(a)), or, as the case may be,
 - (II)
 - (a) pay to the relevant Governmental Authority, or
 - (b) if the Borrower has not been provided by the Agent or such Lender with any authorization and/or particulars that are required for the Borrower to make such payment to the relevant Governmental Authority, pay to the Agent or such Lender, as the case may be,

the full amount of any Part XIII Tax Payable in respect of such amount (including the full amount of Part XIII Tax Payable on any additional amount paid by the Borrower to the Agent or such Lender under this Section 8.6(a)). If (I) or (II)(a) applies, the Borrower shall pay such amount to such Governmental Authority within the time period required by applicable Law for Taxes referred to in (I) that are required to be deducted or withheld. If (II)(b) applies, the Borrower shall pay such amount to the Agent or such Lender, as applicable, at least three Business Days before the expiration of the aforementioned time period;

- (C) as promptly as possible thereafter, forward to the Agent and such Lender an official receipt (or a certified copy), or other documentation reasonably acceptable to the Agent and such Lender, evidencing any such payment to such Governmental Authority; and
- (D) pay to the Agent or such Lender, in addition to the payment to which the Agent or such Lender is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by the Agent or such Lender (free

and clear of and net of any such Taxes (including the full amount of any Part XIII Tax Payable), whether assessable against the Borrower, the Agent or such Lender) will equal the full amount the Agent or such Lender would have received had no such deduction or withholding been required or no Part XIII Tax Payable been levied, as the case may be.

- (ii) If the Borrower fails to pay to the relevant Governmental Authority or the Agent or any Lender within the time period referenced in Section 8.6(a)(i)(B) any Taxes that it was required to pay to such Governmental Authority or the Agent or such Lender, as applicable, under this Section 8.6(a) in respect of any payment to or for the benefit of the Agent or any Lender under this Agreement or fails to furnish the Agent or such Lender, as applicable, with the documentation referred to in Section 8.6(a) when required to do so, the Borrower shall forthwith on demand fully indemnify the Agent or such Lender, as applicable, on an after-Taxes basis, from and against any Taxes (including interest and penalties), losses and expenses which the Agent or such Lender may suffer or incur as a result of such failure.
 - (iii) The Borrower shall also indemnify the Agent and each Lender, on an after-Taxes basis, for any additional Taxes on net income (including interest and penalties in respect thereof) that the Agent or such Lender may be obliged to pay as a result of the payment of additional amounts under this Section 8.6(a) within ten (10) days from the date the Agent or such Lender, as applicable, makes written demand therefor, accompanied by a certificate stating the amount of the relevant Taxes, including interest and/or penalties, and the computation thereof, which certificate shall (absent manifest error) be conclusive.
 - (iv) The Borrower's obligations under this Section 8.6(a) shall survive the termination of the Credit Facility and this Agreement and the permanent repayment of the outstanding credit and all other amounts payable hereunder.
- (b) Notwithstanding Section 8.6(a), the Borrower shall not be required to indemnify or pay any additional amounts in respect of Taxes (including, for greater certainty, Part XIII Tax Payable) applicable to any amount payable with respect to any outstanding credit or portion thereof pursuant to Section 8.6(a) above to any Lender that is not a Canadian Qualified Lender, unless such outstanding credit or portion thereof, as the case may be, was assigned, participated or transferred to such Lender at the request of the Borrower, or was assigned, participated or transferred to such Lender following the occurrence of and during the continuance of an Event of Default.
- (c) If the Borrower determines in good faith that a reasonable basis exists for contesting any Taxes for which a payment has been made hereunder, the relevant

Lender or the Agent, as applicable, shall cooperate with the Borrower in challenging such Taxes at the Borrower's expense if so requested by the Borrower. If any Lender or the Agent, as applicable, receives a refund of, or credit for, Taxes for which a payment has been made by the Borrower pursuant to this Agreement, which refund or credit in the good faith judgment of such Lender or the Agent, as the case may be, is attributable to such payment made by the Borrower, then the Lender or the Agent, as the case may be, shall reimburse the Borrower for such amount as the Lender or the Agent, as the case may be, determines to be the proportion of the refund or credit as will leave it, after such reimbursement, in no better or worse position than it would have been in if such Taxes had not been exigible. A Lender or the Agent shall claim any refund or credit that it determines is available to it, unless it concludes in its reasonable discretion that it would be adversely affected by making such a claim. Neither the Lender nor the Agent shall be obliged to disclose any information regarding its tax affairs or computations to the Borrower in connection with this paragraph (c) or any other provision of this Section 8.6, except to the extent necessary for determining the basis for any amounts required to be indemnified by the Borrower under this Section 8.6.

ARTICLE 9 REPAYMENTS AND PREPAYMENTS

9.1 Repayment. The aggregate credit outstanding under the Credit Facility, together with all accrued but unpaid interest thereon and all accrued but unpaid fees with respect thereto, shall be repaid in full by the Borrower to the Lenders on the Maturity Date.

9.2 Extension of Conversion Date

- (a) At any time not more than 90 days and less than 60 days prior to any Conversion Date, the Borrower may, by written request to the Agent (the "**Extension Request**"), request that the Conversion Date be extended for a further period of 364 days from the then current Conversion Date at such time. A copy of the Extension Request shall be provided by the Agent to each of the Lenders in accordance with Section 14.18. Each Lender may, in its sole discretion and regardless of whether or not there is any Default hereunder, by written notice to the Agent (the "**Extension Response Notice**"), not later than 25 days prior to the then current Conversion Date (the "**Extension Response Period**"), approve or decline the Extension Request. If any Lender does not provide an Extension Response Notice within the Extension Response Period, such Lender shall be deemed to have declined the Extension Request. If the Majority Lenders approve the Extension Request, the Agent shall notify the Borrower and the Lenders of such approval and confirm the new Conversion Date. If the Majority Lenders do not approve the Extension Request, or if no Extension Request is made at any time not more than 90 days and less than 60 days prior to any Conversion Date, the Agent shall notify the Borrower and the Lenders and the Conversion Date shall not be extended. For greater certainty, the Borrower may, subject always to the terms and conditions hereof, fully avail itself of the Credit Facility prior to the

Conversion Date and the Credit Facility shall convert to a non-revolving term credit facility on the Conversion Date, which Credit Facility, for certainty, shall be payable in full on the Maturity Date.

- (b) If the Majority Lenders (but not all the Lenders) approve the Extension Request within the Extension Response Period (the "**Approving Lenders**"), the following shall apply:
 - (i) On or before the second Business Day after the Extension Response Period, the Agent shall give written notice (the "**Acquisition Request Notice**") to the Borrower and each Lender identifying the Approving Lenders and Lender or Lenders that have declined or are deemed to have declined the Extension Request (the "**Declining Lenders**") and their respective Individual Commitments.
 - (ii) Any Approving Lender may, at its option, acquire all or any portion of the rights and obligations of the Declining Lenders under the Borrower Documents (all of such rights and obligations being herein called the "**Available Amount**") by giving written notice to the Agent (an "**Acquisition Notice**") of the portion of the Available Amount which it is prepared to acquire (the "**Desired Acquisition Amount**"). Such Acquisition Notice shall be given within 10 days following the giving of the Acquisition Request Notice (such deadline being herein called the "**Acquisition Deadline**"). If only one Approving Lender gives an Acquisition Notice to the Agent or if more than one Approving Lender gives an Acquisition Notice to the Agent but the aggregate of their Desired Acquisition Amounts is less than or equal to the Available Amount, then each such Approving Lender shall be entitled to acquire its Desired Acquisition Amount of the rights and obligations of the Declining Lenders under the Borrower Documents. If more than one Approving Lender gives an Acquisition Notice to the Agent and the aggregate of the Desired Acquisition Amounts is greater than the Available Amount, then each such Approving Lender shall be entitled to acquire a pro rata share of the rights and obligations of the Declining Lenders under the Borrower Documents, such pro rata share being determined based on the relative Desired Acquisition Amount of each such Approving Lender. On or before the second Business Day following the Acquisition Deadline, the Agent shall give to the Borrower and each Lender a written notice identifying the Available Amount of each Declining Lender and the portion thereof to be acquired by each Approving Lender. Each of such acquisitions shall be completed on the Conversion Date in accordance with the procedures set out in Section 15.6(c). If the Available Amount is not completely acquired by the Approving Lenders, the Borrower may locate other Persons ("**Substitute Lenders**") who qualify as Lenders, are satisfactory to the Agent, acting reasonably, and who acquire all or a portion of the balance of the rights and obligations of the Declining Lenders under the Borrower Documents on the Conversion Date in

accordance with the procedures set out in Section 15.6(c). Any outstanding credit extended by the Declining Lenders to the Borrower which is not so acquired by Approving Lenders or Substitute Lenders shall be repaid and the Individual Commitments of the Declining Lenders not so acquired shall be cancelled on the Conversion Date (without giving effect to the Extension Request) and the amount of the Credit Facility shall thereupon be reduced by the aggregate of the Individual Commitments so cancelled. The Borrower shall comply with Section 8.4 in connection with any such prepayment. As concerns any Bankers' Acceptances or BA Rate Loans that otherwise would be subject to prepayment pursuant to this Section 9.2(b)(ii), the Borrower shall forthwith pay to the Agent an amount equal to the aggregate of the aggregate face amount of such Bankers' Acceptances and the aggregate principal amount of such BA Rate Loans, such amount to be held by the Agent against any amount owing by the Borrower to such Declining Lenders in respect of such Bankers' Acceptances and BA Rate Loans. Any such amount paid to the Agent shall be held on deposit by the Agent until the maturity date of such Bankers' Acceptances or BA Rate Loans, at which time it shall be applied against the indebtedness of the Borrower to such Declining Lenders thereunder. While on deposit with the Agent, such amount shall bear interest at the rate applicable to short-term deposits.

9.3 Voluntary Prepayments. The Borrower shall be entitled, at its option and upon two Business Days' irrevocable notice to the Agent, to prepay all or any portion of any outstanding credit at any time provided that (i) Section 8.4 shall be complied with in connection with any such prepayment, (ii) Bankers' Acceptances and BA Rate Loans may only be prepaid on their maturity and (iii) any such prepayment of all or any portion of any outstanding Loan under the Credit Facility shall be in an amount of no less than \$1,000,000 and otherwise in multiples of \$100,000. Amounts which are prepaid as aforesaid on and after the Conversion Date may not be reborrowed. Amounts which are prepaid as aforesaid prior to the Conversion Date may be reborrowed.

9.4 Mandatory Prepayments. The Borrower shall cause the proceeds of any Secured Bond issued after the date hereof to be applied, contemporaneously with such issuance, as follows:

- (i) firstly, to pay the reasonable and customary fees, commissions, expenses, issuance costs, discounts and other costs paid by or on behalf of the Borrower in connection with such issuance;
- (ii) secondly, to repay any then maturing Secured Bond;
- (iii) thirdly, to repay any credit outstanding under the Credit Facility; and
- (iv) fourthly, towards the Borrower's capital expenditure, and working capital, requirements;

provided that, as concerns any prepayment of credit outstanding under the Credit Facility, (i) Section 8.4 shall be complied with in connection with any such prepayment and (ii) Bankers' Acceptances and BA Rate Loans may only be paid on their maturity. Amounts which are prepaid as aforesaid prior to the Conversion Date may be reborrowed. Amounts which are prepaid as aforesaid on or after the Conversion Date may not be reborrowed. As concerns any Bankers' Acceptances or BA Rate Loans that otherwise would be subject to prepayment pursuant to this Section 9.4, the Borrower shall forthwith upon demand by the Agent pay to the Agent an amount equal to the aggregate of the aggregate face amount of such Bankers' Acceptances and the aggregate principal amount of such BA Rate Loans, such amount to be held by the Agent against any amount owing by the Borrower to the Lenders in respect of such Bankers' Acceptances and BA Rate Loans. Any such amount paid to the Agent shall be held on deposit by the Agent until the maturity date of such Bankers' Acceptances or BA Rate Loans, at which time it shall be applied against the indebtedness of the Borrower to the Lenders thereunder. While on deposit with the Agent, such amount shall bear interest at the rate applicable to short-term deposits.

9.5 Reimbursement Obligation for Maturing Bankers' Acceptances. The Borrower hereby unconditionally agrees to pay to each Lender on the maturity date (whether at stated maturity, by acceleration or otherwise) of each Bankers' Acceptance accepted by such Lender the undiscounted face amount of such then-maturing Bankers' Acceptance. The obligation of the Borrower to reimburse the Lenders for then-maturing Bankers' Acceptances may be satisfied by the Borrower by:

- (a) paying to the Lenders, in accordance with Section 3.7, on the maturity date of the Bankers' Acceptances an amount equal to the aggregate undiscounted face amount thereof, provided that the Borrower shall notify the Agent of its intention to reimburse the Lenders in such manner prior to 11:00 a.m. (Toronto time) on such maturity date;
- (b) replacing the maturing Bankers' Acceptances with new Bankers' Acceptances in accordance with Section 5.1; or
- (c) converting the maturing Bankers' Acceptances into a Prime Rate Loan in accordance with Section 6.2.

In no event shall the Borrower claim from the Lenders any grace period with respect to the aforesaid obligation of the Borrower to reimburse the Lenders.

9.6 Currency of Repayment. All payments and repayments of outstanding credit hereunder shall be made in the currency of such outstanding credit.

ARTICLE 10 REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties. To induce the Agent and the Lenders to enter into this Agreement and to extend credit to the Borrower hereunder, the Borrower hereby represents and warrants to the Agent and the Lenders as at the date hereof, as at the date of each extension of credit hereunder and as of the last day of each Fiscal Quarter (provided, however,

the representation and warranty set forth in Section 10.1(m) shall only be made on the Closing Date), as follows and acknowledges and confirms that the Agent and the Lenders are relying upon such representations and warranties in executing this Agreement and in extending credit hereunder:

- (a) **Organization; Powers.** The Borrower is duly incorporated, amalgamated or continued and is organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, has all requisite corporate power and authority to carry on its business as now and formerly conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.
- (b) **Authorization; Enforceability.** The execution and delivery of the Borrower Documents and the performance of its obligations hereunder and thereunder are within the Borrower's corporate powers and have been duly authorized by all necessary corporate and, if required, shareholder action. This Agreement and the other Borrower Documents have been duly executed and delivered by the Borrower and constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other Laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at Law.
- (c) **Governmental Approvals; No Conflicts.** The execution and delivery of the Borrower Documents and the performance of the Borrower's obligations hereunder and thereunder (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority that have not been obtained, made or taken (except for normal course post-closing filings under applicable securities Laws or stock exchange rules, which the Borrower will make within the required time frames and except for consents and approvals for the financing contemplated herein which the Borrower will obtain prior to the Closing Date), (b) will not violate in any material respect any applicable Law or the articles and by-laws of the Borrower or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or its assets, or give rise to a right thereunder to require any payment to be made by the Borrower, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower.
- (d) **Financial Condition.**
 - (i) As of the date hereof, the Borrower has furnished to the Lenders the financial statements that it otherwise would have been required to deliver to the Agent pursuant to Sections 11.1(b)(i) and (ii) in connection with the Fiscal Year ended December 31, 2003 and the Fiscal Quarter ended September 30, 2004. Such financial statements present fairly, in all

material respects, the financial position and results of operations and cash flows of the Borrower as of such dates and for such periods in accordance with GAAP and with accounting requirements established from time to time by the Newfoundland and Labrador Board of Commissioners of Public Utilities, subject to year end audit adjustments. Thereafter, the Borrower has furnished to the Lenders the financial statements required to be delivered by it to the Agent pursuant to Sections 11.1(b)(i) and (ii). The most recent audited annual financial statements and unaudited quarterly financial statements so delivered present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower as of such dates and for such periods in accordance with GAAP and with accounting requirements established from time to time by the Newfoundland and Labrador Board of Commissioners of Public Utilities, subject to year end audit adjustments.

- (ii) The fiscal year of the Borrower ends on December 31 of each calendar year.

(e) **Litigation.**

- (i) Other than as previously disclosed to the Agent or the Lenders and confirmed by way of letter dated the date hereof, there are no actions, suits or proceedings (including any Tax-related matter) by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change, or (ii) that involve the Borrower Documents.
- (ii) Except with respect to any matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change, the Borrower (i) has not failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, licence or other approval required under any Environmental Law, (ii) has not become subject to any Environmental Liability, (iii) has not received notice of any claim with respect to any Environmental Liability, or (iv) does not know of any basis on which any Environmental Liability would reasonably be expected to arise.

- (f) **Compliance with Laws and Agreements.** The Borrower is in compliance with all Laws (including Environmental Laws) applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change. The Borrower has not violated or failed to obtain any Authorization necessary to the ownership of any of its property or assets or the conduct of its businesses, which violation or

failure could reasonably be expected to result in (in the event that such a violation or failure were asserted by any Person through appropriate action) a Material Adverse Change.

- (g) **Taxes.** The Borrower has timely filed or caused to be filed all Tax returns and reports required to have been filed and (x) has paid or caused to be paid all Taxes required to have been paid by it, (y) has accrued as a liability all such Taxes on its books or (z) has disclosed in its financial statements (including, without limitation, in the notes thereto) all such Taxes, other than Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower has set aside on its books adequate reserves, except to the extent in each case that any failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change.
- (h) **Title to Real Property.** The Borrower has indefeasible fee simple title to its material owned real properties (if any), and with respect to leased real properties, indefeasible title to the leasehold estate with respect thereto, pursuant to valid and enforceable leases, and its title to its owned and leased real properties is free and clear of all Liens except Permitted Liens.
- (i) **Title to Personal Property.** Except to the extent not in the aggregate materially adverse to the Borrower's financial condition or operations, the Borrower has title to its owned personal property, and with respect to leased personal properties, title to the leasehold estate with respect thereto, pursuant to valid and enforceable leases, and its title to its owned and leased personal property is free and clear of all Liens except Permitted Liens.
- (j) **No Defaults under Other Instruments.** The Borrower is not in default nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute a default (in any respect that would result in a Material Adverse Change) under any loan or credit agreement, indenture, mortgage, deed of trust, security agreement or other instrument or agreement evidencing or pertaining to any Indebtedness for Borrowed Money of the Borrower, or under any material agreement or instrument to which the Borrower is a party or by which the Borrower is bound.
- (k) **No Defaults Hereunder.** No Default has occurred and is continuing.
- (l) **Subsidiaries.** There are no Subsidiaries of the Borrower other than the Existing Subsidiaries. Each Existing Subsidiary is an inactive corporation with no physical assets and no liabilities other than shareholder equity.
- (m) **No Material Adverse Change.** There has occurred no Material Adverse Change since September 30, 2004.
- (n) **Employee Benefit Plans.** The Borrower has maintained all of its benefit and pension plans in all material respects in accordance with all applicable legal requirements.

- (o) **Insurance.** Insurance is being maintained by, or on behalf of, the Borrower in accordance with Section 11.1(i). Each such insurance policy maintained by, or on behalf of, the Borrower is in full force and effect.
- (p) **Unsecured Debt.** The Credit Facility ranks *pari passu* with all other unsecured Indebtedness for Borrowed Money of the Borrower.

10.2 Survival of Representations and Warranties. All of the representations and warranties of the Borrower contained in Section 10.1 shall survive the execution and delivery of this Agreement and shall continue until all credit outstanding hereunder has been repaid and the Credit Facility and this Agreement have been terminated notwithstanding any investigation made at any time by or on behalf of the Agent or any of the Lenders.

ARTICLE 11 COVENANTS

11.1 Affirmative Covenants. The Borrower hereby covenants and agrees with the Agent and the Lenders that, until all credit outstanding hereunder has been repaid in full and the Credit Facility and this Agreement have been terminated and unless the Lenders have otherwise consented thereto in writing in accordance with Section 14.14:

- (a) **Prompt Payment.** The Borrower shall duly and punctually pay or cause to be paid to the Lenders and the Agent all amounts payable under each Borrower Document at the dates and places, in the currency and in the manner mentioned herein.
- (b) **Financial Statements and Other Information.** The Borrower shall furnish to the Agent (with sufficient copies for each Lender):
 - (i) **Annual Financial Statements.** As soon as available and in any event within 120 days after the end of each fiscal year of the Borrower, its audited balance sheet and related statements of income, retained earnings and cash flow as of the end of and for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent auditors of recognized national standing in the applicable jurisdiction (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such financial statements present fairly in all material respects the financial condition and results of operations of the Borrower in accordance with GAAP and with accounting requirements established from time to time by the Newfoundland and Labrador Board of Commissioners of Public Utilities, in each case consistently applied;
 - (ii) **Quarterly Financial Statements.** As soon as available and in any event within 60 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, its unaudited balance sheet and related statements of income, retained earnings and cash flow as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year which

includes such fiscal quarter, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Responsible Officer as presenting fairly in all material respects the financial condition and results of operations of the Borrower in accordance with GAAP and with accounting requirements established from time to time by the Newfoundland and Labrador Board of Commissioners of Public Utilities, in each case consistently applied, subject to normal year-end audit adjustments;

- (iii) **Compliance Certificates.** Concurrently with the financial statements required pursuant to Sections 11.1(b)(i) and (ii) above, a certificate of the Borrower, signed by a Responsible Officer (A) confirming fulfillment of its obligations under this Agreement and the other Borrower Documents and demonstrating in reasonable detail compliance (including showing all material calculations) as at the end of the most recently completed Fiscal Year or the most recently completed Fiscal Quarter, with the financial covenant in Section 11.1(j), and (B) containing or accompanied by such financial or other details, information and material as the Agent may reasonably request to evidence such compliance, which certificate shall be substantially in the form of Schedule B hereto;
- (iv) **Other Information.** Promptly after the same become publicly available, copies of all press releases relating to material change reports, prospectuses, proxy statements and other materials filed out of the ordinary course by the Borrower with any securities commission, stock exchange or similar entity, and all materials distributed out of the ordinary course by the Borrower to its shareholders and which relate to matters in which the Lenders, in such capacities, can reasonably be expected to have an interest. Promptly following receipt by the Borrower of the Agent's request, such additional financial or operating reports, statements or information as the Agent may, from time to time, reasonably request.; and
- (v) **Notices of Default.** Promptly after any Responsible Officer of the Borrower learns of the receipt or occurrence of any of the following, a certificate of the Borrower, signed by a Responsible Officer, specifying (A) any official notice of any violation, possible violation, non-compliance or possible non-compliance, or claim made by any Governmental Authority pertaining to all or any part of the properties of the Borrower which could reasonably be expected to result in a Material Adverse Change, (B) any event which constitutes a Default or Event of Default, together with a detailed statement specifying the nature thereof and the steps being taken to cure such Default or Event of Default, (C) the receipt of any notice from, or the taking of any other action by, the holder of any promissory note, debenture or other evidence of Indebtedness for Borrowed Money of the Borrower in an amount in excess of \$5,000,000 with respect to an actual or alleged default, together with a detailed

statement specifying the notice given or other action taken by such holder and the nature of the claimed default and what action the Borrower is taking or proposes to take with respect thereto, (D) any event, development or condition which may reasonably be expected to result in a Material Adverse Change, (E) any representation and warranty in Section 10.1 (with Section 10.1(d)(i) being amended to refer to the most recent financial statements delivered to the Agent) ceasing to be true and correct at such time or (F) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower, in each case which has resulted or is reasonably likely to result in a Material Adverse Change.

- (c) **Existence; Conduct of Business.** The Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licences, permits, privileges and franchises material to the conduct of its business (including, without limitation, the making of all necessary regulatory filings), except to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Change.
- (d) **Payment of Obligations.** The Borrower shall pay its obligations, including Tax liabilities (other than Tax liabilities that the Borrower has accrued as a liability on its books or has disclosed in its financial statements (including, without limitation, in the notes thereto)), that, if not paid, could reasonably be expected to result in a Material Adverse Change, before the same shall become delinquent or in default, except where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) the Borrower has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (iii) any failure to make payment pending such contest, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change.
- (e) **Books and Records; Inspection Rights.** The Borrower shall keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower shall permit any representatives designated by the Agent, upon reasonable prior notice and during normal business hours, but not more than once in any year so long as no Default has occurred and is continuing, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent auditors.
- (f) **Compliance with Laws.** The Borrower shall comply with all Laws (including, without limitation, all Environmental Laws) and Authorizations applicable to it or its property, except where any failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change.
- (g) **Use of Proceeds.** The proceeds of the credit extended hereunder shall be used solely by the Borrower for general working capital and capital expenditure

requirements of the Borrower including back up requirements for commercial paper issued by the Borrower to fund its general working capital and capital expenditure requirements.

- (h) **Further Assurances.** The Borrower shall cure promptly any defects in the execution and delivery of the Borrower Documents, including this Agreement. The Borrower shall, at its expense, as promptly as practical, execute and deliver to the Agent, upon request, all such other and further documents, agreements and instruments in compliance with or performance of the covenants and agreements of the Borrower in the Borrower Documents, all as may be necessary in connection therewith.
- (i) **Insurance.** The Borrower shall maintain or cause to be maintained, with financially sound and reputable insurers, insurance with respect to its properties and business against such liabilities, casualties, risks and contingencies and in such types and amounts as is customary in the case of Persons engaged in the same or similar businesses and similarly situated and in accordance with any requirement of any Governmental Authority, except to the extent that any failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change.
- (j) **Financial Covenant.** The Borrower shall ensure that the Debt to Capitalization Ratio does not exceed 0.65:1:00 at any time.
- (k) **Reimbursement of Expenses.** The Borrower shall reimburse the Agent, on demand, for all reasonable out-of-pocket costs, charges and expenses incurred by it or on its behalf (including, without limitation, the fees and out-of-pocket disbursements of its consultants and its legal counsel and travel expenses) in connection with the Agent's due diligence investigation (whenever conducted), the negotiation, preparation, execution, delivery, syndication, post-closing advertising agreed to by the Borrower, interpretation and enforcement of the Borrower Documents and all other documentation ancillary to the completion of the transactions contemplated hereby and thereby and any amendments hereto or thereto and any waivers of any provisions hereof or thereof (whether or not consummated or entered into), provided that all out-of-pocket costs, charges and expenses shall be evidenced by appropriate documentation, including detailed billing summaries with respect to fees of legal counsel.
- (l) **Rating of the Borrower.** The Borrower shall forthwith provide notice to the Agent of any change in its Rating.

11.2 Performance of Covenants by Agent. The Agent may, upon notice by the Agent to the Borrower, perform any covenant of the Borrower under any Borrower Document which the Borrower fails to perform or cause to be performed and which the Agent is capable of performing, including any covenants the performance of which requires the payment of money, provided that the Agent shall not be obligated to perform any such covenant on behalf of the Borrower and no such performance by the Agent shall require the Agent to further perform the

Borrower's covenants or shall operate as a derogation of the rights and remedies of the Agent or the Lenders under this Agreement or as a waiver of such covenant by the Majority Lenders. Any amounts paid by the Agent as aforesaid shall be repaid by the Borrower to the Agent on demand.

11.3 Restrictive Covenants. The Borrower hereby covenants and agrees with the Agent and the Lenders that, until all credit outstanding hereunder has been repaid in full and the Credit Facility and this Agreement have been terminated and unless the Lenders have otherwise consented thereto in writing in accordance with Section 14.14:

- (a) **Liens.** The Borrower shall not create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by the Borrower, except Permitted Liens.
- (b) **Fundamental Changes.**
 - (i) The Borrower shall not (A) merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it, (B) sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) or (C) liquidate or dissolve.
 - (ii) The Borrower shall not engage to any material extent in any material business that is materially different from businesses of the type conducted on the date of the execution of this Agreement, and businesses reasonably related or incidental thereto.
- (c) **Indebtedness for Borrowed Money.** The Borrower shall not create, incur, assume or permit to exist any Indebtedness for Borrowed Money, except:
 - (i) any Indebtedness for Borrowed Money created under the Borrower Documents;
 - (ii) the Trust Deed Indebtedness;
 - (iii) any Purchase Money Obligation;
 - (iv) Indebtedness for Borrowed Money of up to \$1,000,000 incurred by the Borrower in connection with a VISA or other credit card facilities;
 - (v) Indebtedness for Borrowed Money of up to \$21,000,000 principal amount incurred by the Borrower pursuant to, inter alia, unsecured overdraft facilities; and
 - (vi) any additional Indebtedness for Borrowed Money incurred by the Borrower, provided that (A) at the time of the incurrence thereof, no Default has occurred and is continuing, (B) no Default would arise immediately after or as a result of the incurrence thereof, (C) there would not be a breach of Section 11.1(j) immediately after giving effect to the

incurrence thereof and (D) the Borrower has given the Agent, prior to the incurrence thereof, a certificate detailing such incurrence and evidencing compliance with clauses (A) to (C) above.

- (d) **Guarantees.** Subject to Section 11.3(g), the Borrower shall not Guarantee any obligations of any other Person, other than any Guarantee resulting from the endorsement of negotiable instruments for collection in the ordinary course of business.
- (e) **Restricted Payments.** The Borrower shall not declare, pay or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except that (i), provided no Default has occurred and is continuing, the Borrower may declare and pay ordinary course dividends with respect to its outstanding common and preferred shares (but not special or extraordinary dividends) or make distributions out of consolidated surplus, provided that there would not be a breach of Section 11.1(j) after giving effect to the payment, (ii) the Borrower may make Restricted Payments pursuant to and in accordance with stock option plans, stock purchase plans, profit sharing plans and/or other benefit plans or investment plans for management, employees or customers of the Borrower, (iii) the Borrower may make Restricted Payments in respect of the purchase or redemption by the Borrower of its preferred shares pursuant to the operation of the purchase or sinking funds applicable to such preferred shares provided that an aggregate amount of such purchase and redemption in any Fiscal Year will not exceed \$300,000 and (iv) the Borrower may make additional Restricted Payments provided that (A) at the time of such payment, no Default has occurred and is continuing, (B) no Default would arise immediately after or as a result of such payment, (C) there would not be a breach of Section 11.1(j) immediately after giving effect to such payment, and (D) the Borrower has given the Agent, prior to such payment, a certificate detailing such payment and evidencing compliance with clauses (A) to (C) above.
- (f) **Transactions with Affiliates.** The Borrower shall not sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except in the ordinary course of business at prices and on terms and conditions not less favourable to the Borrower than could be obtained on an arm's-length basis from unrelated third parties. The Borrower shall not enter into any transaction or series of transactions with Affiliates of the Borrower, which involve an outflow of money or other property from the Borrower to an Affiliate of the Borrower, including payment of management fees, affiliation fees, administration fees, compensation, salaries, asset purchase payments or any other type of fees or payments similar in nature, other than on terms and conditions substantially as favourable to the Borrower as would be obtainable by the Borrower in a reasonably comparable arm's-length transaction with a Person other than an Affiliate of the Borrower. The foregoing restrictions shall not apply to (A) any other transaction with any employee, officer or director of the Borrower pursuant to employee profit sharing and/or benefit plans and

compensation and non-competition arrangements in amounts customary for corporations similarly situated to the Borrower and entered into in the ordinary course of business and approved by the board of directors of the Borrower, (B) any reimbursement of reasonable out-of-pocket costs incurred by an Affiliate of the Borrower on behalf of or for the account of the Borrower, (C) payments by the Borrower to the Parent of up to \$1,500,000 in any Fiscal Year with respect to head office costs, board of director fees and other overhead costs, or (D) any transfer by the Borrower of any Existing Subsidiary to any Subsidiary of the Parent.

- (g) **Intercompany Loans and Guarantees.** The Borrower shall not lend any amount to any Affiliate or Guarantee any obligation of any Affiliate except Guarantees permitted under Section 11.3(d).
- (h) **Disposition of Assets.** The Borrower shall not convey, sell, lease, assign, transfer or otherwise dispose of any of its property, business or assets (including sales of receivables and the sale portion of any sale-leaseback transaction), except that:
 - (i) the Borrower may sell, transfer or otherwise dispose of used or surplus equipment, vehicles, inventory or other assets in the ordinary course of business;
 - (ii) the Borrower may sell or discount without recourse accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof;
 - (iii) the Borrower may sell or transfer any Existing Subsidiary to any Subsidiary of the Parent;
 - (iv) the Borrower may, subsequent to any acquisition, sell, transfer or otherwise dispose of a portion of the assets so acquired to the extent the Borrower determines such assets are not an essential part of such acquisition;
 - (v) the Borrower may sell or transfer to the Province of Newfoundland and Labrador or a municipality therein certain property, plant and equipment and franchise rights pursuant to the exercise by such Province or municipality, as the case may be, of statutory or other rights in connection with the granting of public utility franchises to the Borrower or the contribution of assets to the Borrower;
 - (vi) the Borrower may sell or transfer to Aliant Telecom Inc. (or its successor or assign) certain utility poles and other assets purchased by it from Aliant Telecom Inc., pursuant to the terms of the Joint Use Facilities Partnership Agreement dated as of January 1, 2001 between the Borrower and Aliant Telecom Inc., in accordance with the terms thereof; and

- (vii) the Borrower may, subject always to Section 11.3(b)(i)(B), otherwise sell, transfer or otherwise dispose of assets for fair value, provided that the aggregate consideration for all sales, transfers and disposals by the Borrower pursuant to this clause (vii) during the term of this Agreement shall at no time exceed \$10,000,000 (other than any sale, transfer or other disposition where the net proceeds therefrom are reinvested by the Borrower in its operations within the six month period following its receipt of such net proceeds).
- (i) **Subsidiaries.** The Borrower shall not have any other Subsidiaries other than the Existing Subsidiaries. The Borrower shall not suffer or permit any Existing Subsidiary to carry on any business, hold any assets or incur any liabilities except as contemplated in Section 10.1(l).

ARTICLE 12

CONDITIONS PRECEDENT TO OBTAINING CREDIT

12.1 Conditions Precedent to All Credit. The obligation of the Lenders to extend credit under the Credit Facility is subject to fulfilment of the following conditions precedent at the time such credit is extended:

- (a) no Default has occurred and is continuing or would arise immediately after giving effect to or as a result of such extension of credit;
- (b) the Borrower shall have complied with the requirements of Article 4, 5 or 6, as the case may be, in respect of the relevant credit; and
- (c) the representations and warranties made by the Borrower in the Borrower Documents shall be true and correct in all material respects on the date such credit is extended as if such representations and warranties were made on such date.

Section 12.1(a) does not apply to a deemed conversion of a Bankers' Acceptance into a Prime Rate Loan pursuant to Section 6.5. Section 12.1(c) does not apply to an extension of credit pursuant to a conversion or rollover.

12.2 Conditions Precedent to Initial Drawdown. The obligation of the Lenders to extend credit by way of drawdown for the first time is subject to the prior or concurrent fulfilment of the following conditions precedent at the time such credit is extended:

- (a) the conditions precedent set forth in Section 12.1 have been fulfilled;
- (b) the absence of any litigation, inquiry and investigation enjoining or restricting the Credit Facility;
- (c) the Agent shall have received, in form and substance satisfactory to the Agent:
 - (i) a duly certified copy of the articles of incorporation and by-laws of the Borrower;

- (ii) a certificate of status or good standing for the Borrower issued by the appropriate governmental body or agency of the jurisdiction in which the Borrower is incorporated;
 - (iii) a duly certified copy of the resolution of the board of directors of the Borrower authorizing it to execute, deliver and perform its obligations under each Borrower Document;
 - (iv) a certificate of an officer of the Borrower, in such capacity, setting forth specimen signatures of the individuals authorized to sign the Borrower Documents;
 - (v) a certificate of the chief financial officer of the Borrower, in such capacity, certifying that, to the best of his or her knowledge after due inquiry, no Default has occurred and is continuing or would arise immediately after giving effect to or as a result of such extension of credit;
 - (vi) evidence satisfactory to the Agent that all existing credit facilities, including but not limited to the Existing Facilities, have been repaid in full and permanently cancelled (other than Indebtedness for Borrower Money referred to in Section 11.3(c)(v));
 - (vii) an opinion of the legal counsel to the Borrower, addressed to the Agent and the Agent's counsel, with respect to all matters as the Agent may reasonably request;
 - (viii) an opinion of the legal counsel to the Agent in each relevant jurisdiction, with respect to all matters as the Agent may reasonably request; and
 - (ix) a certified copy of the Trust Deeds;
- (d) the execution and delivery of the Fee Letter;
- (e) the Agent and its counsel, acting reasonably, shall be satisfied that all applicable Laws have been complied with in all material respects, all material agreements have been entered into and all necessary governmental, corporate and other third party consents (including, without limitation, all requisite approvals from the Newfoundland and Labrador Board of Commissioners of Public Utilities), acknowledgements, directions and approvals have been obtained with respect to the Borrower Documents; and
- (f) all amounts due and payable under the Borrower Documents shall have been paid.

12.3 Waiver. The terms and conditions of Sections 12.1 and 12.2 are inserted for the sole benefit of the Agent and the Lenders and the Majority Lenders may waive them in whole or in part, with or without terms or conditions, in respect of any extension of credit, without prejudicing their right to assert them in whole or in part in respect of any other extension of credit.

ARTICLE 13 DEFAULT AND REMEDIES

13.1 Events of Default. Upon the occurrence of any one or more of the following events (each, an “**Event of Default**”) which is continuing, unless expressly waived in writing by the Majority Lenders or cured to the satisfaction of the Majority Lenders:

- (a) the Borrower shall fail to repay outstanding credit hereunder when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;
- (b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in Section 13.1(a)) payable under any Borrower Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three Business Days after notice thereof from the Agent to the Borrower;
- (c) any representation or warranty made or deemed made by or on behalf of the Borrower in or in connection with any Borrower Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Borrower Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect when made or deemed to be made unless such incorrect representation or warranty is capable of being corrected and the Borrower, acting in good faith, has commenced and is diligently pursuing the correction of such incorrect representation or warranty, in which case the Borrower shall have an additional 30 days to correct such incorrect representation or warranty;
- (d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 11.1(b)(v)(B), 11.1(c), 11.1(g) or 11.1(j) or in Section 11.3 and such failure shall continue unremedied for a period of three Business Days after notice thereof from the Agent to the Borrower;
- (e) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in any Borrower Document to which it is a party (other than those specified in any of Section 13.1(a), (b), (c) or (d)) and such failure shall continue unremedied for a period of 30 days after notice thereof from the Agent to the Borrower unless such failure is capable of being cured and the Borrower, acting in good faith, has commenced and is diligently pursuing the curing of such failure, in which case the Borrower shall have an additional 30 days to cure such failure;
- (f) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in any agreement which entitles the other party to such agreement to terminate such agreement and that termination would reasonably be expected to result in Material Adverse Change;

- (g) any obligation or obligations of the Borrower in respect of Indebtedness for Borrowed Money in excess of \$15,000,000 in the aggregate or the equivalent thereof in any other currency other than under the Borrower Documents shall not be paid when due, or, if such Indebtedness for Borrowed Money contemplates a grace period, by the end of such grace period, or if such Indebtedness for Borrowed Money becomes (or becomes capable of being declared) prematurely repayable by reason of a default unless such default has been remedied or cured, or waived by the appropriate debt holder;
- (h) if, in the opinion of the Majority Lenders acting reasonably, there shall have occurred a Material Adverse Change;
- (i) the Borrower:
 - (i) becomes insolvent, or generally does not, or becomes unable to, pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement between it and any class of its creditors;
 - (ii) commits an act of bankruptcy under the *Bankruptcy and Insolvency Act* (Canada), or makes an assignment of its property for the general benefit of its creditors under such Act, or makes a proposal (or files a notice of its intention to do so) under such Act;
 - (iii) institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any federal, provincial or foreign Law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any comparable statute or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding;
 - (iv) applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official for it or any substantial part of its property; or
 - (v) ceases to carry on business, or threatens to do any of the actions described in this Section 13.1(i) or in Section 13.1(j), or takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this Section 13.1(i) or in Section 13.1(j), or otherwise acts in

furtherance thereof or fails to act in a timely and appropriate manner in defence thereof;

- (j) any petition is filed, application made or other proceeding instituted against or in respect of the Borrower:
 - (i) seeking to adjudicate it an insolvent;
 - (ii) seeking a receiving order against it under the *Bankruptcy and Insolvency Act* (Canada);
 - (iii) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief under any federal, provincial or foreign Law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any comparable statute or at common law or in equity; or
 - (iv) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official for it or any substantial part of its property;

and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of 30 days after the institution thereof, provided that if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against the Borrower thereunder in the interim, such grace period will cease to apply, and provided further that if the Borrower files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply;

- (k) any other event occurs which, under the Laws of any applicable jurisdiction, has an effect equivalent to any of the events referred to in either of Sections 13.1(i) or (j);
- (l) one or more judgments for the payment of money in a cumulative amount in excess of \$15,000,000 (or its equivalent) in the aggregate (but only to the extent not covered by insurance as to which the relevant insurance company has acknowledged to the Lenders coverage pursuant to a written confirmation to that effect satisfactory to the Agent, acting reasonably) is rendered against the Borrower and the Borrower has not (i) provided for its discharge in accordance with its terms within 30 days from the date of entry thereof, or (ii) procured a stay of execution thereof within 30 days from the date of entry thereof and within such period, or such longer period during which execution of such judgment has been stayed, appealed such judgment and caused the execution thereof to be stayed

during such appeal, provided that if enforcement and/or realization proceedings are lawfully commenced in respect thereof in the interim, such grace period will cease to apply;

- (m) any property of the Borrower having a fair market value in excess of \$15,000,000 (or its then equivalent) in the aggregate is seized (including by way of execution, attachment, garnishment, levy or distraint), or any Lien thereon securing Indebtedness for Borrowed Money in excess of \$15,000,000 (or its then equivalent) is enforced, in each case by any Person other than the Borrower, continues in effect and is not released or discharged for more than 30 days or such longer period during which entitlement to the use of such property continues with the Borrower, and the Borrower is contesting the same in good faith and by appropriate proceedings, provided that if the property is removed from the use of the Borrower, or is sold, in the interim, such grace period will cease to apply;
- (n) one or more final judgments, not involving the payment of money and not otherwise specified in this Section 13.1(n), has been rendered against the Borrower, the result of which could reasonably be expected to result in a Material Adverse Change, so long as the Borrower has not (i) provided for its discharge in accordance with its terms within 30 days from the date of entry thereof, or (ii) procured a stay of execution thereof within 30 days from the date of entry thereof and within such period, or such longer period during which execution of such judgment has been stayed, appealed such judgment and caused the execution thereof to be stayed during such appeal, provided that if proceedings to seize or sell assets of the Borrower are lawfully commenced in respect thereof in the interim, such grace period will cease to apply;
- (o) any Borrower Document is declared to be void or voidable as a result of any act or omission of the Borrower or is repudiated by the Borrower, or the validity, binding effect, legality or enforceability of any Borrower Document is at any time contested by the Borrower, or the Borrower denies that it has any or any further liability or obligation hereunder or thereunder or any action or proceeding is commenced to enjoin or restrain the performance or observance by the Borrower of any material terms of any Borrower Document or to question the validity or enforceability of any Borrower Document, or at any time it is unlawful or impossible for the Borrower to perform any of its material obligations hereunder or thereunder;
- (p) the Borrower fails to maintain a Rating by at least one Major Credit Rating Agency; or
- (q) the Parent ceases to (x) own, beneficially and of record, over 50% of all of the issued and outstanding common shares of the Borrower or (y) Control the Borrower;

the Agent (with the approval and instructions of the Majority Lenders) may, by notice to the Borrower, terminate the Credit Facility and the Agent (with the approval and instructions of the

Majority Lenders) may, by the same notice or by further notice to the Borrower, declare all indebtedness of the Borrower to the Agent and the Lenders pursuant to this Agreement (including the present value of the face amount of all Bankers' Acceptances issued and outstanding hereunder based on their respective maturity dates, such present value to be calculated using a discount rate equal to the yield of Government of Canada treasury bills having a similar maturity date) and all unpaid interest and fees hereunder to be immediately due and payable whereupon the Credit Facility shall terminate and all such indebtedness shall immediately become and be due and payable without further demand or other notice of any kind, all of which are expressly waived by the Borrower (provided, however, that the Credit Facility shall terminate and all such indebtedness of the Borrower to the Agent and the Lenders shall automatically become due and payable, without notice of any kind, upon the occurrence of an event described in clause (i), (j) or (k) above). Upon the payment by the Borrower to the Lenders of the present value of the face amount of all Bankers' Acceptances issued and outstanding hereunder, the Borrower shall have no further liability to the Lenders with respect to such Bankers' Acceptances.

13.2 Remedies Cumulative. The Borrower expressly agrees that the rights and remedies of the Agent and the Lenders under this Agreement are cumulative and in addition to and not in substitution for any rights or remedies provided by Law. Any single or partial exercise by the Agent or any of the Lenders of any right or remedy for a default or breach of any term, covenant or condition in this Agreement does not waive, alter, affect or prejudice any other right or remedy to which the Agent or such Lender may be lawfully entitled for the same default or breach. Any waiver by the Agent or any of the Lenders of the strict observance, performance or compliance with any term, covenant or condition of this Agreement is not a waiver of any subsequent default and any indulgence by the Agent or any of the Lenders with respect to any failure to strictly observe, perform or comply with any term, covenant or condition of this Agreement is not a waiver of the entire term, covenant or condition or any subsequent default.

13.3 Set Off. In addition to any rights now or hereafter granted under applicable Law, and not by way of limitation of any such rights, the Agent and each Lender is authorized, after the occurrence of an Event of Default and for so long as such Event of Default continues and without notice to the Borrower or to any other Person, any such notice being expressly waived by the Borrower, to set-off, appropriate and apply and any and all deposits, matured or unmatured, general or special, and any other indebtedness at any time held by or owing by the Agent or such Lender to or for the credit of or the account of the Borrower against and on account of the obligations and liabilities of the Borrower which are due and payable to the Agent or such Lender under this Agreement.

ARTICLE 14 THE AGENT

14.1 Appointment and Authorization of Agent. Each Lender hereby appoints and authorizes, and hereby agrees that it will require any assignee of any of its interests in the Borrower Documents (other than the holder of a participation in its interests herein or therein) to appoint and authorize the Agent to take such actions as agent on its behalf and to exercise such powers under the Borrower Documents as are delegated to the Agent by such Lender by the terms hereof, together with such powers as are reasonably incidental thereto. Neither the Agent

nor any of its directors, officers, employees or agents shall be liable to any of the Lenders for any action taken or omitted to be taken by it or them thereunder or in connection therewith, except for its own gross negligence or wilful misconduct and each Lender hereby acknowledges that the Agent is entering into the provisions of this Section 14.1 on its own behalf and as agent and trustee for its directors, officers, employees and agents.

14.2 Interest Holders. The Agent may treat each Lender set forth in Schedule A hereto or the Person designated in the last instrument delivered to it under Section 15.6 as the holder of all of the interests of such Lender under the Borrower Documents.

14.3 Consultation with Counsel. The Agent may consult with legal counsel selected by it as counsel for the Agent and the Lenders and shall not be liable to the Lenders for any action taken or not taken or suffered by it in good faith and in accordance with the advice and opinion of such counsel.

14.4 Documents. The Agent shall not be under any duty to the Lenders to examine, enquire into or pass upon the validity, effectiveness or genuineness of the Borrower Documents or any instrument, document or communication furnished pursuant to or in connection with the Borrower Documents and the Agent shall, as regards the Lenders, be entitled to assume that the same are valid, effective and genuine, have been signed or sent by the proper parties and are what they purport to be.

14.5 Agent as Lender. With respect to those portions of the Credit Facility made available by it, the Agent shall have the same rights and powers under the Borrower Documents as any other Lender and may exercise the same as though it were not the Agent. The Agent and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower and its Affiliates and Persons doing business with the Borrower and/or any of its Affiliates as if it were not the Agent and without any obligation to account to the Lenders therefor.

14.6 Responsibility of Agent. The duties and obligations of the Agent to the Lenders under the Borrower Documents are only those expressly set forth herein. The Agent shall not have any duty to the Lenders to investigate whether a Default or an Event of Default has occurred. The Agent shall, as regards the Lenders, be entitled to assume that no Default or Event of Default has occurred and is continuing unless the Agent has actual knowledge or has been notified by the Borrower of such fact or has been notified by a Lender that such Lender considers that a Default or Event of Default has occurred and is continuing, such notification to specify in detail the nature thereof.

14.7 Action by Agent. The Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights which may be vested in it on behalf of the Lenders by and under this Agreement or any other Borrower Document; provided, however, that the Agent shall not exercise any rights under Section 13.1 or under the Borrower Documents expressed to be on behalf of or with the approval of the Majority Lenders without the request, consent or instructions of the Majority Lenders. Furthermore, any rights of the Agent expressed to be on behalf of or with the approval of the Majority Lenders shall be exercised by the Agent upon the request or instructions of the Majority Lenders. The Agent shall not incur any liability

to the Lenders under or in respect of any of the Borrower Documents with respect to anything which it may do or refrain from doing in the reasonable exercise of its judgment or which may seem to it to be necessary or desirable in the circumstances, except for its gross negligence or wilful misconduct. The Agent shall in all cases be fully protected in acting or refraining from acting under any of the Borrower Documents in accordance with the instructions of the Majority Lenders and any action taken or failure to act pursuant to such instructions shall be binding on all Lenders. In respect of any notice by or action taken by the Agent hereunder, the Borrower shall at no time be obliged to enquire as to the right or authority of the Agent to so notify or act.

14.8 Notice of Events of Default. In the event that the Agent shall acquire actual knowledge or shall have been notified of any Default or Event of Default, the Agent shall promptly notify the Lenders and shall take such action and assert such rights under Section 13.1 of this Agreement and under the other Borrower Documents as the Majority Lenders shall request in writing and the Agent shall not be subject to any liability by reason of its acting pursuant to any such request. If the Majority Lenders shall fail for five Business Days after receipt of the notice of any Default or Event of Default to request the Agent to take such action or to assert such rights under any of the Borrower Documents in respect of such Default or Event of Default, the Agent may, but shall not be required to, and subject to subsequent specific instructions from the Majority Lenders, take such action or assert such rights (other than rights under Section 13.1 of this Agreement or under the other Borrower Documents and other than giving an express waiver of any Default or any Event of Default) as it deems in its discretion to be advisable for the protection of the Lenders except that, if the Majority Lenders have instructed the Agent not to take such action or assert such rights, in no event shall the Agent act contrary to such instructions unless required by Law to do so.

14.9 Responsibility Disclaimed. The Agent shall be under no liability or responsibility whatsoever as agent hereunder or under any of the other Borrower Documents:

- (a) to the Borrower or any other Person as a consequence of any failure or delay in the performance by, or any breach by, any Lender or Lenders of any of its or their obligations under any of the Borrower Documents;
- (b) to any Lender or Lenders as a consequence of any failure or delay in performance by, or any breach by, the Borrower or any other Person of any of its obligations under any of the Borrower Documents; or
- (c) to any Lender or Lenders for any statements, representations or warranties in any of the Borrower Documents or in any other documents contemplated hereby or thereby or in any other information provided pursuant to any of the Borrower Documents or any other documents contemplated hereby or thereby or for the validity, effectiveness, enforceability or sufficiency of any of the Borrower Documents or any other document contemplated hereby or thereby.

14.10 Indemnification. The Lenders agree to indemnify the Agent (to the extent not reimbursed by the Borrower) *pro rata* according to the Pro Rata Share of each of them from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any nature whatsoever which may be imposed on, incurred

by or asserted against the Agent in any way relating to or arising out of any of the Borrower Documents or any other document contemplated hereby or thereby or any action taken or omitted by the Agent under any of the Borrower Documents or any document contemplated hereby or thereby, except that no Lender shall be liable to the Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the gross negligence or wilful misconduct of the Agent.

14.11 Credit Decision. Each Lender represents and warrants to the Agent that:

- (a) in making its decision to enter into this Agreement and to extend credit to the Borrower under the Credit Facility, it is independently taking whatever steps it considers necessary to evaluate the financial condition and affairs of the Borrower and that it has made an independent credit judgment without reliance upon any information furnished by the Agent; and
- (b) so long as any portion of the Credit Facility is being utilized by the Borrower, it will continue to make its own independent evaluation of the financial condition and affairs of the Borrower.

14.12 Successor Agent. Subject to the appointment and acceptance of a successor Agent as provided below, the Agent may resign at any time by giving 30 days' written notice thereof to the Lenders. Upon any such resignation, the Majority Lenders shall have the right to appoint a successor Agent who shall (provided no Event of Default has occurred and is continuing) be approved by the Borrower and shall be one of the Lenders unless none of the Lenders wishes to accept such appointment. If no successor Agent shall have been so appointed and shall have accepted such appointment by the time of such resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent which shall be a bank organized under the Laws of Canada which has shareholders' equity in excess of \$500,000,000 and has an office in Toronto. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges, duties and obligations of the retiring Agent (in its capacity as Agent but not in its capacity as a Lender) and the retiring Agent shall be discharged from its duties and obligations hereunder (in its capacity as Agent but not in its capacity as a Lender). After any retiring Agent's resignation or removal hereunder as the Agent, provisions of this Article 14 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Agent.

14.13 Delegation by Agent. With the prior approval of the Majority Lenders, the Agent shall have the right to delegate any of its duties or obligations hereunder as Agent to any Affiliate of the Agent so long as the Agent shall not thereby be relieved of such duties or obligations.

14.14 Waivers and Amendments

- (a) Subject to Section 14.14(b), any term, covenant or condition of any of the Borrower Documents may only be amended with the consent of the Borrower and the Majority Lenders or compliance therewith may be waived (either generally or

in a particular instance and either retroactively or prospectively) by the Majority Lenders and in any such event the failure to observe, perform or discharge any such covenant, condition or obligation, so amended or waived (whether such amendment is executed or such consent or waiver is given before or after such failure), shall not be construed as a breach of such covenant, condition or obligation or as a Default or Event of Default. Any indulgence by the Lenders or the Majority Lenders with respect to any failure to strictly observe, perform or comply with any term, covenant or condition of any Borrower Document is not a waiver of the entire term, covenant or condition or any subsequent default.

- (b) Notwithstanding Section 14.14(a), without the prior written consent of each Lender, no such amendment or waiver shall directly:
 - (i) increase the amount of the Credit Facility;
 - (ii) alter the terms of Section 2.5 or Article 9;
 - (iii) extend the time of the Maturity Date or for any other payment of the interest or principal on any Loans, extend the time for payment with respect to any Bankers' Acceptances pursuant to Section 9.5, forgive any portion of interest or principal thereof, reduce the stated rate of interest thereon or amend the requirement of *pro rata* application of all amounts received by the Agent;
 - (iv) consent to any assignment by the Borrower of the Borrower Documents or the benefit thereof;
 - (v) change the percentage of the Lenders required to constitute the Majority Lenders or otherwise amend the definition of Majority Lenders;
 - (vi) reduce the stated amount of any fees to be paid to the Lenders pursuant to Article 7 of this Agreement or the Fee Letter. For certainty, this Section 14.14(b)(vi) does not apply to the Fee Letter to the extent payments thereunder are to be paid solely to the Agent;
 - (vii) permit any subordination or postponement of the Borrower Obligations; or
 - (viii) alter the terms of this Section 14.14(b).
- (c) Without the prior written consent of the Agent, no amendment to or waiver of Sections 14.1 through 14.13 or any other provision hereof to the extent it affects the rights or obligations of the Agent shall be effective.

14.15 Determination by Agent Conclusive and Binding. Any determination to be made by the Agent on behalf of or with the approval of the Lenders or the Majority Lenders under this Agreement shall be made by the Agent in good faith and, if so made, shall be binding on all parties, absent manifest error.

14.16 Adjustments among Lenders after Acceleration.

- (a) The Lenders agree that, at any time after all indebtedness of the Borrower to the Lenders and the Agent pursuant hereto has become immediately due and payable pursuant to Section 13.1 or after the cancellation or termination of the Credit Facility, they will at any time or from time to time upon the request of any Lender through the Agent purchase portions of the availments made available by the other Lenders which remain outstanding, and make any other adjustments which may be necessary or appropriate, in order that the amounts of the availments made available by the respective Lenders which remain outstanding, as adjusted pursuant to this Section 14.16, will be in the same proportions as their respective Pro Rata Shares thereof immediately prior to such acceleration, cancellation or termination.
- (b) The Lenders agree that, at any time after all indebtedness of the Borrower to the Lenders and the Agent pursuant hereto has become immediately due and payable pursuant to Section 13.1 or after the cancellation or termination of the Credit Facility, the amount of any repayment made by the Borrower under this Agreement, and the amount of any proceeds from the exercise of any rights or remedies of the Lenders under the Borrower Documents, which are to be applied against amounts owing hereunder as principal, will be so applied in a manner such that to the extent possible, the availments made available by the respective Lenders which remain outstanding, after giving effect to such application, will be in the same proportions as their respective Pro Rata Shares thereof immediately prior to such acceleration, cancellation or termination.
- (c) For greater certainty, the Lenders acknowledge and agree that, without limiting the generality of the provisions of Sections 14.16(a) and (b), such provisions will have application if and whenever any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, compensation, or otherwise) on account of any monies owing or payable by the Borrower to it hereunder in excess of its *pro rata* share of payments on account of monies owing by the Borrower to all the Lenders hereunder.
- (d) The Borrower agrees to be bound by and to do all things necessary or appropriate to give effect to any and all purchases and other adjustments made by and between the Lenders pursuant to this Section 14.16.

14.17 Redistribution of Payment. If a Lender shall receive payment of a portion of the aggregate amount of principal and interest due to it hereunder which is greater than the proportion received by any other Lender in respect of the aggregate amount of principal and interest due in respect of the Credit Facility (having regard to the respective Individual Commitments of the Lenders), the Lender receiving such proportionately greater payment shall purchase a participation (which shall be deemed to have been done simultaneously with receipt of such payment) in that portion of the aggregate outstanding credit of the other Lender or Lenders so that the respective receipts shall be *pro rata* to their respective participation in the credits; provided, however, that if all or part of such proportionately greater payment received by

such purchasing Lender shall be recovered from the Borrower, such purchase shall be rescinded and the purchase price paid for such participation shall be returned by such selling Lender or Lenders to the extent of such recovery, but without interest.

14.18 Distribution of Notices. With respect to each notice which is delivered to the Agent hereunder on behalf of certain of or all of the Lenders, the Agent shall provide a copy of such notice to each of such Lenders on the date it is received by the Agent if such date is a Business Day and it is received by the Agent prior to 12:00 noon (Toronto time) on such date; otherwise, the Agent shall provide a copy of such notice to each of such Lenders within one Business Day of receipt by the Agent. The foregoing sentence shall also apply to any automatic conversion pursuant to Section 6.4 or 6.5. With respect to each other document which is delivered to the Agent hereunder on behalf of certain of or all of the Lenders, the Agent shall provide a copy of such document to each of such Lenders within one Business Day of receipt by the Agent.

ARTICLE 15 MISCELLANEOUS

15.1 Waivers. No failure or delay by the Agent, the Lenders or the Majority Lenders in exercising any remedy, right or power hereunder or otherwise shall operate as a waiver thereof, except a waiver which is specifically given in writing by the Agent, and no single or partial exercise of any power, right or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other power, right or privilege.

15.2 Notices. All notices, demands and other communications provided for in this Agreement shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee or sent by facsimile, charges prepaid, at or to the applicable addresses or facsimile numbers, as the case may be, set opposite the party's name on the signature page hereof (in the case of the Borrower or the Agent) or set forth in Schedule A hereto (in the case of the Lenders) or at or to such other address or addresses or facsimile number or numbers as any party hereto may from time to time designate to the other parties in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Business Day and such delivery was made before 4:00 p.m. (Toronto time); otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of delivery. Any communication which is transmitted by facsimile as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a Business Day and such transmission was made before 4:00 p.m. (Toronto time); otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of transmission.

15.3 Severability. Any provision hereof which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

15.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

15.5 Successors and Assigns. This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.

15.6 Assignment

- (a) Neither the Borrower Documents nor the benefit thereof may be assigned by the Borrower.
- (b) A Lender may at any time sell to one or more other Persons ("**Participants**") participating interests in any credit outstanding hereunder, the commitment of the Lender hereunder or any other interest of the Lender under the Borrower Documents provided such sale of a participating interest would not cause the Borrower to incur additional costs pursuant to Article 8. For greater certainty, the aforesaid proviso shall only be applicable for so long as no Event of Default has occurred and is continuing. In the event of any such sale by the Lender of a participating interest to a Participant, the Lender's obligations under this Agreement to the Borrower shall remain unchanged, the Lender shall remain solely responsible for the performance thereof and the Borrower shall continue to be obligated to the Lender in connection with the Lender's rights under this Agreement. The Borrower agrees that each Participant shall be entitled to the benefits of Article 8 with respect to its participation hereunder; provided that no Participant shall be entitled to receive any greater amount pursuant to such Article than the Lender would have been entitled to receive in respect of the amount of the participation transferred by the Lender to such Participant had no such transfer occurred.
- (c) With the written consent of the Borrower (which consent shall not be required (x) in circumstances where an Event of Default has occurred and is continuing (y) if such sale is to one or more other Lenders or to an Affiliate or Subsidiary of any of the Lenders and, in each case, a notice of the sale has been given to the Borrower) and the Agent, a Lender may at any time sell all or any part of its rights and obligations under the Borrower Documents to one or more Persons ("**Purchasing Lenders**"), provided (prior to the occurrence and continuance of an Event of Default) such sale would not cause the Borrower to incur any additional costs pursuant to Article 8 and provided further (prior to the occurrence and continuance of an Event of Default) any partial assignment or sale shall be with respect to a minimum Individual Commitment of \$10,000,000 and in integral multiples of \$1,000,000 in excess thereof or such lesser amount as will result in each of the selling Lender (except if the selling Lender is assigning its entire Individual Commitment) and the Purchasing Lender having a minimum aggregate Individual Commitment of \$10,000,000. As concerns any assignment where the written consent of the Borrower is not required, the Agent shall provide notice to the Borrower of such assignment; provided, however, failure to provide such notice shall in no way effect the validity of such assignment. Provided an Event of Default has not occurred and is not continuing, a Purchasing Lender shall be a Canadian Qualified Lender unless such Purchasing Lender has waived its rights to the benefit of Section 8.6 and such waiver is otherwise in form and substance

satisfactory to the Borrower. Upon such sale, the Lender shall, to the extent of such sale, be released from its obligations under the Borrower Documents and each of the Purchasing Lenders shall become a party to the Borrower Documents to the extent of the interest so purchased. Any such assignment by a Lender shall not be effective unless and until such Lender has paid to the Agent an assignment fee in the amount of \$3,500 for each Purchasing Lender (unless the payment of such fee has been waived by the Agent), unless and until the assignee has executed an instrument substantially in the form of Schedule C hereto or otherwise in a form acceptable to such Lender, the Purchasing Lender and the Agent, whereby such assignee has agreed to be bound by the terms of the Borrower Documents as a Lender and has agreed to a specific Individual Commitment and a specific address and facsimile number for the purpose of notices as provided in Section 15.2 and unless and until a copy of a fully executed copy of such instrument has been consented to by the Agent and, if no Event of Default has occurred and is continuing, consented to by the Borrower. Upon any such assignment becoming effective, Schedule A hereto shall be deemed to be amended to include the assignee as a Lender with the specific Individual Commitment, address and facsimile number as aforesaid and the Individual Commitment of the Lender making such assignment shall be deemed to be reduced by the amount of the Individual Commitment of the assignee. Where any such assignment occurs after the occurrence and during the continuance of an Event of Default, the Purchasing Lender, if it is not a Canadian Qualified Lender, shall make reasonable efforts to respond accurately and promptly to a question in writing of the Borrower as to the Purchasing Lender's country of residence.

- (d) The Borrower authorizes the Agent and the Lenders to disclose to any Participant or Purchasing Lender (each, a "**Transferee**") and any prospective Transferee any and all financial and other information in its possession concerning the Borrower which has been delivered to them by or on behalf of the Borrower pursuant to this Agreement or which has been delivered to them by or on behalf of the Borrower in connection with their credit evaluation of the Borrower prior to entering into this Agreement, so long as any such Transferee or prospective Transferee agrees not to disclose any confidential, non-public information to any Person other than its non-brokerage Affiliates, employees, accountants or legal counsel, unless required by Law and after prior notice to the Borrower.

15.7 Entire Agreement. The Borrower Documents and the agreements referred to therein and delivered pursuant thereto constitute the entire agreement between the parties hereto and supersede any prior agreements, commitment letters, undertakings, declarations, representations and understandings, both written and verbal, in respect of the subject matter hereof.

15.8 Further Assurances. The Borrower shall from time to time and at all times hereafter, upon every reasonable request of the Agent, make, do, execute, and deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be necessary in the opinion of the Agent for more effectually implementing and carrying out the

true intent and meaning of this Agreement, the other Borrower Documents or any agreement delivered pursuant hereto or thereto.

15.9 Judgment Currency

- (a) If, for the purpose of obtaining or enforcing judgment against the Borrower in any court in any jurisdiction, it becomes necessary to convert into a particular currency (such currency being hereinafter in this Section 15.9 referred to as the **"Judgment Currency"**) an amount due in another currency (such other currency being hereinafter in this Section 15.9 referred to as the **"Indebtedness Currency"**) under this Agreement, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding:
 - (i) the date of actual payment of the amount due, in the case of any proceeding in the courts of the Province of Ontario or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or
 - (ii) the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 15.9(a)(ii) being hereinafter in this Section 15.9 referred to as the **"Judgment Conversion Date"**).
- (b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 15.9(a)(ii), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the Borrower shall pay to the Lenders such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Indebtedness Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date.
- (c) Any amount due from the Borrower under the provisions of Section 15.9(b) shall be due to the judgment creditor as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Agreement.
- (d) The term **"rate of exchange"** in this Section 15.9 means the noon spot rate of exchange for Canadian interbank transactions applied in converting the Indebtedness Currency into the Judgment Currency published by the Bank of Canada for the day in question.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

NEWFOUNDLAND POWER INC.
55 Kenmount Road
P.O. Box 8910
St. John's NL A1B 3P6

Attention: Chief Financial Officer
Telefax: (709) 737-5300

NEWFOUNDLAND POWER INC.

By: Karl Smith
Karl Smith
President and Chief Executive Officer

By: Lisa Hutchens
Lisa Hutchens
Vice President Finance and Chief Financial
Officer

ROYAL BANK OF CANADA
12th Floor, South Tower
Royal Bank Plaza
200 Bay Street
Toronto, Ontario M5J 2W7

Attention: Manager, Agency Services Group
Telefax: (416) 842-4023

ROYAL BANK OF CANADA, as Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

NEWFOUNDLAND POWER INC.
55 Kenmount Road
P.O. Box 8910
St. John's NL A1B 3P6

Attention: Chief Financial Officer
Telefax: (709) 737-5300

NEWFOUNDLAND POWER INC.


By: _____
Karl Smith
President and Chief Executive Officer

By: _____
Lisa Hutchens
Vice President Finance and Chief Financial
Officer

ROYAL BANK OF CANADA
12th Floor, South Tower
Royal Bank Plaza
200 Bay Street
Toronto, Ontario M5J 2W7

Attention: Manager, Agency Services Group
Telefax: (416) 842-4023

ROYAL BANK OF CANADA, as Agent

By:  _____
Name: Gail Watkin
Title: Manager, Agency

By: _____
Name:
Title:

ROYAL BANK OF CANADA, as Lender

By: Catherine N. Deluz
Name: Catherine N. Deluz
Title: Attorney-in-Fact

By: _____
Name: _____
Title: _____

**CANADIAN IMPERIAL BANK OF
COMMERCE**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

BANK OF MONTREAL

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

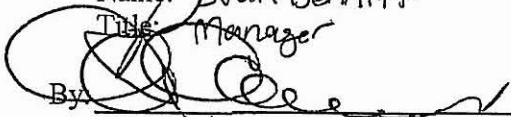
ROYAL BANK OF CANADA, as Lender

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**CANADIAN IMPERIAL BANK OF
COMMERCE**

By:  _____
Name: Evan Bennett
Title: Manager

By:  _____
Name: R.M. Callander
Title: Director

BANK OF MONTREAL

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ROYAL BANK OF CANADA, as Lender

By: _____
Name: _____
Title: _____

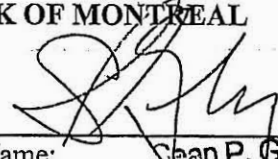
By: _____
Name: _____
Title: _____

**CANADIAN IMPERIAL BANK OF
COMMERCE**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

BANK OF MONTREAL

By:  _____
Name: Sean P. Gallaway
Title: Vice President

By: _____
Name: _____
Title: _____

Name and Address of Lender	Individual Commitment
Royal Bank of Canada 200 Bay Street Royal Bank Plaza 5 th Floor, South Tower Toronto, Ontario M5J 2W7	\$40,000,000
Attention: Director, Corporate Credit Telefax: (416) 842-5320	
	\$30,000,000
Canadian Imperial Bank of Commerce 199 Bay Street Commerce Court West, 3 rd Floor Toronto, Ontario M5L 1A2	
Attention: Director, Energy and Utilities Group Telefax: (416) 980-5011	
	\$30,000,000
Bank of Montreal 1 First Canadian Place, 4 th Floor Toronto, Ontario M5X 1H3	
Attention: Vice President, Loan Products Group Investment & Corporate Banking Telefax: (416) 359-7796	

**SCHEDULE B
COMPLIANCE CERTIFICATE**

TO: ROYAL BANK OF CANADA, as Agent

I, _____, the Chief Financial Officer of Newfoundland Power Inc. (the "Borrower"), in such capacity and not personally, hereby certify that:

2. I am the duly appointed Chief Financial Officer of the Borrower named in the Credit Agreement dated as of January 21, 2005 between the Borrower, the lending institutions from time to time parties thereto as Lenders and Royal Bank of Canada, as administrative agent of the Lenders, as the same may be amended, modified, supplemented or replaced from time to time (the "**Credit Agreement**") and as such I am providing this certificate for and on behalf of the Borrower pursuant to the Credit Agreement.
3. I am familiar with and have examined the provisions of the Credit Agreement including, without limitation, those of Articles 10, 11 and 13 thereof.
4. To the best of my knowledge, information and belief and after due inquiry, no Default has occurred and is continuing as at the date hereof [**or, if a Default has occurred, specifying the Default and the steps being taken to remedy same**].
5. As of the last day of the Fiscal Quarter ending _____, the Debt to Capitalization Ratio as referred to in Section 11.1(j) of the Credit Agreement was _____, the detailed calculations of which are attached hereto.
6. Unless the context otherwise requires, capitalized terms in the Credit Agreement which appear herein without definitions shall have the meanings ascribed thereto in the Credit Agreement.

DATED this _____ day of _____, _____.

[Name]
Chief Financial Officer

SCHEDULE C
FORM OF ASSIGNMENT

Dated: _____

Reference is made to the Credit Agreement dated as of January 21, 2005 (the "**Credit Agreement**"), between Newfoundland Power Inc., the lending institutions from time to time parties thereto as Lenders and Royal Bank of Canada, as administrative agent of the Lenders, as amended to the date hereof. Terms defined in the Credit Agreement are used herein as therein defined.

_____ (the "**Assignor**") and _____ (the "**Assignee**") agree as follows:

1. The Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, a _____% interest in and to all of the Assignor's rights and obligations as a Lender under the Borrower Documents as of the Effective Date (as defined below) (including, without limitation, such percentage interest in the Assignor's Individual Commitment as in effect on the Effective Date and the credit extended by the Assignor and outstanding on the Effective Date).
2. The Assignor (i) represents and warrants that as of the date hereof its Individual Commitment is \$_____ (without giving effect to assignments thereof which have not yet become effective, including, but not limited to, the assignment contemplated hereby), and the aggregate outstanding amount of credit extended by it is \$_____ (without giving effect to assignments thereof which have not yet become effective, including, but not limited to, the assignment contemplated hereby); (ii) represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; (iii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Borrower Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Borrower Documents or any other instrument or document furnished pursuant thereto; (iv) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or the performance or observance by the Borrower of any of its obligations under the Borrower Documents or any other instrument or document furnished pursuant thereto; and (v) gives notice to the Agent of the assignment to the Assignee hereunder.
3. The effective date of this Assignment (the "**Effective Date**") shall be _____. Following the execution of this Assignment, it will be delivered to the Agent for its consent and, to the extent required pursuant to Section 15.6(c) of the Credit Agreement, to the Borrower for its consent.
4. Upon such consent, as of the Effective Date (i) the Assignee shall, in addition to any rights and obligations under the Borrower Documents held by it immediately prior to the Effective Date, have the rights and obligations under the Borrower Documents that have

been assigned to it pursuant to this Assignment, (ii) the Assignor shall, to the extent provided in this Assignment, relinquish its rights and be released from its obligations under the Borrower Documents (iii) the Individual Commitment of the Assignee shall be as described in Appendix 1 hereto and (iv) the address and facsimile number of the Assignee for the purposes of Schedule A to the Credit Agreement shall be as set forth in Appendix 1 hereto.

5. The Assignor and Assignee shall make all appropriate adjustments in payments under the Borrower Documents for periods prior to the Effective Date directly between themselves.
6. This Assignment shall be governed by, and construed in accordance with, the Laws of the Province of Ontario and the Laws of Canada applicable therein.

[ASSIGNOR]

By: _____

Name: _____

Title: _____

[ASSIGNEE]

By: _____

Name: _____

Title: _____

Acknowledged and agreed to as of this ____ day of _____, ____.

ROYAL BANK OF CANADA, as Agent

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

¹ Acknowledged and agreed to as of this _____ day of _____, _____.

NEWFOUNDLAND POWER INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

¹ Not applicable if Event of Default outstanding or if Lender assigning to another Lender or to an Affiliate or Subsidiary.

**SCHEDULE D
FORM OF DRAWDOWN NOTICE**

TO: Royal Bank of Canada, as Agent
12th Floor, South Tower
Royal Bank Plaza
200 Bay Street
Toronto, Ontario
M5J 2W7

Attention: Manager, Agency Services Group

Facsimile: (416) 842-4023

RE: Credit Agreement dated as of January 21, 2005 (the "Credit Agreement") between Newfoundland Power Inc., as borrower, the lending institutions from time to time parties thereto as Lenders and Royal Bank of Canada, as administrative agent of the Lenders

Pursuant to the terms of the Credit Agreement, the undersigned hereby irrevocably notifies you that it wishes to draw down under the Credit Facility on _____ as follows:

1. Availment Option: _____
2. Amount: _____
3. If Bankers' Acceptance, term: _____

[The undersigned hereby irrevocably authorizes and directs you to pay the proceeds of this drawdown to _____ at _____.]

The undersigned hereby confirms that no Default has occurred and is continuing as at the date hereof or would arise immediately after giving effect to or as a result of such drawdown.

All capitalized terms defined in the Credit Agreement and used herein shall have the meanings ascribed thereto in the Credit Agreement.

DATED the _____ day of _____, _____.

NEWFOUNDLAND POWER INC.

By: _____
Name:
Title:

- 2 -

By: _____
Name:
Title:

**SCHEDULE E
FORM OF ROLLOVER NOTICE**

TO: Royal Bank of Canada, as Agent
12th Floor, South Tower
Royal Bank Plaza
200 Bay Street
Toronto, Ontario
M5J 2W7

Attention: Manager, Agency Services Group

Facsimile: (416) 842-4023

RE: Credit Agreement dated as of January 21, 2005 (the "Credit Agreement") between Newfoundland Power Inc., as borrower, the lending institutions from time to time parties thereto as Lenders and Royal Bank of Canada, as administrative agent of the Lenders

Pursuant to the terms of the Credit Agreement, the undersigned hereby irrevocably requests a rollover of outstanding credit under the Credit Facility on _____ as follows:

Maturity date
of maturing
Bankers'
Acceptances or BA
Rate Loans _____

Aggregate face
amount of maturing
Bankers'
Acceptances or BA
Rate Loans \$ _____

Portion thereof to be
replaced \$ _____

Term of new
Bankers'
Acceptances (or BA
Rate Loans) _____

The undersigned hereby confirms that no Default has occurred and is continuing as at the date hereof or would arise immediately after giving effect to or as a result of such rollover.

All capitalized terms defined in the Credit Agreement and used herein shall have the meaning ascribed thereto in the Credit Agreement.

DATED the _____ day of _____, _____.

NEWFOUNDLAND POWER INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

**SCHEDULE F
FORM OF CONVERSION NOTICE**

TO: Royal Bank of Canada, as Agent
12th Floor, South Tower
Royal Bank Plaza
200 Bay Street
Toronto, Ontario
M5J 2W7

Attention: Manager, Agency Services Group

Facsimile: (416) 842-4023

RE: Credit Agreement dated as of January 21, 2005 (the "Credit Agreement") between Newfoundland Power Inc., as borrower, the lending institutions from time to time parties thereto as Lenders and Royal Bank of Canada, as administrative agent of the Lenders

Pursuant to the terms of the Credit Agreement, the undersigned hereby irrevocably requests a conversion of outstanding credit under the Credit Facility on _____ as follows:

[Choose as appropriate]

**Converting From Bankers' Acceptances
(or BA Rate Loan)**

Maturity date of _____
Bankers' Acceptances to
be converted

**Converting Into Bankers' Acceptances
(or BA Rate Loan)**

Aggregate face amount of \$ _____
new Bankers' Acceptances

Aggregate face amount
of said Bankers'
Acceptances \$ _____

Term of new Bankers'
Acceptances _____

Portion thereof to be
converted \$ _____

**Converting from
Prime Rate Loans**

**Converting to
Prime Rate Loans**

Principal amount of
Prime Rate Loan to be
converted \$ _____

Principal amount of new
Prime Rate Loan \$ _____

Portion thereof to be
converted \$ _____

The undersigned hereby confirms that no Default has occurred and is continuing as at the date hereof or would arise immediately after giving effect to or as a result of such conversion.

All capitalized terms defined in the Credit Agreement and used herein shall have the meaning ascribed thereto in the Credit Agreement.

DATED the _____ day of _____, _____.

NEWFOUNDLAND POWER INC.

By: _____
Name:
Title:

**SCHEDULE G
PRICING GRID**

Pricing Rating	Major Credit Rating Agency			Acceptance Fee Rate	Prime Rate Margin	Standby Fee Rate
	S&P	Moody's	DBRS			
I	≥A	≥A2	≥A	0.575	Nil	0.125
II	A-	A3	A (low)	0.750	Nil	0.150
III	BBB+	Baa1	BBB (high)	0.950	Nil	0.200
IV	BBB	Baa2	BBB	1.350	0.350	0.250
V	≤ BBB- or unrated	≤Baa3 or unrated	≤BBB (low) or unrated	1.750	0.750	0.450

**Amendment to the
Committed Credit Facility Agreement
January 2006**

**FIRST AMENDING AGREEMENT
RE: NEWFOUNDLAND POWER INC.
TERM CREDIT AGREEMENT**

THIS AGREEMENT made as of the 20th day of January, 2006.

BETWEEN:

ROYAL BANK OF CANADA, a Canadian chartered bank

(herein, in its capacity as administrative agent of the Lenders,
called the “**Agent**”)

- and-

**ROYAL BANK OF CANADA, CANADIAN IMPERIAL
BANK OF COMMERCE, BANK OF MONTREAL and THE
BANK OF NOVA SCOTIA** and one or more Persons to whom
the foregoing or their respective permitted assigns may from time
to time assign an undivided interest in the Borrower Documents (as
defined herein) and who agree to be bound by the terms hereof as a
Lender (as defined herein)

(herein, in their capacities as lenders to the Borrower, collectively
called the “**Lenders**” and individually called a “**Lender**”)

- and -

NEWFOUNDLAND POWER INC., a corporation incorporated
under the laws of the Province of Newfoundland and Labrador

(herein called the “**Borrower**”)

WHEREAS Newfoundland Power Inc., the Lenders (other than The Bank of
Nova Scotia) and the Agent entered into a credit agreement made as of January 21, 2005 (the
“**Credit Agreement**”) and pursuant to which the Lenders established a certain revolving/non-
revolving credit facility in favour of the Borrower;

AND WHEREAS the parties hereto wish to amend certain provisions of the
Credit Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in
consideration of the mutual covenants and agreements contained herein, the parties covenant and
agree as follows:

ARTICLE 1 DEFINED TERMS

1.1 Capitalized Terms. All capitalized terms which are used herein without being specifically defined herein shall have the meaning ascribed thereto in the Credit Agreement as amended hereby.

ARTICLE 2 AMENDMENTS

2.1 General Rule. Subject to the terms and conditions herein contained, the Credit Agreement is hereby amended to the extent necessary to give effect to the provisions of this agreement, excluding those amendments contemplated in Article 3, and to incorporate the provisions of this agreement, excluding those amendments contemplated in Article 3, into the Credit Agreement.

2.2 Definitions. The definition of “**Conversion Date**” in Section 1.1 of the Credit Agreement is hereby amended by deleting the date “January 20, 2006” and replacing it with “January 19, 2007”.

2.3 Conditions Precedent to All Credit. Section 12.1(c) of the Credit Agreement is hereby amended by adding the phrase “(provided, however, the representation and warranty set forth in Section 10.1(m) shall only be made on the Closing Date)” after the phrase “on such date”.

2.4 Schedule A - Individual Commitments. Schedule A of the Credit Agreement is hereby deleted in its entirety and replaced with the revised Schedule A attached hereto.

2.5 Schedule G - Pricing Grid. Schedule G to the Credit Agreement is hereby deleted in its entirety and replaced with the revised Schedule G attached hereto as Annex I.

ARTICLE 3 POST-PUB APPROVAL AMENDMENTS

3.1 Additional Amendments. Upon the Borrower’s receipt of all approvals of the Newfoundland and Labrador Board of Commissioners of Public Utilities (the “**PUB Approvals**” and the “**PUB**”, respectively) that are required in connection with the amendments contemplated in this Article 3, and subject to the terms and conditions herein contained, the Credit Agreement is hereby amended, in addition to those amendments contemplated in Article 2, to the extent necessary to give effect to the provisions of this Article 3, and to incorporate the provisions of this Article 3, into the Credit Agreement.

3.2 Recital. In the first recital of the Credit Agreement, the reference to “a certain revolving/non-revolving term credit facility” is hereby deleted and replaced by the phrase “a certain revolving term credit facility”.

3.3 Definitions. Section 1.01 of the Credit Agreement is hereby amended as follows:

- (i) the definition of “**Applicable Margin**” is amended by deleting the following immediately after the first sentence thereof:

“On and after the Conversion Date, each amount in Levels I, II and III of the table in Schedule G shall be increased by 0.25% per annum and each amount in Levels IV and V of the table in Schedule G shall be increased by 0.50% per annum.”

- (ii) the definition of “**Conversion Date**” is hereby deleted in its entirety.
- (iii) the definition of “**Credit Facility**” is amended by deleting the phrase “revolving/non-revolving term credit facility” and replacing it with the phrase “revolving term credit facility”.
- (iv) the definition of “**Maturity Date**” is hereby deleted in its entirety and replaced by the following:

“**Maturity Date**” means January 20, 2009, as the same may be extended pursuant to Section 9.2

- (v) the following definition is added immediately after the definition of “**Person**”:

“**Post-PUB Amendments Effective Date**” means the date of the effectiveness of the amendments to this Agreement contemplated by Article 3 of the First Amending Agreement to this Agreement made as of January 20, 2006 between the Agent, the Lenders and the Borrower.

- (vi) the following definition is added immediately after the definition of “**Trust Deed Liens**”:

“**Utilization Percentage**” means, for any particular day, the percentage obtained when the aggregate amount of credit outstanding under the Credit Facility as at the close of business on such day is divided by the amount of the Credit Facility as at the close of business on such day.

3.4 Establishment of Credit Facility. Section 2.1 of the Credit Agreement is hereby amended by deleting the phrase “revolving/non-revolving term credit facility” and replacing it with the phrase “revolving term credit facility”.

3.5 Reduction of Credit Facility. Section 2.4 of the Credit Agreement is hereby deleted in its entirety and replaced by the following:

2.4 Reductions of Credit Facility. The Borrower may, from time to time, by three Business Days’ notice in writing to the Agent, permanently reduce the amount of the Credit Facility to the extent it is not utilized; provided, however, that any such permanent reduction of the amount of the Credit Facility shall be by an amount of no less than \$1,000,000 and otherwise in multiples of \$100,000.

The amount of the Credit Facility will not be reduced by any prepayment pursuant to Sections 9.3 or 9.4 or pursuant to Section 9.5, but will be permanently reduced by any repayment pursuant to Section 9.1, each such reduction to be in an amount equal to the amount of the repayment and to be effective from the time of the repayment. Any repayment of outstanding credit under the Credit Facility which forms part of any rollover under Article 5 or any conversion from one type of credit to another type of credit under Article 6 shall not cause any reduction in the amount of the Credit Facility. Upon each permanent reduction in the amount of the Credit Facility, the Individual Commitment of each Lender shall thereupon be reduced by an amount equal to such Lender's Pro Rata Share of the amount by which the Credit Facility is permanently reduced.

3.6 Drawdown. The first sentence of Section 4.1 of the Credit Agreement is hereby amended by deleting, immediately after the phrase "from time to time by way of drawdown", the phrase "on or before the Conversion Date".

3.7 Standby Fee. Section 7.5 of the Credit Agreement is hereby amended by deleting the reference to "Conversion Date" and replacing it with "Maturity Date".

3.8 Interest and Fee Adjustment. Section 7.6 of the Credit Agreement is hereby deleted in its entirety and replaced by the following:

7.6 Interest and Fee Adjustment. Subject to the limitations expressed in this Section, the changes in the interest rate margins and fee rates contemplated in the definition of Applicable Margin shall be effective on (i) the effective date for any change in the Pricing Rating (as announced by the applicable Major Credit Rating Agency); or (ii) the date of the occurrence of an Event of Default, as the case may be (and, for greater certainty, in the case of acceptance fees shall not be effective for that portion of the remaining term of any outstanding Bankers' Acceptances or BA Rate Loans on and after such date but shall only be effective on the last day of such term). No change in the Applicable Margin which would result in a reduction of applicable interest rate margins and fee rates hereunder shall be permitted at any time that an Event of Default has occurred and is continuing hereunder.

3.9 Utilization Fee. Article 7 of the Credit Agreement is hereby amended by adding the following section immediately following Section 7.6:

7.7 Utilization Fee. Upon the first Business Day of each Fiscal Quarter commencing after the Post-PUB Amendments Effective Date and on the Maturity Date, the Borrower shall pay to the Lenders, in arrears, a utilization fee, calculated and accruing daily from and including the Post-PUB Amendments Effective Date for each day on which the Utilization Percentage is greater than 50% at the rate per annum, calculated on the basis of a year of 365 days, equal to 0.075% on the amount of the credit outstanding under the Credit Facility as at the close of business on each such day.

3.10 Extension of Conversion Date. Section 9.2 of the Credit Agreement is hereby deleted in its entirety and replaced by the following:

9.2 Extension of Maturity Date.

- (a) At any time not more than 90 days and less than 60 days prior to the Maturity Date, provided that the Borrower has obtained any necessary regulatory approvals, the Borrower may, by written request to the Agent (the “**Extension Request**”), request that the Maturity Date be extended for a further period of 364 days from the then current Maturity Date at such time. The Extension Request shall confirm that all necessary regulatory approvals for the Extension Request have been obtained. A copy of the Extension Request shall be provided by the Agent to each of the Lenders in accordance with Section 14.18. Each Lender may, in its sole discretion and regardless of whether or not there is any Default hereunder, by written notice to the Agent (the “**Extension Response Notice**”), not later than 25 days prior to the then current Maturity Date (the “**Extension Response Period**”), approve or decline the Extension Request. If any Lender does not provide an Extension Response Notice within the Extension Response Period, such Lender shall be deemed to have declined the Extension Request. If Lenders with Individual Commitments that in the aggregate are equal to or greater than 66 2/3% of the aggregate Individual Commitments of all Lenders approve the Extension Request, the Agent shall notify the Borrower and the Lenders of such approval and confirm the new Maturity Date, which new Maturity Date shall become effective on and from the then current Maturity Date. If Lenders with Individual Commitments that in the aggregate are equal to or greater than 66 2/3% of the aggregate Individual Commitments of all Lenders do not approve the Extension Request, the Agent shall notify the Borrower and the Lenders and the Maturity Date shall not be extended.
- (b) If Lenders with Individual Commitments that in the aggregate are equal to or greater than 66 2/3% but less than 100% of the aggregate Individual Commitments of all Lenders approve the Extension Request within the Extension Response Period (the “**Approving Lenders**”), the following shall apply:
 - (i) On or before the second Business Day after the Extension Response Period, the Agent shall give written notice (the “**Acquisition Request Notice**”) to the Borrower and each Lender identifying the Approving Lenders and Lender or Lenders that have declined or are deemed to have declined the Extension Request (the “**Declining Lenders**”) and their respective Individual Commitments.
 - (ii) Any Approving Lender may, at its option, acquire all or any portion of the rights and obligations of the Declining Lenders

under the Borrower Documents (all of such rights and obligations being herein called the “**Available Amount**”) by giving written notice to the Agent (an “**Acquisition Notice**”) of the portion of the Available Amount which it is prepared to acquire (the “**Desired Acquisition Amount**”). Such Acquisition Notice shall be given within 10 days following the giving of the Acquisition Request Notice (such deadline being herein called the “**Acquisition Deadline**”). If only one Approving Lender gives an Acquisition Notice to the Agent or if more than one Approving Lender gives an Acquisition Notice to the Agent but the aggregate of their Desired Acquisition Amounts is less than or equal to the Available Amount, then each such Approving Lender shall be entitled to acquire its Desired Acquisition Amount of the rights and obligations of the Declining Lenders under the Borrower Documents. If more than one Approving Lender gives an Acquisition Notice to the Agent and the aggregate of the Desired Acquisition Amounts is greater than the Available Amount, then each such Approving Lender shall be entitled to acquire a pro rata share of the rights and obligations of the Declining Lenders under the Borrower Documents, such pro rata share being determined based on the relative Desired Acquisition Amount of each such Approving Lender. On or before the second Business Day following the Acquisition Deadline, the Agent shall give to the Borrower and each Lender a written notice identifying the Available Amount of each Declining Lender and the portion thereof to be acquired by each Approving Lender. Each of such acquisitions shall be completed on the Maturity Date (without giving effect to the Extension Request) in accordance with the procedures set out in Section 15.6(c). If the Available Amount is not completely acquired by the Approving Lenders, the Borrower may locate other Persons (“**Substitute Lenders**”) who qualify as Lenders, are satisfactory to the Agent, acting reasonably, and who acquire all or a portion of the balance of the rights and obligations of the Declining Lenders under the Borrower Documents on the Maturity Date (without giving effect to the Extension Request) in accordance with the procedures set out in Section 15.6(c). Any outstanding credit extended by the Declining Lenders to the Borrower which is not so acquired by Approving Lenders or Substitute Lenders shall be repaid and the Individual Commitments of the Declining Lenders not so acquired shall be cancelled on the Maturity Date (without giving effect to the Extension Request) and the amount of the Credit Facility shall thereupon be reduced by the aggregate of the Individual Commitments so cancelled. The Borrower shall comply with Section 8.4 in connection with any such prepayment. As concerns any Bankers’ Acceptances or BA Rate Loans that otherwise would be subject to prepayment

pursuant to this Section 9.2(b)(ii), the Borrower shall forthwith pay to the Agent an amount equal to the aggregate of the aggregate face amount of such Bankers' Acceptances and the aggregate principal amount of such BA Rate Loans, such amount to be held by the Agent against any amount owing by the Borrower to such Declining Lenders in respect of such Bankers' Acceptances and BA Rate Loans. Any such amount paid to the Agent shall be held on deposit by the Agent until the maturity date of such Bankers' Acceptances or BA Rate Loans, at which time it shall be applied against the indebtedness of the Borrower to such Declining Lenders thereunder. While on deposit with the Agent, such amount shall bear interest at the rate applicable to short-term deposits.

3.11 Voluntary Prepayments. Section 9.3 of the Credit Agreement is hereby amended by deleting the final two sentences thereof and replacing them with the following:

Amounts which are prepaid as aforesaid may be reborrowed.

3.12 Mandatory Prepayments. Section 9.4 of the Credit Agreement is hereby amended by deleting the second and third sentences thereof and replacing them with the following:

Amounts which are prepaid as aforesaid may be reborrowed.

3.13 Waivers and Amendments. Section 14.14(b)(iii) of the Credit Agreement is hereby amended by adding, immediately after the phrase "extend the time of the Maturity Date", the phrase "(other than any extension thereof pursuant to Section 9.2)".

3.14 Schedule G - Pricing Grid. Schedule G to the Credit Agreement is hereby deleted in its entirety and replaced with the revised Schedule G attached hereto as Annex II.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties. To induce the Lenders and the Agent to enter into this agreement, the Borrower hereby represents and warrants to the Lenders and the Agent that the representations and warranties of the Borrower which are contained in Section 10.1 of the Credit Agreement, as hereby amended, are true and correct on each of the date hereof and the date of the effectiveness of the amendments contemplated in Article 3, as if made on the date hereof and the date of the effectiveness of the amendments contemplated in Article 3, respectively.

ARTICLE 5 CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT

5.1 Conditions Precedent. This agreement, excluding Article 3, shall not be effective unless the following conditions have been satisfied:

- (a) the Agent shall have received, for the benefit of the Lenders on a pro rata basis, a renewal fee from the Borrower in the amount of \$50,000; and
- (b) no Default shall have occurred and be continuing or would arise upon this agreement, excluding the provisions of Article 3, becoming effective.

5.2 Conditions Precedent to Effectiveness of Article 3 Amendments. Article 3 of this agreement shall not be effective unless the following conditions have been satisfied:

- (a) the conditions precedent set forth in Section 5.1 have been satisfied;
- (b) the PUB Approvals have been obtained; and
- (c) no Default shall have occurred and be continuing or would arise upon Article 3 becoming effective.

ARTICLE 6 MISCELLANEOUS

6.1 Future References to the Credit Agreement. On and after the date of this agreement, each reference in the Credit Agreement to “this agreement”, “hereunder”, “hereof”, or words of like import referring to the Credit Agreement, and each reference in any related document to the “Credit Agreement”, “thereunder”, “thereof”, or words of the like import relating to the Credit Agreement, shall mean and be a reference to the Credit Agreement as amended hereby. The Credit Agreement, as amended hereby, is and shall continue to be in full force and effect and is hereby in all respects ratified and confirmed.

6.2 Governing Law. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

6.3 Enurement. This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.

6.4 Conflict. If any provision of this agreement is inconsistent or conflicts with any provision of the Credit Agreement, the relevant provision of this agreement shall prevail and be paramount.

6.5 Counterparts. This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF the parties hereto have executed this agreement.

NEWFOUNDLAND POWER INC.

By: Jocelyn Perry
Name: Jocelyn Perry
Title: Vice President, Finance

By: Peter Alteen
Name: Peter Alteen
Title: Vice President, Regulatory Affairs
& General Counsel

ROYAL BANK OF CANADA, as Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

ROYAL BANK OF CANADA, as Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this agreement.

NEWFOUNDLAND POWER INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

ROYAL BANK OF CANADA, as Agent

By:  _____
Name: David Wheatley
Title: Manager, Agency

By: _____
Name:
Title:

ROYAL BANK OF CANADA, as Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this agreement.

NEWFOUNDLAND POWER INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

ROYAL BANK OF CANADA, as Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

ROYAL BANK OF CANADA, as Lender

By: Catherine N. Deluz
Name:
Title: Catherine N. Deluz
Attorney-in-Fact

By: _____
Name:
Title:

**CANADIAN IMPERIAL BANK OF
COMMERCE**

By: 
Name: **EVAN BENNITT**
Title: **MANAGER**

By: 
Name: **TONY TERESCHENKO**
Title: **ASSOCIATE**

BANK OF MONTREAL

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

THE BANK OF NOVA SCOTIA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**CANADIAN IMPERIAL BANK OF
COMMERCE**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

BANK OF MONTREAL

By: _____
Name: Sean P. Gallaway
Title: Vice President

By: _____
Name: _____
Title: _____

THE BANK OF NOVA SCOTIA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**CANADIAN IMPERIAL BANK OF
COMMERCE**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____


BANK OF MONTREAL

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

THE BANK OF NOVA SCOTIA

By:  _____
Name: Rania Llewellyn
Title: Director

By:  _____
Name: Audrey MacAdam
Title: Associate Director

**SCHEDULE A
INDIVIDUAL COMMITMENTS**

Name and Address of Lender	Individual Commitment
Royal Bank of Canada 200 Bay Street Royal Bank Plaza 5 th Floor, South Tower Toronto, Ontario M5J 2W7	\$32,000,000
Attention: Director, Corporate Credit Telefax: (416) 842-5320	\$24,000,000
Canadian Imperial Bank of Commerce 199 Bay Street Commerce Court West, 3 rd Floor Toronto, Ontario M5L 1A2	
Attention: Director, Energy and Utilities Group Telefax: (416) 980-5011	\$24,000,000
Bank of Montreal 1 First Canadian Place, 4 th Floor Toronto, Ontario M5X 1H3	
Attention: Vice President, Loan Products Group Investment & Corporate Banking Telefax: (416) 359-7796	\$20,000,000
The Bank of Nova Scotia 62 nd Floor, Scotia Plaza 40 King Street West Toronto, Ontario M5W 2X6	
Attention: Director, Infrastructure, Power and Privatization Group, Corporate Banking Telefax: (416) 933-7399	

ANNEX I

SCHEDULE G PRICING GRID

Pricing Rating	Major Credit Rating Agency			Acceptance Fee Rate	Prime Rate Margin	Standby Fee Rate
	S&P	Moody's	DBRS			
I	≥ A	≥ A2	≥ A	0.525	Nil	0.090
II	A-	A3	A (low)	0.600	Nil	0.115
III	BBB+	Baa1	BBB (high)	0.750	Nil	0.160
IV	BBB	Baa2	BBB	1.000	Nil	0.210
V	≤ BBB- or unrated	≤ Baa3 or unrated	≤ BBB (low) or unrated	1.250	0.250	0.260

ANNEX II

SCHEDULE G PRICING GRID

Pricing Rating	Major Credit Rating Agency			Acceptance Fee Rate	Prime Rate Margin	Standby Fee Rate
	S&P	Moody's	DBRS			
I	≥ A	≥ A2	≥ A	0.525	Nil	0.100
II	A-	A3	A (low)	0.600	Nil	0.125
III	BBB+	Baa1	BBB (high)	0.750	Nil	0.175
IV	BBB	Baa2	BBB	1.000	Nil	0.225
V	≤ BBB- or unrated	≤ Baa3 or unrated	≤ BBB (low) or unrated	1.250	0.250	0.275

**Second Amendment to the
Committed Credit Facility Agreement
August 2008**

**SECOND AMENDING AGREEMENT
RE: NEWFOUNDLAND POWER INC.
TERM CREDIT AGREEMENT**

THIS AGREEMENT made as of the 29th day of August, 2008.

BETWEEN:

ROYAL BANK OF CANADA, a Canadian chartered bank

(herein, in its capacity as administrative agent of the Lenders,
called the “**Agent**”)

- and -

**ROYAL BANK OF CANADA, CANADIAN IMPERIAL
BANK OF COMMERCE, BANK OF MONTREAL and THE
BANK OF NOVA SCOTIA** and one or more Persons to whom
the foregoing or their respective permitted assigns may from time
to time assign an undivided interest in the Borrower Documents (as
defined herein) and who agree to be bound by the terms hereof as a
Lender (as defined herein)

(herein, in their capacities as lenders to the Borrower, collectively
called the “**Lenders**” and individually called a “**Lender**”)

- and -

NEWFOUNDLAND POWER INC., a corporation incorporated
under the laws of the Province of Newfoundland and Labrador

(herein called the “**Borrower**”)

WHEREAS Newfoundland Power Inc., the Lenders (other than The Bank of
Nova Scotia) and the Agent entered into a credit agreement made as of January 21, 2005 (as
amended by a first amending agreement made as of January 20, 2006, the “**Credit Agreement**”)
and pursuant to which the Lenders established a certain revolving credit facility in favour of the
Borrower;

AND WHEREAS the parties hereto wish to amend certain provisions of the
Credit Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in
consideration of the mutual covenants and agreements contained herein, the parties covenant and
agree as follows:

ARTICLE 1 DEFINED TERMS

1.1 **Capitalized Terms.** All capitalized terms which are used herein without being specifically defined herein shall have the meaning ascribed thereto in the Credit Agreement as amended hereby.

ARTICLE 2 AMENDMENTS

2.1 **Amendments.** Upon the Borrower's receipt of all approvals of the Newfoundland and Labrador Board of Commissioners of Public Utilities (the "**2008 PUB Approvals**") that are required in connection with the amendments contemplated in this Article 2, and subject to the terms and conditions herein contained, the Credit Agreement is hereby amended to the extent necessary to give effect to the provisions of this Article 2, and to incorporate the provisions of this Article 2, into the Credit Agreement.

2.2 **Definitions.** Section 1.1 of the Credit Agreement is hereby amended by deleting the definition of "**Maturity Date**" in its entirety and replacing it with the following:

"Maturity Date" means August 29, 2011, as the same may be extended pursuant to Section 9.2."

2.3 **Extension of Maturity Date.** Section 9.2 of the Credit Agreement is hereby deleted in its entirety and replaced by the following:

9.2 **Extension of Maturity Date.**

- (a) At any time not more than 90 days and less than 60 days prior to the date which is two years or one year, as the case may be, prior to the Maturity Date, the Borrower may, by written request to the Agent (the "**Extension Request**"), request that the Maturity Date be extended for a further period of 364 days (if the Extension Request is made two years prior to the Maturity Date) or a further period of up to one year and 364 days (if the Extension Request is made one year prior to the Maturity Date) from the then current Maturity Date at such time. The Extension Request shall state whether any regulatory approvals for the extension of the Maturity Date are required. A copy of the Extension Request shall be provided by the Agent to each of the Lenders in accordance with Section 14.18. Each Lender may, in its sole discretion and regardless of whether or not there is any Default hereunder, by written notice to the Agent (the "**Extension Response Notice**"), not later than 25 days prior to the date which is two years or one year, as the case may be, prior to the then current Maturity Date (the "**Extension Response Period**"), approve or decline the Extension Request. If any Lender does not provide an Extension Response Notice within the Extension Response Period, such Lender shall be deemed to have declined the Extension Request. If Lenders with Individual Commitments that in the aggregate are equal to or greater than

66 2/3% of the aggregate Individual Commitments of all Lenders approve the Extension Request, the Agent shall notify the Borrower and the Lenders of such approval and confirm the new Maturity Date, and such new Maturity Date shall become effective on and from the later of (i) receipt of any necessary regulatory approvals and (ii) the date of such notification of approval by the Agent to the Borrower. If regulatory approvals are required, the Borrower shall seek to obtain such regulatory approvals promptly after receipt of notice of approval of the Extension Request and shall provide written notice to the Agent upon receipt of such approvals. If Lenders with Individual Commitments that in the aggregate are equal to or greater than 66 2/3% of the aggregate Individual Commitments of all Lenders do not approve the Extension Request, the Agent shall notify the Borrower and the Lenders and the Maturity Date shall not be extended.

- (b) If Lenders with Individual Commitments that in the aggregate are equal to or greater than 66 2/3% but less than 100% of the aggregate Individual Commitments of all Lenders approve the Extension Request within the Extension Response Period (the “**Approving Lenders**”), the following shall apply:
 - (i) On or before the second Business Day after the Extension Response Period, the Agent shall give written notice (the “**Acquisition Request Notice**”) to the Borrower and each Lender identifying the Approving Lenders and Lender or Lenders that have declined or are deemed to have declined the Extension Request (the “**Declining Lenders**”) and their respective Individual Commitments.
 - (ii) Any Approving Lender may, at its option, acquire all or any portion of the rights and obligations of the Declining Lenders under the Borrower Documents (all of such rights and obligations being herein called the “**Available Amount**”) by giving written notice to the Agent (an “**Acquisition Notice**”) of the portion of the Available Amount which it is prepared to acquire (the “**Desired Acquisition Amount**”). Such Acquisition Notice shall be given within 10 days following the giving of the Acquisition Request Notice (such deadline being herein called the “**Acquisition Deadline**”). If only one Approving Lender gives an Acquisition Notice to the Agent or if more than one Approving Lender gives an Acquisition Notice to the Agent but the aggregate of their Desired Acquisition Amounts is less than or equal to the Available Amount, then each such Approving Lender shall be entitled to acquire its Desired Acquisition Amount of the rights and obligations of the Declining Lenders under the Borrower Documents. If more than one Approving Lender gives an Acquisition Notice to the Agent and the aggregate of the Desired

Acquisition Amounts is greater than the Available Amount, then each such Approving Lender shall be entitled to acquire a pro rata share of the rights and obligations of the Declining Lenders under the Borrower Documents, such pro rata share being determined based on the relative Desired Acquisition Amount of each such Approving Lender. On or before the second Business Day following the Acquisition Deadline, the Agent shall give to the Borrower and each Lender a written notice identifying the Available Amount of each Declining Lender and the portion thereof to be acquired by each Approving Lender. Each of such acquisitions shall be completed on the date which is two years or one year, as the case may be, prior to the Maturity Date (without giving effect to the Extension Request) in accordance with the procedures set out in Section 15.6(c). If the Available Amount is not completely acquired by the Approving Lenders, the Borrower may locate other Persons ("**Substitute Lenders**") who qualify as Lenders, are satisfactory to the Agent, acting reasonably, and who acquire all or a portion of the balance of the rights and obligations of the Declining Lenders under the Borrower Documents on the date which is two years or one year, as the case may be, prior to the Maturity Date (without giving effect to the Extension Request) in accordance with the procedures set out in Section 15.6(c). Any outstanding credit extended by the Declining Lenders to the Borrower which is not so acquired by Approving Lenders or Substitute Lenders shall be repaid and the Individual Commitments of the Declining Lenders not so acquired shall be cancelled on the date which is two years or one year, as the case may be, prior to the Maturity Date (without giving effect to the Extension Request) and the amount of the Credit Facility shall thereupon be reduced by the aggregate of the Individual Commitments so cancelled. The Borrower shall comply with Section 8.4 in connection with any such prepayment. As concerns any Bankers' Acceptances or BA Rate Loans that otherwise would be subject to prepayment pursuant to this Section 9.2(b)(ii), the Borrower shall forthwith pay to the Agent an amount equal to the aggregate of the aggregate face amount of such Bankers' Acceptances and the aggregate principal amount of such BA Rate Loans, such amount to be held by the Agent against any amount owing by the Borrower to such Declining Lenders in respect of such Bankers' Acceptances and BA Rate Loans. Any such amount paid to the Agent shall be held on deposit by the Agent until the maturity date of such Bankers' Acceptances or BA Rate Loans, at which time it shall be applied against the indebtedness of the Borrower to such Declining Lenders thereunder. While on deposit with the Agent, such amount shall bear interest at the rate applicable to short-term deposits.

2.4 Events of Default. Section 13.1(h) of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

(h) “[Intentionally deleted.]”.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties. To induce the Lenders and the Agent to enter into this agreement, the Borrower hereby represents and warrants to the Lenders and the Agent that the representations and warranties of the Borrower which are contained in Section 10.1 of the Credit Agreement, as hereby amended, are true and correct on each of the date hereof and the date of the effectiveness of the amendments contemplated in Article 2, as if made on the date hereof and the date of the effectiveness of the amendments contemplated in Article 2, respectively.

ARTICLE 4 CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT

4.1 Conditions Precedent. This agreement shall not be effective unless the following conditions have been satisfied:

- (a) the Agent shall have received, for the benefit of the Lenders on a pro rata basis, an amendment fee from the Borrower in the amount of \$50,000;
- (b) the 2008 PUB Approvals have been obtained; and
- (c) no Default shall have occurred and be continuing or would arise upon this agreement becoming effective.

ARTICLE 5 MISCELLANEOUS

5.1 Future References to the Credit Agreement. On and after the date of this agreement, each reference in the Credit Agreement to “this agreement”, “hereunder”, “hereof”, or words of like import referring to the Credit Agreement, and each reference in any related document to the “Credit Agreement”, “thereunder”, “thereof”, or words of the like import relating to the Credit Agreement, shall mean and be a reference to the Credit Agreement as amended hereby. The Credit Agreement, as amended hereby, is and shall continue to be in full force and effect and is hereby in all respects ratified and confirmed.

5.2 Governing Law. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

5.3 Enurement. This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.

5.4 Conflict. If any provision of this agreement is inconsistent or conflicts with any provision of the Credit Agreement, the relevant provision of this agreement shall prevail and be paramount.

5.5 Counterparts. This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF the parties hereto have executed this agreement.

NEWFOUNDLAND POWER INC.

By: Jocelyn Perry
Name: Jocelyn Perry
Title: Vice-President, Finance
& Chief Financial Officer

By: Earl Ludlow
Name: Earl Ludlow
Title: President
& Chief Executive Officer

ROYAL BANK OF CANADA, as Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

ROYAL BANK OF CANADA, as Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this agreement.

NEWFOUNDLAND POWER INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

ROYAL BANK OF CANADA, as Agent

By:  _____
Name: Susan Khokher
Title: Manager, Agency

By: _____
Name:
Title:

ROYAL BANK OF CANADA, as Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this agreement.

NEWFOUNDLAND POWER INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

ROYAL BANK OF CANADA, as Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

ROYAL BANK OF CANADA, as Lender

By: _____
Name:
Title: **TIMOTHY P. MURRAY**
AUTHORIZED SIGNATORY

By: _____
Name:
Title:

CANADIAN IMPERIAL BANK OF
COMMERCE

By: R. Khanna
Name: **Raj Khanna**
Title: **DIRECTOR**

By: R. Sengal
Name: **Ralph Sengal**
Title: **Executive Director**

BANK OF MONTREAL

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

THE BANK OF NOVA SCOTIA

By: _____
Name: _____
Title: _____


By: _____
Name: _____
Title: _____

CANADIAN IMPERIAL BANK OF
COMMERCE

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

BANK OF MONTREAL

By:  _____
Name: _____
Title: Sean P. Gallaway
Vice President

By: _____
Name: _____
Title: _____

THE BANK OF NOVA SCOTIA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CANADIAN IMPERIAL BANK OF
COMMERCE

By: _____
Name:
Title:


By: _____
Name:
Title:

BANK OF MONTREAL

By: _____
Name:
Title:

By: _____
Name:
Title:

THE BANK OF NOVA SCOTIA

By:  _____
Name:
Title: **JUDY MCKAY**
DIRECTOR

By:  _____
Name: **Kirt Millwood**
Title: **Associate Director**