

FIRST CALGARY PETROLEUMS LTD.

U.S.\$ 267,000,000 9.00 per cent. Convertible Bonds due 2012

TRUST DEED

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THIS TRUST DEED is made on 14 December 2007

BETWEEN:

- (1) **FIRST CALGARY PETROLEUMS LTD.** (the "**Issuer**"); and
- (2) **BNY CORPORATE TRUSTEE SERVICES LIMITED** (the "**Trustee**", which expression includes, where the context admits, all persons for the time being the trustee or trustees of this Trust Deed).

WHEREAS

- (A) The Issuer has authorised the creation and issue of U.S.\$267,000,000 in aggregate principal amount of 9.00 per cent. Convertible Bonds due 2012 convertible into registered common shares, of no par value each, in the share capital of the Issuer (the "**Common Shares**") to be constituted in relation to this Trust Deed.
- (B) The Trustee has agreed to act as trustee of this Trust Deed on the following terms and conditions.

NOW THIS DEED WITNESSES AND IT IS HEREBY DECLARED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Trust Deed the following expressions have the following meanings:

"**Agency Agreement**" means the paying, transfer and conversion agreement appointing the initial Agents and any other agreement for the time being in force appointing Successor agents, together with any agreement for the time being in force amending or modifying with the prior written approval of the Trustee any of the aforesaid agreements;

"**Agents**" means the Paying and Conversion Agent, Transfer Agent, Registrar or any of them;

"**Appointee**" means any delegate, agent, nominee or custodian appointed pursuant to the provisions of this Trust Deed;

"**Auditors**" means the auditors for the time being of the Issuer or, in the event of them being unable or unwilling to carry out any action requested of them pursuant to this Trust Deed, means such other firm of chartered accountants in Canada as may be nominated in writing by Issuer and approved by the Trustee for the purpose;

"**Authorised Signatory**" means any director or any other person or persons notified to the Trustee by any director as being an Authorised Signatory pursuant to sub-clause 6.14 (*Authorised Signatories*);

"**Bond Certificate**" means any individual bond certificate representing a Bondholder's entire holding of Bonds, in or substantially in the form set out in of Schedule 1 (*Form*

of *Bond Certificate*) and includes any replacement Bond Certificate issued pursuant to Condition 13 (*Replacement of Bonds*);

"**Bondholder**" and (in relation to a Bond) "**holder**" means a person in whose name a Bond is registered in the register of Bondholders thereof;

"**Bonds**" means the bonds in registered form, each comprising the U.S.\$267,000,000 9.00 per cent. Convertible Bonds due 2012 constituted in relation to this Trust Deed to be represented by a Bond Certificate or Bond Certificates, and for the time being outstanding or, as the case may be, a specific number thereof;

"**Charged Property**" means any property howsoever described which is the subject of Security;

"**Clearstream, Luxembourg**" means Clearstream Banking, société anonyme;

"**Conditions**" means the terms and conditions to be endorsed on the Bonds, in the form or substantially in the form set out in Schedule 2 and any reference in this Trust Deed to a particular numbered Condition shall be construed in relation to the Bonds accordingly;

"**Directions**" means directions in writing signed by or on behalf of one or more Bondholders whether contained in one document or several documents in like form, each signed by or on behalf of one or more such holders of the Bonds;

"**Escrow Account**" means an account opened by the Issuer with the Escrow Agent;

"**Escrow Agent**" means The Bank of New York, acting through its London branch;

"**Escrow Agreement**" means the agreement dated 14 December 2007 between the Issuer, the Escrow Agent and the Security Trustee in relation to the Escrow Account, together with any agreement for the time being in force amending or modifying the aforesaid agreement;

"**Euroclear**" means Euroclear Bank S.A./N.V.;

"**Event of Default**" means any one of those circumstances described in Condition 10 (*Events of Default*) but (in the case of any of the events described in clauses (b), (d) or (j) thereof in relation to the Issuer or in relation to a Subsidiary Undertaking in clauses (c), (e), (f), (g), (h), (i), (j) or (k) thereof) only if such event is, pursuant to the provisions of Condition 10 (*Events of Default*), certified by the Trustee to be materially prejudicial to the interests of Bondholders in accordance with the provisions of Condition 10 (*Events of Default*);

"**Extraordinary Resolution**" has the meaning set out in Schedule 3;

"**Further Bonds**" means any bonds of the Issuer constituted in relation to a deed supplemental to this Principal Trust Deed pursuant to Clause 2.3 (*Further Issues*) and

for the time being outstanding or, as the context may require, a specific number thereof;

"Inter-creditor Agreement" means the agreement to be entered into by the Issuer, the Trustee and the other parties named therein pursuant to Condition 2 and as provided in clause 5 and which is substantially in the form set out in the Schedule 4 to this Trust Deed (or in such other form as may be determined in accordance with clause 5);

"Liability" means any loss, damage, cost, charge, claim, demand, expense, judgment, action, proceeding or other liability whatsoever (including, without limitation, in respect of taxes, duties, levies, imposts and other charges) and including any value added tax or similar tax charged or chargeable in respect thereof and legal fees and expenses on a full indemnity basis;

"Paying and Conversion Agents" means The Bank of New York at its Specified Office initially appointed pursuant to the Agency Agreement and/or, if applicable, any Successor paying and conversion agents, at their respective Specified Offices;

"Potential Event of Default" means an event or circumstance which could, with the giving of notice, lapse of time, the issuing of a certificate and/or fulfilment of any other requirement provided for in Condition 10 (*Events of Default*) become an Event of Default;

"Project Agent" means one or more agents or trustees of the Project Lenders under or in connection with the Project Company Financing;

"Register" means the register maintained by the Registrar at its Specified Office;

"Registrar" means, in relation to the Bonds of any relevant series the institution at its Specified Office initially appointed as registrar in relation to such Bonds pursuant to the relevant Agency Agreement or, if applicable, any Successor registrar in relation to such Bonds at its Specific Office;

"Repay" shall include **"redeem"** and vice versa and **"repaid"**, **"repayable"**, **"repayment"**, **"redeemed"**, **"redeemable"** and **"redemption"** shall be construed accordingly;

"Secured Creditors" means the Security Trustee in its own capacity and as trustee on behalf of the Trustee and the Bondholders;

"Secured Amounts" means the aggregate of all moneys and Liabilities which from time to time are or may become due, owing or payable by the Issuer to each, some or any of the Secured Creditors under the Bonds or the Transaction Documents;

"Security" means all or any of the Security Interests created or intended to be created or which may at any time be intended to be created in favour of the Security Trustee or the Security Agent by or pursuant to the Security Deed, the Escrow Agreement or any other document which the Issuer and the Trustee agree to be a Security Document for the benefit of the Secured Creditors;

"**Security Agent**" means the security agent appointed pursuant to the Inter-creditor Agreement;

"**Security Documents**" means any document under which Security is created;

"**Security Interest**" means a mortgage, charge, lien, pledge or other form of encumbrance or security interest;

"**Security Trustee**" means BNY Corporate Trustee Services Limited;

"**Specified Office**" means, in relation to any Agent, either the office outside of the United Kingdom identified with its name in the Conditions or any other office notified to any relevant parties pursuant to the Agency Agreement;

"**Successor**" means, in relation to the Agents, such other or further person, as may from time to time be appointed pursuant to the Agency Agreement as an Agent;

"**this Trust Deed**" means this Trust Deed and the Schedules (as from time to time modified in accordance with the provisions contained herein) and (unless the context requires otherwise) includes any deed or other document executed in accordance with the provisions hereof (as from time to time modified as aforesaid) and expressed to be supplemental hereto;

"**Transaction Documents**" means this Trust Deed, the Security Documents, the Escrow Agreement, the Agency Agreement and, if applicable, the Inter-creditor Agreement;

"**Trustee Acts**" means both the Trustee Act 1925 and the Trustee Act 2000 of England and Wales;

"**U.S.\$**" and "**US Dollars**" denotes the lawful currency for the time being of the United States of America;

"**Written Resolution**" has the meaning set out in Schedule 3.

1.2 **Principles of interpretation**

In this Trust Deed references to:

- 1.2.1 *Statutory modification*: a provision of any statute shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under such modification or re-enactment;
- 1.2.2 *Additional amounts*: principal and/or interest in respect of the Bonds shall be deemed also to include references to any additional amounts which may be payable under Condition 9 (*Taxation*);
- 1.2.3 *Tax*: costs, charges or expenses shall include any value added tax or similar tax charged or chargeable in respect thereof;

- 1.2.4 *Enforcement of rights*: an action, remedy or method of judicial proceedings for the enforcement of rights of creditors shall include, in respect of any jurisdiction other than England, references to such action, remedy or method of judicial proceedings for the enforcement of rights of creditors available or appropriate in such jurisdictions as shall most nearly approximate thereto;
- 1.2.5 *Clauses and Schedules*: a Schedule or a Clause or sub-clause, paragraph or sub-paragraph is, unless otherwise stated, to a schedule hereto or a clause or sub-clause, paragraph or sub-paragraph hereof respectively;
- 1.2.6 *Principal*: principal shall, when applicable, include premium;
- 1.2.7 *Clearing systems*: Euroclear and/or Clearstream, Luxembourg shall, wherever the context so admits, be deemed to include references to any additional or alternative clearing system approved by the Issuer and the Trustee;
- 1.2.8 *Trust Corporation*: a trust corporation denotes a corporation entitled by rules made under the Public Trustee Act 1906 to act as a custodian trustee or entitled pursuant to any other legislation applicable to a trustee in any jurisdiction other than England to act as trustee and carry on trust business under the laws of the country of its incorporation;
- 1.2.9 *Gender*: words denoting the masculine gender shall include the feminine gender also, words denoting persons only shall include companies, corporations and partnerships and words importing the singular number only shall include the plural and in each case *vice versa*; and
- 1.2.10 *Outstanding*: all references to Bonds Outstanding or outstanding shall be read in the context of and to take account of Clause 3.4 (*Indebtedness threshold*).

1.3 **The Conditions**

In this Trust Deed, unless the context requires or the same are otherwise defined, words and expressions defined in the Conditions and not otherwise defined herein shall have the same meaning in this Trust Deed.

1.4 **Headings**

The headings and sub-headings are for ease of reference only and shall not affect the construction of this Trust Deed.

1.5 **The Schedules**

The schedules are part of this Trust Deed and shall have effect accordingly.

2. **COVENANT TO REPAY**

2.1 **Covenant to Repay**

The Issuer covenants with the Trustee that it will, as and when the Bonds or any of them become due to be redeemed or any principal on the Bonds or any of them becomes due to be repaid in accordance with the Conditions, unconditionally pay or

procure to be paid to or to the order of the Trustee in US Dollars in New York City in immediately available freely transferable funds the principal amount of the Bonds or any of them becoming due for redemption or repayment on that date and shall (subject to the provisions of the Conditions) until all such payments (both before and after judgment or other order) are duly made unconditionally pay or procure to be paid to or to the order of the Trustee as aforesaid on the dates provided for in the Conditions interest on the principal amount of the Bonds or any of them outstanding from time to time as set out in the Conditions *provided that*:

- 2.1.1 every payment of principal or interest in respect of the Bonds or any of them made to the Paying and Conversion Agent in the manner provided in the Agency Agreement shall satisfy, to the extent of such payment, the relevant covenant by the Issuer contained in this Clause except to the extent that there is default in the subsequent payment thereof to the Bondholders in accordance with the Conditions;
- 2.1.2 if any payment of principal or interest in respect of the Bonds or any of them is made after the due date, payment shall be deemed not to have been made until either the full amount is paid to the Bondholders or, if earlier, the seventh day after notice has been given to the Bondholders in accordance with the Conditions that the full amount has been received by the Paying and Conversion Agent or the Trustee except, in the case of payment to the Paying and Conversion Agent, to the extent that there is failure in the subsequent payment to the Bondholders under the Conditions; and
- 2.1.3 in any case where payment of the whole or any part of the principal amount due in respect of any Bond is improperly withheld or refused upon due presentation (if so provided for in the Conditions) of the Bond, interest shall accrue on the whole or such part of such principal amount from the date of such withholding or refusal until the date either on which such principal amount due is paid to the Bondholders or, if earlier, the seventh day after which notice is given to the Bondholders in accordance with the Conditions that the full amount payable in respect of the said principal amount is available for collection by the Bondholders provided that on further due presentation thereof (if so provided for in the Conditions) such payment is in fact made.

The Trustee will hold the benefit of this covenant and the covenant in Clause 4 (*Covenant to comply with Trust Deed and Schedules*) on trust for the Bondholders.

2.2 Following an Event of Default

At any time after any Event of Default shall have occurred and the applicable Standstill Period (if any) has elapsed from the occurrence of the relevant event, the Trustee may:

- 2.2.1 by notice in writing to the Issuer and the Agents and require the Agents or any of them:

- (a) to act thereafter, until otherwise instructed by the Trustee, as Agents of the Trustee under the provisions of this Trust Deed on the terms provided in the Agency Agreement (with consequential amendments as necessary and save that the Trustee's liability under any provisions thereof for the indemnification, remuneration and payment of out-of-pocket expenses of the Agents shall be limited to amounts for the time being held by the Trustee on the trusts of this Trust Deed in relation to the Bonds on the terms of this Trust Deed and available to the Trustee for such purpose) and thereafter to hold all Bonds and all sums, documents and records held by them in respect of Bonds on behalf of the Trustee; and/or
 - (b) to deliver up all Bonds and all sums, documents and records held by them in respect of Bonds to the Trustee or as the Trustee shall direct in such notice *provided that* such notice shall be deemed not to apply to any document or record which the relevant Agent is obliged not to release by any law or regulation; and
- 2.2.2 by notice in writing to the Issuer require it to make all subsequent payments in respect of Bonds to or to the order of the Trustee and with effect from the issue of any such notice until such notice is withdrawn, sub-clause 2.1.1 to Clause 2.1 (*Covenant to Repay*) and (so far as it concerns payments by the Issuer) Clause 9.4 (*Payment to Bondholders*) shall cease to have effect.

2.3 Further Issues

- 2.3.1 The Issuer shall be at liberty from time to time (but subject always to the provisions of this Trust Deed) without the consent of the Bondholders to create and issue further notes, bonds or debentures howsoever designated either ranking *pari passu* in all respects (or in all respects save for the first payment of interest thereon) and so as to form a single series with the original Bonds, and/or Further Bonds of any series or upon such terms as to interest, conversion, redemption and otherwise as the Issuer may at the time of the issue thereof determine.
- 2.3.2 Any further notes, bonds or debentures howsoever designated created and issued pursuant to the provisions of Clause 2.3.1 shall, if they are to form a single series with the Bonds, and/or Further Bonds of any series, be constituted in relation to a deed supplemental to this Trust Deed and in any other case, if the Trustee so agrees, may be so constituted. In any such case the Issuer shall prior to the issue of any such further notes, bonds or debentures, execute and deliver to the Trustee a deed supplemental to this Trust Deed (if applicable, duly stamped or denoted) and containing a covenant by the Issuer in the form *mutatis mutandis* of Clause 2.1 (*Covenant to repay*) of this Trust Deed in relation to the principal and interest in respect of such further notes, bonds or debentures howsoever designated and such other

provisions (corresponding to any of the provisions contained in this Trust Deed) as the Trustee shall require.

- 2.3.3 A memorandum of every such supplemental deed shall be endorsed by the Trustee on this Trust Deed and by the Issuer on the duplicate of this Trust Deed.

3. **THE BONDS**

3.1 **The Bond Certificates**

The Bond Certificates will be printed in accordance with applicable legal and stock exchange requirements (if any) substantially in the forms set out in Schedule 2. The Bonds will be endorsed with the Conditions.

3.2 **Signature**

The Bond Certificates will be signed manually or in facsimile by a duly authorised person designated by the Issuer and will be authenticated manually by or on behalf of the Registrar. The Issuer may use the facsimile signature of a person who at the date of this Trust Deed is such a duly authorised person even if at the time of issue of any Bonds he no longer holds that office. Bonds so executed and authenticated will be binding and valid obligations of the Issuer.

3.3 **Entitlement to treat holder as owner**

The Issuer, the Trustee and any Agent may deem and treat the holder of any Bond Certificate appertaining to the relevant Bond as the absolute owner of such Bond Certificate as the case may be (whether or not such Bond Certificate shall be overdue and notwithstanding any notation of ownership or other writing thereon or any notice of previous loss or theft of such Bond Certificate) for all purposes and, except as ordered by a court of competent jurisdiction or as required by applicable law, the Issuer, the Trustee and the Agents shall not be affected by any notice to the contrary. All payments made to any such holder shall be valid and, to the extent of the sums so paid, effective to satisfy and discharge the liability for the moneys payable upon the Bond Certificate.

3.4 **Indebtedness threshold**

No person (other than the Trustee or any common depositary in respect of the Bonds or a similar person) may hold or acquire Bonds or an interest (whether through a clearing system or otherwise) in the Bonds to the extent that (a) the consolidated indebtedness of the Issuer ("**Relevant Indebtedness**") determined by reference to the most recent published consolidated financial statements of the Issuer exceeds the consolidated capital of the Issuer and (b) such person's interest in such Relevant Indebtedness (including, but not limited to, the Bonds) is or exceeds 20 per cent. of the Relevant Indebtedness (the amount of such excess being "**Excess Relevant Indebtedness**"). If a Bondholder has an interest in Excess Relevant Indebtedness, then solely as against such Bondholder or solely as against the Trustee, common depositary or similar person as aforesaid in respect of the interest of such Bondholder, no indebtedness shall thereafter

at any time for any purpose be treated as owing by the Issuer to the Trustee or that Bondholder in respect of those Bonds representing Excess Relevant Indebtedness.

4. COVENANT TO COMPLY WITH TRUST DEED AND SCHEDULES

The Issuer hereby covenants with the Trustee to comply with those provisions of this Trust Deed, the Security Deed and the Conditions which are expressed to be binding on it and to perform and observe the same. The Bonds are subject to the provisions contained in this Trust Deed, all of which shall be binding upon the Issuer and the Bondholders and all persons claiming through or under them respectively.

5. THE SECURITY

5.1 Enforcement - Discretion and direction of Bond Trustee

The Trustee may, at any time subject to the provisions of the Inter-creditor Agreement or Schedule 5 as applicable, at its discretion and without notice, take any action under or in connection with any of the Transaction Documents as it is entitled to do so and as it may think fit including, without limitation, directing:

- 5.1.1 the Security Trustee to take any action under or in connection with the Escrow Agreement and Security Trust Deed;
- 5.1.2 the Security Agent under any of the Transaction Documents; and
- 5.1.3 after the occurrence of an Event of Default which is continuing and after the applicable Standstill Period (if any) has elapsed from the occurrence of the relevant event, to take any steps necessary to enforce the Security in favour of the Security Trustee or the Security Agent), *provided that*:

(a) the Trustee shall not be bound to take any such action unless it shall be so directed by the Holders of at least one quarter of the aggregate principal amount of the Outstanding Bonds or by an Extraordinary Resolution and (b) neither the Trustee nor the Security Trustee shall be bound to take any such action unless (i) it shall have been so indemnified and/or secured to its satisfaction and (ii) such action is lawful in all relevant jurisdictions.

5.2 Sale of Charged Property

In the event that the Security has become enforceable and the Trustee has in accordance with the terms hereof determined to exercise its rights to enforce the Security through the Security Trustee or the Security Agent, any sale of the Charged Property shall be effected by or on behalf of the Trustee.

5.3 Standstill Period

Notwithstanding the above, a Standstill Period shall not prevent the Trustee from taking action to claim amounts owing to itself and/or the Security Trustee on a personal basis pursuant to the Inter-creditor Agreement, the Trust Deed and the Security Deed, as applicable.

- 5.4 In connection with the establishment of the Project Company, upon the request of the Issuer, the Trustee, the Issuer, the Security Agent and the other parties named therein (including, if relevant, one or more agents for the Project Lenders) will, subject to this Clause 5, together enter into the Inter-creditor Agreement in, or (in the reasonable opinion of the Trustee) substantially in the form set out in Schedule 4 to this Trust Deed.
- 5.5 If the proposed parties to the Inter-creditor Agreement wish to make changes to the form of Inter-creditor Agreement other than pursuant to the terms of Clause 5.4, the Trustee shall at the request of the Issuer enter into the Inter-creditor Agreement if the Trustee determines in its absolute discretion that such changes are not materially prejudicial to the interests of Bondholders.
- 5.6 If the Trustee is not able to enter into the Inter-creditor Agreement pursuant to Clause 5.4 or Clause 5.5, the Trustee shall if directed to by the Issuer notify the Bondholders accordingly in accordance with Condition 15, requesting Directions to enter into the Inter-creditor Agreement from not less than 5% of the holders of the outstanding Bonds within 10 Business Days of the date of publication of the notice (the "**Inter-creditor Notice**").
- 5.7 If the Trustee receives Directions as described in Clause 5.6 and does not receive notice from Bondholders representing more than 25% of the outstanding Bonds instructing or requesting the Trustee to refrain from entering into the Inter-creditor Agreement in such form within 10 Business Days of the date of publication of the Inter-creditor Notice (a "**Refrain Instruction**"), the Trustee shall and, if necessary, shall instruct the Security Trustee to, execute the Inter-creditor Agreement in such agreed form.
- 5.8 If the Trustee does not receive such Directions as requested in accordance with Clause 5.6 (or if the Trustee was not directed by the Issuer to request such Directions) or if it receives a Refrain Instruction in accordance with Clause 5.7, the Trustee will at the request of the Issuer convene a Meeting of Bondholders so that Bondholders can consider and vote on (i) the proposed form of the Inter-creditor Agreement and/or (ii) the appointment of a committee pursuant to Condition 14, *inter alia*, to negotiate and agree the proposed form of the Inter-creditor Agreement.
- 5.9 If a Meeting is convened in accordance with Clause 5.8, the Issuer and its professional advisers shall be entitled to attend any such Meeting of Bondholders and participate in any discussions or negotiations in relation to the proposed form of the Inter-creditor Agreement at such Meeting and/or with any appointed Bondholders' committee and at the request of the Issuer and the instructions of the Bondholders (acting by way of Extraordinary Resolution or through the Bondholders' Committee) the Trustee will enter into the proposed form of Inter-creditor Agreement.
- 5.10 Following entering into the Inter-creditor Agreement pursuant to this Clause 5, the Issuer shall execute the Second Share Lien in favour of the Security Agent and shall otherwise observe the provisions of Condition 2 relating to the Second Share Lien.

- 5.11 Where the Trustee receives Directions, instructions or requests from the Bondholders or the Bondholders Committee in accordance with this Clause 5, it shall be bound to follow such Directions, instructions or requests and they shall take effect as if they were an Extraordinary Resolution such that they shall bind the remainder of the Bondholders whether or not they sign the Directions and each of the Bondholders shall be bound to give effect to them accordingly and shall have no recourse against the Trustee for its following thereof.
- 5.12 The sanction of a Meeting of Bondholders or of an Extraordinary Resolution or Written Resolution shall not be required to any proposed amendment to the form of Inter-creditor Agreement pursuant to Clause 5.4 to Clause 5.7 (inclusive) and no further such Meeting shall be required where a Meeting or committee of Bondholders has instructed the Trustee to execute the Inter-creditor Agreement pursuant to Clause 5.8.
- 5.13 For the avoidance of doubt, none of the matters contemplated in this Clause 5 shall constitute a Reserved Matter for any purpose.
- 5.14 Notwithstanding the above, the Trustee shall not be required to agree to any amendment contrary to its own personal interests, in particular as regards the ranking of its fees, costs, liabilities and indemnity payments in the priority of payments set out in the Inter-creditor Agreement in the form set out in Schedule 4 to this Trust Deed.

6. COVENANTS BY THE ISSUER

The Issuer hereby covenants with the Trustee that, so long as any of the Bonds remain outstanding, it will:

6.1 Books of account

At all times keep and procure that all its Subsidiary Undertakings keep such books of account as may be necessary to comply with all applicable laws and so as to enable the financial statements of the Issuer to be prepared and allow the Trustee and any person appointed by it free access to the same at all reasonable times and to discuss the same with responsible officers of the Issuer;

6.2 Event of Default

Give notice in writing to the Trustee forthwith upon becoming aware of any Event of Default or Potential Event of Default and without waiting for the Trustee to take any further action;

6.3 Certificate of Compliance

Provide to the Trustee within 10 days of any request by the Trustee and at the time of the despatch to the Trustee of its annual balance sheet and profit and loss account, and in any event not later than 180 days after the end of its financial year, a certificate, signed by two Authorised Signatories of the Issuer, certifying that up to a specified date not earlier than seven days prior to the date of such certificate (the "**Certified Date**") the Issuer has complied with its obligations under this Trust Deed (or, if such is not the case, giving details of the circumstances of such non-compliance) and that as at such date there did not exist nor had there existed at any time prior thereto since the

Certified Date in respect of the previous such certificate (or, in the case of the first such certificate, since the date of this Trust Deed) any Event of Default or Potential Event of Default or other matter which would affect the Issuer's ability to perform its obligations under this Trust Deed or (if such is not the case) specifying the same;

6.4 Financial statements

Send to the Trustee and to the Paying and Conversion Agent (if the same are produced) as soon as practicable after their date of publication and in the case of annual financial statements in any event not more than 180 days after the end of each financial year, two copies of the Issuer's annual balance sheet and profit and loss account and of every balance sheet, profit and loss account, report or other notice, statement or circular issued (or which under any legal or contractual obligation should be issued) to the members or holders of debentures or creditors (or any class of them) of the Issuer, in their capacity as such at the time of the actual (or legally or contractually required) issue or publication thereof and procure that the same are made available for inspection by Bondholders at the Specified Offices of the Agents as soon as practicable thereafter;

6.5 Information

So far as permitted by applicable law, at all times give to the Trustee such information, opinions, certificates and other evidence as it shall require and in such form as it shall require (including, without limitation, the certificates called for by the Trustee pursuant to Clause 6.3 (*Certificate of Compliance*) for the performance of its functions;

6.6 Bonds held by Issuer

Send to the Trustee forthwith upon being so requested in writing by the Trustee a certificate of the Issuer (signed on its behalf by two Authorised Signatories) setting out the total number of Bonds which at the date of such certificate are held by or for the benefit of the Issuer or any Subsidiary Undertaking;

6.7 Execution of further Documents

So far as permitted by applicable law, at all times execute all such further documents and do all such further acts and things as may be necessary at any time or times in the opinion of the Trustee to give effect to the provisions of this Trust Deed;

6.8 Notices to Bondholders

Send or procure to be sent to the Trustee not less than three days prior to the date of publication, for the Trustee's approval, one copy of each notice to be given to the Bondholders in accordance with the Conditions and not publish such notice without such approval and, upon publication, send to the Trustee two copies of such notice (such approval, unless so expressed, not to constitute approval of such notice for the purpose of Section 21 of the Financial Services and Markets Act 2000);

6.9 Notification of non-payment

Use all reasonable endeavours to procure that the Paying and Conversion Agent notifies the Trustee forthwith in the event that it does not, on or before the due date for payment in respect of the Bonds or any of them, receive unconditionally the full

amount in the relevant currency of the moneys payable on such due date on all such Bonds;

6.10 Notification of late payment

In the event of the unconditional payment to the Paying and Conversion Agent or the Trustee of any sum due in respect of the Bonds or any of them being made after the due date for payment thereof, forthwith give notice to the Bondholders that such payment has been made;

6.11 Notification of redemption or repayment

Not less than the number of days specified in the relevant Condition prior to the redemption or repayment date in respect of any Bond, give to the Trustee notice in writing of the amount of such redemption or repayment pursuant to the Conditions;

6.12 Optional redemption

If the Issuer gives notice to the Trustee that it intends to redeem the Bonds pursuant to Condition 7(b) (*Redemption at the Option of the Issuer*) and Condition 7(c) (*Redemption for Taxation Reasons*) the Issuer shall, prior to giving such notice to the Bondholders, provide such information to the Trustee as the Trustee requires in order to satisfy itself of the matters referred to in such Condition;

6.13 Obligations of Agents

Observe and comply with its obligations and use all reasonable endeavours to procure that the Agents observe and comply with all their obligations under the Agency Agreement and notify the Trustee immediately it becomes aware of any material breach of such obligations, or failure by an Agent to comply with such obligations, in relation to the Bonds;

6.14 Authorised Signatories

Upon the execution hereof and thereafter forthwith upon any change of the same, deliver to the Trustee (with a copy to the Paying and Conversion Agent) a list of the Authorised Signatories of the Issuer together with certified specimen signatures of the same;

6.15 Payments

Pay moneys payable by it to the Trustee hereunder without set off, counterclaim, deduction or withholding, unless otherwise compelled by law and in the event of any deduction or withholding compelled by law will pay such additional amount as will result in the payment to the Trustee of the amount which would otherwise have been payable by it to the Trustee hereunder;

6.16 Notice of the end of the Conversion Period

On giving notice to redeem the Bonds pursuant to Condition 7(b) (*Redemption at the Option of the Issuer*), Condition 7(c) (*Redemption for Taxation Reasons*) or Condition 7(d) (*Bond Repurchase Offer*) and six weeks prior to the final expiry of the Conversion Period (assuming no early redemption of the Bonds) give notice to the Bondholders in accordance with the Conditions reminding Bondholders of the Conversion Right then arising or current and stating the then current Conversion Price;

6.17 Notice of Conversion Price adjustment

As soon as practicable after the happening of any event as a result of which the Conversion Price will be adjusted pursuant to this Trust Deed and the Conditions, give notice to the Trustee and the Bondholders in accordance with the Conditions advising them of the date on which the relevant adjustment of the Conversion Price is likely to become effective and of the effect of exercising their Conversion Rights pending such date;

6.18 Escrow Agreement

The Issuer shall not amend the terms of the Escrow Agreement, including terminating the appointment of the Escrow Agent, without the consent of the Trustee; and

6.19 Directors' Certificate

Upon the happening of an event as a result of which the Conversion Price will be adjusted pursuant to this Trust Deed and the Conditions as soon as reasonably practicable deliver to the Trustee a certificate signed by two Authorised Signatories of the Issuer on behalf of the Issuer setting forth brief particulars of the event, and the adjusted Conversion Price and the date on which such adjustment takes effect and in any case setting forth such other particulars and information as the Trustee may reasonably require.

7. AMENDMENTS AND SUBSTITUTION

7.1 Waiver

The Trustee may, without any consent or sanction of the Bondholders and without prejudice to its rights in respect of any subsequent breach, condition, event or act, from time to time and at any time, but only if and in so far as in its opinion the interests of the Bondholders shall not be materially prejudiced thereby, authorise or waive and/or instruct the Security Trustee to waive, on such terms and conditions (if any) as shall seem expedient to it, any breach or proposed breach of any of the covenants or provisions contained in the Transaction Documents or the Bonds or determine that any Event of Default or Potential Event of Default shall not be treated as such for the purposes of this Trust Deed; any such authorisation, waiver or determination shall be binding on the Bondholders and, unless the Trustee agrees otherwise, the Issuer shall cause such authorisation, waiver or determination to be notified to the Bondholders as soon as practicable thereafter in accordance with the Condition relating thereto; *provided that* the Trustee shall not exercise any powers conferred upon it by this Clause in contravention of any express direction by an Extraordinary Resolution or of a request in writing made by the holders of not less than 25 per cent. in aggregate principal amount of the Bonds then outstanding (but so that no such direction or request shall affect any authorisation, waiver or determination previously given or made) or so as to authorise or waive any such breach or proposed breach relating to any of the matters the subject of the Reserved Matters as specified and defined in Schedule 3.

7.2 Modifications

The Trustee may from time to time and at any time without any consent or sanction of the Bondholders agree to and/or instruct the Security Trustee to agree to (a) any modification to the Conditions, the Transaction Documents or the Bonds (other than in respect of Reserved Matters as specified and defined in Schedule 3 or any provision of the Transaction Documents referred to in that specification) or the Bonds which in the opinion of the Trustee is proper to make provided the Trustee is of the opinion that such modification will not be materially prejudicial to the interests of the Bondholders or (b) any modification to the Conditions, the Transaction Documents or the Bonds if in the opinion of the Trustee such modification is of a formal, minor or technical nature or made to correct a manifest error. Any such modification shall be binding on the Bondholders and, unless the Trustee otherwise agrees, the Issuer shall cause such modification to be notified to the Bondholders as soon as practicable thereafter in accordance with the Conditions.

7.3 Substitution

7.3.1 *Procedure:* The Trustee may, without the consent of the Bondholders, agree to the substitution, in place of the Issuer (or of any previous substitute under this Clause) of any successor in business of the Issuer (hereinafter called the "**Substituted Obligor**") as the principal debtor hereunder if:

- (a) a trust deed is executed or some other written form of undertaking is given by the Substituted Obligor to the Trustee, in form and manner satisfactory to the Trustee, agreeing to be bound by the terms of this Trust Deed, the Agency Agreement and the Bonds with any consequential amendments which the Trustee may deem appropriate, as fully as if the Substituted Obligor had been named in this Trust Deed and the Agency Agreement and on the Bonds as the principal debtor in place of the Issuer (or of any previous substitute under this Clause);
- (b) an unconditional and irrevocable guarantee in form and substance satisfactory to the Trustee shall have been given by the Issuer of the obligations of the Substituted Obligor under this Trust Deed;
- (c) the Issuer and the Substituted Obligor execute such other deeds, documents and instruments (if any) as the Trustee may require in order that the substitution is fully effective and comply with such other requirements as the Trustee may direct in the interests of the Bondholders; and
- (d) the Trustee is satisfied that the Substituted Obligor has obtained all governmental and regulatory approvals and consents necessary for its assumption of liability as principal debtor in respect of the Bonds in place of the Issuer (or such previous substitute as aforesaid);

7.3.2 *Change of law:* In connection with any proposed substitution of the Issuer or any previous substitute, the Trustee may, in its absolute discretion and without

the consent of the Bondholders agree to a change of the law from time to time governing the Bonds and this Trust Deed provided that such change of law, in the opinion of the Trustee, would not be materially prejudicial to the interests of the Bondholders;

- 7.3.3 *Extra duties:* The Trustee shall be entitled to refuse to approve any Substituted Obligor if, pursuant to the law of the country of incorporation of the Substituted Obligor, the assumption by the Substituted Obligor of its obligations hereunder imposes responsibilities on the Trustee over and above those which have been assumed under this Trust Deed;
- 7.3.4 *Directors' certification:* If any two directors of the Substituted Obligor certify that immediately prior to the assumption of its obligations as Substituted Obligor under this Trust Deed the Substituted Obligor is solvent after taking account of all prospective and contingent liabilities resulting from its becoming the Substituted Obligor, the Trustee need not have regard to the financial condition, profits or prospects of the Substituted Obligor or compare the same with those of the Issuer (or of any previous substitute under this sub-clause);
- 7.3.5 *Interests of Bondholders:* In connection with any proposed substitution, the Trustee shall not have regard to, or be in any way liable for, the consequences of such substitution for individual Bondholders resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory. No Bondholder shall, in connection with any such substitution, be entitled to claim from the Issuer any indemnification or payment in respect of any tax consequence of any such substitution upon individual Bondholders;
- 7.3.6 *Release of Issuer:* Any such agreement by the Trustee pursuant to sub-clause 7.3.1 (*Substitution Procedure*) shall, if so expressed, operate to release the Issuer (or such previous substitute as aforesaid) from any or all of its obligations as principal debtor under the Bonds and this Trust Deed but without prejudice to its liabilities under any guarantee given pursuant to Clause 7.3.1(b). Not later than fourteen days after the execution of any such documents as aforesaid and after compliance with the said requirements of the Trustee, the Substituted Obligor shall cause notice thereof to be given to the Bondholders; and
- 7.3.7 *Completion of Substitution:* Upon the execution of such documents and compliance with the said requirements, the Substituted Obligor shall be deemed to be named in this Trust Deed and the Bonds as the principal debtor in place of the Issuer (or of any previous substitute under this sub-clause) and this Trust Deed, the Bonds and the Agency Agreement shall thereupon be deemed to be amended in such manner as shall be necessary to give effect to the substitution and without prejudice to the generality of the foregoing any references in this Trust Deed, in the Bonds or in the Agency Agreement to the Issuer shall be deemed to be references to the Substituted Obligor.

8. ENFORCEMENT

8.1 Legal Proceedings

The Trustee may at any time, at its discretion and without further notice but subject always to the provisions of the Inter-creditor Agreement and the Conditions, institute such proceedings against the Issuer as it may think fit to recover any amounts due in respect of the Bonds which are unpaid or to enforce any of its rights under this Trust Deed or the Conditions but it shall not be bound to take any such proceedings unless (a) subject as aforesaid it shall have been so directed by an Extraordinary Resolution or so requested in writing by the holders of at least one-quarter in principal amount of the outstanding Bonds and (b) it shall have been indemnified and/or secured to its satisfaction against all liabilities, proceedings, claims and demands to which it may thereby become liable and all costs, charges and expenses which may be incurred by it in connection therewith and provided that the Trustee shall not be held liable for the consequence of taking any such action and may take such action without having regard to the effect of such action on individual Bondholders. Only the Trustee may enforce the provisions of the Bonds or this Trust Deed and no Bondholder shall be entitled to proceed directly against the Issuer unless the Trustee, having become bound so to proceed, fails to do so within a reasonable time and such failure is continuing.

8.2 Evidence of Default

If the Trustee (or any Bondholder where entitled under this Trust Deed so to do) makes any claim, institutes any legal proceeding or lodges any proof in a winding-up or insolvency of the Issuer under this Trust Deed or under the Bonds, proof therein that as regards any specified Bond the Issuer has made default in paying any principal due in respect of such Bond shall (unless the contrary be proved) be sufficient evidence that the Issuer has made the like default as regards all other Bonds in respect of which a corresponding payment is then due and for the purposes of Clause 7.2 a payment shall be a "corresponding" payment notwithstanding that it is due in respect of a Bond of a different denomination from that in respect of the above specified Bond.

9. APPLICATION OF MONEYS

9.1 Application of Moneys

All moneys received by the Trustee in respect of the Bonds or amounts payable under this Trust Deed will despite any appropriation of all or part of them by the Issuer (including any moneys which represent principal or interest in respect of Bonds which have become void under the Conditions) be held by the Trustee on trust to apply them (subject to Clause 9.2 (*Investment of Moneys*) and subject to the provisions of the Inter-creditor Agreement):

- 9.1.1 first, in payment or satisfaction of the costs, charges, expenses and liabilities incurred by the Trustee and/or the Security Trustee in the preparation and execution of the trusts of this Trust Deed and/or the Security Deed as appropriate (including remuneration of and indemnity payments owed to the Trustee and the Security Trustee and any person appointed hereunder or under the Security Deed);

9.1.2 secondly, in or towards payment *pari passu* and rateably of all arrears of interest remaining unpaid in respect of the Bonds and all principal moneys due on or in respect of the Bonds; and

9.1.3 thirdly, the balance (if any) in payment to the Issuer.

9.2 **Investment of Moneys**

If the amount of the moneys at any time available for payment of principal and interest in respect of the Bonds under Clause 9.1 (*Application of Moneys*) shall be less than a sum sufficient to pay at least one-tenth of the principal amount of the Bonds then outstanding, the Trustee may, at its discretion, invest such moneys upon some or one of the investments hereinafter authorised with power from time to time, with like discretion, to vary such investments; and such investment with the resulting income thereof may be accumulated until the accumulations together with any other funds for the time being under the control of the Trustee and available for the purpose shall amount to a sum sufficient to pay at least one-tenth of the principal amount of the Bonds then outstanding and such accumulation and funds (after deduction of any taxes and any other deductibles applicable thereto) shall then be applied in the manner aforesaid.

9.3 **Authorised Investments**

Any moneys which under this Trust Deed may be invested by the Trustee may be invested in the name or under the control of the Trustee in any of the investments for the time being authorised by English law for the investment by trustees of trust moneys or in any other investments, whether similar to those aforesaid or not, which may be selected by the Trustee or by placing the same on deposit in the name or under the control of the Trustee with such bank or other financial institution as the Trustee may think fit and in such currency as the Trustee in its absolute discretion may determine and the Trustee may at any time vary or transfer any of such investments for or into other such investments or convert any moneys so deposited into any other currency and shall not be responsible for any Liability occasioned by reason of any such investments or such deposit whether by depreciation in value, fluctuation in exchange rates or otherwise.

9.4 **Payment to Bondholders**

The Trustee shall give notice to the Bondholders in accordance with the Conditions of the date fixed for any payment under Clause 9.1 (*Application of Moneys*). Any payment to be made in respect of the Bonds by the Issuer or the Trustee may be made in the manner provided in the Conditions, the Agency Agreement and this Trust Deed and any payment so made shall be a good discharge to the extent of such payment, by the Issuer or the Trustee, as the case may be.

9.5 **Production of Bond Certificate**

Upon any payment under Clause 9.4 (*Payment to Bondholders*) of principal or interest, the Bond Certificate representing the Bond in respect of which such payment is made shall, if the Trustee so requires, be produced to the Trustee or the Agent by or through whom such payment is made and the Trustee shall, in the case of part payment, require

the Registrar to make a notation in the Register of the amount and date of payment thereon or, in the case of payment in full, shall cause such Bond Certificate to be surrendered or shall cancel or procure the same to be cancelled and shall certify or procure the certification of such cancellation.

10. TERMS OF APPOINTMENT

By way of supplement to the Trustee Acts, it is expressly declared as follows:

10.1 Reliance on Information

- 10.1.1 *Advice:* The Trustee may in relation to this Trust Deed act on the opinion or advice of or a certificate or any information obtained from any lawyer, banker, valuer, surveyor, broker, auctioneer, accountant or other expert (whether obtained by the Trustee, the Issuer, any Subsidiary Undertaking or any Agent) and which advice or opinion may be provided on such terms (including as to limitations on liability) as the Trustee may consider in its sole discretion to be consistent with prevailing market practice with regard to advice or opinions of that nature and shall not be responsible for any Liability occasioned by so acting; any such opinion, advice, certificate or information may be sent or obtained by letter, telegram, telex, cablegram or facsimile transmission and the Trustee shall not be liable for acting on any opinion, advice, certificate or information purporting to be so conveyed although the same shall contain some error or shall not be authentic;
- 10.1.2 *Certificate of directors or Authorised Signatories:* the Trustee may call for and shall be at liberty to accept a certificate signed by two directors and/or two Authorised Signatories of the Issuer or other person duly authorised on their behalf as to any fact or matter *prima facie* within the knowledge of the Issuer as sufficient evidence thereof and a like certificate to the effect that any particular dealing, transaction or step or thing is, in the opinion of the person so certifying, expedient as sufficient evidence that it is expedient and the Trustee shall not be bound in any such case to call for further evidence or be responsible for any Liability that may be occasioned by its failing so to do;
- 10.1.3 *Resolution or direction of Bondholders:* the Trustee shall not be responsible for acting upon any resolution purporting to (a) be a Written Resolution; (b) to have been passed at any meeting of the Bondholders in respect whereof minutes have been made and signed or a direction of a specified percentage of Bondholders; (c) the Directions or (d) have been passed by a Meeting of Bondholders in accordance with the Conditions, even though it may subsequently be found that there was some defect in the constitution of the meeting or the passing of the resolution or the making of the directions or that for any reason the resolution purporting to be a Written Resolution or to have been passed at any Meeting of Bondholders or meeting of a committee of Bondholders or the making of the directions was not valid or binding upon the Bondholders;

- 10.1.4 *Reliance on certification of clearing system:* the Trustee may call for and shall be at liberty to accept and place full reliance on as sufficient evidence thereof and shall not be liable to the Issuer or any Bondholder by reason only of either having accepted as valid or not having rejected an original certificate or letter of confirmation purporting to be signed on behalf of Euroclear, Clearstream, Luxembourg or any other relevant clearing system in relation to any matter;
- 10.1.5 *Bondholders as a class:* whenever in this Trust Deed the Trustee is required in connection with any exercise of its powers, trusts, authorities or discretions to have regard to the interests of the Bondholders, it shall have regard to the interests of the Bondholders as a class and in particular, but without prejudice to the generality of the foregoing, shall not be obliged to have regard to the consequences of such exercise for any individual Bondholder resulting from his or its being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory;
- 10.1.6 *Trustee not responsible for investigations:* the Trustee shall not be responsible for, or for investigating any matter which is the subject of, any recital, statement, representation, warranty or covenant of any person contained in this Trust Deed, the Bonds, or any other agreement or document relating to the transactions herein or therein contemplated or for the execution, legality, effectiveness, adequacy, genuineness, validity, enforceability or admissibility in evidence thereof;
- 10.1.7 *No Liability as a result of the delivery of a certificate:* the Trustee shall have no Liability whatsoever for any loss, cost, damages or expenses directly or indirectly suffered or incurred by the Issuer, any Bondholder or any other person as a result of the delivery by the Trustee to the Issuer of a certificate as to material prejudice pursuant to Condition 10 (*Events of Default*) on the basis of an opinion formed by it in good faith;
- 10.1.8 *No obligation to monitor:* the Trustee shall be under no obligation to monitor or supervise the functions of any other person under the Bonds or any other agreement or document relating to the transactions herein or therein contemplated and shall be entitled, in the absence of actual knowledge of a breach of obligation, to assume that each such person is properly performing and complying with its obligations;
- 10.1.9 *Bonds held by the Issuer:* in the absence of knowledge or express notice to the contrary, the Trustee may assume without enquiry (other than requesting a certificate of the Issuer under sub-clause 6.6 (*Bonds held by Issuer*)), that no Bonds are for the time being held by or for the benefit of the Issuer or its Subsidiary Undertakings;
- 10.1.10 *Entry on the Register:* the Trustee shall not be liable to the Issuer or any Bondholder by reason of having accepted as valid or not having rejected any

entry on the Register later found to be forged or not authentic and may assume for all purposes in relation hereto that any entry on the Register is correct;

- 10.1.11 *Events of Default:* the Trustee shall not be bound to give notice to any person of the execution of this Trust Deed or to take any steps to ascertain whether any Event of Default or Potential Event of Default has happened and, until it shall have actual knowledge or express notice to the contrary, the Trustee shall be entitled to assume that no such Event of Default or Potential Event of Default has happened and that each of the Issuer is observing and performing all the obligations on its part contained in the Bonds and under this Trust Deed and no event has happened as a consequence of which any of the Bonds may become repayable;
- 10.1.12 *The Common Shares:* The Trustee shall not at any time be under any duty or responsibility in respect of the validity or value (or the kind or amount) of any Common Shares or of any other securities or cash, which may at any time be made available or delivered upon the exercise of any Conversion Right; and it makes no representation with respect thereto. The Trustee shall not be responsible for any failure of the Issuer or to make available or deliver any Shares or to make any payment upon the exercise of any Conversion Right; and
- 10.1.13 *The Security Interest:* Until it shall have express notice from the Issuer of the contrary, the Trustee shall be entitled to assume that the Project Company has not been established and/or that no Security Interest has been created of the Project Company's shares.

10.2 **Trustee's powers and duties**

- 10.2.1 *Trustee's determination:* The Trustee may determine whether or not a default in the performance by the Issuer of any obligation under the provisions of this Trust Deed or contained in the Bonds is capable of remedy and/or materially prejudicial to the interests of the Bondholders and if the Trustee shall certify that any such default is, in its opinion, not capable of remedy and/or materially prejudicial to the interests of the Bondholders such certificate shall be conclusive and binding upon the Issuer and the Bondholders;
- 10.2.2 *Determination of questions:* the Trustee as between itself and the Bondholders shall have full power to determine all questions and doubts arising in relation to any of the provisions of this Trust Deed and every such determination, whether made upon a question actually raised or implied in the acts or proceedings of the Trustee, shall be conclusive and shall bind the Trustee and the Bondholders;
- 10.2.3 *Trustee's discretion:* the Trustee shall (save as expressly otherwise provided herein) as regards all the trusts, powers, authorities and discretions vested in it by this Trust Deed or by operation of law, have absolute and uncontrolled discretion as to the exercise or non-exercise thereof and the Trustee shall not

be responsible for any Liability that may result from the exercise or non-exercise thereof but whenever the Trustee is under the provisions of this Trust Deed bound to act at the request or direction of the Bondholders, the Trustee shall nevertheless not be so bound unless first indemnified and/or provided with security to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, charges, damages, expenses and liabilities which it may incur by so doing;

- 10.2.4 *Trustee's consent:* any consent given by the Trustee for the purposes of this Trust Deed may be given on such terms and subject to such conditions (if any) as the Trustee may require;
- 10.2.5 *Conversion of currency:* where it is necessary or desirable for any purpose in connection with this Trust Deed to convert any sum from one currency to another it shall (unless otherwise provided by this Trust Deed or required by law) be converted at such rate or rates, in accordance with such method and as at such date for the determination of such rate of exchange, as may be specified by the Trustee in its absolute discretion as relevant and any rate, method and date so specified shall be binding on the Issuer and the Bondholders;
- 10.2.6 *Application of proceeds:* the Trustee shall not be responsible for the receipt or application by the Issuer of the proceeds of the issue of the Bonds or the delivery of any Bond Certificate to the persons entitled to them;
- 10.2.7 *Error of judgment:* the Trustee shall not be liable for any error of judgment made in good faith by any officer or employee of the Trustee assigned by the Trustee to administer its corporate trust matters;
- 10.2.8 *Agents:* the Trustee may, in the conduct of the trusts of this Trust Deed instead of acting personally, employ and pay an agent on any terms, whether or not a lawyer or other professional person, to transact or conduct, or concur in transacting or conducting, any business and to do or concur in doing all acts required to be done by the Trustee (including the receipt and payment of money) and the Trustee shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it hereunder or be bound to supervise the proceedings or acts of any such person;
- 10.2.9 *Delegation:* the Trustee may, in the execution and exercise of all or any of the trusts, powers, authorities and discretions vested in it by this Trust Deed, act by responsible officers or a responsible officer for the time being of the Trustee and the Trustee may also whenever it thinks fit, whether by power of attorney or otherwise, delegate to any person or persons or fluctuating body of persons (whether being a joint trustee of this Trust Deed or not) all or any of the trusts, powers, authorities and discretions vested in it by this Trust Deed

and any such delegation may be made upon such terms and conditions and subject to such regulations (including power to sub-delegate with the consent of the Trustee) as the Trustee may think fit in the interests of the Bondholders and the Trustee shall not be bound to supervise the proceedings or acts of and shall not in any way or to any extent be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of such delegate or sub-delegate;

- 10.2.10 *Custodians and nominees:* the Trustee may appoint and pay any person to act as a custodian or nominee on any terms in relation to such assets of the trust as the Trustee may determine, including for the purpose of depositing with a custodian this Trust Deed or any Transaction Document and the Trustee shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it hereunder or be bound to supervise the proceedings or acts of any such person; the Trustee is not obliged to appoint a custodian if the Trustee invests in securities payable to bearer;
- 10.2.11 *Confidential information:* the Trustee shall not (unless required by law or ordered so to do by a court of competent jurisdiction) be required to disclose to any Bondholder confidential information or other information made available to the Trustee by the Issuer in connection with this Trust Deed and no Bondholder shall be entitled to take any action to obtain from the Trustee any such information; and
- 10.2.12 *Directions:* the Trustee shall be entitled to request instructions or directions from the Bondholders (or a committee thereof) and shall not be liable for any Liability caused by so doing.

10.3 **Financial matters**

- 10.3.1 *Professional charges:* any trustee being a banker, lawyer, broker or other person engaged in any profession or business shall be entitled to charge and be paid all usual professional and other charges for business transacted and acts done by him or his partner or firm on matters arising in connection with the trusts of this Trust Deed and also his properly incurred charges in addition to disbursements for all other work and business done and all time spent by him or his partner or firm on matters arising in connection with this Trust Deed, including matters which might or should have been attended to in person by a trustee not being a banker, lawyer, broker or other professional person;
- 10.3.2 *Expenditure by the Trustee:* nothing contained in this Trust Deed shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties or the exercise of any right, power, authority or discretion hereunder if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it; and

10.3.3 *Trustee may enter into financial transactions with the Issuer:* no Trustee and no director or officer of any corporation being a Trustee hereof shall by reason of the fiduciary position of such Trustee be in any way precluded from making any contracts or entering into any transactions in the ordinary course of business with the Issuer or any Subsidiary Undertaking, or any person or body corporate directly or indirectly associated with the Issuer or any Subsidiary Undertaking, or from accepting the trusteeship of any other debenture stock, debentures or securities of the Issuer or any Subsidiary Undertaking or any person or body corporate directly or indirectly associated with the Issuer or any Subsidiary Undertaking, and neither the Trustee nor any such director or officer shall be accountable to the Bondholders or the Issuer or any Subsidiary Undertaking, or any person or body corporate directly or indirectly associated with the Issuer or any Subsidiary Undertaking, for any profit, fees, commissions, interest, discounts or share of brokerage earned, arising or resulting from any such contracts or transactions and the Trustee and any such director or officer shall also be at liberty to retain the same for its or his own benefit.

10.4 **Disapplication**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Trustee in relation to the trusts constituted by this Trust Deed. Where there are any inconsistencies between the Trustee Acts and the provisions of this Trust Deed, the provisions of this Trust Deed shall, to the extent allowed by law, prevail and, in the case of any such inconsistency with the Trustee Act 2000, the provisions of this Trust Deed shall constitute a restriction or exclusion for the purposes of that Act.

10.5 **Trustee Liability**

Subject to Section 192 of the Companies Act 1985 (if applicable) and notwithstanding anything to the contrary in this Trust Deed, the Bonds or the Agency Agreement, the Trustee shall not be liable to any person for any matter or thing done or omitted in any way in connection with or in relation to this Trust Deed, the Bonds or the Agency Agreement save in relation to its own gross negligence, wilful default or fraud.

10.6 **Matters Relating to Security**

10.6.1 *Reliance on title to the Security:* the Trustee may accept without investigation, requisition or objection such right and title as the Issuer may have to any of the Charged Property and the other Security created in favour of the Trustee by this Trust Deed and shall not be bound or concerned to examine or enquire into or be liable for any defect or failure in the right or title of the Issuer to all or any of the Charged Property whether such defect or failure was known to the Trustee or might have been discovered upon examination or enquiry and whether capable of remedy or not;

10.6.2 *Registration and perfection of the Security:* the Trustee shall not be liable for any failure, omission or defect in perfecting, protecting or further assuring the Security including:

- (a) any failure, omission or defect in registering or filing or procuring registration or filing of, or otherwise protecting or perfecting the Security or the priority thereof or the right or title of any person in or to the assets comprised in the Security; and
 - (b) any failure or omission to require any further assurances in relation to the Security;
- 10.6.3 *Adequacy of the Security*: the Trustee shall not be responsible for any unsuitability, inadequacy or unfitness of any Charged Property as security for the Bonds and shall not be obliged to make any investigation into, and shall be entitled to assume, the suitability, adequacy and fitness of the Charged Property as security for the Bonds;
- 10.6.4 *Monitoring*: the Trustee shall not be responsible for investigating, monitoring or supervising the observance or performance by any person in respect of the Charged Property or otherwise;
- 10.6.5 *No responsibility for Security*: the Trustee shall not be responsible for any Liabilities occasioned to the Security however caused, whether by an act or omission of the Issuer or any other person (including any bank, broker, depositary, or other intermediary or any clearing system or operator thereof) acting in accordance with or contrary to the provisions of any of the Security Documents or otherwise and irrespective of whether the Security is held by or to the order of any of such persons;
- 10.6.6 *Insurance*: without prejudice to the provisions of the Security Documents relating to insurance, the Trustee shall not be under any obligation to insure any of the Security or any deeds or documents of title or other evidence in respect of the Security or to require any other person to maintain any such insurance or monitor the adequacy of any such insurance and shall not be responsible for any Liability which may be suffered by any person as a result of the lack of or inadequacy of any such insurance;
- 10.6.7 *Depreciation in value*: until the Charge shall become enforceable in accordance with the applicable provisions of the Security Documents, the moneys standing to the credit of any account comprised in the Charged Property shall be dealt with in accordance with the provisions of the Security Documents and the Trustee shall not be responsible in such circumstances or at any other time for any Liability suffered by any person, whether by reason of depreciation in value or by fluctuation in exchange rates or otherwise;
- 10.6.8 *No liability for loss*: the Trustee will not be liable for any decline in the value nor any loss realised upon any sale or other disposition pursuant to this Trust Deed or any Security Document of, any of the Charged Property. In particular and without limitation, the Trustee shall not be liable for any such decline or loss directly or indirectly arising from its acting or failing to act as

a consequence of an opinion reached by it in good faith based on advice received by it in accordance with this Trust Deed and the Conditions; and

- 10.6.9 *Liability to Tax:* the Trustee shall have no responsibility whatsoever to the Issuer or any Bondholder as regards any deficiency which might arise because the Trustee is subject to any stamp, issue, registration, documentation and any other similar taxes or duties in respect of all or any of the Charged Property, the income there from or the proceeds thereof.

10.7 Voting Rights

After the Security has become enforceable and unless the Trustee agrees otherwise, it will not direct the Security Agent to exercise any voting rights with respect to the Charged Property unless and until (a) it is entitled so to do under the terms of the Inter-creditor Agreement and (b) it has been so requested in writing by the holders of at least one quarter in aggregate number of the outstanding Bonds or has been directed by an Extraordinary Resolution from the Bondholders and shall not be liable for any decline in value or loss incurred as a result of its exercising any voting rights in accordance with any such request or direction or for failing to do so if it has not received a request or direction in sufficient time to enable it to exercise any voting rights or such request or direction is unclear or ambiguous.

11. COSTS AND EXPENSES

11.1 Remuneration:

- 11.1.1 *Normal Remuneration:* The Issuer shall pay to the Trustee remuneration for its services as trustee as from the date of this Trust Deed, such remuneration to be at such rate as may from time to time be agreed between the Issuer and the Trustee. Such remuneration shall be payable in advance on the anniversary of the date hereof in each year and the first payment shall be made on the date hereof. Such remuneration shall accrue from day to day and be payable (in priority to payments to the Bondholders) for so long as any Bond remains outstanding;

- 11.1.2 *Extra Remuneration:* In the event of the occurrence of an Event of Default or a Potential Event of Default or the Trustee considering it expedient or necessary or being requested by the Issuer to undertake duties which the Trustee and the Issuer agree to be of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee under this Trust Deed, the Issuer shall pay to the Trustee such additional remuneration as shall be agreed between them;

- 11.1.3 *Value added tax:* The Issuer shall in addition pay to the Trustee an amount equal to the amount of any value added tax or similar tax chargeable in respect of its remuneration under this Trust Deed;

- 11.1.4 *Failure to agree:* In the event of the Trustee and the Issuer failing to agree:

- (a) (in a case to which sub-clause 11.1.1 applies) upon the amount of the remuneration; or
- (b) (in a case to which sub-clause 11.1.2 applies) upon whether such duties shall be of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee under this Trust Deed, or upon such additional remuneration;

such matters shall be determined by an Independent Financial Adviser (acting as an expert and not as an arbitrator) selected by the Trustee and approved by the Issuer or, failing such approval, nominated (on the application of the Trustee) by the President for the time being of The Law Society of England and Wales (the expenses involved in such nomination and the fees of such Independent Financial Adviser being payable by the Issuer) and the determination of any such Independent Financial Adviser shall be final and binding upon the Trustee and the Issuer;

- 11.1.5 *Expenses:* The Issuer shall also pay or discharge all costs, charges and expenses incurred by the Trustee in relation to the preparation and execution of, the exercise of its powers and the performance of its duties under, and in any other manner in relation to, this Trust Deed, including but not limited to legal and travelling expenses and any stamp, issue, registration, documentary and other taxes or duties paid or payable by the Trustee in connection with any action taken or contemplated by or on behalf of the Trustee for enforcing, or resolving any doubt concerning, or for any other purpose in relation to, this Trust Deed;
- 11.1.6 *Indemnity:* The Issuer shall indemnify the Trustee (a) in respect of all liabilities and expenses incurred by it or by any Appointee or other person appointed by it to whom any trust, power, authority or discretion may be delegated by it in the execution or purported execution of the trusts, powers, authorities or discretions vested in it by this Trust Deed and, (b) against all liabilities, actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to this Trust Deed or a Transaction Document *provided that* it is expressly stated that Clause 10.5 (*Trustee Liability*) shall apply in relation to these provisions and *provided also that* such indemnity shall cover the indemnity required by (a) the Security Trustee where the Trustee instructs the Security Trustee to act pursuant to the Security Deed and/or (b) by the Security Agent pursuant to the Inter-creditor Agreement;
- 11.1.7 *Priority of Indemnity:* The Trustee shall be entitled to be indemnified out of the Charged Property against all actions, Liabilities payable pursuant to Clause 11.1.6 (*Indemnity*), proceedings (or threats of actions or proceedings) costs, claims and demands in respect of any matter or thing in any way omitted or done in any way in relation to this Trust Deed or in a Security Document in accordance with such Clauses and the Trustee may retain and payout of the

monies in its hands arising from the Charged Property all sums necessary to effect such indemnity;

11.1.8 *Payment of amounts due:* All amounts due and payable pursuant to sub clauses 11.1.5 (*Expenses*) and 11.1.6 (*Indemnity*) shall be payable by the Issuer on the date (being not less than 5 business days after the making of such demand) specified in a demand by the Trustee; the rate of interest applicable to such payments shall be three per cent. per annum above the base rate from time to time of Barclays Bank PLC and interest shall accrue:

- (a) in the case of payments made by the Trustee prior to the date of the demand, from the date on which the payment was made or such later date as specified in such demand;
- (b) in the case of payments made by the Trustee on or after the date of the demand, from the date specified in such demand, which date shall not be a date earlier than the date such payments are made.

All remuneration payable to the Trustee shall carry interest at the rate specified in this Clause 11.1.8 (*Payment of amounts due*) from the due date thereof;

11.1.9 *Discharges:* Unless otherwise specifically stated in any discharge of this Trust Deed the provisions of this Clause 11.1 (*Remuneration*) shall continue in full force and effect notwithstanding such discharge.

11.2 Stamp duties

The Issuer will pay all stamp duties, registration taxes, capital duties and other similar duties or taxes (if any) payable on (a) the constitution and issue of the Bonds, (b) the initial delivery of the Bonds (c) any action taken by the Trustee (or any Bondholder where permitted or required under this Trust Deed so to do) to enforce the provisions of the Bonds or this Trust Deed and (d) the execution of this Trust Deed. If the Trustee (or any Bondholder where permitted under this Trust Deed so to do) shall take any proceedings against the Issuer in any other jurisdiction and if for the purpose of any such proceedings this Trust Deed or any Bonds are taken into any such jurisdiction and any stamp duties or other duties or taxes become payable thereon in any such jurisdiction, the Issuer will pay (or reimburse the person making payment of) such stamp duties or other duties or taxes (including penalties).

11.3 Exchange rate indemnity

11.3.1 *Currency of Account and Payment:* US Dollars or, in relation to Clause 11.1 (*Remuneration*), pounds sterling (the "**Contractual Currency**") is the sole currency of account and payment for all sums payable by the Issuer under or in connection with this Trust Deed and the Bonds, including damages;

11.3.2 *Extent of Discharge:* An amount received or recovered in a currency other than the Contractual Currency (whether as a result of, or of the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or

dissolution of the Issuer or otherwise), by the Trustee or any Bondholder in respect of any sum expressed to be due to it from the Issuer will only discharge the Issuer to the extent of the Contractual Currency amount which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so); and

- 11.3.3 *Indemnity*: If that Contractual Currency amount is less than the Contractual Currency amount expressed to be due to the recipient under this Trust Deed or the Bonds, the Issuer will indemnify it against any Liability sustained by it as a result. In any event, the Issuer will indemnify the recipient against the cost of making any such purchase.

11.4 Indemnities separate

The indemnities in this Trust Deed constitute separate and independent obligations from the other obligations in this Trust Deed, will give rise to separate and independent causes of action, will apply irrespective of any indulgence granted by the Trustee and/or any Bondholder and will continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under this Trust Deed or the Bonds or any other judgment or order. Any such Liability as referred to in sub-clause 11.3.3 (*Indemnity*) shall be deemed to constitute a Liability suffered by the Trustee and the Bondholders and no proof or evidence of any actual Liability shall be required by the Issuer or their liquidator or liquidators.

12. APPOINTMENT AND RETIREMENT

12.1 Appointment of Trustees

The power of appointing new trustees of this Trust Deed shall be vested in the Issuer but no person shall be appointed who shall not previously have been approved by an Extraordinary Resolution. A trust corporation may be appointed sole trustee hereof but subject thereto there shall be at least two trustees hereof one at least of which shall be a trust corporation. Any appointment of a new trustee hereof shall as soon as practicable thereafter be notified by the Issuer to the Agents and to the Bondholders. The Bondholders shall together have the power, exercisable by Extraordinary Resolution, to remove any trustee or trustees for the time being hereof. The removal of any trustee shall not become effective unless there remains a trustee hereof (being a trust corporation) in office after such removal.

12.2 Co-trustees

Notwithstanding the provisions of Clause 12.1 (*Appointment of Trustees*), the Trustee may, upon giving prior notice to the Issuer but without the consent of the Issuer or the Bondholders, appoint any person established or resident in any jurisdiction (whether a trust corporation or not) to act either as a separate trustee or as a co-trustee jointly with the Trustee:

- 12.2.1 if the Trustee considers such appointment to be in the interests of the Bondholders; or
- 12.2.2 for the purposes of conforming to any legal requirements, restrictions or conditions in any jurisdiction in which any particular act or acts are to be performed; or
- 12.2.3 for the purposes of obtaining a judgment in any jurisdiction or the enforcement in any jurisdiction either of a judgment already obtained or of this Trust Deed.

12.3 Attorneys

The Issuer each hereby irrevocably appoints the Trustee to be its attorney in its name and on its behalf to execute any such instrument of appointment. Such a person shall (subject always to the provisions of this Trust Deed) have such trusts, powers, authorities and discretions (not exceeding those conferred on the Trustee by this Trust Deed) and such duties and obligations as shall be conferred on such person or imposed by the instrument of appointment. The Trustee shall have power in like manner to remove any such person. Such proper remuneration as the Trustee may pay to any such person, together with any attributable costs, charges and expenses incurred by it in performing its function as such separate trustee or co-trustee, shall for the purposes of this Trust Deed be treated as costs, charges and expenses incurred by the Trustee.

12.4 Retirement of Trustees

Any Trustee for the time being of this Trust Deed may retire at any time upon giving not less than three calendar months' notice in writing to the Issuer without assigning any reason therefor and without being responsible for any costs occasioned by such retirement. The retirement of any Trustee shall not become effective unless there remains a trustee hereof (being a trust corporation) in office after such retirement. The Issuer hereby covenants that in the event of the only trustee hereof which is a trust corporation giving notice under this Clause it shall use its best endeavours to procure a new trustee, being a trust corporation, to be appointed and if the Issuer has not procured the appointment of a new trustee within 30 days of the expiry of the Trustee notice referred to in this Clause 12.4, the Trustee shall be entitled to procure forthwith a new trustee.

12.5 Competence of a majority of Trustees

Whenever there shall be more than two trustees hereof the majority of such trustees shall (provided such majority includes a trust corporation) be competent to execute and exercise all the trusts, powers, authorities and discretions vested by this Trust Deed in the Trustee generally.

12.6 Powers additional

The powers conferred by this Trust Deed upon the Trustee shall be in addition to any powers which may from time to time be vested in it by general law or as the holder of any of the Bonds.

12.7 **Merger**

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Clause, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

13. **NOTICES**

13.1 **Addresses for notices**

All notices and other communications hereunder shall be made in writing and in English (by letter or fax) and shall be sent as follows:

13.1.1 *Issuer:* If to the Issuer, to it at:

First Calgary Petroleums Ltd.
Suite 500, 1414 - 8th Street SW
Calgary, Alberta, Canada T2R 1J6

Fax no.: +1 403 264 3955
Attention: Richard G Anderson

with a copy to:

Burnet, Duckworth & Palmer LLP
1400, 350-7th Avenue S.W.
Calgary, AB T2P 3N9

Fax no: +1 403 260-0332
Attention: Gary Bugeaud

13.1.2 *Trustee:* if to the Trustee, to it at:

BNY Corporate Trustee Services Limited
One Canada Square
London E14 5AL

Fax: +44 20 7964 2536
Attention: Manager, Corporate Trust Services

13.2 **Effectiveness**

Every notice or other communication sent in accordance with Clause 13.1 to either the Issuer or the Trustee shall be effective as follows:

13.2.1 if sent by letter, it shall be deemed to have been delivered 7 days after the time of despatch and if sent by fax it shall be deemed to have been delivered at the time of despatch

provided that any such notice or other communication which would otherwise take effect after 4.00 p.m. on any particular day shall not take effect until 10.00 a.m. on the immediately succeeding business day in the place of the addressee.

14. **LAW AND JURISDICTION**

14.1 **Governing law**

This Trust Deed and the Bonds and all matters arising from or connected with it are governed by, and shall be construed in accordance with, English law.

14.2 **English courts**

The courts of England have exclusive jurisdiction to settle any dispute (a "**Dispute**"), arising from or connected with this Trust Deed or the Bonds (including a dispute regarding the existence, validity or termination of this Trust Deed or the Bonds) or the consequences of their nullity.

14.3 **Appropriate forum**

The parties agree that the courts referred to in Clause 14.2 (*English courts*) are the most appropriate and convenient courts to settle any Dispute and, accordingly, that they will not argue that any other courts are more appropriate or convenient.

14.4 **Rights of the Trustee and Bondholders to take proceedings outside England**

Clause 14.2 (*English courts*) is for the benefit of the Trustee and the Bondholders only. As a result, nothing in this Clause 14 (*Law and jurisdiction*) prevents the Trustee or any of the Bondholders from taking proceedings relating to a Dispute ("**Proceedings**") in any other courts with jurisdiction. To the extent allowed by law, the Trustee or any of the Bondholders may take concurrent Proceedings in any number of jurisdictions.

14.5 **Service of process**

The Issuer agrees that the documents which start any Proceedings and any other documents required to be served in relation to those Proceedings may be served on it by being delivered to the Issuer at 29 Farm Street, London W1J 5RL or at any address of the Issuer in Great Britain at which service of process may be served on it in accordance with Part XXIII of the Companies Act 1985. Nothing in this paragraph shall affect the right of the Trustee or any of the Bondholders to serve process in any other manner permitted by law. This clause applies to Proceedings in England and to Proceedings elsewhere.

14.6 **Consent to enforcement etc.**

The Issuer consents generally in respect of any Proceedings to the giving of any relief or the issue of any process in connection with such Proceedings including (without limitation) the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which is made or given in such Proceedings.

14.7 **Waiver of immunity**

To the extent that the Issuer may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution,

before judgement or otherwise) or other legal process and to the extent that such immunity (whether or not claimed) may be attributed in any such jurisdiction to the Issuer or its assets or revenues, the Issuer agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

15. **SEVERABILITY**

In case any provision in or obligation under this Trust Deed shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

16. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No person shall have any right to enforce any provision of this Trust Deed under the Contracts (Rights of Third Parties) Act 1999.

17. **COUNTERPARTS**

This Trust Deed may be executed in any number of counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF this Trust Deed has been executed as a deed by the parties hereto and is intended to be and is hereby delivered on the date first before written.

SCHEDULE 1
FORM OF BOND CERTIFICATE

Serial Number:

FIRST CALGARY PETROLEUMS LTD.
*(incorporated with limited liability under
the laws of the Province of Alberta in Canada)*

U.S.\$267,000,000
9.00 per cent. Convertible Bonds due 2012

This Bond Certificate is issued in respect of the U.S.\$267,000,000 9.00 per cent. Convertible Bonds due 2012 (the "**Bonds**") of First Calgary Petroleum Ltd. (the "**Issuer**"). The Bonds are constituted by, are subject to, and have the benefit of, a trust deed (as amended or supplemented from time to time, the "**Trust Deed**") dated 14 December 2007 between the Issuer and BNY Corporate Trustee Services Limited as trustee (the "**Trustee**", which expression includes all persons for the time being appointed trustee or trustees under the Trust Deed) and are the subject of an agency agreement (as amended or supplemented from time to time, the "**Agency Agreement**") dated 14 December 2007 and made between the Issuer, The Bank of New York (Luxembourg) S.A. as registrar (the "**Registrar**", which expression includes any successor registrar appointed from time to time in connection with the Bonds), The Bank of New York as paying and conversion agent, the other paying agents and the transfer agents named therein and the Trustee.

Any reference herein to the "**Conditions**" is to the terms and conditions of the Bonds endorsed hereon and any reference to a numbered "**Condition**" is to the correspondingly numbered provision thereof.

This is to certify that:

.....

of

.....

is the person registered in the register maintained by the Registrar in relation to the Bonds (the "**Register**") as the duly registered holder or, if more than one person is so registered, the first-named of such persons (the "**Holder**") of:

U.S.\$.....

(..... [**CURRENCY AND AMOUNT IN WORDS**])

in aggregate principal amount of the Bonds.

The Issuer, for value received, hereby promises to pay such principal sum to the Holder on 29 November 2012 or on such earlier date or dates as the same may become payable in accordance with the Conditions, and to pay interest on such principal sum in arrear on the

dates and at the rate specified in the Conditions, together with any additional amounts payable in accordance with the Conditions, all subject to and in accordance with the Conditions.

[The statements set forth in the legend below, if applicable, are an integral part of this Bond Certificate and by acceptance hereof each holder of this Bond Certificate agrees to be subject to and bound by the terms and provisions set forth in such legend, if applicable. For so long as this Bond Certificate is a "restricted security" within the meaning of Rule 144(a)(3) under the U.S. Securities Act of 1933, as amended, the Issuer covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the U.S. Securities Exchange Act of 1934, as amended, nor exempt from reporting pursuant to Rule 12g3-2(b) under such Act, make available to the holder in connection with any sale hereof and to any prospective purchaser of this Bond Certificate from such holder, in each case upon request, the information specified in, and meeting the requirements of, Rule 144A(d)(4) under the U.S. Securities Act of 1933, as amended.]¹

This Bond Certificate is evidence of entitlement only and is not a document of title. Entitlements are determined by the Register and only the Holder is entitled to payment in respect of this Bond Certificate.

This Bond Certificate shall not be valid for any purpose until it has been authenticated for and on behalf of The Bank of New York (Luxembourg) S.A. as registrar.

¹ To appear only in the US Bond Certificates.

AS WITNESS the manual or facsimile signature of a duly authorised person on behalf of the Issuer.

FIRST CALGARY PETROLEUMS LTD.

By:
manual or facsimile signature
(duly authorised)

ISSUED as of 14 December 2007

AUTHENTICATED for and on behalf of
The Bank of New York (Luxembourg) S.A.
as registrar without recourse, warranty
or liability

By:
manual signature
(duly authorised)

[THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN, AND WILL NOT BE, REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR QUALIFIED UNDER THE LAWS OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF, BY PURCHASING SUCH SECURITIES, AGREES FOR THE BENEFIT OF FIRST CALGARY PETROLEUMS LTD. (THE "CORPORATION") THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE CORPORATION, (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (C) IN ACCORDANCE WITH RULE 144A UNDER THE SECURITIES ACT OR (D) PURSUANT TO ANOTHER EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT, IN EACH CASE, IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES AND ANY OTHER JURISDICTION, AND IN THE CASE OF TRANSFERS PURSUANT TO CLAUSE (D), THE HOLDER HAS FURNISHED TO THE CORPORATION AN OPINION OF COUNSEL OR OTHER EVIDENCE REASONABLY SATISFACTORY TO THE CORPORATION TO THAT EFFECT. THE HOLDER WILL, AND EACH SUBSEQUENT PURCHASER IS REQUIRED TO, NOTIFY ANY

SUBSEQUENT PURCHASER OF THE SECURITIES OF THE RESALE RESTRICTIONS
REFERRED TO ABOVE.]¹

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS
SECURITY MUST NOT TRADE THE SECURITY BEFORE 15 APRIL 2008.

¹ To appear only in the US Bond Certificates.

FORM OF TRANSFER

FOR VALUE RECEIVED, being the registered holder of this Bond Certificate, hereby transfers to.....
.....
of.....
.....

U.S.\$ in principal amount of the U.S.\$267,000,000 9.00 per cent. Convertible Bonds due 2012 (the "**Bonds**") of First Calgary Petroleums Ltd. (the "**Issuer**") and irrevocably requests and authorises The Bank of New York (Luxembourg) S.A., in its capacity as registrar in relation to the Bonds (or any successor to The Bank of New York (Luxembourg) S.A., in its capacity as such) to effect the relevant transfer by means of appropriate entries in the register kept by it.

Dated:

By:
(*duly authorised*)

Bonds

The name of the person by or on whose behalf this form of transfer is signed must correspond with the name of the registered holder as it appears on the face of this Bond Certificate.

- (a) A representative of such registered holder should state the capacity in which he signs, e.g. executor.
- (b) The signature of the person effecting a transfer shall conform to any list of duly authorised specimen signatures supplied by the registered holder or be certified by a recognised bank, notary public or in such other manner as the Registrar may require.
- (c) Any transfer of Bonds shall be in an amount equal to U.S.\$100,000 or any integral multiple of U.S.\$100,000 in excess thereof.

[Attached to each Bond Certificate:]

[Terms and Conditions as set out in Schedule 2]

[At the foot of the Terms and Conditions:]

PAYING AND CONVERSION AGENT

The Bank of New York
One Canada Square
London E14 5AL
United Kingdom

REGISTRAR

The Bank of New York (Luxembourg) S.A.
Aerogolf Center
1A Hoehenhof
L-1736 Senningerberg
Luxembourg

SCHEDULE 2
TERMS AND CONDITIONS OF THE BONDS

The following, subject to completion and amendment, and save for the paragraphs in italics, is the text of the Terms and Conditions of the Bonds which will be endorsed on the Bonds.

The issue of the U.S.\$267,000,000 9 per cent. Convertible Bonds due 2012 (the "**Bonds**", which expression shall, unless otherwise indicated, include any Further Bonds) was (save in respect of any such Further Bonds) authorised by a resolution of the Board of Directors of First Calgary Petroleums Ltd. (the "**Issuer**") passed on 12 November 2007. The Bonds are constituted by, are subject to, and have the benefit of, a Trust Deed dated 14 December 2007 (as amended or supplemented from time to time, the "**Trust Deed**") between the Issuer and BNY Corporate Trustee Services Limited as trustee (the "**Trustee**", which expression shall include all persons who are for the time being the trustee or trustees appointed under the Trust Deed) and are the subject of a Paying and Conversion Agency Agreement dated 14 December 2007 (as amended or supplemented from time to time, the "**Agency Agreement**") entered into in relation to the Bonds between the Issuer, The Bank of New York, acting through its London branch (the "**Paying and Conversion Agent**", which expression shall include any successor as paying and conversion agent under the Agency Agreement), The Bank of New York (Luxembourg) S.A. (the "**Registrar**", which expression shall include any successor as registrar under the Agency Agreement) and the Trustee. In the circumstances and from the time specified in the Trust Deed, the Bonds will also be subject to an inter-creditor agreement (the "**Inter-creditor Agreement**") substantially in the form set out in Schedule 4 of the Trust Deed (or in such other form as may be agreed by the Issuer and the Trustee in accordance with the Trust Deed) and to be entered into between the Trustee, the Issuer and the other persons specified therein. Copies of the Trust Deed, the Agency Agreement, the Escrow Agreement (as defined below) and the Security Deed (as defined below) are available, and (as and when executed) copies of the Inter-creditor Agreement will be available, for inspection at the specified offices of the Trustee and the Paying and Conversion Agent. The Bondholders (as defined below) are deemed to have notice of all the provisions of the Trust Deed, the Agency Agreement, the Escrow Agreement, the Security Deed and the Inter-creditor Agreement applicable to them.

The Inter-creditor Agreement will be entered into as a condition of and at the same time as the grant of the Second Share Lien (as defined below). The Trust Deed provides that the Inter-creditor Agreement will be entered into in the form set out in Schedule 4 of the Trust Deed or in such other form as the Issuer may agree and which the Trustee determines is not materially prejudicial to Bondholders or which the Trustee is instructed or requested to execute by the Bondholders or a committee thereof (each in the manner set out in the Trust Deed). If the Inter-creditor Agreement has not been entered into on or before the date on which any credit is first extended to the Project Company (as defined below) by the Project Lenders (as defined below), then, until such time as the Inter-creditor Agreement is entered into, for the purpose of the Bonds, the provisions of Schedule 5 of the Trust Deed that substantially reflect paragraphs (c) and (d) below, shall be applicable to the Bonds, the Bondholders and the Trustee.

The Inter-creditor Agreement provides, inter-alia, that:

- (a) *until the later of the date (the "**Discharge Date**") on which the agent for the Project Lenders (the "**Project Finance Agent**") is satisfied that (i) all amounts owing to the Project Lenders have been fully paid and discharged (and all commitments of the Project Lenders have been cancelled) and (ii) neither the Project Company nor the Issuer has any actual or contingent payment obligations owing to the Project Lenders, the Trustee shall not be entitled to take any steps to enforce the Second Share Lien (as defined below) except with the consent of the Project Finance Agent;*
- (b) *the Trustee shall take such action as may be required by the Project Lenders acting together or the Issuer to effect the requisite priority of the First Share Lien (as defined below) including making the appropriate claims in insolvency proceedings of the Issuer and turnover of any recoveries;*
- (c) *in circumstances where an Event of Default (as defined in Condition 10) has occurred and a Negotiation Period (as defined in Condition 10) has begun, immediately following the start of the Negotiation Period or, if later, the appointment by the Bondholders of a person or persons as a committee to represent the interests of the Bondholders in accordance with the Conditions and the Trust Deed, the Issuer and the Project Finance Agent shall negotiate in good faith with such Bondholders' committee to seek an agreement one of the terms of which may be that the Bondholders' committee will direct the Bond Trustee to waive (upon the terms of such agreement) each Event of Default which has given rise to the Negotiation Period; and*
- (d) *if before the Discharge Date any amount due to the Issuer from any third party (other than the Project Company, the Trustee, the Security Trustee or any Bondholder) in respect of the Project, including any compensation due to any expropriation of the Relevant Licence (as defined in Condition 4) is received by the Trustee (either directly or through the Issuer or any liquidator, receiver or other like officer) other than in accordance with Clause 2.1 or Clause 10 of the Inter-creditor Agreement then the Trustee shall promptly notify the Security Agent (as defined below) and will on demand pay to the Security Agent for application in accordance with the Inter-creditor Agreement an amount determined by the Security Agent to be equal to the lesser of:*
 - (i) *the outstanding amount of any liabilities owing by the Issuer or the Project Company to any Project Lender or any other entity to the extent expressed in the Inter-creditor Agreement to rank ahead of amounts owed and due to the Trustee; and*
 - (ii) *the amount so received.*

1. Form, Denomination and Title

(a) Form

The Bonds are in registered form in the denomination of U.S.\$100,000 each or integral multiples thereof ("**Authorised Denominations**"). Each Bond will, subject as set out in

these Conditions, entitle the holder to convert such Bond into registered common shares of no par value in the share capital of the Issuer ("**Common Shares**"), in accordance with, and as described in, Condition 6.

(b) *Register*

The Registrar will maintain a register (the "**Register**") in respect of the Bonds in accordance with the provisions of the Agency Agreement. In these Conditions, the "**Holder**" of a Bond means the person in whose name such Bond is for the time being registered in the Register (or, in the case of a joint holding, the first named thereof) and "**Bondholder**" shall be construed accordingly. A certificate (each, a "**Bond Certificate**") will be issued to each Bondholder in respect of its registered holding. Each Bond Certificate will be numbered serially with an identifying number which will be recorded in the Register.

(c) *Title*

The Holder of each Bond shall (except as otherwise required by law) be treated as the absolute owner of such Bond for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any other interest therein, any writing on the Bond Certificate relating thereto (other than the endorsed form of transfer) or any notice of any previous loss or theft of such Bond Certificate) and no person shall be liable for so treating such Holder.

(d) *Transfers*

Subject to paragraphs (g) and (h) below, a Bond may be transferred upon surrender of the relevant Bond Certificate, with the endorsed form of transfer duly completed, at the specified office of the Registrar or any transfer agent (a "**Transfer Agent**") appointed from time to time pursuant to the Agency Agreement, together with such evidence as the Registrar or (as the case may be) such Transfer Agent may reasonably require to prove the title of the transferor and the authority of the individuals who have executed the form of transfer; *provided, however, that* a Bond may not be transferred unless the principal amount of Bonds transferred and (where not all of the Bonds held by a Holder are being transferred) the principal amount of the balance of Bonds not transferred are Authorised Denominations. Where not all the Bonds represented by the surrendered Bond Certificate are the subject of the transfer, a new Bond Certificate in respect of the balance of the Bonds will be issued to the transferor.

(e) *Registration and delivery of Bond Certificates*

Within five business days of the surrender of a Bond Certificate and supporting documentation in accordance with paragraph (d) above, the Registrar or (as the case may be) the Transfer Agent will register the transfer in question and deliver a new Bond Certificate of a like principal amount to the Bonds transferred to each relevant Holder at its specified office or (as the case may be) the specified office of any Transfer Agent or (at the request and risk of any such relevant Holder) by uninsured first class mail (airmail if overseas) to the address specified for the purpose by such

relevant Holder. In this paragraph, "**business day**" means a day on which commercial banks are open for general business (including dealings in foreign currencies) in the city where the Registrar or (as the case may be) the relevant Transfer Agent has its specified office.

(f) *No charge*

The transfer of a Bond will be effected without charge by or on behalf of the Issuer, the Registrar or any Transfer Agent but against such indemnity as the Registrar or (as the case may be) such Transfer Agent may require in respect of any tax or other duty of whatsoever nature which may be levied or imposed in connection with such transfer.

(g) *Closed periods*

A Bondholder may not require a transfer to be registered (i) during the period of 15 days ending on the due date for any payment of principal or interest in respect of the Bonds or (ii) after a Conversion Notice has been delivered with respect to such Bond.

(h) *Regulations concerning transfers and registration*

All transfers of Bonds and entries on the Register are subject to the detailed regulations concerning the transfer of Bonds scheduled to the Agency Agreement. The regulations may be changed by the Issuer with the prior written approval of the Trustee and the Registrar. A copy of the current regulations will be mailed (free of charge) by the Registrar to any Bondholder who requests in writing a copy of such regulations.

(i) *Indebtedness threshold*

No person (other than the Trustee or any common depositary in respect of the Bonds or a similar person) may hold or acquire Bonds or an interest (whether through a clearing system or otherwise) in the Bonds to the extent that (a) the consolidated indebtedness of the Issuer ("**Relevant Indebtedness**") determined by reference to the most recent published consolidated financial statements of the Issuer exceeds the consolidated capital of the Issuer and (b) such person's interest in such Relevant Indebtedness (including, but not limited to, the Bonds) is or exceeds 20 per cent. of the Relevant Indebtedness (the amount of such excess being "**Excess Relevant Indebtedness**"). If a Bondholder has an interest in Excess Relevant Indebtedness, then solely as against such Bondholder or solely as against the Trustee, common depositary or similar person as aforesaid in respect of the interest of such Bondholder, no indebtedness shall thereafter at any time for any purpose (notwithstanding that the Issuer may subsequently incur other indebtedness) be treated as owing by the Issuer to the Trustee or that Bondholder in respect of those Bonds representing Excess Relevant Indebtedness.

2. **Status and Security**

Subject to the provisions of the Inter-creditor Agreement or Schedule 5 of the Trust Deed (as the case may be) the Bonds constitute direct, unsubordinated and

unconditional obligations of the Issuer secured in the manner provided below and ranking *pari passu* and rateably without any preference among themselves.

The obligations of the Issuer under the Bonds are secured by a first fixed charge over all sums standing credit to the Escrow Account (as defined below), constituted by a security deed (the "**Security Deed**") dated 14 December 2007 made in favour of BNY Corporate Trustee Services Limited as security trustee (the "**Security Trustee**"), for the benefit of the Bondholders, the Trustee and the Security Trustee.

The Issuer has, on or before the Closing Date (as defined below) deposited the sum of U.S.\$23,028,750 (the "**Escrow Amount**") in the Escrow Account. The Security Deed contains provisions relating to the release of security for the purpose of satisfying the Issuer's obligations to pay interest in accordance with these Conditions and for certain other purposes set out in the Escrow Agreement (as defined below).

For the purposes of these Conditions, "**Escrow Account**" means an account opened by the Issuer with The Bank of New York, acting through its London branch as escrow agent (the "**Escrow Agent**") (Account Number 1397818400) (or such other U.S. dollar account as may be agreed between the Issuer and the Security Trustee) on the terms of an agreement dated 14 December 2007 (the "**Escrow Agreement**") between the Issuer, the Escrow Agent and the Security Trustee.

In addition the Issuer intends (i) to establish a Subsidiary Undertaking (the "**Project Company**") to hold and exploit all of the rights and obligations which the Issuer determines to be necessary or desirable in order to explore, appraise, develop and exploit the subject matter of the Relevant Licence itself and related contracts and assets (including tax assets in relation to the Relevant Licence and other licences) of the Issuer (the "**Project**") and (ii) together with the Project Company, to enter into arrangements with one or more banks, financial institutions or other investors (the "**Project Lenders**") whereby the Project Lenders and the Issuer will provide the financing (including loans, guarantees and hedging, as applicable) of the Project Company (the "**Project Company Financing**").

Subject to the Trustee and the other parties named therein having entered into the Inter-creditor Agreement, the Issuer shall procure that, upon the grant by the Issuer, for the benefit of the Project Lenders, of a first effective Security Interest (the "**First Share Lien**") over all the issued share capital of the Project Company from time to time (the "**Project Company Share Capital**"), the Security Agent (as defined in the Inter-creditor Agreement) shall be granted, for the benefit of the Bondholders, an effective Security Interest over the Project Company Share Capital (the "**Second Share Lien**") which shall rank in all respects after the First Share Lien but, subject thereto, in priority and senior to any and all other Security Interests in the Project Company Share Capital. Furthermore, the Issuer shall take such action as the Security Agent may reasonably require (1) to procure that the Second Share Lien shall be in form and substance reasonably satisfactory to the Security Agent and the Project Lenders, (2) to perfect or protect the Second Share Lien and (3) at any time after the Second Share Lien shall have become enforceable, subject to the provisions of the Inter-creditor

Agreement, to facilitate the realisation of such security and the exercise of the functions of the Security Agent. The Issuer shall give notice to the Bondholders in accordance with Condition 15 (A) upon the establishment of the Project Company, of the fact of such establishment and (B) upon the execution of the Inter-creditor Agreement and the Second Share Lien, of the fact of such execution, and neither the Trustee nor the Security Trustee shall be responsible for investigating whether such events have occurred and may rely upon the notice of the Issuer as conclusive evidence of that fact.

3. **Negative Covenants**

(a) *Restrictions on indebtedness*

So long as any Bond remains Outstanding, the Issuer will not contract, create, incur, assume, guarantee, suffer to exist, or in any other manner become directly or indirectly liable for the payment of, any indebtedness for borrowed money (other than Permitted Indebtedness) the outstanding aggregate principal amount of which exceeds U.S.\$65,000,000 or its equivalent in any currency or currencies (as reasonably determined on the basis of the middle spot rate for the relevant currency against the U.S. dollar as determined by an Independent Financial Adviser on the date on which any indebtedness for borrowed money is incurred).

For the purposes of this paragraph (a), "**Permitted Indebtedness**" means:

- (i) the Bonds;
- (ii) any indebtedness for borrowed money (whether outstanding on the Closing Date or thereafter incurred) that is subordinate or junior in right of payment to the Bonds, as the case may be, pursuant to a written agreement;
- (iii) any actual or contingent indebtedness of the Issuer arising as a result of any guarantee, performance guarantee or bond, indemnity or other liability of the Issuer in respect of Project Company Financing which the Issuer determines to be necessary in order to maintain the Relevant Licence; and
- (iv) any indebtedness of the Issuer which is incurred in the period of 270 days before the Final Maturity Date for the purpose of refinancing the Bonds Outstanding at that time provided that the net proceeds raised by the Issuer in incurring such indebtedness are credited to an escrow account with an international financial institution of good repute until they are either applied in redeeming the Bonds or no Bonds remain Outstanding.

(b) *Negative Pledge*

So long as any Bond remains Outstanding, the Issuer will ensure that no indebtedness for borrowed money of the Issuer or any Subsidiary Undertaking of the Issuer and no guarantee by the Issuer or any Subsidiary Undertaking of the Issuer of any indebtedness for borrowed money (in each case other than Project Finance

Indebtedness) of any person will be secured by a Security Interest (in each case other than the First Share Lien) upon, or with respect to, any of the present or future business, undertaking, assets or revenues of the Issuer or any Subsidiary Undertaking of the Issuer unless the Issuer and/or the relevant Subsidiary Undertaking of the Issuer, as the case may be, shall, before or at the same time as the creation of the Security Interest, take any and all action necessary to ensure that:

- (i) all amounts payable by it under the Bonds are secured at least equally and rateably to the satisfaction of the Trustee with the indebtedness for borrowed money or guarantee, as the case may be; or
- (ii) such other Security Interest or guarantee or other arrangement (whether or not including the giving of a Security Interest) is provided in respect of all amounts payable by the Issuer under the Bonds as the Trustee may in its absolute discretion consider to be not materially less beneficial to the interests of the Bondholders or as may be approved by an Extraordinary Resolution.

4. **Definitions**

In these Conditions:

"**Additional Shares**" has the meaning provided in Condition 6(c).

"**business day**" means, in relation to any place, a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets are open for general business in that place.

a "**Change of Control**" will be deemed to have occurred if (i) a take-over bid (as such term is defined under applicable Canadian securities legislation) is made to Shareholders or (ii) any other offer is made to all (or as nearly as may be practicable all) Shareholders which, if successful, would result in the offeror and/or any parties acting jointly or in concert with the offeror acquiring all or a majority of the outstanding Common Shares of the Issuer or (iii) any person proposes a plan (including a plan of arrangement under applicable Canadian corporate legislation) with regard to such an acquisition (other than an Exempt Newco Scheme) and, in the case of (i), (ii) or (iii) above (such offer or plan having become or been declared unconditional in all respects) the right to cast more than 50 per cent. of the votes which may ordinarily be cast on a poll at a meeting of shareholders of the Issuer has become unconditionally vested in the offeror and/or such joint actor as aforesaid (and, for the avoidance of doubt, shall not constitute an Event of Default unless the events constituting the Change of Control would otherwise fall within the provisions of Condition 10).

"**Closing Date**" means 14 December 2007.

"**Common Shares**" has the meaning provided in Condition 1(a).

"**Conversion Date**" has the meaning provided in Condition 6(h).

"**Conversion Notice**" has the meaning provided in Condition 6(h).

"**Conversion Period**" has the meaning provided in Condition 6(a).

"**Conversion Price**" has the meaning provided in Condition 6(a).

"**Conversion Right**" has the meaning provided in Condition 6(a).

"**Current Market Price**" has the meaning provided in Condition 6(b).

"**dealing day**" has the meaning provided in Condition 6(b).

"**Dividend**" has the meaning provided in Condition 6(b)(ii).

"**Exempt Newco Scheme**" means a Newco Scheme where immediately after completion of the relevant plan of arrangement the common shares of Newco are (1) admitted to trading on the Relevant Stock Exchange or (2) admitted to listing on such other regulated, regularly operating, recognised stock exchange or securities market as the Issuer or Newco may determine.

"**Extraordinary Resolution**" has the meaning given in the Trust Deed.

"**Fair Market Value**" has the meaning provided in Condition 6(b)(ii).

"**Final Maturity Date**" means 29 November 2012.

"**Further Bonds**" means any further Bonds issued pursuant to Condition 16 and consolidated and forming a single series with the then Outstanding Bonds.

"**Group**" means the Issuer and its Subsidiary Undertakings taken as a whole.

"**indebtedness for borrowed money**" means any present or future indebtedness (whether being principal, premium, interest or other amounts) for or in respect of (i) money borrowed, (ii) liabilities under or in respect of any acceptance or acceptance credit or (iii) any notes, bonds, debentures, debenture stock, loan stock or other securities offered, issued or distributed whether by way of public offer, private placing, acquisition consideration or otherwise and whether issued for cash or in whole or in part for a consideration other than cash.

"**Independent Financial Adviser**" means an investment bank of international repute appointed by the Issuer.

"**Interest Payment Date**" has the meaning provided in Condition 5(a).

"**Licensing Authority**" means La Société Nationale pour la Recherche, la Production, le Transport, la Transformation et la Commercialisation des Hydrocarbures SpA ("**Sonatrach**") or any successor or successors thereto or other authority or authorities performing substantially the functions thereof.

"**Licence Event**" means the occurrence of any one or more of the following events (which for the avoidance of doubt, shall not constitute an Event of Default, unless they would otherwise fall within the provisions of Condition 10):

- (i) the Licensing Authority gives the Issuer or any Subsidiary Undertaking of the Issuer written notice of unconditional revocation of the Relevant Licence; or
- (ii) the Issuer or any Subsidiary Undertaking of the Issuer agrees in writing with the Licensing Authority to any revocation or surrender of the Relevant Licence unless such revocation or surrender is made in contemplation of, and is followed within 6 months by a substitution or replacement of the Relevant Licence with a further licence, permit, permission, certificate, consent or approval or other authorisation on such terms as shall be approved by an Extraordinary Resolution of the Bondholders; or
- (iii) the Issuer or any Subsidiary Undertaking of the Issuer sells, donates, transfers or otherwise disposes of the Relevant Licence (whether or not on a voluntary basis and whether or not for any consideration) to any other person unless such sale, donation, transfer or other disposal is made in contemplation of a substitution or replacement of the Relevant Licence with a further licence, permit, permission, certificate, consent or approval or other authorisation on such terms as shall be approved by an Extraordinary Resolution of Bondholders and provided further that nothing contained in these Conditions shall prevent a transfer of the Relevant Licence from the Issuer to any Subsidiary Undertaking of the Issuer or from any Subsidiary Undertaking to the Issuer or any other Subsidiary Undertaking of the Issuer or prevent the Issuer from making farm-out or project finance arrangements; or
- (iv) any modification is made to the terms and conditions of the Relevant Licence or any other event occurs in relation to the Relevant Licence which is, in each case, materially prejudicial to the interests of the Bondholders, as determined by an Independent Financial Adviser (having regard to the financial position of the Group as a whole at the time of such modification or event).

"Material Subsidiary Undertaking" means (i) the Project Company and (ii) any other Subsidiary Undertaking whose net assets, turnover or net profits represent 10 per cent. or more of the consolidated net assets, turnover or net profits of the Issuer as determined at any relevant time by reference to the then latest published consolidated accounts of the Issuer.

"Newco Scheme" means a plan of arrangement which effects the interposition of a limited liability company ("**Newco**") between the Shareholders of the Issuer immediately prior to the plan of arrangement (the "**Existing Shareholders**") and the Issuer, provided that immediately after completion of the plan of arrangement the only shareholders of Newco are the Existing Shareholders and that all Subsidiary Undertakings of the Issuer immediately prior to the plan of arrangement (other than Newco, if Newco is then a Subsidiary Undertaking of the Issuer) are Subsidiary Undertakings of the Issuer (or of Newco) immediately after the plan of arrangement.

"Optional Redemption Date" has the meaning provided in Condition 7(b).

"Optional Redemption Notice" has the meaning provided in Condition 7(b).

"Outstanding" means in relation to the Bonds, all the Bonds issued other than (a) those which have been redeemed, (b) those in respect of which Conversion Rights have been exercised and the Issuer's obligation to pay any accrued but unpaid interest in relation to such Bonds has been duly performed and which have been cancelled in accordance with the Conditions, (c) those in respect of which the date for redemption in accordance with the Conditions has occurred and the redemption moneys (including all interest accrued on such Bonds to the date for such redemption and any interest payable after such date) have been duly paid to the relevant Bondholder and remain available for payment against presentation and surrender of Bonds, (d) those in respect of which claims have become prescribed, (e) those mutilated or defaced Bonds which have been surrendered in exchange for replacement Bonds pursuant to Condition 13, (f) (for the purpose only of determining the number and principal amount of Bonds Outstanding and without prejudice to their status for any other purpose) those Bonds alleged to have been lost, stolen or destroyed and in respect of which replacement Bonds have been issued pursuant to Condition 13, and (g) those which have been purchased and cancelled as provided in Condition 7(f); provided that for the purposes of (i) ascertaining the right to attend and vote at any meeting of the Bondholders and (ii) the determination of the number and principal amount of Bonds Outstanding for the purposes of Condition 14(a) or (b), those Bonds (if any) which are beneficially held by, or are held on behalf of, the Issuer or any Subsidiary Undertaking or affiliate of the Issuer and not yet cancelled shall be deemed not to remain Outstanding.

"Prevailing Rate of Exchange", at any time, means the C\$/U.S.\$ spot rate of exchange prevailing at such time appearing on Bloomberg page CADUSD Currency or any successor page.

"Project Finance Company" means a Subsidiary Undertaking of the Issuer which:

- (i) is a single-purpose company whose sole business comprises a project for the ownership, financing, creation, construction, improvement, development, exploration or exploitation of its assets; and
- (ii) has no indebtedness other than Project Finance Indebtedness.

"Project Finance Indebtedness" means any present or future indebtedness incurred by a Project Finance Company in connection with its particular project where the provider of the indebtedness has no recourse against the Issuer or any of its Subsidiary Undertakings or their assets, other than:

- (i) recourse to the Project Finance Company and the assets owned by that Project Finance Company in connection with that project (the **"Project Assets"**); and/or
- (ii) recourse for amounts limited to the cash flow or net cash flow (other than historic cash flow or historic net cash flow) from the Project Assets or the

business of owning, acquiring, constructing, developing, maintaining and/or operating the Project Assets; and/or

- (iii) (A) recourse for the purpose only of enabling amounts to be claimed in respect of such indebtedness in an enforcement of any Security Interest given over the Project Assets (and/or any other assets primarily used in the business of owning, acquiring, constructing, creating, developing, maintaining and/or operating the Project Assets) or the income, cash flow or other proceeds deriving therefrom (or given over shares or the like in the capital of the Project Finance Company) to secure such indebtedness, provided that (aa) the extent of such recourse is limited solely to the amount of any recoveries made on any such enforcement and (bb) such person or persons is/are not entitled, by virtue of any right or claim arising out of or in connection with such indebtedness, to commence proceedings for the winding up or dissolution of the Issuer or any of its Subsidiary Undertakings (other than a Project Finance Company) or to appoint or procure the appointment of any receiver, trustee, liquidator, administrator, administrative receiver or similar officer in respect of the Issuer or any of its Subsidiary Undertakings (other than a Project Finance Company) or any of its assets (save for the Project Assets the subject of such Security Interest); and/or (B) recourse against the assets, income, cashflow, proceeds or shares or the like subject to a Security Interest referred to in this paragraph (iii); and/or
- (iv) recourse under any form of assurance, undertakings or support, which recourse is limited to a claim for damages (other than liquidated damages and damages required to be calculated in a specified way) or under an indemnity for breach of an obligation or representation (not being a payment obligation or an obligation to procure payment by another or an indemnity in respect thereof or any obligation to comply or to procure compliance by another with any financial ratios or other tests of financial condition other than costs to complete tests or project completion tests) of the Issuer or any of its Subsidiary Undertakings; and/or
- (v) recourse against a Project Finance Company for the purpose of enforcing a Security Interest against it, so long as:
 - (i) the recourse is limited to recoveries in respect of the Project Assets; and
 - (ii) if the Project Assets do not comprise all or substantially all of the Project Finance Company's business, the provider of the indebtedness has contractually agreed not to exercise any right to take any step towards its winding-up or dissolution or the appointment of a receiver, trustee, liquidator, administrator, administrative receiver or similar officer in respect of it or its assets (other than the Project Assets); and/or

- (iii) recourse against the Issuer or any of its Subsidiary Undertakings is solely to enable enforcement of any Security Interest given by it over shares or the like in the capital of the Project Finance Company.

"Record Date" has the meaning provided in Condition 8(g).

"Reference Date" has the meaning provided in Condition 6(a).

"Relevant Currency" means Canadian dollars or, if at the relevant time or for the purposes of the relevant calculation or determination, the Toronto Stock Exchange is not the Relevant Stock Exchange, the currency in which the Common Shares are quoted or traded on the Relevant Stock Exchange.

a **"Relevant Event"** means a Change of Control or a Licence Event.

"Relevant Event Period" means the period commencing on the date a Relevant Event occurs and ending on the date falling 60 days following the occurrence of the Relevant Event or, if later, 60 days following the date on which notice of such Relevant Event is given to Bondholders by or on behalf of the Issuer

"Relevant Exchange Rate" has the meaning provided in Condition 7(d).

"Relevant Licence" means the Issuer's interest in the Contract for the Exploration, Appraisal and Exploitation of Hydrocarbons on the Ledjmet area (Block 405b) between the Issuer and La Société Nationale pour la Recherche, la Production, le Transport, la Transformation et la Commercialisation des Hydrocarbures SpA ("Sonatrach") or any material licences, permits, permissions, certificates, consents, orders, approvals or other authorisations extending, supplementing, amending or replacing the above.

"Relevant Stock Exchange" means the Toronto Stock Exchange or, if the Common Shares are not at that time listed or quoted or traded on the Toronto Stock Exchange, the principal stock exchange or securities market on which the Common Shares are then listed or quoted or dealt in.

"Secured Creditors" means the Security Trustee in its own capacity and as trustee on behalf of the Trustee and the Bondholders.

"Securities" means any securities including, without limitation, Common Shares or options, warrants or other rights to subscribe for or purchase or acquire Common Shares.

"Security Interest" means a mortgage, charge, lien, pledge or other form of encumbrance or security interest;

"Security" means all or any of the Security Interests created or intended to be created or which may at any time be intended to be created in favour of the Security Trustee or the Security Agent by or pursuant to the Security Deed, the Escrow Agreement or any other document which the Issuer and the Trustee agree to be a Security Document for the benefit of the Secured Creditors;

"Security Documents" means any document under which Security is created.

"Shareholders" means holders of Common Shares.

"Specified Date" has the meaning provided in Condition 6(b)(vi) and (vii).

"Spin-Off" has the meaning provided in Condition 6(b)(ii).

"Spin-Off Securities" has the meaning provided in Condition 6(b)(ii).

"Subsidiary Undertaking" means, in relation to any company or corporation, a company or corporation:

- (a) which is controlled, directly or indirectly, by the first mentioned company or corporation;
- (b) more than half of the outstanding voting shares in the share capital of which is beneficially owned, directly or indirectly, by the first mentioned company or corporation; or
- (c) which is a Subsidiary Undertaking of another Subsidiary Undertaking of the first mentioned company or corporation,

and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board or directors or equivalent body whether or not such company or corporation beneficially owns, directly or indirectly, more than half of the outstanding voting shares in the share capital.

"Tax Redemption Date" has the meaning provided in Condition 7(c).

"Tax Redemption Notice" has the meaning provided in Condition 7(c).

"Toronto business day" means a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets are open for business in Toronto.

"Transaction Documents" means the Trust Deed, the Security Documents, the Escrow Agreement, the Agency Agreement and, if applicable, the Inter-creditor Agreement.

"U.S. Certificates" means the certificates for Common Shares to be issued on conversion of the Bonds (including any Additional Shares) purchased by qualified constitutional buyers (as defined in Rule 144 under the U.S. Securities Act, "**QIBs**") in accordance with Rule 144A under the Securities Act and all certificates issued in exchange therefore or in substitution thereof.

"U.S. dollars" or "**U.S.\$**" means the lawful currency for the time being of the United States of America.

"U.S. Securities Act" means the United States Securities Act of 1933, as amended.

"**Volume Weighted Average Price**" means, in respect of a Common Share or, as the case may be, a Spin-Off Security, on any dealing day, the volume weighted average price of a Common Share or, as the case may be, a Spin-Off Security appearing on the Relevant Stock Exchange or (in the case of a Spin-Off Security) from the principal stock exchange or securities market on which such Spin-Off Securities are then listed or quoted or dealt in, if any, or, in any such case, such other source as shall be determined to be appropriate by an Independent Financial Adviser on such dealing day, provided that if on any such dealing day such price is not available or cannot otherwise be determined as provided above, the Volume Weighted Average Price of a Common Share or a Spin-Off Security, as the case may be, in respect of such dealing day shall be the Volume Weighted Average Price, determined as provided above, on the immediately preceding dealing day on which the same can be so determined.

In making any calculation or determination of Current Market Price or Volume Weighted Average Price, such adjustments (if any) shall be made as an Independent Financial Adviser considers appropriate to reflect any consolidation or sub-division of the Common Shares, or any like or similar event.

For the purposes of Conditions 6(b), (c) and (e) and Condition 11 only, (a) references to the "**issue**" of Common Shares shall include the transfer and/or delivery of Common Shares by the Issuer or any of its Subsidiary Undertakings, whether newly issued and allotted or previously existing or held by or on behalf of the Issuer or any of its Subsidiary Undertakings, and (b) Common Shares held by or on behalf of the Issuer or any of its Subsidiary Undertakings (and which, in the case of Condition 6(b)(iii) and (iv), do not rank for the relevant right or other entitlement) shall not be considered as or treated as "outstanding".

5. **Interest**

(a) *Interest Rate*

The Bonds bear interest from and including the Closing Date at the rate of 9 per cent. per annum calculated by reference to the principal amount thereof and payable semi-annually in arrear on 29 May and 29 November in each year (each an "**Interest Payment Date**"), save that the first payment of interest will be made on 29 May 2008 in respect of the period from (and including) the Closing Date to (but excluding) 29 May 2008 and the amount of interest payable in respect of each U.S.\$100,000 principal amount of Bonds on such date will be U.S.\$4,125. The amount of interest payable in respect of any period which is not an Interest Period shall be calculated on the basis of a 360-day year consisting of 12 months of 30 days each and, in the case of an incomplete month, the number of days elapsed. As used herein, "**Interest Period**" means the period beginning on (and including) the Closing Date and ending on (but excluding) 29 May 2008 (being the first Interest Payment Date) and each successive period beginning on (and including) an Interest Payment Date and ending on (but excluding) the next succeeding Interest Payment Date.

(b) *Accrual of Interest*

Each Bond will cease to bear interest (i) where the Conversion Right shall have been exercised by a Bondholder, from the Interest Payment Date immediately preceding the relevant Conversion Date or, if none, the Closing Date (subject to Condition 6(j)) or (ii) where such Bond is being redeemed or repaid pursuant to Condition 7 or Condition 10, from the due date for redemption thereof unless, upon due presentation thereof, payment of principal is improperly withheld or refused, in which event such Bond will continue to bear interest in accordance with this Condition 5 (both before and after judgment) until whichever is the earlier of (x) the day on which all sums due in respect of such Bond up to that day are received by or on behalf of the relevant Bondholder and (y) the day seven days after the Paying and Conversion Agent or the Trustee has notified Bondholders of the receipt of all sums due in respect of all the Bonds up to that seventh day (except to the extent that there is failure in the subsequent payment to the relevant Bondholders under these Conditions).

6. **Conversion of Bonds into Common Shares**

(a) *Conversion Period and Conversion Price*

Each Bond shall entitle the Holder (such right a "**Conversion Right**") to convert such Bond into Common Shares, which shall be at such time credited as fully paid, subject to and as provided in these Conditions.

The number of Common Shares to be issued on exercise of a Conversion Right shall be determined by dividing the principal amount of the relevant Bond by the conversion price (the "**Conversion Price**") in effect on the relevant Conversion Date.

The initial Conversion Price is U.S.\$4.20 per Common Share. The Conversion Price is subject to adjustment in the circumstances described in Condition 6(b).

A Bondholder may exercise the Conversion Right in respect of a Bond by delivering such Bond to the specified office of the Paying and Conversion Agent in accordance with Condition 6(h) whereupon the Issuer shall issue, or procure the delivery, to the Bondholder of Common Shares which shall be at such time credited as fully paid as provided in this Condition 6.

Subject to, and upon compliance with, the provisions of these Conditions, the Conversion Right in respect of a Bond may be exercised, at the option of the Holder thereof, at any time (subject to any applicable fiscal or other laws or regulations and as hereinafter provided) from 24 January 2008 to (i) the close of business (at the place where the relevant Bond is delivered for conversion) on the date falling six days prior to the Final Maturity Date (both days inclusive), or (ii) to the close of business in London on the date prior to the date on which a valid Optional Redemption Notice is given in accordance with Condition 7(b), or (iii) to the close of business (at the place where the relevant Bond is delivered for conversion) on the sixth day before the date fixed for redemption or purchase thereof (both days inclusive) if a valid Tax Redemption Notice is given in accordance with Condition 7(c) or if a valid Relevant

Event Repurchase Acceptance Notice is given in accordance with Condition 7(d), unless in the case of (i) and (iii) above there shall be default in making payment in respect of such Bond on such date fixed for redemption, in which event the Conversion Right shall extend up to the close of business (at the place aforesaid) on the date on which the full amount of such payment becomes available for payment and notice of such availability has been duly given in accordance with Condition 15 or, if earlier, the Final Maturity Date; provided that, in the case of (i), (ii) and (iii) above, if the final such date for the exercise of Conversion Rights is not a business day at the place aforesaid, then the period for exercise of the Conversion Right by Bondholders shall end on the immediately preceding business day at the place aforesaid.

Conversion Rights may not be exercised following the giving of a notice by the Trustee pursuant to Condition 10. Conversion Rights may not be exercised by a Bondholder in circumstances where the relevant Conversion Date would fall during the period commencing on the Record Date in respect of any payment of interest on the Bonds and ending on the relevant Interest Payment Date (both dates inclusive).

The period during which Conversion Rights may be exercised by a Bondholder is referred to as the "**Conversion Period**".

Fractions of Common Shares will not be issued on conversion or pursuant to Condition 6(c) and no cash payment or adjustment will be made *in lieu* thereof. However, if the Conversion Right in respect of more than one Bond is exercised at any one time such that Common Shares to be issued on conversion or pursuant to Condition 6(c) are to be registered in the same name, the number of such Common Shares to be issued in respect thereof shall be calculated on the basis of the aggregate principal amount of such Bonds being so converted and rounded down to the nearest whole number of Common Shares.

The Issuer will procure that Common Shares to be issued on conversion will be issued to the Holder of the Bonds completing the relevant Conversion Notice or his nominee. Such Common Shares will be deemed to be issued as of the relevant Conversion Date. Any Additional Shares to be issued pursuant to Condition 6(c) will be deemed to be issued as of the date the relevant Retroactive Adjustment takes effect or as at the date of issue of Common Shares if the adjustment results from the issue of Common Shares (each such date, the "**Reference Date**").

(b) *Adjustment of Conversion Price*

Upon the happening of any of the events described below, the Conversion Price shall be adjusted as follows:

- (i) *Consolidation or Subdivision:* If and whenever there shall be an alteration to the number of outstanding Common Shares as a result of a consolidation or subdivision of the Common Shares, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such alteration by the following fraction:

$$\frac{A}{B}$$

where:

A is the aggregate number of outstanding Common Shares immediately before such alteration; and

B is the aggregate number of outstanding Common Shares immediately after such alteration.

Such adjustment shall become effective on the date the alteration takes effect.

- (ii) *Dividends:* If and whenever the Issuer shall pay or make any Dividend (as defined below) to the Shareholders, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such Dividend by the following fraction:

$$\frac{A-B}{A}$$

where:

A is the Current Market Price (as defined below) of one Common Share on the dealing day immediately preceding the date of the first public announcement of the relevant Dividend or, in the case of a purchase, buy back or redemption of Common Shares or any receipts or certificates representing Common Shares by or on behalf of the Issuer or any Subsidiary of the Issuer, the date on which such Common Shares, receipts or certificates are purchased, bought back or redeemed or, in the case of a Spin-Off, on the dealing day immediately preceding the first date on which the Common Shares are traded ex- the relevant Spin-Off; and

B is the portion of the Fair Market Value (as defined below) of the Dividend attributable to one Common Share, with such portion being determined by dividing the Fair Market Value of the aggregate Dividend by the number of Common Shares entitled to receive the relevant Dividend (or, in the case of a purchase, buy back or redemption of Common Shares or any receipts or certificates representing Common Shares by or on behalf of the Issuer or any Subsidiary of the Issuer, by the number of Common Shares in issue immediately prior to such purchase, buy back or redemption).

Such adjustment shall become effective on the date on which the relevant Dividend is paid or made or, in the case of a purchase of Common Shares or any receipts or certificates representing Common Shares, on the date such purchase is made or, in any such case if later, the first date upon which the

Fair Market Value of the relevant Dividend is capable of being determined as provided herein.

For the purposes of the above, the Fair Market Value of a Cash Dividend shall (subject as provided in paragraph (a) of the definition of "Dividend" and in the definition of "Fair Market Value") be determined as at the date of the first public announcement of the relevant Dividend and, in the case of a Non-Cash Dividend, the Fair Market Value of the relevant Dividend shall be the Fair Market Value of the relevant Spin-off Securities or, as the case may be, the relevant property or assets.

"Cash Dividend" means (i) any Dividend which is to be paid or made in cash (in whatever currency), but other than one falling within paragraph (b) of the definition of "Spin-Off" and (ii) any Dividend determined to be a Cash Dividend pursuant to paragraph (a) of the definition of "Dividend".

"Dividend" means any dividend or distribution (including a Spin-Off) whether of cash, securities, assets or other property, and whenever paid or made and however described (and for these purposes a distribution of assets includes without limitation an issue of Common Shares or other Securities, but does not include the issue or grant to Shareholders as a class by way of rights of Common Shares or other Securities, or the issue or grant to Shareholders as a class by way of rights of options, warrants or other rights to subscribe for or purchase any Common Shares or other Securities) provided that:

- (a) where a cash Dividend is announced which is to be, or may at the election of a Shareholder or Shareholders be, satisfied by the issue or delivery of Common Shares or other securities, property or assets, then for the purposes of this definition the Dividend in question shall be treated as a Dividend of the greater of (i) such cash Dividend and (ii) the Fair Market Value (on the date of the first public announcement of such Dividend or if later, the date on which the number of Common Shares (or amount of property, securities or assets, as the case may be) which may be issued or delivered is determined) of such Common Shares or other property, securities or assets;
- (b) a purchase or redemption of share capital of the Issuer by the Issuer or any Subsidiary Undertaking of the Issuer shall not constitute a Dividend except that a purchase of Common Shares by or on behalf of the Issuer or any of its Subsidiary Undertakings where the price per Common Share (before expenses) paid by the Issuer or any Subsidiary Undertaking of the Issuer on any one day in respect of such purchases exceeds by more than 5 per cent. the Volume Weighted Average Price of a Common Share on the five immediately preceding dealing days either (1) on that day, or (2) where an announcement has been made of the intention to purchase Common Shares at some future date at a specified price, on the dealing day immediately preceding the date of such announcement and, if in the case of either (1) or (2), the relevant day is not a dealing day, the immediately preceding dealing day, in which case such purchase shall be deemed to constitute a Dividend to the extent that the

aggregate price paid (before expenses) in respect of such Common Shares purchased by the Issuer or, as the case may be, any of its Subsidiary Undertakings exceeds the product of (i) 105 per cent. of the Volume Weighted Average Price of the Common Shares determined as aforesaid and (ii) the number of Common Shares so purchased; and

- (c) if the Issuer or any of its Subsidiary Undertakings shall purchase any receipts or certificates representing Common Shares, the provisions of paragraph (b) shall be applied in respect thereof in such manner and with such modifications (if any) as shall be determined in good faith by an Independent Financial Adviser.

"Fair Market Value" means, with respect to any property on any date, the fair market value of that property as determined in good faith by an Independent Financial Adviser provided that (i) the Fair Market Value of a cash Dividend paid or to be paid shall be the amount of such cash Dividend; (ii) the Fair Market Value of any other cash amount shall be the amount of such cash; (iii) where Spin-Off Securities, options, warrants or other rights are publicly traded in a market of adequate liquidity (as determined by an Independent Financial Adviser), the fair market value (a) of such Spin-Off Securities shall equal the arithmetic mean of the daily Volume Weighted Average Price of such Spin-Off Securities and (b) of such options, warrants or other rights shall equal the arithmetic mean of the daily closing prices of such options, warrants or other rights, in the case of both (a) and (b) during the period of five dealing days on the relevant market commencing on such date (or, if later, the first such dealing day such Spin-Off Securities, options, warrants or other rights are publicly traded); and (iv) in the case of (i) translated into the Relevant Currency (if declared or paid in a currency other than the Relevant Currency) at the rate of exchange used to determine the amount payable to Shareholders who were paid or are to be paid or are entitled to be paid the cash Dividend in the Relevant Currency; and in any other case, converted into the Relevant Currency (if expressed in a currency other than the Relevant Currency) at such rate of exchange as may be determined in good faith by an Independent Financial Adviser to be the Prevailing Rate of Exchange at the close of business on that date (or if no such rate is available on that date the equivalent rate on the immediately preceding date on which such a rate is available).

"Spin-Off" means:

- (a) a distribution of Spin-Off Securities by the Issuer to Shareholders as a class; or
- (b) any transfer of any property or assets (including cash or shares or securities of or in or issued or allotted by any entity) by any entity (other than the Issuer) to Shareholders as a class or, in the case of or in connection with a Newco Scheme, Existing Shareholders, as a class (but excluding the issue and allotment of shares by Newco to Existing Shareholders), pursuant in each case to any arrangements with the Issuer or any of its Subsidiary Undertakings.

"Spin-Off Securities" means equity shares of an entity other than the Issuer.

- (i) *Shares, Rights and Share-Related Securities Issues to Shareholders*: If and whenever the Issuer shall issue Common Shares to Shareholders as a class by way of rights, or issue or grant to Shareholders as a class by way of rights, options, warrants or other rights to subscribe for or purchase any Common Shares, in each case at a price per Common Share which is less than 95 per cent. of the Current Market Price per Common Share on the dealing day immediately preceding the date of the first public announcement of the terms of the issue or grant of such Common Shares, options, warrants or other rights, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A+B}{A+C}$$

where:

- A is the number of Common Shares outstanding immediately before such announcement;
- B is the number of Common Shares which the aggregate amount (if any) payable for the Common Shares issued by way of rights, or for the options or warrants or other rights issued by way of rights and for the total number of Common Shares deliverable on the exercise thereof, would purchase at such Current Market Price per Common Share; and
- C is the number of Common Shares issued or, as the case may be, the maximum number of Common Shares which may be issued upon exercise of such options, warrants or rights calculated as at the date of issue of such options, warrants or rights.

Such adjustment shall become effective on the first date on which the Common Shares are traded ex-rights, ex-options or ex-warrants on the Relevant Stock Exchange.

- (ii) *Rights Issues of Other Securities to Shareholders*: If and whenever the Issuer shall issue any Securities (other than Common Shares or options, warrants or other rights to subscribe for or purchase any Common Shares) to Shareholders as a class by way of rights or grant to Shareholders as a class by way of rights any options, warrants or other rights to subscribe for or purchase any Securities (other than Common Shares or options, warrants or other rights to subscribe for or purchase Common Shares), the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the Current Market Price of one Common Share on the dealing day immediately preceding the first date on which the terms of such issue or grant are publicly announced; and
- B is the Fair Market Value on the date of such announcement of the portion of the rights attributable to one Common Share.

Such adjustment shall become effective on the first date on which the Common Shares are traded ex-rights, ex-options or ex-warrants on the Relevant Stock Exchange.

- (iii) *Issues of Shares at less than Current Market Price:* If and whenever the Issuer shall issue (otherwise than as mentioned in sub-paragraph (b)(iii) above) any Common Shares (other than Common Shares issued on the exercise of Conversion Rights or on the exercise of any rights of conversion into, or exchange or subscription for or purchase of, Common Shares) wholly for cash or no consideration or issue or grant (otherwise than as mentioned in sub-paragraph (b)(iv) above) wholly for cash or for no consideration any options, warrants or other rights to subscribe for or purchase any Common Shares (other than the Bonds, which term shall for this purpose include any Further Bonds), in each case at a price per Common Share which is less than 95 per cent. of the Current Market Price per Common Share on the dealing day immediately preceding the date of the first public announcement of the terms of such issue or grant, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A is the number of Common Shares outstanding immediately before the issue of such Common Shares or the grant of such options, warrants or rights;
- B is the number of Common Shares which the aggregate consideration (if any) receivable for the issue of such additional Common Shares or, as the case may be, for the Common Shares to be issued or otherwise made available upon the exercise of any such options, warrants or rights, would purchase at such Current Market Price per Common Share; and

C is the number of Common Shares to be issued pursuant to such issue of such Common Shares or, as the case may be, the maximum number of Common Shares which may be issued upon exercise of such options, warrants or rights calculated as at the date of issue of such options, warrants or rights.

Such adjustment shall become effective on the date of issue of such additional Common Shares or, as the case may be, the grant of such options, warrants or rights.

(iv) *Other Issues at less than Current Market Price:* If and whenever the Issuer or any Subsidiary Undertaking of the Issuer or (at the direction or request of or pursuant to any arrangements with the Issuer or any Subsidiary Undertaking of the Issuer) any other company, person or entity (otherwise than as mentioned in sub-paragraphs (b)(iii), (b)(iv) or (b)(v) above) shall issue wholly for cash or no consideration any Securities (other than the Bonds, which term shall for this purpose exclude any Further Bonds) which by their terms of issue carry (directly or indirectly) rights of conversion into, or exchange or subscription for, Common Shares (or shall grant any such rights in respect of existing Securities so issued) or Securities which by their terms might be redesignated as Common Shares, and the consideration per Common Share receivable upon conversion, exchange, subscription or redesignation is less than 95 per cent. of the Current Market Price per Common Share on the dealing day immediately preceding the date of the first public announcement of the terms of issue of such Securities (or the terms of such grant), the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue (or grant) by the following fraction:

$$\frac{A+B}{A+C}$$

where:

A is the number of Common Shares outstanding immediately before such issue or grant (but where the relevant Securities carry rights of conversion into or rights of exchange or subscription for Common Shares which have been issued by the Issuer for the purposes of or in connection with such issue, less the number of such Common Shares so issued or otherwise made available);

B is the number of Common Shares which the aggregate consideration (if any) receivable for the Common Shares to be issued or otherwise made available upon conversion or exchange or upon exercise of the right of subscription attached to such Securities or, as the case may be, for the Common Shares to be issued or to arise from any such redesignation would purchase at such Current Market Price per Common Share; and

C is the maximum number of Common Shares to be issued or otherwise made available upon conversion or exchange of such Securities or upon the exercise of such right of subscription attached thereto at the initial conversion, exchange or subscription price or rate or, as the case may be, the maximum number of Common Shares which may be issued or arise from any such redesignation,

Provided that if at the time of issue of the relevant Securities or date of grant of such rights (as used in this sub-paragraph (b)(vi) the "**Specified Date**") such number of Common Shares is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time (which may be when such Securities are converted or exchanged or rights of subscription are exercised or, as the case may be, such Securities are redesignated or at such other time as may be provided) then for the purposes of this sub-paragraph (b)(vi), "C" shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such conversion, exchange, subscription, purchase or acquisition or, as the case may be, redesignation had taken place on the Specified Date.

Such adjustment shall become effective on the date of issue of such Securities or, as the case may be, the grant of such rights.

- (v) *Amendment of Terms of Rights or Share-Related Securities:* If and whenever there shall be any modification of the rights of conversion, exchange or subscription attaching to any such Securities (other than the Bonds, which term shall for this purpose include any Further Bonds) as are mentioned in sub-paragraph (b)(vi) above (other than in accordance with the terms (including terms as to adjustment) applicable to such Securities upon issue) so that following such modification the consideration per Common Share receivable has been reduced and is less than 95 per cent. of the Current Market Price per Common Share on the dealing day immediately preceding the date of the first public announcement of the proposals for such modification, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such modification by the following fraction:

$$\frac{A+B}{A+C}$$

where:

- A is the number of Common Shares outstanding immediately before such modification (but where the relevant Securities carry rights of conversion into or rights of exchange or subscription for Common Shares which have been issued, by the Issuer or any Subsidiary Undertaking of the Issuer (or at the direction or request or pursuant to any arrangements

with the Issuer or any Subsidiary Undertaking of the Issuer) for the purposes of or in connection with such issue, less the number of such Common Shares so issued or otherwise made available on conversion);

- B is the number of Common Shares which the aggregate consideration (if any) receivable for the Common Shares to be issued or otherwise made available upon conversion or exchange or upon exercise of the right of subscription attached to the Securities so modified would purchase at such Current Market Price per Common Share or, if lower, the existing conversion, exchange or subscription price of such Securities; and
- C is the maximum number of Common Shares which may be issued or otherwise made available upon conversion or exchange of such Securities or upon the exercise of such rights of subscription attached thereto at the modified conversion, exchange or subscription price or rate but giving credit in such manner as an Independent Financial Adviser shall consider appropriate for any previous adjustment under this sub-paragraph or sub-paragraph (b)(vi) above.

Provided that if at the time of such modification (as used in this sub-paragraph (b)(vii) the "**Specified Date**") such number of Common Shares is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time (which may be when such Securities are converted or exchanged or rights of subscription are exercised or at such other time as may be provided) then for the purposes of this paragraph (b)(vii), "C" shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such conversion, exchange or subscription had taken place on the Specified Date.

Such adjustment shall become effective on the date of modification of the rights of conversion, exchange or subscription attaching to such Securities.

- (vi) *Other Offers to Shareholders:* If and whenever the Issuer or any Subsidiary Undertaking of the Issuer or (at the direction or request of or pursuant to any arrangements funded by the Issuer or any Subsidiary Undertaking of the Issuer) any other company, person or entity shall offer any Securities for an amount less than their Fair Market Value to Shareholders as a class (except where the Conversion Price falls to be adjusted under sub-paragraphs (b)(ii), (iii), (iv), or (vi) above or (ix) below (or would fall to be so adjusted if the consideration receivable per Common Share contemplated by the relevant issue or grant was less than 95 per cent. of the Current Market Price per Common Share on the relevant dealing day)) the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before the making of such offer by the following fraction:

$$\frac{A-B}{A}$$

where:

- A is the Current Market Price of one Common Share on the dealing day immediately preceding the date on which the terms of such offer are first publicly announced; and
- B is the amount that is attributable to one Common Share by which the Fair Market Value on the date of such announcement of the offered Securities exceeds the amount to be paid for them upon consummation of the offer.

Such adjustment shall become effective on the first date on which the Common Shares are traded ex-rights on the Relevant Stock Exchange.

- (vii) *Relevant Event*: If a Relevant Event shall occur, then upon any exercise of Conversion Rights where the Conversion Date falls during the Relevant Event Period, the Conversion Price (the "**Relevant Event Conversion Price**") shall be determined as set out below:

$$\text{RECP} = \text{OCP} / (1 + (\text{CP} \times c/t))$$

where:

- RECP = means the Relevant Event Conversion Price
- OCP = means the Conversion Price in effect on the relevant Conversion Date
- CP = means 15 per cent.
- c = means the number of days from and including the date the Relevant Event occurs to but excluding the Final Maturity Date
- t = means the number of days from and including the Closing Date to but excluding the Final Maturity Date

- (viii) *Other Events*: If the Issuer determines that an adjustment should be made to the Conversion Price as a result of one or more circumstances not referred to above in this Condition 6(b) (even if the relevant circumstance is specifically excluded from the operation of sub-paragraphs (b)(i) to (ix) above), the Issuer shall, at its own expense and acting reasonably, request an Independent Financial Adviser to determine as soon as practicable what adjustment (if any) to the Conversion Price is fair, equitable and reasonable to take account thereof and the date on which such adjustment should take effect and upon such determination such adjustment (if any) shall be made and shall take effect in accordance with such determination, provided that an adjustment shall only be made pursuant to this sub-paragraph (b)(x) if such Independent Financial

Adviser is so requested to make such a determination not more than 21 days after the date on which the relevant circumstance arises.

Notwithstanding the foregoing provisions, where the events or circumstances giving rise to any adjustment pursuant to this Condition 6(b) have already resulted or will result in an adjustment to the Conversion Price or where the events or circumstances giving rise to any adjustment arise by virtue of any other events or circumstances which have already given or will give rise to an adjustment to the Conversion Price or where more than one event which gives rise to an adjustment to the Conversion Price occurs within such a short period of time that, in the opinion of the Issuer, a modification to the operation of the adjustment provisions is required to give the intended result, such modification shall be made to the operation of the adjustment provisions as may be advised by an Independent Financial Adviser to be in its opinion appropriate to give the intended result and provided further that, for the avoidance of doubt, the issue of Common Shares pursuant to the exercise of Conversion Rights shall not result in an adjustment to the Conversion Price.

For the purpose of any calculation of the consideration receivable or price pursuant to sub-paragraphs (v), (vi) and (vii), the following provisions shall apply:

- (a) the aggregate consideration receivable or price for Common Shares issued for cash shall be the amount of such cash;
- (b) (x) the aggregate consideration receivable or price for Common Shares to be issued or otherwise made available upon the conversion or exchange of any Securities shall be deemed to be the aggregate consideration or price received or receivable for any such Securities and (y) the aggregate consideration receivable or price for Common Shares to be issued or otherwise made available upon the exercise of rights of subscription attached to any Securities or upon the exercise of any options, warrants or rights shall be deemed to be that part (which may be the whole) of the consideration or price received or receivable for such Securities or, as the case may be, for such options, warrants or rights which are attributed by the Issuer to such rights of subscription or, as the case may be, such options, warrants or rights or, if no part of such consideration or price is so attributed, the Fair Market Value of such rights of subscription or, as the case may be, such options, warrants or rights as at the date of the first public announcement of the terms of issue of such Securities or, as the case may be, such options, warrants or rights, plus in the case of each of (x) and (y) above, the additional minimum consideration receivable or price (if any) upon the conversion or exchange of such Securities, or upon the exercise of such rights or subscription attached thereto or, as the case may be, upon exercise of such options, warrants or rights and (z) the consideration receivable or price per Common Share upon the conversion or exchange of, or upon the exercise of such rights of subscription attached to, such Securities or, as the case may be, upon the exercise of such options, warrants or rights shall be the aggregate consideration or price

referred to in (x) or (y) above (as the case may be) divided by the number of Common Shares to be issued upon such conversion or exchange or exercise at the initial conversion, exchange or subscription price or rate;

- (c) if the consideration or price determined pursuant to (a) or (b) above (or any component thereof) shall be expressed in a currency other than the Relevant Currency it shall be converted into the Relevant Currency at such rate of exchange as may be determined in good faith by an Independent Financial Adviser to be the Prevailing Rate of Exchange at the close of business on the date of the first public announcement of the terms of issue of such Securities (or if no such rate is available on that date, the equivalent rate on the immediately preceding date on which such rate is available); and
- (d) in determining consideration or price pursuant to the above, no deduction shall be made for any commissions or fees (howsoever described) or any expenses paid or incurred for any underwriting, placing or management of the issue of the relevant Common Shares or Securities or otherwise in connection therewith.

"Current Market Price" means, in respect of a Common Share at a particular date, the average of the Volume Weighted Average Price of a Common Share for the five consecutive dealing days ending on the dealing day immediately preceding such date; provided that if at any time during the said five-dealing-day period the Volume Weighted Average Price shall have been based on a price ex-Dividend (or ex- any other entitlement) and during some other part of that period the Volume Weighted Average Price shall have been based on a price cum-Dividend (or cum- any other entitlement), then:

- (a) if the Common Shares to be issued do not rank for the Dividend (or entitlement) in question, the Volume Weighted Average Price on the dates on which the Common Shares shall have been based on a price cum-Dividend (or cum-any other entitlement) shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Dividend or entitlement per Common Share as at the date of first public announcement of such Dividend (or entitlement); or
- (b) if the Common Shares to be issued do rank for the Dividend (or entitlement) in question, the Volume Weighted Average Price on the dates on which the Common Shares shall have been based on a price ex-Dividend (or ex- any other entitlement) shall for the purpose of this definition be deemed to be the amount thereof increased by such similar amount,

and provided further that if on each of the said five dealing days the Volume Weighted Average Price shall have been based on a price cum-Dividend (or cum- any other entitlement) in respect of a Dividend (or other entitlement) which has been declared or announced but the Common Shares to be issued do not rank for that Dividend (or other entitlement) the Volume Weighted Average Price on each of such dates shall for the

purposes of this definition be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Dividend or entitlement per Common Share as at the date of the first public announcement of such Dividend or entitlement,

and provided further that, if the Volume Weighted Average Price of a Common Share is not available on one or more of the said five dealing days, then the average of such Volume Weighted Average Prices which are available in that five-dealing-day period shall be used (subject to a minimum of two such prices) and if only one, or no, such Volume Weighted Average Price is available in the relevant period the Current Market Price shall be determined in good faith by an Independent Financial Adviser.

"**dealing day**" means a day on which the relevant stock exchange or securities market is open for business, other than a day on which the relevant stock exchange or securities market is scheduled to, or does, close prior to its regular weekday closing time.

References to any issue or offer or grant to Shareholders "**as a class**" or "**by way of rights**" shall be taken to be references to an issue or offer or grant to all or substantially all Shareholders other than Shareholders to whom, by reason of the laws of any territory or requirements of any recognised regulatory body or any other stock exchange in any territory or in connection with fractional entitlements, it is determined not to make such issue or offer or grant.

(c) *Retroactive Adjustments*

If the Conversion Date in relation to any Bond shall be after the record date for any such issue, distribution, grant or offer (as the case may be) as is mentioned in Condition 6(b)(ii), (iii), (iv) and (viii), or any such issue as is mentioned in Condition 6(b)(v) and (vi) which is made to the Shareholders or any of them, but before the relevant adjustment becomes effective under Condition 6(b) (such adjustment, a "**Retroactive Adjustment**"), the Issuer shall (conditional upon the relevant adjustment becoming effective) procure that there shall be issued to the converting Bondholder, in accordance with the instructions contained in the Conversion Notice, such additional number of Common Shares (if any) (the "**Additional Shares**") as, together with the Common Shares issued or to be issued on conversion of the relevant Bond (together with any fraction of a Common Share not so issued), is equal to the number of Common Shares which would have been required to be issued on conversion of such Bond if the relevant adjustment (more particularly referred to in the said provisions of Condition 6(b)) to the Conversion Price had in fact been made and become effective immediately after the relevant record date.

(d) *Decision of an Independent Financial Adviser*

If any doubt shall arise as to the appropriate adjustment to the Conversion Price, and following consultation between the Issuer and an Independent Financial Adviser, a written opinion of such Independent Financial Adviser in respect of such adjustment to

the Conversion Price shall be conclusive and binding on all concerned, save in the case of manifest error.

(e) *Employees' Share Schemes*

No adjustment will be made to the Conversion Price where Common Shares or other Securities (including rights, warrants and options) are issued, offered, exercised, allotted, appropriated, modified or granted to, or for the benefit of, employees or former employees (including Directors whether or not holding or formerly holding executive office or the personal service company of any such person) or their spouses or relatives, in each case, of, or any person employed or formerly employed as a consultant by, the Issuer or any of its Subsidiary Undertakings or any associated company or to trustees to be held for the benefit of any such person, in any such case pursuant to any employees' share scheme or stock option plan.

(f) *Rounding Down and Notice of Adjustment to the Conversion Price*

On any adjustment, the resultant Conversion Price, if not an integral multiple of U.S.\$0.01, shall be rounded down to the nearest whole multiple of U.S.\$0.01. No adjustment shall be made to the Conversion Price where such adjustment (rounded down if applicable) would be less than one per cent. of the Conversion Price then in effect. Any adjustment not required to be made, and/or any amount by which the Conversion Price has been rounded down, shall be carried forward and taken into account in any subsequent adjustment, and such subsequent adjustment shall be made on the basis that the adjustment not required to be made had been made at the relevant time.

Notice of any adjustments to the Conversion Price shall be given to Bondholders in accordance with Condition 15 promptly after the determination thereof.

(g) *Change of Control or Licence Event*

Following the occurrence of a Licence Event, the Issuer shall give notice thereof to the Bondholders in accordance with Condition 15 (a "**Preliminary Licence Event Notice**") within 14 calendar days of the first day on which it becomes so aware. A Preliminary Licence Event Notice shall contain all information material to Bondholders concerning the Licence Event and the actions proposed by the Issuer in relation to the Licence Event. If on the day which is 45 calendar days after the date of the Preliminary Licence Event Notice the Licence Event is continuing the Issuer shall promptly give notice thereof to the Bondholders in accordance with Condition 15 (a "**Final Licence Event Notice**"). Following the occurrence of a Change of Control, the Issuer shall give notice thereof to the Bondholders in accordance with Condition 15 (a "**Change of Control Notice**" and each of a Change of Control Notice and a Final Licence Event Notice being hereafter referred to as a "**Relevant Event Notice**") within 14 calendar days of the first day on which it becomes so aware.

A Relevant Event Notice shall contain a statement informing Bondholders of their entitlement to exercise their Conversion Rights as provided in these Conditions and the Conversion Price then applicable. The Relevant Event Notice shall also specify:

- (i) all information material to Bondholders concerning the Relevant Event;
- (ii) the closing price of the Common Shares as derived from the Relevant Stock Exchange as at the latest practicable date prior to the publication of such notice; and
- (iii) the last day of the Relevant Event Period.

In addition, in the event that any circumstance occurs in relation to a Relevant Licence which might reasonably be expected to be materially prejudicial to Bondholders, the Issuer shall forthwith appoint an Independent Financial Advisor to determine if a Licence Event has occurred. In addition, Bondholders holding not less than 25 per cent. in principal amount of the Bonds for the time being Outstanding may at any time require the Issuer to appoint an Independent Financial Advisor to determine if a Licence Event has occurred. The Trustee may assume that no Relevant Event has occurred unless it is given notice thereof in accordance with this Condition.

(h) *Procedure for Conversion*

A Conversion Right may be exercised by a Bondholder during the Conversion Period by delivering the relevant Bond Certificate together with the certificate referred to below to the specified office of the Paying and Conversion Agent, between the hours of 09.00 and 15.00 (in the city of the office of the Paying and Conversion Agent), accompanied by a duly completed and signed notice of conversion (a "**Conversion Notice**") in the form (for the time being current) obtainable from the Paying and Conversion Agent. Conversion Rights shall be exercised subject in each case to any applicable fiscal or other laws or regulations applicable in the jurisdiction in which the specified office of the Paying and Conversion Agent is located. If any such delivery is made after 15.00 on any particular day in the city of the office of the Paying and Conversion Agent or on a day that is not a business day in such city, such delivery shall be deemed for all purposes of these Conditions to have been made on the next following business day in such city.

A Conversion Right may be exercised only in respect of the whole of the principal amount of a Bond. Where not all the Bonds represented by the surrendered Bond Certificate are the subject of the exercise of Conversion Rights, a new Bond Certificate in respect of the balance of the Bonds will be issued to the Bondholder.

A Conversion Notice, once delivered, shall be irrevocable.

The conversion date in respect of a Bond (the "**Conversion Date**") shall be the second Toronto business day immediately following the date of such delivery and, if applicable, the making of any payment to be made as provided below.

A Bondholder exercising a Conversion Right must pay any taxes and capital, stamp, issue and registration duties arising on conversion (other than any taxes or capital duties or stamp duties payable in Canada (or any province or territory thereof) in respect of the issue of Common Shares on such conversion (including any Additional Shares), which shall be paid by the Issuer) and such Bondholder must pay all, if any, taxes arising by reference to any disposal or deemed disposal of a Bond or interest therein in connection with such conversion.

A Bondholder exercising a Conversion Right will also be required to deliver to the Paying and Conversion Agent a certificate stating that neither such Bondholder, nor any person or persons connected or affiliated to such Bondholder holds nor will it or they, following delivery of Common Shares resulting from such conversion, hold 10 per cent. or more of the outstanding Common Shares. If any Bondholder is unable to provide such a certificate as aforesaid, or if the Issuer believes on reasonable grounds that any such certification is incorrect, then the Issuer shall not be obliged to deliver Common Shares to such Bondholder in accordance with the Conditions but instead be entitled to arrange, as soon as reasonably practicable, the sale of Common Shares resulting from such conversion on behalf of such Bondholder and the payment to such Bondholder of the net proceeds of such sale through such broker or other financial intermediary as the Trustee shall approve for the purpose. The costs of any such sale (including taxes or capital duties, stamp duties or value added tax or any brokerage or similar commissions) shall be payable by the converting Bondholder and shall be deducted from the proceeds of such sale and such converting Bondholder must pay all, if any, taxes arising by reference to any disposal of Common Shares.

Except for U.S. Certificates, Common Shares to be issued on conversion of the Bonds (including any Additional Shares) will be issued in "book-entry-only" form eligible for deposit at The Canadian Depository for Securities Limited ("CDS") (or any successor licensed clearance and settlement facility applicable to the Common Shares) and are expected to be credited to the CDS Participant account specified in the Conversion Notice by a date falling not later than ten Toronto business days after the relevant Conversion Date. If at any time the Common Shares are not listed and posted for trading on the Toronto Stock Exchange, Common Shares to be issued on conversion of the Bonds (including any Additional Shares) will be delivered in such manner as is customary for shares traded on such other stock exchange on which the Common Shares are admitted or listed for trading at such time, or if not admitted or listed for trading on any stock exchange at such time, shall be delivered in registered, certificated form.

(i) *Common Shares*

- (i) Common Shares issued upon conversion of the Bonds will be fully paid and non-assessable and will in all respects rank *pari passu* with the fully paid Common Shares outstanding on the relevant Conversion Date or, in the case of Additional Shares, on the relevant Reference Date (except in any such case for any right excluded by mandatory provisions of applicable law), except that

the Common Shares or, as the case may be, the Additional Shares so issued will not rank for (or, as the case may be, the relevant holders shall not be entitled to receive) any rights, distributions or payments the record date or other due date for the establishment of entitlement for which falls prior to the relevant Conversion Date or, as the case may be, the relevant Reference Date.

- (ii) Save as provided in Condition 6(j), no payment or adjustment shall be made on conversion of any Bonds for any interest which otherwise would have accrued on the relevant Bonds since the last Interest Payment Date preceding the Conversion Date relating to such Bonds (or, if such Conversion Date falls before the first Interest Payment Date, since the Closing Date).

(j) *Interest on Conversion*

If any notice requiring the redemption of any Bonds is given pursuant to Condition 7(b) or 7(c) on or after the fifteenth calendar day prior to a record date in respect of any Dividend or distribution payable in respect of the Common Shares which has occurred since the last Interest Payment Date (or in the case of the first Interest Period, since the Closing Date) (whether such notice is given before, on or after such record date) where such notice specifies a date for redemption falling on or prior to the date which is 14 calendar days after the Interest Payment Date next following such record date, interest shall accrue on Bonds in respect of which Conversion Rights shall have been exercised and in respect of which the Conversion Date falls after such record date and on or prior to the Interest Payment Date next following such record date in respect of such Dividend or distribution, in each case from and including the preceding Interest Payment Date (or, if such Conversion Date falls before the first Interest Payment Date, from the Closing Date) to but excluding such Conversion Date. The Issuer shall pay any such interest or procure that any such interest is paid by not later than 14 calendar days after the relevant Conversion Date by U.S. dollar cheque drawn on, or by transfer to, a U.S. dollar account maintained with a bank outside the United States of America in accordance with instructions given by the relevant Bondholder in the relevant Conversion Notice.

(k) *Legend on Conversion*

- (i) Where Conversion Rights are exercised prior to 15 April 2008, the certificate that is issued representing the Common Shares will bear the following legends:

"UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY SHALL NOT TRADE THE SECURITY BEFORE 15 APRIL 2008."

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE LISTED ON THE TORONTO STOCK EXCHANGE ("TSX"); HOWEVER THE SAID SECURITIES CANNOT BE TRADED THROUGH THE FACILITIES OF THE TSX SINCE THEY ARE NOT FREELY

TRANSFERABLE AND CONSEQUENTLY ANY CERTIFICATE REPRESENTING SUCH SECURITIES IS NOT "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON THE TSX."

If the Holder of the Bond or any beneficial purchaser wishes to resell any Common Shares acquired on exercise of Conversion Rights at any time prior to 15 April 2008, he or it must make such resales in compliance with applicable laws.

- (ii) Bond Certificates and Certificates for the Common Shares to be issued on conversion of the Bonds (including any Additional Shares) purchased by QIBs in accordance with Rule 144A under the U.S. Securities Act (and all certificates issued in exchange therefore or in substitution thereof) shall bear the following U.S. legend:

"THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN, AND WILL NOT BE, REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR QUALIFIED UNDER THE LAWS OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF, BY PURCHASING SUCH SECURITIES, AGREES FOR THE BENEFIT OF FIRST CALGARY PETROLEUMS LTD. (THE "CORPORATION") THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE CORPORATION, (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (C) IN ACCORDANCE WITH RULE 144A UNDER THE SECURITIES ACT OR (D) PURSUANT TO ANOTHER EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT, IN EACH CASE, IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES AND ANY OTHER JURISDICTION, AND IN THE CASE OF TRANSFERS PURSUANT TO CLAUSE (D), THE HOLDER HAS FURNISHED TO THE CORPORATION AN OPINION OF COUNSEL OR OTHER EVIDENCE REASONABLY SATISFACTORY TO THE CORPORATION TO THAT EFFECT. THE HOLDER WILL, AND EACH SUBSEQUENT PURCHASER IS REQUIRED TO, NOTIFY ANY SUBSEQUENT PURCHASER OF THE SECURITIES OF THE RESALE RESTRICTIONS REFERRED TO ABOVE."

provided, further, that, if any Bonds or Common Shares to be issued on conversion of the Bonds (including any Additional Shares) are being sold in accordance with Rule 904 of Regulation S under the U.S. Securities Act, and if the Issuer is a "foreign issuer" within the meaning of Regulation S under the U.S. Securities Act at the time of sale, the applicable U.S. Legend may be removed by providing a declaration to the registrar and transfer agent for the

Common Shares, as set forth in Schedule 6 to the Trust Deed (or in such other form as the Issuer may prescribe from time to time).

(l) *Minimum Conversion Price*

The Conversion Price may not be reduced below the lowest price permitted by Canadian law or the regulations of the Relevant Stock Exchange (the "**Minimum Conversion Price**"). In the event that, following any adjustment pursuant to subparagraphs 6(b)(v), 6(b)(vi), 6(b)(vii), 6(b)(ix) or 6(b)(x), the Conversion Price would otherwise be reduced below the Minimum Conversion Price, the Conversion Price as a result of the relevant adjustment will be deemed to be the Minimum Conversion Price.

As at the Closing Date, the Issuer was subject to the regulations of the Toronto Stock Exchange and pursuant to these regulations the initial Minimum Conversion Price is U.S.\$ 3.75, being the volume weighted average price of the Common Shares for the five dealing days prior to 15 November 2007 (the date on which the Issuer notified the Toronto Stock Exchange of the issue of the Bonds) and translated into U.S. dollars at the Bank of Canada noon buying rate on 14 November 2007.

(m) *Trustee Not Obligated to Monitor*

The Trustee shall not be under any duty to monitor or make enquiries as to whether or not any event or circumstance which gives rise or may give rise to an adjustment to the Conversion Price has occurred or may occur and will not be responsible to Bondholders for any loss arising from any failure by it to do so.

(n) *Purchase or Redemption by the Issuer of its own Shares*

The Issuer may exercise such rights as it may from time to time lawfully have to purchase or redeem its own shares (including Common Shares) without the consent of the Bondholders.

(o) *Corporate reorganisation*

In the event of any consolidation, amalgamation or merger of the Issuer with any other corporation (other than a consolidation, amalgamation or merger in which the Issuer is the continuing corporation), or sale or transfer of all or substantially all of the assets of the Issuer, the Issuer shall immediately notify the Bondholders and the Trustee of such event and (so far as legally possible) cause the corporation resulting from such consolidation, amalgamation or merger or the corporation which shall have acquired such assets, as the case may be, to execute a trust deed supplemental to the Trust Deed providing that the holder of each Bond then Outstanding shall have the right (during the Conversion Period) to convert such Bond into the class and amount of shares and other securities and property receivable upon such consolidation, amalgamation, merger, sale or transfer by a holder of the number of Shares into which such Bond would have been converted had the relevant Conversion Date fallen immediately prior to such consolidation, amalgamation, merger, sale or transfer.

Such supplemental trust deed shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in these Conditions. The undertaking contained in this Condition 6(o) is without prejudice to the provisions of Condition 6 (b)(ix), Condition 6(g) and Condition 7(d) and shall apply in the same way to any subsequent consolidations, amalgamations, mergers, sales or transfers but shall not apply to any sale or transfer of assets of the Issuer to the Project Company in connection with the establishment of the Project Company.

7. **Redemption and Purchase**

(a) *Final Redemption*

Unless previously purchased and cancelled, redeemed or converted as herein provided, the Bonds will be redeemed at their principal amount on the Final Maturity Date. The Bonds may only be redeemed at the option of the Issuer prior to the Final Maturity Date in accordance with Condition 7(b) or Condition 7(c).

(b) *Redemption at the Option of the Issuer*

On giving not less than 30 nor more than 90 days' notice (an "**Optional Redemption Notice**") to the Bondholders in accordance with Condition 15, the Issuer may redeem all but not some only of the Bonds on the date (the "**Optional Redemption Date**") specified in the Optional Redemption Notice at their principal amount together with accrued interest up to but excluding the Optional Redemption Date:

- (i) at any time on or after 14 December 2010, if the Current Market Price of the Common Shares on each of at least 20 dealing days in any period of 30 consecutive dealing days ending not earlier than 7 days prior to the giving of the Optional Redemption Notice, shall have exceeded 145 per cent. of the Conversion Price on each relevant dealing day; or
- (ii) at any time if prior to the date the relevant Optional Redemption Notice is given, Conversion Rights shall have been exercised and/or purchases (and corresponding cancellations) and/or redemptions effected in respect of 85 per cent. or more in principal amount of the Bonds originally issued (which shall for this purpose include any Further Bonds).

(c) *Redemption for Taxation Reasons*

On giving not less than 30 nor more than 90 days' notice (a "**Tax Redemption Notice**") to the Bondholders in accordance with Condition 15, the Issuer may redeem all, and not some only, of the Bonds on the date specified therein (the "**Tax Redemption Date**") at their principal amount, together with accrued but unpaid interest to such date, if, immediately before giving such notice, the Issuer satisfies the Trustee that (i) the Issuer has or will become obliged to pay additional amounts in respect of payments on the Bonds pursuant to Condition 9 as a result of any change in, or amendment to, the laws or regulations of Canada or any political subdivision or any authority thereof or therein having power to tax, or any change in the general

application or official interpretation of such laws or regulations, which change or amendment becomes effective on or after 11 December 2007 (a "**Tax Change**"), and (ii) such obligation cannot be avoided by the Issuer taking reasonable measures available to it, provided that no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Issuer would be obliged to pay such additional amounts were a payment in respect of the Bonds then due. Prior to the publication of any notice of redemption pursuant to this Condition 7(c), the Issuer shall deliver to the Trustee (A) a certificate signed by two Directors of the Issuer stating that the circumstances referred to in (i) and (ii) above prevail and setting out details of such circumstances and (B) an opinion in form and substance satisfactory to the Trustee of independent legal or tax advisers of recognised standing to the effect that the Issuer has or will become obliged to pay such additional amounts as a result of such change or amendment. The Trustee shall be entitled to accept such certificate and opinion as sufficient evidence of the satisfaction of the circumstances set out in (i) and (ii) above, in which event they shall be conclusive and binding on the Bondholders.

On the Tax Redemption Date, the Issuer shall (subject to the next following paragraph) redeem the Bonds at their principal amount, together with accrued interest to such date.

If the Issuer gives a Tax Redemption Notice pursuant to this Condition 7(c), each Bondholder will have the right to elect that his Bond(s) shall not be redeemed and that the provisions of Condition 9 shall not apply in respect of any payment to be made on such Bond(s) which falls due after the relevant Tax Redemption Date whereupon no additional amounts shall be payable in respect of the relevant Tax Change pursuant to Condition 9 and payment of all amounts on the Bonds shall be made subject to the deduction or withholding of the taxation required to be withheld or deducted by Canada or any political subdivision or any authority thereof or therein having power to tax as a result of such Tax Change. To exercise such right, the Holder of the relevant Bond must complete, sign and deposit at the specified office of the Paying and Conversion Agent a duly completed and signed notice of election, in the form for the time being current, obtainable from the specified office of the Paying and Conversion Agent together with the relevant Bonds on or before the day falling 10 days prior to the Tax Redemption Date.

(d) *Bond Repurchase Offer*

Following the occurrence of a Relevant Event, the Issuer shall in the Relevant Event Notice make an offer (a "**Bond Repurchase Offer**") to the Bondholders to purchase all of the Bonds then Outstanding at their principal amount together with accrued interest to the Relevant Event Repurchase Date.

To accept such Bond Repurchase Offer, the Holder of a Bond must present the relevant Bond Certificate at the specified office of the Paying and Conversion Agent together with a duly completed and signed notice of acceptance, in the form for the time being current, obtainable from the specified office of the Paying and Conversion Agent ("**Relevant Event Repurchase Acceptance Notice**") at any time in the Relevant Event Period, in the case of a Relevant Event. The "**Relevant Event Repurchase Date**" shall

be the seventh Toronto business day after the expiry of the Relevant Event Period. Where not all the Bonds represented by the surrendered Bond Certificate are tendered in acceptance of such Bond Repurchase Offer, a new Bond Certificate in respect of the balance of the Bonds will be issued to the Bondholder.

Payment in respect of any such Bond shall be made by U.S. dollar cheque drawn on, or by transfer to a U.S. dollar account specified by the relevant Bondholder in the applicable Relevant Event Repurchase Acceptance Notice and maintained by such Bondholder with, a bank outside the United States.

A Relevant Event Repurchase Acceptance Notice, once delivered, shall be irrevocable and the Issuer shall redeem all Bonds the subject of Relevant Event Repurchase Acceptance Notices delivered as aforesaid on the Relevant Event Repurchase Date.

(e) *Optional Redemption Notice, Tax Redemption Notice and drawings*

Any Optional Redemption Notice or Tax Redemption Notice shall be irrevocable. Any such notice shall specify (i) the Optional Redemption Date or, as the case may be, the Tax Redemption Date and (ii) the aggregate principal amount of the Bonds Outstanding, in each case as at the latest practicable date prior to the publication of the Optional Redemption Notice or, as the case may be, the Tax Redemption Date.

(f) *Purchase*

Subject to the requirements (if any) of any stock exchange or market on which the Bonds may be listed or admitted to trading at the relevant time, and any other applicable law, the Issuer or any Subsidiary Undertaking of the Issuer may at any time purchase Bonds in the open market or otherwise at any price. Any purchase by tender shall be made available to all Bondholders alike with the exception of such Bondholders to whom, by reason of applicable laws, it is determined not to make such an offer. Such Bonds shall be surrendered to the Paying and Conversion Agent for cancellation.

(g) *Cancellation*

All Bonds which are redeemed or purchased by the Issuer or any Subsidiary Undertaking of the Issuer or in respect of which Conversion Rights are exercised will be cancelled and may not be reissued or resold.

(h) *Multiple notices*

If more than one notice of redemption is given pursuant to this Condition 7, the first of such notices to be given shall prevail, save that a Relevant Event Repurchase Acceptance Notice shall prevail over any other notice of redemption given pursuant to this Condition 7, whether given before, after or at the same time as any Relevant Event Repurchase Acceptance Notice, and the Issuer shall make a Bond Repurchase Offer notwithstanding that it may have given a notice of redemption pursuant to Condition 7(b) or (c) and in any such case the Optional Redemption Date or the Tax Redemption

Date shall be postponed to the fourteenth calendar day after the expiry of the Relevant Event Period.

8. Payments

(a) *Principal*

Payments of principal shall be made by U.S. dollar cheque drawn on, or, upon application by a Holder of a Bond to the specified office of the Paying and Conversion Agent not later than the fifteenth day before the due date for any such payment, by transfer to a U.S. dollar account maintained by the payee with, a bank in New York City and (in the case of redemption) upon surrender (or, in the case of part payment only, endorsement) of the relevant Bond Certificates at the specified office of the Paying and Conversion Agent.

(b) *Interest*

Payments of interest shall be made by U.S. dollar cheque drawn on, or upon application by a Holder of a Bond to the specified office of the Paying and Conversion Agent not later than the fifteenth day before the due date for any such payment, by transfer to a U.S. dollar account maintained by the payee with, a bank in New York City and (in the case of interest payable on redemption) upon surrender (or, in the case of part payment only, endorsement) of the relevant Bond Certificates at the specified office of the Paying and Conversion Agent.

(c) *Other amounts*

Payments of all other amounts will be made as provided in these Conditions.

(d) *Payments subject to fiscal laws*

All payments are subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment. No commissions or expenses shall be charged to the Bondholders in respect of such payments.

(e) *Non-business days*

Where payment is to be made by transfer to a U.S. dollar account, payment instructions (for value the due date, or, if the due date is not a business day, for value the next succeeding business day) will be initiated and, where payment is to be made by U.S. dollar cheque, the cheque will be mailed (i) (in the case of payments of principal and interest payable on redemption) on the later of the due date for payment and the day on which the relevant Bond Certificate is surrendered (or, in the case of part payment only, endorsed) at the specified office of a Paying Agent and (ii) (in the case of payments of interest payable other than on redemption) on the due date for payment. A Holder of a Bond shall not be entitled to any interest or other payment in respect of any delay in payment resulting from (A) the due date for a payment not being a business day or (B) a cheque mailed in accordance with this Condition 8 arriving after the due date for payment or being lost in the mail. In this paragraph,

"**business day**" means any day on which banks are open for general business (including dealings in foreign currencies) in New York City and, in the case of surrender (or, in the case of part payment only, endorsement) of a Bond Certificate, in the place in which the Bond Certificate is surrendered (or, as the case may be, endorsed).

(f) *Partial payments*

If a Paying and Conversion Agent makes a partial payment in respect of any Bond, the Issuer shall procure that the amount and date of such payment are noted on the Register and, in the case of partial payment upon presentation of a Bond Certificate, that a statement indicating the amount and the date of such payment is endorsed on the relevant Bond Certificate.

(g) *Record date*

Each payment in respect of a Bond will be made to the person shown as the Holder in the Register at the opening of business in the place of the Registrar's specified office on the fifteenth day before the due date for such payment (the "**Record Date**"). Where payment in respect of a Bond is to be made by cheque, the cheque will be mailed to the address shown as the address of the Holder in the Register at the opening of business on the relevant Record Date.

(h) *Paying and Conversion Agent, etc.*

The initial Paying and Conversion Agent and the initial Registrar and their initial specified offices are listed below. The Issuer reserves the right under the Agency Agreement at any time (with the prior approval of the Trustee) to vary or terminate the appointment of the Paying and Conversion Agent and the Registrar and appoint additional or other Paying and Conversion Agents, provided that it will (i) maintain a Paying and Conversion Agent and a Registrar and (ii) maintain a Paying and Conversion Agent in an EU Member State, if any, that will not be obliged to withhold or deduct tax pursuant to any law implementing European Council Directive 2003/48/EC on the taxation of savings income or any other Directive implementing the conclusions of the ECOFIN Council meeting of 26-27 November 2000. Notice of any change in the Paying and Conversion Agents or their specified offices will promptly be given to the Bondholders in accordance with Condition 15.

(i) *Fractions*

When making payments to Bondholders, if the relevant payment is not of an amount which is a whole multiple of the smallest unit of the relevant currency in which such payment is to be made, such payment will be rounded down to the nearest unit.

9. **Taxation**

All payments of principal and interest by or on behalf of the Issuer in respect of the Bonds shall be made free and clear of, and without withholding or deduction for, any

taxes, duties, assessments or governmental charges of whatever nature ("**Taxes**") imposed, levied, collected, withheld or assessed by or within Canada or any political subdivision or authority therein or thereof having power to tax, unless such withholding or deduction is required by law. In that event the Issuer shall pay such additional amounts as will result in receipt by the Bondholders of such amounts as would have been received by them had no such withholding or deduction been required, except that no such additional amounts shall be payable in respect of any Bond:

- (a) held by a Holder who is liable to such Taxes in respect of such Bond by reason of his having some connection with Canada other than the mere holding of the Bond; or
- (b) where (in the case of a payment of principal or interest on redemption) the relevant Bond Certificate is surrendered for payment more than 30 days after the Relevant Date except to the extent that the relevant Holder would have been entitled to such additional amounts if it had surrendered the relevant Bond Certificate on the last day of such period of 30 days; or
- (c) where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to European Council Directive 2003/48/EC or any other Directive implementing the conclusions of the ECOFIN Council meeting of 26-27 November 2000 on the taxation of savings income or any law implementing or complying with, or introduced in order to conform to, such Directive; or
- (d) held by a Holder who would have been able to avoid such withholding or deduction by presenting the relevant Bond to another Paying and Conversion Agent in a Member State of the European Union; or
- (e) held by a Holder who would have been able to avoid such withholding or deduction but for the failure of the Bondholder to comply with any certification, identification or other reporting requirements concerning the nationality, residence, identity or connection with Canada of the Bondholder if (i) such compliance is required or imposed by law as a precondition to exemption from all or any part of such Taxes, and (ii) the Issuer shall have notified the Bondholders in accordance with Condition 15 that they will be required to comply with such requirement no less than 60 days prior to the first Interest Payment Date in respect of which such requirement shall apply; or
- (f) held by a Holder that does not deal at arms' length (as contemplated by the Income Tax Act (Canada), as amended from time to time) with the Issuer at the time of such presentation.

If a Bondholder is entitled to receive a refund of any taxes in relation to which the Issuer has paid an additional amount, it shall pay over such refund to the Issuer (but

only to the extent of additional amounts paid by the Issuer), net of all out-of-pocket expenses of the Bondholder and without interest.

"Relevant Date" means whichever is the later of (i) the date on which such payment first becomes due and (ii) if the full amount payable has not been received by the Paying and Conversion Agent on or prior to such due date, the date on which, the full amount having been so received, notice to that effect shall have been given to the Bondholders. Any reference in these Conditions to principal and/or interest shall be deemed to include any additional amounts which may be payable under this Condition 9.

10. **Events of Default**

If any of the following events (each an **"Event of Default"**) occurs and the applicable Standstill Period (if any) has elapsed from the occurrence of the relevant event, then the Trustee at its discretion may and, if so requested in writing by Holders of at least one quarter of the aggregate principal amount of the Outstanding Bonds or if so directed by an Extraordinary Resolution, shall (subject, in the case of the happening of any of the events mentioned in paragraphs (b), (d) or (j) below and, in relation only to a Subsidiary Undertaking of the Issuer, paragraphs (c), (e), (f), (g), (h), (i), (j) or (k) below, to the Trustee having certified in writing that the happening of such event is in its opinion materially prejudicial to the interests of the Bondholders and, in all cases, to the Trustee having been indemnified or provided with security to its satisfaction) give written notice to the Issuer declaring the Bonds to be immediately due and payable, whereupon they shall become immediately due and payable at their principal amount together with accrued interest without further action or formality:

- (a) *Non Payment*: if default is made for a period of 10 Toronto business days or more in the payment of any sum due in respect of the Bonds or any of them;
or
- (b) *Breach of Other Obligations*: if the Issuer fails to perform or observe any of its other obligations (or any provision expressed as an obligation whether or not enforceable as such) under the Bonds, the Trust Deed or the Security Deed (including a failure to make a Bond Repurchase Offer) and such failure continues for the period of 30 business days in London and Toronto after notice of such default shall have been given to the Paying and Conversion Agent at its specified office by a Bondholder (and for the avoidance of doubt, for the purposes of the applicable Standstill Period (if any), the relevant event shall be deemed to occur at the end of any such period of 30 business days);
or
- (c) *Cross-Default*: if (i) any other indebtedness for borrowed money of the Issuer or any of its Subsidiary Undertakings is declared due and repayable prior to its stated maturity by reason of an event of default howsoever described or (ii) any such indebtedness for borrowed money is not paid when due or, as the case may be, within any applicable grace period (whenever agreed) or (iii) the

Issuer or any Subsidiary Undertaking fails to pay when due (or, as the case may be, within any applicable grace period) any amount payable by it under any present or future guarantee for, or indemnity in respect of, any indebtedness for borrowed money of any person, provided that (in relation to each of (i) to (iii) above) the aggregate amount of the relevant indebtedness for borrowed money in respect of which any one or more of the events mentioned above in this sub-paragraph (c) has or have occurred in respect of the Issuer and its Subsidiary Undertakings equals or exceeds U.S.\$15,000,000 or its equivalent in other currencies (on the basis of the middle spot rate for the relevant currency against the U.S. dollar as quoted by any leading bank on the day on which this paragraph operates) and is not being disputed in good faith by the Issuer or its Subsidiary Undertakings; or

- (d) *Winding-up*: if an order shall be made by any competent court or any resolution of shareholders shall be passed for the winding-up or dissolution of the Issuer, other than (i) for the purposes of or pursuant to an Exempt Newco Scheme, or (ii) for the purposes of any other amalgamation, merger, consolidation, reorganisation, reconstruction or other similar arrangement on terms certified in writing by the Trustee to be not materially prejudicial to the interests of the Bondholders; or
- (e) *Winding-up of a Subsidiary Undertaking of the Issuer*: if any order shall be made by any competent court or any resolution of shareholders shall be passed for the winding-up or dissolution of a Material Subsidiary Undertaking of the Issuer, save for the purposes of any amalgamation, merger, consolidation, reorganisation, reconstruction or other similar arrangement (A) not involving or arising out of the insolvency of such Material Subsidiary Undertaking of the Issuer and under which all the surplus assets of such Material Subsidiary Undertaking of the Issuer are transferred to the Issuer or any of its other Subsidiary Undertakings or (B) the terms of which have previously been certified in writing by the Trustee to be not materially prejudicial to the interests of the Bondholders; or
- (f) *Cessation of Business*: if the Issuer or any Material Subsidiary Undertaking of the Issuer shall cease to carry on the whole or substantially the whole of its business, save in the case of the Issuer for the matters described in Condition 2 and save in each case for the purposes of any amalgamation, merger, consolidation, reorganisation, reconstruction or other similar arrangement (i) not involving or arising out of the insolvency of the Issuer or such Material Subsidiary Undertaking of the Issuer and under which all or substantially all of its assets are transferred to the Issuer or another Subsidiary Undertaking of the Issuer or (ii) under which all or substantially all of its assets are transferred to a third party or parties (whether associates or not) for full consideration by the Issuer or a Material Subsidiary Undertaking of the Issuer on an arm's length basis or (iii) the terms of which have previously been certified in writing by

the Trustee to be not materially prejudicial to the interests of the Bondholders;
or

- (g) *Insolvency*: if the Issuer or any Material Subsidiary Undertaking of the Issuer shall suspend or announce its intention to suspend payment of its debts generally or shall be declared or adjudicated by a competent court to be unable, or shall admit in writing its inability, to pay its debts generally as they fall due, or shall be adjudicated or found insolvent by a competent court or shall enter into any composition or other similar arrangement with its creditors generally; or
- (h) *Security Enforced*: if any mortgage, charge, pledge, lien or other encumbrance, present or future, created or assumed by the Issuer or any Material Subsidiary Undertaking of the Issuer becomes enforceable and any step is taken to enforce it (including the taking of possession or the appointment of a receiver, administrative receiver, administrator or other similar official in relation to the Issuer or any Material Subsidiary Undertaking of the Issuer or in relation to the whole or a substantial part of the undertaking or assets of the Issuer or the whole or the majority of the undertaking or assets of any Material Subsidiary Undertaking of the Issuer); or
- (i) *Enforcement Proceedings*: a distress, attachment, execution or other process shall be levied or enforced upon, or any encumbrancer shall take possession of, the whole or a substantial part of the assets of the Issuer or the whole or the majority of the assets of any Material Subsidiary Undertaking of the Issuer; or
- (j) *Nationalisation*: any lawful step is taken by any person to seize, compulsorily acquire, expropriate or nationalise all or substantially all of the assets of the Issuer or any Material Subsidiary Undertaking of the Issuer; or
- (k) *Analogous Events*: any event occurs which under the laws of any relevant jurisdiction has an analogous effect to any of the events referred to under any of the foregoing paragraphs.

In relation to any Event of Default, "**Standstill Period**" has the following meaning:

- (1) if the Event of Default is in respect of Condition 10(b) (insofar as it relates to the obligations of the Issuer to deliver Common Shares, or to pay to a Bondholder the proceeds of sale of any Common Shares, pursuant to Condition 6) or Condition 10(d), then there is no applicable Standstill Period;
- (2) in any other circumstances the applicable Standstill Period shall be:
 - (A) a period of 120 days from the occurrence of the relevant event; and

- (B) if the Event of Default has not been waived during the 120 day period referred to in (A) above, a further period of 60 days (the "**Negotiation Period**") from the last day of such 120 day period during which negotiations will take place in good faith in accordance with the provisions of the Inter-creditor Agreement or Schedule 5 of the Trust Deed (as the case may be).

During a Standstill Period the Trustee shall not take any action to recover any principal amount or interest payable in respect of the Bonds but, for the avoidance of doubt, a Standstill Period shall not prevent the Trustee from taking action to claim amounts owing to itself and/or the Security Trustee on a personal basis pursuant to the Inter-creditor Agreement, the Trust Deed and the Security Deed, as applicable. With effect from and including the date which is the earlier of (i) the date on which the Inter-creditor Agreement becomes effective and (ii) the date any credit is first extended to the Project Company by the Project Lenders, any action by the Trustee to enforce its rights in respect of the Bonds or recover the principal amount or interest payable in respect of the Bonds other than as described in this Condition 10 will be subject to the provisions of the Inter-creditor Agreement or, pending execution of the Inter-creditor Agreement, Schedule 5 to the Trust Deed.

For the avoidance of doubt, the failure of the parties to enter into the Inter-creditor Agreement in accordance with clause 5 of the Trust Deed shall not constitute an Event of Default for any purpose.

11. **Undertakings**

Whilst any Conversion Right remains exercisable, the Issuer will, save with the approval of an Extraordinary Resolution:

- (a) issue, allot and deliver Common Shares on exercise of Conversion Rights in accordance with these Conditions and at all times keep allotted, reserved and available for issue free from pre-emptive or other similar rights out of its common share capital such number of fully paid and non-assessable Common Shares as would enable it to issue in full such number of Common Shares as are required to be issued by it upon exercise of Conversion Rights and all other rights of subscription and exchange for and conversion into Common Shares;
- (b) not in any way modify the rights attaching to the Common Shares with respect to voting, dividends or liquidation nor issue any other class of equity shares carrying any rights which are more favourable than such rights attaching to the Common Shares but so that nothing in this Condition 11(b) shall prevent:
 - (i) the issue of any Common Shares or other Securities to employees or former employees or directors (including Directors whether or not holding or formerly holding executive office or the personal service company of any such person) or their spouses or relatives, in each

- case of, or any person employed or formerly employed as a consultant by, the Issuer or any of the Issuer's Subsidiary Undertakings or associated companies or to trustees to be held for the benefit of any such person pursuant to any employees' share scheme or stock option plan; or
- (ii) any consolidation or subdivision of the Common Shares; or
 - (iii) any modification of such rights which is not, in the opinion of an Independent Financial Adviser, materially prejudicial to the interests of the Bondholders; or
 - (iv) any alteration to the Articles of Incorporation of the Issuer made in connection with the matters described in this Condition 11 or which is supplemental or incidental to any of the foregoing (including any amendment made to enable or facilitate procedures relating to such matters and any amendment dealing with the rights and obligations of holders of Securities, including Common Shares, dealt with under such procedures); or
 - (v) any issue of equity shares where the issue of such equity shares results or would, but for the provisions of any other Condition, otherwise result in an adjustment of the Conversion Price; or
 - (vi) any issue of equity shares or modification of rights attaching to the Common Shares where prior thereto the Issuer shall have instructed an Independent Financial Adviser to determine what (if any) adjustments should be made to the Conversion Price as being fair, equitable and reasonable to take account thereof and such Independent Financial Adviser shall have determined either that no adjustment is required or that an adjustment to the Conversion Price is required and, if so, the new Conversion Price as a result thereof and the basis upon which such adjustment is to be made and, in any such case, the date on which the adjustment shall take effect (and so that the adjustment shall be made and shall take effect accordingly);
- (c) procure that no Securities (whether issued by the Issuer or any Subsidiary Undertaking of the Issuer or procured by the Issuer or any Subsidiary Undertaking of the Issuer to be issued or issued by any other person pursuant to any arrangement funded by the Issuer or any Subsidiary Undertaking of the Issuer) issued without rights to convert into, or exchange or subscribe for, Common Shares shall subsequently be granted such rights exercisable at a consideration per Common Share which is less than 95 per cent. of the Current Market Price per Common Share at the close of business on the last dealing day preceding the date of the announcement of the proposed inclusion of such rights unless the same gives rise (or would, but for the provisions of

Condition 6(f) relating to the carry forward of adjustments, give rise) to an adjustment to the Conversion Price;

- (d) if a take-over bid (as such term is defined under applicable Canadian securities legislation) or other offer is made to all (or as nearly as may be practicable all) Shareholders which would result in the offeror and/or any parties acting jointly or in concert with the offeror acquiring all or a majority of the outstanding Common Shares, or if a plan is proposed with regard to such acquisition, give notice of such offer or plan to the Bondholders at the same time as any notice thereof is sent to its Shareholders (or as soon as practicable thereafter) that details concerning such offer or plan may be obtained from the specified offices of the Paying and Conversion Agent;
- (e) in the event of a Newco Scheme, the Issuer shall take (or shall procure that there is taken) all necessary action to ensure that immediately upon completion of the plan of arrangement, at its option, either (a) Newco is substituted under the Bonds as principal debtor in place of the Issuer or Newco becomes a guarantor under the Bonds and, in either case, that such other adjustments are made to these Conditions and the Agency Agreement to ensure that the Bonds may be converted into or exchanged for ordinary shares of Newco *mutatis mutandis* in accordance with and subject to these Conditions; or (b) such amendments are made to these Conditions and the Agency Agreement as are necessary to ensure that the Bonds may be converted into or exchanged for ordinary shares in Newco *mutatis mutandis* in accordance with and subject to these Conditions; and
- (f) use its reasonable endeavours to ensure that the Common Shares issued upon conversion of the Bonds will be admitted to or listed on the Relevant Stock Exchange in accordance with its respective rules and/or will be listed, quoted or dealt in on any other stock exchange or securities market on which the Common Shares may then be listed or quoted or dealt in.

12. **Prescription**

Claims in respect of principal or any other amount payable upon surrender of the Bonds shall become void unless the Relevant Bond Certificates are surrendered for payment within a period of 10 years from the appropriate Relevant Date.

13. **Replacement of Bonds**

If any Bond Certificate is lost, stolen, mutilated, defaced or destroyed, it may be replaced at the specified office of the Paying and Conversion Agent for the time being subject to all applicable laws, upon payment by the claimant of the expenses incurred in connection with such replacement and on such terms as to evidence and indemnity as the Issuer may require. Mutilated or defaced Bond Certificates must be surrendered before replacements will be issued.

14. **Meetings of Bondholders, Modification and Substitution**

(a) *Meetings of Bondholders*

The Trust Deed contains provisions for convening meetings of Bondholders to consider matters affecting their interests, including the sanctioning by Extraordinary Resolution of a modification of any of these Conditions or the Trust Deed. Such a meeting may be convened by the Issuer or the Trustee and shall be convened by the Trustee if requested in writing by Bondholders holding not less than 20 per cent. in principal amount of the Bonds for the time being Outstanding. The quorum for any meeting convened to consider an Extraordinary Resolution will be one or more persons holding or representing more than half of the aggregate principal amount of the Bonds for the time being Outstanding or, in relation to determining the form of the Inter-creditor Agreement pursuant to Clause 5.8 of the Trust Deed whatever the principal amount of the Bonds so held or represented, or at any adjourned meeting one or more persons being or representing Bondholders whatever the principal amount of the Bonds so held or represented, unless the business of such meeting includes consideration of proposals, *inter alia*, (i) to modify the maturity of the Bonds or the dates on which interest is payable in respect of the Bonds, (ii) to reduce or cancel the principal amount, or interest on, the Bonds, (iii) to increase the Conversion Price other than in accordance with these Conditions, (iv) to change the currency of any payment in respect of the Bonds, (v) to modify or vary the Conversion Rights in respect of the Bonds, or (vi) to modify the provisions concerning the making of a Bond Repurchase Offer or (vii) to modify the provisions concerning the quorum required at any meeting of Bondholders or the majority required to pass an Extraordinary Resolution (each a "**Reserved Matter**"), in which case the necessary quorum will be one or more persons holding or representing not less than three-quarters, or at any adjourned meeting not less than one-quarter, in principal amount of the Bonds for the time being Outstanding. Any Extraordinary Resolution duly passed shall be binding on all Bondholders (whether or not they were present at the meeting at which such resolution was passed).

(b) *Bondholders' Committee*

The Bondholders may, by a resolution passed at a meeting of Bondholders duly convened and held in accordance with the Trust Deed by a majority of at least 50 per cent. of votes cast, or by notice in writing to the Issuer (with a copy to the Trustee) signed by or on behalf of the Holders of at least 50 per cent in aggregate principal amount of the Bonds then Outstanding, appoint any person or persons as a committee to represent the interests of the Bondholders if:

- (a) any of the following events has occurred:
 - (i) the establishment of the Project Company; or
 - (ii) an Event of Default; or

- (iii) the Issuer, by notice to the Bondholders in accordance with Condition 15, has invited the Bondholders to appoint a committee pursuant to this Condition 14,; or
- (b) the Trustee requests a committee to be appointed in order to obtain instructions therefrom.

The quorum for any meeting convened to consider a resolution to appoint such a committee will be one or more persons holding or representing more than half of the aggregate principal amount of the Bonds for the time being Outstanding, or at any adjourned meeting one or more persons being or representing Bondholders whatever the principal amount of the Bonds so held or represented. Such committee shall, if appointed by notice in writing to the Issuer, give notice of its appointment to all Bondholders in accordance with Condition 15 as soon as practicable after the notice is delivered to the Issuer.

Such committee in its discretion may, among other things, (i) on behalf of the Bondholders, authorise the Trustee to enter into the Inter-creditor Agreement in a form which differs to whatever extent the committee thinks appropriate from that set out in the Trust Deed, (ii) enter into discussions with the Trustee over the provisions of the Inter-creditor Agreement and give instructions to the Trustee on behalf the Bondholders to accept or reject proposals for inclusion in or deletion from the Inter-creditor Agreement, (iii) enter into discussions with all or any parties to the Inter-creditor Agreement over the operation of any provisions of the Inter-creditor Agreement and give instructions to the Trustee on behalf the Bondholders to take or omit to take any action or course of action under the Inter-creditor Agreement, (iv) authorise the Trustee to enter into or receive such other documents or instruments as the committee thinks appropriate in connection with the foregoing, (v) engage legal advisers and financial advisers to assist it in representing the interests of the Bondholders, (vi) adopt such rules as it considers appropriate regarding its proceedings, and (vii) designate one or more members of the committee to act as the main point(s) of contact with the Trustee or any other party to the Inter-creditor Agreement and provide all relevant contact details to the Trustee . Except to the extent provided in this paragraph, such committee shall not have the ability to exercise any powers or discretions which the Bondholders could themselves exercise. Any action of such committee duly taken shall be binding on all Bondholders (whether or not they were members of or represented on such committee). The Issuer shall pay any fees and expenses which are reasonably incurred by any such committee (including, without limitation, the costs of giving notices to Bondholders, fees and expenses of the committee's legal advisers and financial advisers, if any) within 30 days of the delivery to the Issuer of a reasonably detailed invoice and supporting documentation.

(c) *Modification/Waiver*

The Trustee may, without the consent or sanction of the Bondholders, agree and/or instruct the Security Trustee to agree to any modification of these Conditions, the Transaction Documents or the Bonds (other than in respect of a Reserved Matter or

any provision of those referred to in the definition of Reserved Matter) which is, in the opinion of the Trustee, proper to make if, in the opinion of the Trustee, such modification will not be materially prejudicial to the interests of Bondholders and to any modification of these Conditions, the Transaction Documents or the Bonds which is, in the opinion of the Trustee, of a formal, minor or technical nature or is to correct a manifest error.

In addition, the Trustee may, without the consent or sanction of the Bondholders, authorise or waive and/or instruct the Security Trustee to authorise or waive any proposed breach or breach of the Bonds or the Transaction Documents (including an Event of Default) if, in the opinion of the Trustee, the interests of the Bondholders will not be materially prejudiced thereby *provided that* the Trustee shall not exercise any such powers in contravention of any express direction by an Extraordinary Resolution or of a request in writing made by the holders of not less than 25 per cent. in aggregate principal amount of the Bonds then Outstanding (but so that no such direction or request shall affect any authorisation, waiver or determination previously given or made) or so as to authorise or waive any such breach or proposed breach relating to any of the matters the subject of the Reserved Matters..

Unless the Trustee agrees otherwise, any such authorisation, waiver or modification shall be notified to the Bondholders by the Issuer as soon as practicable thereafter.

(d) *Substitution*

The Trust Deed contains provisions under which any successor in business of the Issuer may, without the consent of the Bondholders, assume the obligations of the Issuer as principal debtor under the Trust Deed and the Bonds provided that certain conditions specified in the Trust Deed are fulfilled.

No Bondholder shall, in connection with any substitution, be entitled to claim any indemnification or payment in respect of any tax consequence thereof for such Bondholder, except to the extent provided for in Condition 9 (or any undertaking given in addition to or substitution for it pursuant to the provisions of the Trust Deed).

15. **Notices**

Notices to the Bondholders will be sent to them by first class mail (or its equivalent) or (if posted to an overseas address) by airmail at their respective addresses on the Register. Any such notice shall be deemed to have been given on the fourth day after the date of mailing.

16. **Further Issues**

The Issuer may from time to time without the consent of the Bondholders and in accordance with the Trust Deed create and issue further notes, bonds or debentures either having the same terms and conditions in all respects as the outstanding notes, bonds or debentures of any series (including the Bonds) (or in all respects except for the first payment of interest on them and so that such further issue shall be consolidated

and form a single series with the outstanding notes, bonds or debentures of any series (including the Bonds)) or upon such terms as to interest, conversion, premium, redemption and otherwise as the Issuer may determine at the time of their issue. The Issuer may from time to time, with the consent of the Trustee, create and issue other series of bonds having the benefit of the Trust Deed.

17. The Trustee

Under the Trust Deed, the Trustee is entitled to be indemnified and relieved from responsibility in certain circumstances and to be paid its costs and expenses in priority to the claims of the Bondholders. In addition, the Trustee is entitled to enter into business transactions with the Issuer and any entity relating to the Issuer without accounting for any profit.

In the exercise of its powers and discretions under these Conditions and the Trust Deed, the Trustee will have regard to the interests of the Bondholders as a class and will not be responsible for any consequence for individual Holders of Bonds as a result of such Holders being connected in any way with a particular territory or taxing jurisdiction.

The Trustee may, at any time subject to the provisions of the Inter-creditor Agreement or Schedule 5 of the Trust Deed as applicable, at its discretion and without notice, take any action under or in connection with any of the Transaction Documents as it is entitled to do so and as it may think fit including, without limitation, directing:

- (a) the Security Trustee to take any action under or in connection with the Escrow Agreement and Security Trust Deed;
- (b) the Security Agent under any of the Transaction Documents; and
- (c) after the occurrence of an Event of Default which is continuing and after the applicable Standstill Period (if any) has elapsed from the occurrence of the relevant event, to take any steps necessary to enforce the Security in favour of the Security Trustee or the Security Agent), *provided that*:

(i) the Trustee shall not be bound to take any such action unless it shall be so directed by the Holders of at least one quarter of the aggregate principal amount of the Outstanding Bonds or by an Extraordinary Resolution; (ii) neither the Trustee nor the Security Trustee shall be bound to take any such action unless (A) it shall have been so indemnified and/or secured to its satisfaction and (B) such action is lawful in all relevant jurisdictions; and (iii) the Security Trustee shall not, and shall not be bound to, take any such action unless it shall have been so directed by the Trustee.

No Bondholder may proceed directly against the Issuer unless the Trustee, having become bound to do so, fails to do so within a reasonable time and such failure is continuing. If in any circumstances a Bondholder is entitled to proceed directly against the Issuer, the Bondholder's rights against the Issuer shall be subject to the same

conditions mutatis mutandis as would be the Trustee's rights against the Issuer were the Trustee proceeding directly against the Issuer on behalf of such Bondholder.

18. **Contracts (Rights of Third Parties) Act 1999**

No person shall have any right to enforce any term or condition of the Bonds or the Trust Deed under the Contracts (Rights of Third Parties) Act 1999.

19. **Governing Law and Jurisdiction**

(a) *Governing Law*

The Agency Agreement, the Bonds and the Trust Deed are governed by, and shall be construed in accordance with, English law.

(b) *Jurisdiction*

The Issuer has in the Trust Deed (i) agreed for the benefit of the Trustee and the Bondholders that the courts of England shall have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising from or connected with the Bonds; (ii) agreed that those courts are the most appropriate and convenient courts to settle any Dispute and, accordingly, that it will not argue that any other courts are more appropriate or convenient; and (iii) designated a person in England to accept service of any process on its behalf. The Trust Deed also states that nothing contained in the Trust Deed prevents the Trustee or any of the Bondholders from taking proceedings relating to a Dispute ("**Proceedings**") in any other courts with jurisdiction and that, to the extent allowed by law, the Trustee or any of the Bondholders may take concurrent Proceedings in any number of jurisdictions.

SCHEDULE 3
PROVISIONS FOR MEETINGS OF BONDHOLDERS

1. Definitions

In this Trust Deed and the Conditions, the following expressions have the following meanings:

"Block Voting Instruction" means, in relation to any Meeting, a document in the English language issued by a Registrar:

- (a) certifying:
 - (i) that certain specified Bonds (each a **"Blocked Bond"**) have been blocked in an account with a clearing system and will not be released until the conclusion of the Meeting and that the holder of each Blocked Bond or a duly authorised person on its behalf has instructed the Registrar that the votes attributable to such Blocked Bond are to be cast in a particular way on each resolution to be put to the Meeting; or
 - (ii) that each registered holder of certain specified Bonds (each a **"Relevant Bond"**) or a duly authorised person on its behalf has instructed the Registrar that the votes attributable to each Relevant Bond held by it are to be cast in a particular way on each resolution to be put to the Meeting; and

in each case that, during the period of 48 hours before the time fixed for the Meeting, such instructions may not be amended or revoked;

- (b) listing the total principal amount of the Blocked Bonds and the Relevant Bonds, distinguishing for each resolution between those in respect of which instructions have been given to vote for, or against, the resolution; and
- (c) authorising a named individual or individuals to vote in respect of the Blocked Bonds and the Relevant Bonds in accordance with such instructions;

"Chairman" means, in relation to any Meeting, the individual who takes the chair in accordance with paragraph 7 (*Chairman*);

"Extraordinary Resolution" means a resolution passed at a Meeting duly convened and held in accordance with this Schedule by a majority of not less than three quarters of the votes cast except in the case of a resolution passed in order to (a) agree the form of the Inter-creditor Agreement referred to in Clause 5 of the Trust Deed; or (b) exercise the powers described in paragraph 17(k) of this Schedule, where it means a resolution passed at a Meeting duly convened and held in accordance with this Schedule by a bare majority of the votes cast;

"Form of Proxy" means, in relation to any Meeting, a document in the English language available from the Registrar signed by a Bondholder or, in the case of a corporation, executed under its seal or signed on its behalf by a duly authorised officer and delivered to the Registrar not later than 48 hours before the time fixed for such Meeting, appointing a named individual or individuals to vote in respect of the Bonds held by such Bondholder;

"Meeting" means a meeting of Bondholders (whether originally convened or resumed following an adjournment);

"Proxy" means, in relation to any Meeting, a person appointed to vote under a Block Voting Instruction or a Form of Proxy other than:

- (a) any such person whose appointment has been revoked and in relation to whom the Registrar has been notified in writing of such revocation by the time which is 48 hours before the time fixed for such Meeting; and
- (b) any such person appointed to vote at a Meeting which has been adjourned for want of a quorum and who has not been re-appointed to vote at the Meeting when it is resumed;

"Relevant Fraction" means:

- (a) for all business other than voting on an Extraordinary Resolution, one tenth;
- (b) for voting on any Extraordinary Resolution other than one relating to a Reserved Matter, more than half save that, in relation to determining the form of the Inter-creditor Agreement pursuant to Clause 5.6 of this Trust Deed, it means the fraction of the aggregate principal amount of the outstanding Bonds represented or held by Voters actually present at the Meeting; and
- (c) for voting on any Extraordinary Resolution relating to a Reserved Matter, three quarters;

provided, however, that, in the case of a Meeting which has resumed after adjournment for want of a quorum, it means:

- (i) for all business other than voting on an Extraordinary Resolution relating to a Reserved Matter, the fraction of the aggregate principal amount of the outstanding Bonds represented or held by the Voters actually present at the Meeting; and
- (ii) for voting on any Extraordinary Resolution relating to a Reserved Matter, one quarter;

"Reserved Matter" means any proposal:

- (a) to modify the maturity of the Bonds or the dates on which interest is payable in respect of the Bonds to reduce or cancel the principal amount of, or interest

on, the Bonds, to increase the Conversion Price (as defined in Condition 6(a)) other than in accordance with the Conditions or to change the currency of any payment in respect of the Bonds;

- (b) to modify or vary the Conversion Rights in respect of the Bonds (as defined in Condition 6(d)) or modify the provisions concerning the making of a Bond Repurchase Offer (as defined in Condition 7(d));
- (c) to modify the provisions concerning the quorum required at any Meeting or the majority required to pass an Extraordinary Resolution; or
- (d) to amend this definition;

"Voter" means, in relation to any Meeting, a Proxy or (subject to paragraph 4 (*Record Date*)) a Bondholder; *provided, however, that* (subject to paragraph 4 (*Record Date*)) any Bondholder which has appointed a Proxy under a Block Voting Instruction or Form of Proxy shall not be a **"Voter"** except to the extent that such appointment has been revoked and the Registrar notified in writing of such revocation at least 48 hours before the time fixed for such Meeting;

"Written Resolution" means a resolution in writing signed by or on behalf of all holders of Bonds who for the time being are entitled to receive notice of a Meeting in accordance with the provisions of this Schedule, whether contained in one document or several documents in the same form, each signed by or on behalf of one or more such holders of the Bonds except in the case of a Written Resolution to exercise the powers described in paragraph 17(k) of this Schedule in which case it means a resolution in writing signed by or on behalf of the Holders of at least 50 per cent in aggregate principal amount of the Bonds then Outstanding;

"24 hours" means a period of 24 hours including all or part of a day (disregarding for this purpose the day upon which such Meeting is to be held) upon which banks are open for business in both the place where the relevant Meeting is to be held and in each of the places where the Paying Agents have their Specified Offices and such period shall be extended by one period or, to the extent necessary, more periods of 24 hours until there is included as aforesaid all or part of a day upon which banks are open for business as aforesaid; and

"48 hours" means 2 consecutive periods of 24 hours.

2. **Issue Of Block Voting Instructions And Forms Of Proxy**

The holder of a Bond may require the Registrar to issue a Block Voting Instruction by arranging (to the satisfaction of the Registrar) for such Bond to be blocked in an account with a clearing system not later than 48 hours before the time fixed for the relevant Meeting. The holder of a Bond may require the Registrar to issue a Block Voting Instruction by delivering to the Registrar written instructions not later than 48 hours before the time fixed for the relevant Meeting. Any holder of a Bond may obtain an uncompleted and unexecuted Form of Proxy from the Registrar. A Block Voting

Instruction and a Form of Proxy cannot be outstanding simultaneously in respect of the same Bond.

3. **References To Blocking/Release Of Bonds**

Where Bonds are within Euroclear or Clearstream, Luxembourg or any other clearing system, references to the deposit, or release, of Bonds shall be construed in accordance with the usual practices (including blocking the relevant account) of Euroclear or Clearstream, Luxembourg or such other clearing system.

4. **Record Date**

The Issuer may fix a record date for the purposes of any Meeting or any resumption thereof following its adjournment for want of a quorum provided that such record date is not more than 10 days prior to the time fixed for such Meeting or (as the case may be) its resumption. The person in whose name a Bond is registered in the Register on the record date at close of business in the city in which the Registrar has its Specified Office shall be deemed to be the holder of such Bond for the purposes of such Meeting and notwithstanding any subsequent transfer of such Bond or entries in the Register.

5. **Convening Of Meeting**

The Issuer or the Trustee may convene a Meeting at any time, and the Trustee shall be obliged to do so subject to its being indemnified and/or secured to its satisfaction upon the request in writing of Bondholders holding not less than 20 per cent. of the aggregate principal amount of the outstanding Bonds. Every Meeting shall be held on a date, and at a time and place, approved by the Trustee.

6. **Notice**

At least 21 days' notice (exclusive of the day on which the notice is given and of the day on which the relevant Meeting is to be held) specifying the date, time and place of the Meeting shall be given to the Bondholders and the Paying Agents and the Registrar (with a copy to the Issuer) where the Meeting is convened by the Trustee or, where the Meeting is convened by the Issuer, the Trustee. The notice shall set out the full text of any resolutions to be proposed unless the Trustee agrees that the notice shall instead specify the nature of the resolutions without including the full text and shall state that Bonds may be blocked in clearing systems for the purposes of appointing Proxies under Block Voting Instructions until 48 hours before the time fixed for the Meeting and a Bondholder may appoint a Proxy either under a Block Voting Instruction by delivering written instructions to the Registrar or by executing and delivering a Form of Proxy to the Specified Office of the Registrar, in either case until 48 hours before the time fixed for the Meeting.

7. **Chairman**

An individual (who may, but need not, be a Bondholder) nominated in writing by the Trustee may take the chair at any Meeting but, if no such nomination is made or if the

individual nominated is not present within 15 minutes after the time fixed for the Meeting, those present shall elect one of themselves to take the chair failing which, the Issuer may appoint a Chairman. The Chairman of an adjourned Meeting need not be the same person as was the Chairman of the original Meeting.

8. **Quorum**

The quorum at any Meeting shall be one or more Voters representing or holding not less than the Relevant Fraction of the aggregate principal amount of the outstanding Bonds.

9. **Adjournment For Want Of Quorum**

If within 15 minutes after the time fixed for any Meeting a quorum is not present, then:

- (a) in the case of a Meeting requested by Bondholders, it shall be dissolved; and
- (b) in the case of any other Meeting (unless the Issuer and the Trustee otherwise agree), it shall be adjourned for such period (which shall be not less than 14 days and not more than 42 days) and to such place as the Chairman determines (with the approval of the Trustee); *provided, however, that:*
 - (i) the Meeting shall be dissolved if the Issuer and the Trustee together so decide; and
 - (ii) no Meeting may be adjourned more than once for want of a quorum.

10. **Adjourned Meeting**

The Chairman may, with the consent of, and shall if directed by, any Meeting adjourn such Meeting from time to time and from place to place, but no business shall be transacted at any adjourned Meeting except business which might lawfully have been transacted at the Meeting from which the adjournment took place.

11. **Notice Following Adjournment**

Paragraph 6 (*Notice*) shall apply to any Meeting which is to be resumed after adjournment for want of a quorum save that:

- (a) 10 days' notice (exclusive of the day on which the notice is given and of the day on which the Meeting is to be resumed) shall be sufficient; and
- (b) the notice shall specifically set out the quorum requirements which will apply when the Meeting resumes.

It shall not be necessary to give notice of the resumption of a Meeting which has been adjourned for any other reason.

12. **Participation**

The following may attend and speak at a Meeting:

- (a) Voters;
- (b) representatives of the Issuer and the Trustee;
- (c) the financial advisers of the Issuer and the Trustee;
- (d) the legal counsel to the Issuer and the Trustee and such advisers;
- (e) the Registrar; and
- (f) any other person approved by the Meeting or the Trustee.

13. Show Of Hands

Every question submitted to a Meeting shall be decided in the first instance by a show of hands. Unless a poll is validly demanded before or at the time that the result is declared, the Chairman's declaration that on a show of hands a resolution has been passed, passed by a particular majority, rejected or rejected by a particular majority shall be conclusive, without proof of the number of votes cast for, or against, the resolution. Where there is only one Voter, this paragraph shall not apply and the resolution will immediately be decided by means of a poll.

14. Poll

A demand for a poll shall be valid if it is made by the Chairman, the Issuer, the Trustee or one or more Voters representing or holding not less than one fiftieth of the aggregate principal amount of the outstanding Bonds. The poll may be taken immediately or after such adjournment as the Chairman directs, but any poll demanded on the election of the Chairman or on any question of adjournment shall be taken at the Meeting without adjournment. A valid demand for a poll shall not prevent the continuation of the relevant Meeting for any other business as the Chairman directs.

15. Votes

Every Voter shall have:

- (a) on a show of hands, one vote; and
- (b) on a poll, one vote in respect of each US\$1,000 in aggregate face amount of the outstanding Bond(s) represented or held by him.

Unless the terms of any Block Voting Instruction state otherwise, a Voter shall not be obliged to exercise all the votes to which he is entitled or to cast all the votes which he exercises in the same way. In the case of a voting tie the Chairman shall have a casting vote.

16. **Validity Of Votes By Proxies**

Any vote by a Proxy in accordance with the relevant Block Voting Instruction or Form of Proxy shall be valid even if such Block Voting Instruction or Form of Proxy or any instruction pursuant to which it was given has been amended or revoked, provided that the Registrar has not been notified in writing of such amendment or revocation by the time which is 24 hours before the time fixed for the relevant Meeting. Unless revoked, any appointment of a Proxy under a Block Voting Instruction or Form of Proxy in relation to a Meeting shall remain in force in relation to any resumption of such Meeting following an adjournment; *provided, however, that* no such appointment of a Proxy in relation to a Meeting originally convened which has been adjourned for want of a quorum shall remain in force in relation to such Meeting when it is resumed. Any person appointed to vote at such a Meeting must be re-appointed under a Block Voting Instruction or Form of Proxy to vote at the Meeting when it is resumed.

17. **Powers**

A Meeting shall have power (exercisable only by Extraordinary Resolution), without prejudice to any other powers conferred on it or any other person:

- (a) to approve any Reserved Matter;
- (b) to approve any proposal by the Issuer for any modification, abrogation, variation or compromise of any provisions of this Trust Deed or the Conditions or any arrangement in respect of the obligations of the Issuer under or in respect of the Bonds;
- (c) (other than as permitted under this Trust Deed) to approve the substitution of any person for the Issuer (or any previous substitute) as principal obligor under the Bonds;
- (d) to waive any breach or authorise any proposed breach by the Issuer of its obligations under or in respect of this Trust Deed or the Bonds or any act or omission which might otherwise constitute an Event of Default under the Bonds;
- (e) to remove any Trustee;
- (f) to approve the appointment of a new Trustee;
- (g) to authorise the Trustee (subject to its being indemnified and/or secured to its satisfaction) or any other person to execute all documents and do all things necessary to give effect to any Extraordinary Resolution;
- (h) to discharge or exonerate the Trustee from any liability in respect of any act or omission for which it may become responsible under this Trust Deed or the Bonds;

- (i) to give any other authorisation or approval which under this Trust Deed or the Bonds is required to be given by Extraordinary Resolution;
- (j) to exercise any voting rights in respect of the Charged Property; and
- (k) to appoint any persons as a committee to represent the interests of the Bondholders and to confer upon such committee any powers which the Bondholders could themselves exercise by Extraordinary Resolution.

18. Extraordinary Resolution Binds All Holders

An Extraordinary Resolution shall be binding upon all Bondholders, whether or not present at such Meeting, and each of the Bondholders shall be bound to give effect to it accordingly. Notice of the result of every vote on an Extraordinary Resolution shall be given to the Bondholders and the Agents (with a copy to the Issuer and the Trustee) within 14 days of the conclusion of the Meeting.

19. Minutes

Minutes of all resolutions and proceedings at each Meeting shall be made. The Chairman shall sign the minutes, which shall be *prima facie* evidence of the proceedings recorded therein. Unless and until the contrary is proved, every such Meeting in respect of the proceedings of which minutes have been summarised and signed shall be deemed to have been duly convened and held and all resolutions passed or proceedings transacted at it to have been duly passed and transacted.

20. Written Resolution

A Written Resolution shall take effect as if it were an Extraordinary Resolution.

21. Further Regulations

Subject to all other provisions contained in this Trust Deed, the Trustee may without the consent of the Issuer or the Bondholders prescribe such further regulations regarding the holding of Meetings of Bondholders and attendance and voting at them as the Trustee may in its sole discretion determine.

SCHEDULE 4
FORM OF INTER-CREDITOR AGREEMENT

FIRST CALGARY PETROLEUMS LTD

as Debtor

[•]

as Project Finance Agent

[•]

as Bond Trustee

[•]

as Security Agent

INTERCREDITOR AGREEMENT

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INTERCREDITOR AGREEMENT is made on [•] 200[•]

BETWEEN

- (1) **FIRST CALGARY PETROLEUMS LTD.**, a company incorporated under the laws of the Province of Alberta in Canada (the "**Issuer**");
- (2) [The relevant agent on behalf of the Project Finance Creditors] (the "**Project Finance Agent**");
- (3) [The bond trustee on behalf of the Bond Creditors] (the "**Bond Trustee**"); and
- (4) [The common security agent in respect of the security over all the shares in the Project Finance Company] as Security Agent (the "**Security Agent**").

It is agreed as follows:

1. **INTERPRETATION**

1.1 **Definitions**

Accession Document means a document substantially in the form set out in Schedule 1 executed or to be executed by a person intending to become a party to this Agreement.

"**Agents**" means the Project Finance Agent and the Bond Trustee.

"**Associated Liabilities**" means in relation to any obligation or liability:

- (a) any refinancing, novation, deferral or extension of that obligation or liability;
- (b) any claim for damages or restitution however arising in connection with that obligation or liability or in relation to its rescission;
- (c) any further advance or other accommodation which may be made under any agreement supplemental to any relevant agreement plus all related interest, fees, costs and expenses;
- (d) any claim against the Issuer flowing from any recovery by the Issuer or any other person of a payment or discharge in respect of that obligation or liability on the grounds of preference or otherwise; and
- (e) any amount (including post-insolvency interest) which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of an obligation or liability in any insolvency or other proceedings.

"**Bond Conditions**" means terms and conditions of the Bonds, as set out in schedule 2 of the Bond Trust Deed.

"**Bond Creditors**" means the Bondholders, the Bond Trustee and the Security Trustee (as defined in the Bond Conditions).

"Bond Default" means an Event of Default as defined in the Bond Conditions.

"Bond Discharge Date" means the date on which the Bond Trustee (acting reasonably) is satisfied that all Bond Liabilities have been fully paid and discharged and the Issuer has no actual or contingent payment obligations under any Bond Document.

"Bond Documents" means the Bond Trust Deed and the Agency Agreement (in the latter case, as defined in the Bond Trust Deed).

"Bond Liabilities" means any and all present and future sums, liabilities and obligations (actual or contingent and whether incurred solely or jointly with any other person and whether as principal or surety) owing by the Issuer to any Bond Creditor in any currency under the Bond Documents together with all Associated Liabilities in respect thereof.

"Bondholders" has the meaning specified in the Bond Conditions.

"Bondholders' Committee" means a committee of Bondholders constituted under Condition 14(b) of the Bond Conditions.

"Bonds" means the U.S.\$ 267,000,000 9% convertible bonds due 2012.

"Bond Security Documents" means the Second Share Lien and the Escrow Security Deed.

"Bond Standstill Period" means the Standstill Period as defined in Condition 10 of the Bond Conditions.

"Bond Trust Deed" means the trust deed dated [] between the Issuer and the Bond Trustee in relation to the Bonds.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London and Toronto.

"Discharge Date" means the date on which the Security Agent (acting reasonably) is satisfied that all Secured Liabilities have been fully paid and discharged, all Commitments of the Project Finance Creditors have been cancelled, all amounts owing by the Issuer to the Bond Creditors have been fully paid and discharged and neither the Issuer nor the Project Company has any actual or contingent payment obligations under any Finance Document.

"Enforcement Action" means:

- (a) making demand for payment in respect of any Secured Liabilities, claiming, enforcing or proving for any Secured Liabilities due and payable by the Issuer;
- (b) accelerating any of the Secured Liabilities or otherwise declaring any Secured Liabilities prematurely due and payable whether due to a default (however described) or otherwise;

- (c) enforcing any of the Secured Liabilities by attachment, distress, execution or analogous procedure;
- (d) enforcing (or giving instructions to the Security Agent to enforce) any Security;
- (e) petitioning for (or voting in favour of any resolution for) or initiating, supporting or taking any steps in relation to any Insolvency Event (or any analogous event in relation to the Project Company) or any voluntary arrangement or assignment for the benefit of creditors or any similar proceedings involving the Issuer or the Project Company;
- (f) suing or bringing or supporting any legal proceedings against the Issuer or the Project Company; and
- (g) otherwise exercising any remedy for the recovery of any Secured Liabilities (including by exercising any right of set-off or combination of accounts).

"Escrow Account" has the meaning specified in the Bond Conditions

"Escrow Security" Deed means the "Security Deed" as defined in the Bond Conditions.

"Finance Documents" means the Project Finance Documents and the Bond Documents.

"First Share Lien" has the meaning specified in the Bond Conditions.

"Guarantee" means [insert description of the guarantee by the Issuer in respect of the Project Finance Liabilities].

"Guarantee Demand Event" means the Project Finance Agent making a demand under the Guarantee with respect to all or part of any amounts outstanding under the Project Finance Credit Agreement.

"Insolvency Event" means an event specified in paragraphs (d) to (g) of Condition 10 (Events of Default) of the Bond Conditions in relation to the Issuer or an analogous event in relation to the Project Company.

"Instructing Party" means:

- (a) on or before the Project Finance Discharge Date, the Project Finance Agent; and
- (b) after the Project Finance Discharge Date but on or before the Bond Discharge Date, the Bond Trustee.

"Negotiation Period" has the meaning specified in the Bond Conditions.

"Obligor" means the Issuer or the Project Company (as the context requires).

"Project" has the meaning specified in the Bond Conditions.

"Project Company" means [the project finance SPV].

"Project Finance Credit Agreement" means the [insert description of the credit agreement for the Project Company Financing] and any other credit agreement now or hereafter entered into by the Project Company for the purposes of the Project Company Financing (as defined in the Bond Conditions).

"Project Finance Creditor" means a present or future lender, administrative party, agent or trustee, hedging counterparty or other credit provider under the Project Finance Documents.

"Project Finance Default" means an event of default (howsoever called) under the Project Finance Documents.

"Project Finance Discharge Date" means the later of the date on which the Project Finance Agent (acting reasonably and in good faith) is satisfied that (a) all Project Finance Liabilities have been fully paid and discharged (and all commitments of the Project Finance Creditors have been cancelled) and (b) neither the Project Company nor the Issuer has any actual or contingent payment obligations under any Project Finance Document.

"Project Finance Documents" means the Project Finance Credit Agreement, the documents creating security for the Project Finance Liabilities and other loan, support and other agreements related to the Project Company Financing (as defined under the Bond Conditions).

"Project Finance Liabilities" means any and all present and future sums, liabilities and obligations (actual or contingent and whether incurred solely or jointly with any other person and whether as principal or surety) owing by the Issuer or the Project Company to any Project Finance Creditor in any currency under the Guarantee or any Project Finance Document together with all Associated Liabilities in respect thereof.

"Project Finance Payment Default" means a Project Finance Default related to non-payment of a Project Finance Liability.

"Project Funds" means any amounts received by the Issuer from any third party (other than any Bond Creditor or to the extent received in accordance with the Project Finance Documents, the Project Company) in respect of the Project, including any compensation received due to any expropriation of the Relevant Licence or expropriation of the shares in the Project Company.

"Share Liens" means the First Share Lien and the Second Share Lien.

"Second Share Lien" has the meaning specified in the Bond Conditions.

"Secured Creditors" means the Project Finance Creditors and the Bond Creditors.

"Secured Liabilities" means the Project Finance Liabilities and the Bond Liabilities.

"Security" means any mortgage, charge, pledge, lien, hypothecation, assignment or other security or any other agreement, trust or arrangement (including a right of set-off or combination) having a similar effect, but does not include the Escrow Security Deed.

1.2 Construction of specific terms

In this Agreement, unless the context otherwise requires, a reference to:

- 1.2.1 an agency of a state includes any local or other authority, self regulating or other recognised body or agency, central or federal bank, department, government, legislature, minister, ministry, self regulating organisation, official or public or statutory person (whether autonomous or not) of, or of the government of, that state or any political sub-division in or of that state;
- 1.2.2 an agreement includes any legally binding agreement, arrangement, concession, contract, deed or franchise (in each case whether oral or written);
- 1.2.3 an amendment includes any amendment, supplement, variation, novation, modification, replacement or restatement (in each case however fundamental) and derivative forms shall be construed accordingly;
- 1.2.4 assets includes present and future properties, revenues and rights of every description;
- 1.2.5 an authorisation includes an authorisation, consent, approval, resolution, licence, permit, exemption, filing, registration, notification or notarisation;
- 1.2.6 Clauses and Schedules are references to, respectively, clauses of and schedules to this Agreement and references to this Agreement include its Schedules;
- 1.2.7 a default being continuing means that it has not been waived or remedied;
- 1.2.8 a guarantee includes:
 - (a) an indemnity and a performance bond in each case relating to the obligations of another person; and
 - (b) any other obligation (whatever called) of any person to pay, purchase, provide funds (whether by advancing money, purchasing assets or services or otherwise) for the payment of, indemnify against the consequences of default in the payment of, or otherwise be responsible for, any indebtedness of any other person,
- 1.2.9 a provision or matter including or which includes shall be construed without limitation to any events, circumstances, conditions, acts or matters specified after those words;

- 1.2.10 indebtedness includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.11 a month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that, in relation to the last month of any period:
- (a) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in the calendar month in which that period is to end or, if there is not one, on the immediately preceding Business Day; and
 - (b) if a period commenced on the last Business Day of a month or if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month,
- and references to months shall be construed accordingly;
- 1.2.12 a reference to a liability, obligation or sum (actual or contingent, present or future):
- (a) outstanding shall be construed as reference to it being due and payable; and
 - (b) owing shall be construed as a reference to it being owing, payable or incurred (in each case whether or not outstanding);
- 1.2.13 a party means a party to this Agreement;
- 1.2.14 a person includes, as appropriate, its successors, permitted assignees or transferees and also includes any individual, firm, company, corporation or other body corporate, government, state or agency of a state or any association, trust, fund or partnership (whether or not having separate legal personality);
- 1.2.15 a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any agency of a state or intergovernmental or supranational authority or organisation;
- 1.2.16 reservations means the principle that equitable remedies are remedies which may be granted or refused at the discretion of the court, the limitation on enforcement as a result of laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws affecting the rights of creditors generally, the statutory or equitable time-barring of claims, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void, defences of set-off or counterclaim, steps necessary to perfect Security where

such steps are not required to be performed under the terms of any Finance Document until a future date, the possibility that fixed charges may be recharacterised as floating charges, rules against penalties and other generally applicable principles set out as qualifications as to matters of law in the relevant legal opinions delivered to the relevant Agent under any of the Finance Documents; and

- 1.2.17 taxes includes all present and future income and other taxes, levies, assessments, imposts, deductions, charges, duties, compulsory loans and withholdings on account of tax wherever imposed by any supranational, governmental, federal, state, provincial, local governmental or municipal taxing authority, body or official (together with any related interest, penalties, fines and surcharges) and tax and taxation shall be construed accordingly.

1.3 General construction

- 1.3.1 In construing this Agreement, unless the context otherwise requires:

- (a) a reference to any agreement (including any Project Finance Document or Bond Document) shall be construed as a reference to that agreement as it may from time to time be amended without giving rise to a breach of a Project Finance Document;
- (b) a provision of law is a reference to that provision as extended, applied or amended from time to time and includes any subordinate legislation;
- (c) a time of day is a reference to London time;
- (d) the index to and the headings in this Agreement are inserted for convenience only and are to be ignored in construing this Agreement;
- (e) words importing the plural include the singular and vice versa;
- (f) where a term is defined in plural form to mean persons or things a reference to that term in singular form shall be construed as meaning any such person or thing;
- (g) a term used in any notice given in connection with this Agreement has the same meaning in that notice as in this Agreement;
- (h) a provision obliging a party to refrain from an activity shall be construed as also obliging such party not to enter into or permit to subsist an agreement to perform that activity unless the agreement is subject to a condition which would prevent the party being required to perform the activity in breach of this Agreement; and
- (i) rights and obligations shall be construed as applying from time to time;

- 1.3.2 Any reference in this Agreement to liquidation, dissolution, winding-up, receivership, administration, assignment for the benefit of creditors or

voluntary arrangement shall be construed to include a reference to any proceeding which is equivalent or analogous in any relevant jurisdiction; and

- 1.3.3 All rights, undertakings, obligations and liabilities of the Bond Creditors set out in this Agreement are entered into or assumed by the Bond Trustee as trustee for the Bond Creditors and all rights, undertakings, obligations and liabilities of the Project Finance Creditors set out in this Agreement are entered into or assumed by the Project Finance Agent as [agent/trustee] for the Project Finance Creditors.
- 1.3.4 Each of the parties to this Agreement acknowledges and agrees that that the Bond Trustee, when acting under this Agreement: (i) is acting as a trustee for the Bondholders only (and no other party) and is not acting personally; (ii) has no personal liability and is under no obligation to make any payments out of its personal assets; and (iii) acts in accordance with and subject to the terms of the Bond Trust Deed.

2. RANKING

2.1 Ranking

- 2.1.1 To the extent of any Project Funds, the Secured Liabilities shall rank in right and priority of payment in the following order (without double counting):

First on a pari passu basis, (a) amounts due and payable to the Project Finance Agent and any other facility agent, trustee or administrative party, in each case accrued in such roles in accordance with the Project Finance Documents; and (b) amounts due and payable to the Bond Trustee in its capacity as bond trustee pursuant to the Bond Trust Deed and accrued prior to the Project Finance Discharge Date, provided that the Bond Trustee shall only be entitled to payment of such amounts from Project Funds to the extent that the assets of the Issuer available to the Bond Trustee (not including the Project Funds) are insufficient to meet such amounts;

Second to the extent not listed in “First” above, the Project Finance Liabilities; and

Third to the extent not listed in “First” above, the Bond Liabilities.

- 2.1.2 Without prejudice to Clause 10, the Share Liens shall rank and secure the Secured Liabilities in the following order:

First the Project Finance Liabilities; and

Second the Bond Liabilities.

2.2 Preservation of ranking

The orders of priority specified in Clause 2.1 (*Ranking*) shall apply notwithstanding:

- 2.2.1 the order of execution or the order or existence of any registration, recording, notification or notarisation of any agreement or instrument;
 - 2.2.2 the date on which any Secured Liabilities were incurred or arose;
 - 2.2.3 whether or not any Secured Creditor is or was obliged to enter into any transaction or make any payment giving rise to any Secured Liabilities; and
 - 2.2.4 any increase, reduction or intermediate discharge of any amount owing in respect of the Secured Liabilities and any amendment to any document or instrument relating to any Secured Liabilities (in each case permitted by this Agreement).
- 2.3 **Certain rights of the Secured Creditors not affected**
- 2.3.1 Nothing in this Agreement shall prevent the Bond Trustee from:
 - (a) applying at any time any amount standing to the credit of the Escrow Account in payment or discharge of the Bond Liabilities; or
 - (b) enforcing the Escrow Security Deed,
 and the provisions of this Agreement shall be construed accordingly.
 - 2.3.2 Nothing in this Agreement shall affect the exercise by the Project Finance Creditors of their rights against the Project Company under the Project Finance Documents.
3. **ISSUER UNDERTAKINGS**
- 3.1.1 The Issuer shall not:
 - (a) take any Enforcement Action in relation to the Project Company;
 - (b) exercise any right of subrogation in respect of the Guarantee;
 - (c) other than in accordance with Clause 2.1.1, use or permit to be used any Project Funds to:
 - (A) pay, repay, prepay, redeem, purchase, make a distribution in respect of, defease or otherwise acquire or satisfy in any manner all or any part of any Bond Liabilities;
 - (B) discharge or allow to be discharged any Bond Liabilities by set-off, right of combination of accounts or otherwise;
 - (d) create or permit to subsist any Security over any of its assets for, or any guarantee in respect of, any Bond Liabilities except pursuant to the Bond Security Documents or pursuant to Condition 3(b) of the Bond Conditions; or

- (e) take or omit to take any action whereby the ranking contemplated by this Agreement may be impaired.

3.1.2 Paragraph (a) does not apply to an action or omission consented to by the applicable Instructing Party.

4. **BOND TRUSTEE UNDERTAKINGS**

Until the Project Finance Discharge Date the Bond Trustee will not, except with the prior consent of the Project Finance Agent:

- 4.1.1 take any Enforcement Action in breach of Clause 7.4;
- 4.1.2 be party to or beneficiary of a transaction which gives rise to a breach of Clause 3 (Issuer Undertakings);
- 4.1.3 other than in accordance with Clause 2.1.1, demand or receive any Project Funds for the purpose of payment, repayment or prepayment of principal, interest or other amount in respect of any Bond Liabilities or apply any Project Funds in or towards discharge of any Bond Liabilities;
- 4.1.4 other than in accordance with Clause 2.1.1, exercise any set-off of Project Funds against any Bond Liabilities;
- 4.1.5 permit to subsist or receive any Security, or any guarantee for or in respect of, any Bond Liabilities other than under the Bond Security Documents or pursuant to Condition 3(b) of the Bond Conditions; or
- 4.1.6 take or omit to take any action whereby the ranking contemplated by this Agreement may be impaired.

5. **TURNOVER**

5.1 **Turnover**

If before the Discharge Date:

- 5.1.1 any payment or distribution in cash or in kind (including by way of set-off or combination of accounts) is received or recovered by any Bond Creditor of or on account of or in relation to any of the Bond Liabilities by virtue of the Second Share Lien; or
- 5.1.2 other than in accordance with Clause 2.1 (*Ranking*) or Clause 10 (*Order of application*), any Project Funds are received or recovered by any Bond Creditor (whether by payment or distribution in cash or in kind or by way of set-off or combination of accounts);

(each such payment or distribution being a Turnover Recovery) the Bond Trustee will (to the extent that it has received actual notice of the same) promptly notify the Security Agent and to the extent that the Bond Trustee has received such amount, will on demand pay to the Security Agent, for

application as provided in the applicable of Clause 10 (*Order of application*) or Clause 2.1 (*Ranking*), an amount determined by the Security Agent to be equal to the lesser of:

- (a) the outstanding amount of any Secured Liabilities expressed to rank ahead of that Bond Creditor's Liabilities in Clause 2.1 (*Ranking*) or Clause 10 (*Order of application*); and
- (b) the amount of such Turnover Recovery,

less the third party costs and expenses (if any) reasonably incurred by that Bond Creditor in receiving or recovering such Turnover Recovery and pending such payment the Bond Trustee (to the extent that it has received such Turnover Recovery) will hold the Turnover Recovery in trust on behalf of the Security Agent for the relevant Secured Creditors in the order referred to in Clause 10 (*Order of application*).

5.2 **Equivalent payment**

If the trust referred to in Clause 5.1 (*Turnover*) fails or cannot be given effect to, the Bond Trustee will pay an amount equal to any such payment or distribution in respect of the relevant Secured Liabilities received by it to the Security Agent for application in accordance with Clause 10 (*Order of application*) or Clause 2.1 (*Ranking*), as applicable.

6. **PRESERVATION**

The ranking effected by this Agreement shall be in addition to and shall not prejudice or affect any Security or any right or remedy of any Secured Creditor and:

- 6.1.1 the obligations and liabilities of the Issuer, or any other party or parties, for or in respect of the Secured Liabilities (subject to the provisions of this Agreement) may, from time to time, in whole or in part, be renewed, extended, amended, supplemented, novated, accelerated, compromised, terminated, sold, transferred, exchanged, waived or released;
- 6.1.2 (subject to the provisions of this Agreement) each Secured Creditor may exercise or refrain from exercising any right, remedy or power granted by the Share Liens or any other document creating, evidencing or otherwise related to the Secured Liabilities or any Security or guarantee held, given or intended to be given therefor (including the right to perfect any Security or guarantee created in connection therewith);
- 6.1.3 (subject to the provisions of this Agreement) any and all Security or guarantees at any time, present or future, held, given or intended to be given for the Secured Liabilities and any rights or remedies of the Secured Creditors in respect thereof may, from time to time, in whole or in part, be renewed, extended, amended, supplemented, novated, accelerated, compromised, terminated, sold, transferred, exchanged, waived or released; and

6.1.4 (subject to the provisions of this Agreement) any balance or balances of funds with the Secured Creditors at any time standing to the credit of the Issuer may, from time to time, in whole or in part, be surrendered or released,

in each case without impairing, abridging, diminishing, releasing or affecting the ranking of Secured Liabilities provided for in this Agreement.

7. ENFORCEMENT OF SECURITY

7.1 Enforcement instructions

7.1.1 The Security Agent shall refrain from enforcing the Share Liens unless instructed otherwise by the applicable Instructing Party.

7.1.2 Subject to the Share Liens having become enforceable, the applicable Instructing Party may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing Share Liens as the applicable Instructing Party sees fit.

7.1.3 The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 7.

7.2 Competing instructions to Security Agent

Subject to Clause 7.1 (*Enforcement instructions*), any instructions given to the Security Agent by the applicable Instructing Party will override any conflicting instructions given by any other parties.

7.3 Manner of enforcement

7.3.1 The Security Agent shall enforce Share Liens (if then enforceable) in such manner as the applicable Instructing Party shall instruct or, in the absence of those instructions, as it sees fit and, subject as required by applicable law, having regard first to the interests of the Project Finance Creditors.

7.3.2 The parties agree that no:

- (a) Project Finance Creditor shall be responsible to any Bond Creditor; and
- (b) Bond Creditor shall be responsible to any Project Finance Creditor,

for any enforcement or failure to enforce or to maximise the proceeds of any enforcement of the Share Liens, and any of the Security Agent and the other Secured Creditors may cease any such enforcement at any time.

7.4 Restriction on Enforcement Action by Secured Creditors

7.4.1 The Bond Trustee shall not:

- (a) take any Enforcement Action in respect of the Second Share Lien until the Project Finance Discharge Date (unless the applicable Instructing Party has previously agreed in writing); or

- (b) subject to Clause 2.3.1 (*Certain rights of the Secured Creditors not affected*), take any other Enforcement Action against the Issuer until the expiry of any applicable Bond Standstill Period (unless the applicable Instructing Party has previously agreed in writing) other than making demand for payment, suing, bringing or supporting legal proceedings or exercising a right of set-off or combination of accounts (but not if any such action would cause an Insolvency Event) to recover amounts to which it is entitled under Clause 2.1.1 "First" and in any event, not before the occurrence of a Bond Default.

7.4.2 The Project Finance Creditors may not take any Enforcement Action against the Issuer other than making demand for payment, suing, bringing or supporting legal proceedings or exercising a right of set-off or combination of accounts (but not if any such action would cause an Insolvency Event) to recover amounts owing to the Project Finance Agent and any other facility agent, trustee or Project Finance Creditor in its capacity as an administrative party to recover amounts to which such parties are entitled under Clause 2.1.1 "First", unless a Project Finance Default has occurred.

7.5 Negotiation Period

Immediately following the start of a Negotiation Period, if later, the appointment by the Bondholders of a Bondholders Committee, the Issuer, the Bondholders Committee and the Project Finance Agent shall negotiate in good faith to seek an agreement in respect of the action to take following commencement of the Negotiation Period, one of the terms of which may be that the Bondholders' Committee will authorise the Bond Trustee to waive (upon the terms of such agreement) each Event of Default which has given rise to the Bond Standstill Period in which such Negotiation Period falls.

8. AUTHORITY OF SECURITY AGENT TO RELEASE SECURITY

8.1 Release pursuant to Enforcement Action

If in connection with any Enforcement Action in relation to the Issuer:

- 8.1.1 the Security Agent disposes of any asset under any Share Lien; or
- 8.1.2 the Issuer disposes of any asset at the request of the Security Agent, the Security Agent is hereby irrevocably authorised by the Secured Creditors without any further authority from the Secured Creditors being required) to enter into any release of any Security created by the relevant Share Lien over the relevant asset and to issue any certificate of non-crystallisation of any floating charge over such asset which the Security Agent may, in its absolute discretion, consider necessary or desirable.

8.2 Further assurances

Each party shall execute any assignment, transfer, release or other document that the Security Agent considers necessary to give effect to the releases and disposals referred to in Clause 8.1 (*Release pursuant to Enforcement Action*).

9. **PRIORITY OF SECURITY**

9.1 **Priority of Security**

The Security conferred by the Share Liens shall rank so as to secure the Secured Liabilities in the order of priority specified in Clause 2.1 (*Ranking*).

9.2 **Co-operation**

The Secured Creditors will take such action as the Security Agent may reasonably request with a view to reflecting the priority of the Security conferred by the Share Liens in any register or with any filing or registration authority and in giving notice to insurers, debtors liable for receivables covered by the security conferred by the Share Liens and other persons.

9.3 **Further actions to evidence priority**

In the event of any Secured Creditor taking any collateral, additional or substituted security for all or any part of the Secured Liabilities, such Secured Creditor, the Issuer and the Security Agent respectively undertake to execute such documents and do such other acts or things as may be necessary to evidence the priority of such security in the manner established by this Agreement.

9.4 **Security, guarantees and indemnities in breach**

If the Issuer provides any Security, guarantee or indemnity in respect of any Secured Liability in breach of the terms of this Agreement, the Security, guarantee or indemnity so granted or given shall be deemed to have been granted or given in favour of the Security Agent to hold on the trusts created by this Agreement.

10. **ORDER OF APPLICATION OF RECOVERIES**

All amounts received by the Security Agent pursuant to any enforcement of the Share Liens with respect to any of the Secured Liabilities and all other amounts paid to the Security Agent under this Agreement shall be applied in the following order (in turn until each is paid in full):

first: on a *pari passu* basis in or towards payment of (a) all outgoings, costs, charges, expenses and liabilities (and all interest thereon as provided in the Finance Documents) incurred by or on behalf of the Security Agent and any receiver, attorney or agent in connection with carrying out its duties and exercising its powers and discretion under the Share Liens or this Agreement and any remuneration due and payable to it or to any such receiver, attorney or agent; (b) the balance of the costs and expenses of the Bond Trustee in connection with such enforcement and any indemnity due and payable to the Bond Trustee, in each case accrued in its role as Bond Trustee in accordance with the Bond Trust Deed; and (c) the balance of the costs and expenses of the Project Finance Agent and any other facility agent, trustee or administrative party in connection with such enforcement and any indemnity due and payable to the Project Finance Agent, other facility agent, trustee or

administrative party, in each case accrued in such roles in accordance with the Project Finance Documents;

- second:** in or towards payment of the balance of the costs and expenses of the Project Finance Creditors in connection with such enforcement;
- third:** in or towards payment to the Project Finance Agent for application towards the balance of the Project Finance Liabilities outstanding to the Project Finance Creditors;
- fourth:** in or towards payment to the Bond Trustee for application towards the balance of the Bond Liabilities outstanding to the Bond Creditors; and
- fifth:** any surplus to such persons who may be entitled to them.

Each payment by the Security Agent under this Clause 10 shall be made towards each Liability pro rata to the aggregate of Liabilities with the same level of priority. An acknowledgement of receipt signed by the relevant party to whom payments are to be made under this Clause shall be a good discharge of the Security Agent.

11. ISSUER'S ACKNOWLEDGEMENT

The Issuer recognises the undertakings and obligations to and on the part of the Secured Creditors contained in this Agreement and:

- 11.1.1 expressly authorises the Secured Creditors (and the Security Agent on their behalf) to enforce the Share Liens in the manner provided for herein; and
- 11.1.2 irrevocably waives any rights which each respectively or collectively may now or in the future have to challenge or have set aside any arrangement relating to:
 - (a) the placing of the proceeds of the enforcement of the Share Liens in any suspense account; or
 - (b) any other matter or thing regarding the order of enforcement of the Share Liens and the priority of the application of the proceeds of such enforcement; and
- 11.1.3 confirms that the Issuer has no right to enforce any agreement, arrangement or understanding herein contained, to claim any right of estoppel in relation hereto or otherwise to control any action on the basis that such action is not in accordance with the terms of the Finance Documents.

12. SUBROGATION

12.1 Subrogation of Bond Creditors

- 12.1.1 If any Project Finance Liabilities are paid out of any proceeds received in respect of the Bond Liabilities owing to the Bond Creditors, the Bond Creditors will to that extent be subrogated to the Project Finance Liabilities so paid (and all Security and guarantees for those Project Finance Liabilities).

- 12.1.2 Any rights of subrogation so arising cannot (and shall not) be exercised by the Bond Creditors before the Project Finance Discharge Date without the consent of the applicable Instructing Party.

12.2 Non-subrogation

Prior to the Discharge Date, the Issuer will in no circumstances be subrogated to or entitled to exercise any of the rights of the Secured Creditors or exercise or enforce any Security.

13. DEFENCES

The provisions of this Agreement shall not be affected, impaired or revoked by any act, omission, transaction, limitation, matter, thing or circumstance whatsoever which but for this provision might operate to affect the priorities of any of the Secured Liabilities or the ranking provided for herein including:

- 13.1.1 any time, waiver or indulgence granted to the Issuer or any other person;
- 13.1.2 any intermediate payment or discharge in whole or in part of any of the Secured Liabilities;
- 13.1.3 the taking of any other Security from the Issuer or any other person or the variation, compromise, renewal or release of, or the failure, refusal or neglect to take, perfect or enforce, any rights, remedies or Security from or against the Issuer or any other person or all or any part of the Share Liens or any other document;
- 13.1.4 any legal limitation, disability, incapacity or other circumstances relating to the Issuer or any other person; or
- 13.1.5 any amendment, supplement to or novation of any of the Finance Documents.

14. DISCLOSURE

The Issuer hereby consents, so long as any of the Share Liens shall remain subsisting, to the disclosure by any of the Secured Creditors to each other of such information concerning the Issuer to such extent as any Secured Creditor shall see fit.

15. AMENDMENTS

- 15.1.1 Any provision of this Agreement may be amended or waived with the consent of each Agent and in relation only to any amendment or waiver of an express right of the Issuer, which imposes an additional obligation on the Issuer, the Issuer.
- 15.1.2 The Security Agent and the Issuer may agree any amendment to the provisions of this Agreement which is necessary to correct a manifest error.
- 15.1.3 Any amendment or waiver of this Agreement pursuant to paragraph (a) or (b) of this Clause 15 shall bind each party.

16. **WARRANTIES**

Each party warrants to the other parties on the date of this Agreement, that:

- 16.1.1 it is duly incorporated and validly existing under the laws of the jurisdiction of its incorporation;
- 16.1.2 this Agreement and the other Finance Documents to which it is a party are within its powers and have been duly authorised and executed by it; and
- 16.1.3 this Agreement it constitutes its legal, valid and binding obligations, enforceable (subject to the reservations) against it in accordance with its terms and the entry into and performance of the transactions contemplated by this Agreement do not conflict with any law or regulation applicable to it or with its constitutional documents or (to an extent which has or could reasonably be expected to have a material adverse effect) any other agreement binding on it or its assets.

17. **NOTICES**

17.1 **Method**

Any notice or other communication to be served under or in connection with this Agreement shall be made in writing and, unless otherwise stated, served in person, or by fax to the relevant party at its address or fax number shown below or notified to the relevant Agent under respectively, the Project Finance Credit Agreement and the Bond Trust Deed, or such other address or number notified by it to the Security Agent or (in the case of the Security Agent) the other parties and, in the case of any Agent, the Security Agent, marked for the attention of the person or department there specified.

The Issuer

Address: [•]

Fax: [•]

Attention: [•]

The Security Agent

Address: [•]

Fax: [•]

Attention: [•]

The Project Finance Agent

Address: [•]

Fax: [•]

Attention: [•]

The Bond Trustee

Address: [•]

Fax: [•]

Attention: [•]

17.2 Deemed Service

Any notice or other communication will, unless otherwise stated, be effective on delivery if delivered personally or by courier to the relevant address. A notice or other communication sent by fax will, unless otherwise stated, be effective when received in legible form.

17.3 Proof of service

In proving service of any notice or other communication under or in connection with this Agreement it will be sufficient to prove:

17.3.1 in the case of a letter, that such letter was properly stamped or franked, addressed and placed in the post or in the case of personal delivery, was left at the correct address; and

17.3.2 in the case of a fax transmission, that fax was duly transmitted to the fax number, as appropriate, of the addressee referred to in Clause 17.1 (*Method*).

17.4 English language

17.4.1 Any notice given under or in connection with this Agreement must be in English.

17.4.2 All other documents provided under or in connection with this Agreement must be:

(a) in English; or

(b) if not in English, and if so required by the Security Agent, accompanied by a certified English translation in which case the English translation will prevail unless the document is a constitutive, statutory or other official document.

18. INFORMATION

18.1 Defaults

The Bond Trustee will notify the other parties of the occurrence of any Bond Default (of which it has actual notice) and the Project Finance Agent shall notify the other parties of any Project Finance Payment Default, in each case on receipt by it of a notice specifying the event concerned (and identifying it as an event of default in accordance with the applicable Finance Documents).

18.2 Consultation

The Agents shall, so far as practicable in the circumstances, consult each other before taking any formal steps to exercise any remedy against the Issuer or to take any

Enforcement Action in respect of the Issuer but nothing in this Clause 18 will invalidate or otherwise affect any action or step taken without such consultation.

19. **MISCELLANEOUS**

19.1 **Interest on overdue amounts**

Without prejudice to the provisions of the Project Finance Credit Agreement and the Bond Conditions relating to interest on overdue amounts, each amount payable by a party to the Security Agent which is not paid when due and payable shall carry interest until paid (before as well as after judgment) payable on demand at a rate of interest as would equal the cost to the Security Agent of borrowing such amount as calculated by the Security Agent on the basis of reasonable assumptions.

19.2 **Secured Creditors' acknowledgement**

The Secured Creditors hereby acknowledge that the certificate of the Security Agent concerning the amounts due to each Secured Creditor in respect of the payment obligations of the Issuer under the Finance Documents shall be binding upon each Secured Creditor hereunder in the absence of manifest error.

19.3 **Agreement to override**

To the extent inconsistent with this Agreement, this Agreement overrides anything in any agreement or instrument relating to any Secured Liabilities provided that any provision in any Share Lien that is required for or otherwise relates to the creation, validity, enforceability or ranking of any Security shall prevail over any conflicting provision in this Agreement.

19.4 **Agreement shall not constitute Security**

The parties hereto confirm that this Agreement shall not constitute nor create nor is it intended to constitute or create any Security.

19.5 **Several obligations**

The obligations of each party are several and no party which is not a Issuer shall be responsible or liable for the acts or omissions of any other party.

19.6 **Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Secured Creditor, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement (including by way of priority) are cumulative and not exclusive of any rights or remedies provided by law.

19.7 **Permitted assurance and receipts**

Nothing in this Agreement shall restrict the ability of a Secured Creditor to:

- 19.7.1 arrange with any person any assurance against loss in respect of, or reduction of its credit exposure to, an Obligor (including assurance by way of credit based derivative or sub-participation); or

19.7.2 receive or recover any sum in respect of its Secured Liabilities as a result of any assignment or transfer permitted by Clause 20 (*Changes to the parties*),

and that Secured Creditor shall not be obliged to account to any other party for any sum received by it as a result of that action.

20. CHANGES TO THE PARTIES

20.1 Supplements

Each of the parties authorises

20.1.1 the Project Finance Agent to sign any Transfer Certificate or Accession Document (as defined in the Project Finance Credit Agreement) entered into under the Project Finance Credit Agreement; and

20.1.2 the Security Agent to sign any Accession Document,

in order that such document or certificate may be supplemental to this Agreement and be binding on and inure to the benefit of all the parties.

20.2 Change of party

No party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Finance Documents or the Secured Liabilities except as permitted by this Clause 20.

20.3 Replacement of Bond Trustee and/or Project Finance Agent

Neither Agent may resign or be removed as specified in its respective appointing documents unless the replacement Agent appointed in accordance with the terms of the Project Finance Credit Agreement (in the case of the Project Finance Agent) or the Bond Trust Deed (in the case of the Bond Trustee) simultaneously agrees with all other parties to become a replacement Agent under this Agreement by execution of an Accession Document.

21. THE SECURITY AGENT

21.1 Security Agent's terms of appointment

The Issuer and each Secured Creditor agrees to the terms set out in Schedule 2 and this Agreement and the Share Liens are subject to the terms of Schedule 2.

21.2 Authorisation of Security Agent

By way of security for the obligations of each party under this Agreement, each party irrevocably authorises the Security Agent individually as its agent (with full power to appoint substitutes and to delegate), in its name and on its behalf, at any time to execute and deliver and otherwise perfect any agreement, assurance, deed, release (whether of security instrument or document), or perform any act which may reasonably be deemed by the Security Agent (or any such substitute or delegate) necessary to perfect any Security or to enforce any and all claims upon or with respect to any Security (including to effect any disposal or other realisation of any or all of the assets the subject thereof), the Secured Liabilities or any part thereof and to collect and

receive any and all payments or distributions which may be owing or deliverable at any time upon or with respect to any Security or the Secured Liabilities or any part thereof.

21.3 Further assurance

Each of the parties will execute or procure the execution of and deliver to the Security Agent such powers of attorney, assignments, releases or other instruments as may be requested by the Security Agent from time to time in order to enable the Security Agent, while a Project Finance Default is continuing or (following the Project Finance Discharge Date but prior to the Bond Discharge Date) while a Bond Default is continuing, to perform any act which may reasonably be deemed by the Security Agent necessary to perfect any Security or to enforce any and all claims upon or with respect to any Security including to effect any disposal or other realisation of any or all of the assets the subject thereof in his own name pursuant to the authorisation in Clause 21.2 (*Authorisation of Security Agent*) to enforce any and all claims with respect to Liabilities or any part thereof and to collect and receive any and all payments or distributions which may be owing or deliverable at any time upon or with respect to any Security or the Secured Liabilities or any part thereof.

22. RATIFICATION

Without prejudice to the generality of Clause 21.2 (*Authorisation of Security Agent*), each party hereby undertakes with the Security Agent that if required so to do such party will ratify and confirm all transactions entered into by the Security Agent (or any substitute or delegate) in the proper exercise of its duties.

23. EXPENSES

23.1 Enforcement expenses

The Issuer shall, forthwith on demand, pay to each Secured Creditor the amount of all costs and expenses properly incurred by it in connection with the enforcement against the Issuer of such Secured Creditor's rights against it under this Agreement.

23.2 Legal costs and tax

The costs and expenses referred to above include the reasonably incurred fees and expenses of legal advisers and any value added tax or similar tax, and are payable in the currency in which they are incurred.

24. PARTIAL INVALIDITY

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any jurisdiction, that shall not affect the legality, validity or enforceability of the remaining provisions in that jurisdiction or of that provision in any other jurisdiction.

25. GOVERNING LAW AND ENFORCEMENT

25.1 Governing law

This Agreement shall be governed by and construed in all respects in accordance with English law.

25.2 Jurisdiction

- 25.2.1 All parties agree that the courts of England are (subject to paragraphs (b) and (c)) to have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims) which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, this Agreement or otherwise arising in connection with this Agreement and for such purposes irrevocably submit to the jurisdiction of the English courts.
- 25.2.2 The agreement contained in paragraph (a) is included for the benefit of each of the Secured Creditors who shall retain the right to take proceedings in any other courts with jurisdiction. To the extent permitted by law, each of the Secured Creditors may take concurrent proceedings in any number of jurisdictions.
- 25.2.3 The Issuer agrees that a judgment or order of any court referred to in this Clause 24.2 is conclusive and binding and may be enforced against it in the courts of any other jurisdiction.

25.3 Process Agent

The Issuer hereby irrevocably and unconditionally appoints its office in England as its agent in England to receive, for and on behalf of itself, service of process in any proceedings before the English courts.

25.4 Service

The Issuer hereby irrevocably and unconditionally:

- 25.4.1 agrees that failure by any process agent to give notice of process served to it shall not impair the validity of such service or of any judgment based on that service; and
- 25.4.2 agrees that nothing in this Agreement shall affect the right to serve process in any other manner permitted by law.

25.5 Third parties

- 25.5.1 The terms of this Agreement may be enforced only by a party to it and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.
- 25.5.2 Notwithstanding any term of this Agreement, no consent of a third party is required for any termination or amendment of this Agreement.

25.6 Counterparts

This Agreement may be executed in any number of counterparts and all those counterparts taken together shall be deemed to constitute one and the same document.

IN WITNESS whereof the parties hereto have caused this Agreement to be duly executed on the date first written above.

SCHEDULE 1 to the Intercreditor Agreement

Accession Document Format

THIS ACCESSION AGREEMENT is made •

BETWEEN:

- (1) [Name of new Issuer/Agent]
- (2) [Name of Security Agent] as Security Agent.]

This Agreement is supplemental to an intercreditor agreement (the "**Intercreditor Agreement**") dated [•] 200[•] between, among others, the Issuer and [•] as Security Agent, [•] as Project Finance Agent and [•] as Bond Trustee.

Words and expressions defined in the Intercreditor Agreement have the same meaning when used in this Agreement.

[Name of new Issuer/Agent] hereby agrees with each other person who is or who becomes a party to the Intercreditor Agreement that with effect from the date of this Agreement it will be bound by the Intercreditor Agreement as [a/an/the] [Issuer/Agent] as if it had been party to the Intercreditor Agreement in that capacity.

Address for notice of [name of new Issuer/Agent] for the purposes of Clause 17 (*Notices*) of the Intercreditor Agreement is:

[•].

Governing law and enforcement

The provisions of Clause 24 (*Governing law and enforcement*) of the Intercreditor Agreement shall apply to this Accession Agreement as if set out in full herein.

In witness whereof the parties have caused this Agreement to be duly executed on the date first written above.

[*Execution provisions*]

SCHEDULE 2 to the Intercreditor Agreement

The Security Agent

1. APPOINTMENT OF SECURITY AGENT

Each of the Secured Creditors (other than the Security Agent) hereby appoints the Security Agent to act as its agent in connection herewith and in connection with the Share Liens and authorises the Security Agent to perform such duties and exercise such rights, powers and discretions as are specifically delegated to the Security Agent by the terms hereof together with all rights, powers and discretions as are reasonably incidental thereto or necessary to give effect to the arrangements hereby created and each of the Secured Creditors irrevocably authorises the Security Agent on its behalf to enter into any and each Security Document.

2. TRUST PROPERTY

The Security Agent shall stand possessed of any Secured Property (or any proceeds thereof) received by it upon trust for the benefit of the Secured Creditors on the terms and subject to the conditions set out in this Agreement. It is hereby agreed that, in relation to any jurisdiction the courts of which would not recognise or give effect to the trust expressed to be created by this Agreement, the relationship of the Secured Creditors to the Security Agent shall be construed as one of principal and agent but, to the extent permissible under the laws of such jurisdiction, all the other provisions of this Agreement shall have full force and effect between the parties hereto.

In this Schedule 2 Secured Property means:

- (a) the assets and rights in respect of which Security is granted and the rights and powers given under and pursuant to the Share Liens including the covenants given in respect of the obligations under the Share Liens;
- (b) all assets, rights, powers, guarantees, encumbrances or money at any time transferred, paid to or vested in the Security Agent as additions to the Secured Property; and
- (c) all investments, property or money at any time representing the Secured Property or any part thereof, including all income and other sums at any time received or receivable by the Security Agent in respect of the Secured Property (or any part thereof).

3. DIRECTIONS

The Secured Creditors shall not exercise any independent power which they may have to enforce the Share Liens or to exercise any rights, discretions or powers or to grant any consents or releases under or pursuant to the Share Liens or otherwise exercise direct recourse to the security constituted by the Share Liens except through the Security Agent either acting on its own behalf or acting pursuant to any authorisation by a Secured Creditor. Subject to paragraph 9 (*Provision of directions and*

information) and to its being indemnified to its satisfaction, the Security Agent shall take such action (including the exercise of all rights, discretions or powers and the granting of consents or releases) or, as the case may be, refrain from taking such action under or pursuant to this Agreement and the Share Liens as instructed pursuant to Clause 7 (*Enforcement of Security*).

4. **EXERCISE OF POWERS OF ENFORCEMENT**

Subject to Clause 7 (*Enforcement of Security*) and subject to the Security Agent being indemnified and/or secured to its satisfaction, at any time after the Share Liens have become enforceable in accordance with their respective terms, the Security Agent shall, either acting on its own behalf or on behalf of any Secured Creditor, exercise all powers of enforcement of the security conferred by or pursuant to the Share Liens in accordance with instructions given to it pursuant to Clause 7 (*Enforcement of Security*) but not otherwise.

5. **NO OTHER ACTION**

The Security Agent shall not be required to take any action or exercise any rights, remedies, powers or discretions under or in connection with this Agreement except as instructed pursuant to this Agreement (including Clause 7 (*Enforcement of Security*)).

6. **SECURITY AGENT'S ASSUMPTIONS**

The Security Agent shall be entitled to assume that any instructions, requests or certificates received by it from the Agents under or pursuant to this Agreement are (a) given in accordance with the provisions of this Agreement and (b) given, where appropriate, in accordance with directions of persons or the provisions of agreements by which the Agents are bound and the Security Agent shall not be liable to any other person for any action taken or omitted under or in connection with this Agreement in accordance with any such instructions or certificates unless caused by its fraud, negligence or wilful misconduct.

7. **IDENTITY OF AGENTS**

The Security Agent shall be entitled (and bound) to assume that the identity of the Agents are as notified to it at the date of this Agreement, unless and until it is notified otherwise by both the retiring party and its successor in writing together with the date from which the change becomes effective. The Security Agent shall be entitled to rely upon and assume that any such notification is authentic and shall not be liable for any loss occasioned by so assuming or relying.

8. **MODIFICATIONS TO SECURITY DOCUMENTS**

The Security Agent shall concur with the Issuer in making any modification to the Share Liens which:

- (a) it may be expedient to make and such modification will not be prejudicial to the interests of any of the Secured Creditors; or

- (b) is necessary to correct a manifest error.

Any such modification shall be promptly notified to the Agents by the Security Agent and shall be binding on all the Secured Creditors. For the purposes of this Clause, neither the execution of a Security Document by the Issuer nor the release from the security constituted by the Share Liens of any property which may be so released shall be deemed to constitute such modification.

9. PROVISION OF DIRECTIONS AND INFORMATION

The parties (other than the Security Agent) shall provide the Security Agent with all necessary directions, information and documents as it may, in its opinion (acting reasonably), require for the purposes of carrying out its duties and obligations under this Agreement, and at all times shall assist the Security Agent in any way which the Security Agent may require, in its opinion (acting reasonably), to enable the Security Agent to effect its duties and obligations. Nothing in the previous sentence shall require the Bond Trustee to provide information that is inconsistent with its duties under the Bond Trust Deed or contrary to any law by which it is bound

10. NO DUTY OR RESPONSIBILITY

The Security Agent shall have no duty or responsibility, either initially or on a continuing basis:

- (a) to provide any Secured Creditors with any information with respect to the Issuer whenever coming into its possession or to provide any other person with any communication received by it under or in connection with this Agreement; or
- (b) to investigate the application of sums distributed pursuant to Clause 10 (*Order of application*).

11. FURTHER ACTS

After agreement with the Agents, the Security Agent shall be entitled to agree to and execute and perform any documents and do such other acts or things as may be necessary or expedient to give effect to the provisions of Clauses 15 (*Amendments*), 18 (*Information*), 19 (*Miscellaneous*) and 20 (*Changes to the parties*).

12. FORMAL NOTICES

The Security Agent shall, as soon as practicable upon receipt, send to the Agents copies of each formal notice received by it as Security Agent from the Issuer.

13. DELEGATION

The Security Agent may, in the execution of all or any of the trusts, powers, authorities and discretions vested in it by this Agreement, any of the Share Liens or any other document to which it is party, act by responsible officers or a responsible

officer for the time being of the Security Agent. The Security Agent may also, whenever it thinks expedient in the interests of the Secured Creditors, whether by power of attorney or otherwise, delegate to any person or persons all or any of the trusts, rights, powers, duties, authorities and discretions vested in it by any such document provided such delegate agrees to hold any amounts which it is to hold by virtue of such delegation separate from any other assets held by it. Any such delegation may be made upon such terms and conditions and subject to such regulations (including provisions as to remuneration and power to sub-delegate) as the Security Agent may think fit in the interests of the Secured Creditors. The Security Agent shall give prompt notice to the Issuer and each of the other Creditors of the appointment of any delegate as aforesaid and shall procure that any delegate shall also give prompt notice of the appointment of any sub-delegate to the Security Agent, the Issuer and each of the Secured Creditors.

14. **SECURITY AGENT'S DISCRETIONS**

It is expressly declared (which in so far as it relates to the discretions of the Security Agent shall operate by way of supplement to the Trustee Act 1925) as follows:

- (a) the Security Agent may in relation to any of the provisions of this Agreement act or rely upon the opinion or advice of or any information obtained from any lawyer, banker, accountant, valuer, surveyor, broker, auctioneer, securities company, financial adviser or other expert commissioned by the Security Agent and the Security Agent shall not be responsible for any loss occasioned by so acting or relying;
- (b) any opinion, advice or information obtained pursuant to paragraph (a) may be sent or obtained by letter, telex message, facsimile transmission, telephone or any other means and the Security Agent shall not be liable for acting on any opinion, advice or information purporting to be so conveyed although the same shall contain some error or shall not be authentic;
- (c) the Security Agent shall be at liberty to accept as sufficient evidence a certificate signed or purporting to be signed on behalf of the Agents to the effect that any particular dealing, transaction, step or thing is, in the opinion of the Agents, suitable or expedient or as to any other fact or matter upon which the Security Agent may require to be satisfied and the Security Agent shall in no way be bound to call for further evidence or to be responsible for any loss that may be occasioned by acting on any such certificate;
- (d) the Security Agent may refrain from doing anything which would or might in its opinion be contrary to any law of any jurisdiction or any directive or regulation of any agency of any state or which would or might otherwise render it liable to any person and may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation;

- (e) the Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is a party and shall not have any implied duties, obligations or responsibilities. In performing or carrying out its duties, obligations and responsibilities, the Security Agent shall be considered as acting only in a mechanical and administrative capacity (save as expressly provided in the Share Liens) and shall not have, or be deemed to have, any duty, obligation, or responsibility or relationship of trust or agency with the Issuer;
- (f) the Security Agent shall not be liable for any failure, omission or defect in perfecting the arrangements created by or pursuant to this Agreement other than in respect of its gross negligence or wilful misconduct;
- (g) the Security Agent and every attorney, agent or other person appointed by it under or in connection with this Agreement shall be entitled to be indemnified out of amounts received by the Security Agent under this Agreement against all liabilities and expenses properly incurred in the execution of any power, trust, authority or discretion in connection with this Agreement and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted to be done in any way relating to this Agreement other than in respect of its gross negligence or wilful misconduct;
- (h) pending appropriation and distribution under Clause 10 (*Order of application*), the Security Agent may, on the instructions provided under Clause 7 (*Enforcement of Security*), place any sum received, recovered or held by it under the trusts contained in this Agreement at any time after the Security constituted by the Share Liens becomes enforceable in an interest bearing suspense account at such bank or institution (including the Security Agent) which it may maintain until the Secured Liabilities have been discharged in full;
- (i) all moneys which under the trusts contained in this Agreement are received or held by the Security Agent or are standing to the credit of any an interest bearing suspense account from time to time may be invested in the name of the Security Agent or any nominee or under the control of the Security Agent in any investment for the time being authorised by English law for the investment by a trustee of trust moneys or by placing the same on deposit in the name of the Security Agent or any nominee or under the control of the Security Agent at such bank or institution (including the Security Agent) as is instructed or in such currency as is instructed and if instructed the Security Agent may at any time vary or transfer any such investments for or into other such investments or convert any moneys so deposited into any other currency as is instructed and shall not be responsible for any loss occasioned thereby, whether by depreciation in value, fluctuation in exchange rates or otherwise except for any loss or liability arising from its own gross negligence or wilful misconduct;

- (j) the Security Agent shall have full power to determine all questions and doubts arising in relation to the interpretation or application of any of the provisions of this Agreement as it affects the Security Agent and every such determination made in good faith (whether made upon a question actually raised or implied in the acts or proceedings of the Security Agent) shall be conclusive and shall bind the other parties;
- (k) the Security Agent (in the conduct of the trusts hereof (otherwise than in relation to its right to make any declaration, determination or decision)) may instead of acting personally employ and pay an agent (whether being a lawyer or other person) to transact or concur in transacting any business and to do or concur in doing any acts required to be done by the Security Agent (including the receipt and payment of money);
- (l) the Security Agent shall be at liberty to place all title deeds and other documents certifying, representing or constituting the title to any of the property which is the subject matter of the Share Liens for the time being in its hands in any safe deposit, safe or receptacle selected by the Security Agent or with any bankers or banking company (including the Security Agent or the Agents or any of the Secured Creditors) or company whose business includes undertaking the safe custody of documents or solicitors or firm of solicitors and may on instructions make any such arrangements as they think fit for allowing the relevant Issuer or its lawyers or auditors access to or possession of such title deeds and other documents when necessary or convenient and the Security Agent shall not be responsible for any loss incurred in connection with any such deposit, access or possession;
- (m) any investment of any part or all of the Secured Property may, at the discretion of the Security Agent either acting on its own behalf or on behalf of any Secured Creditor, be made or retained in the names of nominees;
- (n)
 - (i) the Security Agent shall not be responsible for recitals or statements, warranties or representations of any party (other than the Security Agent) contained herein or in any other Finance Document and shall assume the accuracy and correctness thereof and shall not be required to examine or enquire into the title of the Issuer to the Secured Property or any other part of the undertaking, property and assets charged by any of the Share Liens whether or not any default or failure is or was known to the Security Agent or might be, or might have been, discovered upon examination, inquiry or investigation and whether or not capable of remedy or for the validity or enforceability of its rights under any of this Agreement or the Finance Documents to which it is a party to the intent that the Security Agent shall not in any way be responsible for its inability to exercise any of the rights conferred herein or in any such document or for any damage thereby occasioned;

- (ii) the Security Agent shall not be responsible for any loss, expense or liability occasioned to the Secured Property however caused by any act or omission of the Issuer or any other person (including any bank, broker, depository, warehouseman or other intermediary or any clearing system or the operator thereof) acting in accordance with or contrary to the terms of any of the Finance Documents or otherwise and irrespective of whether the Secured Property is held by or to the order of any of the foregoing persons, unless such loss is occasioned by the gross negligence or wilful misconduct of the Security Agent;
- (iii) the Security Agent shall not be bound to give notice to any person of the execution of this Agreement or any of the other Finance Documents or any other document to which it is a party nor shall it be liable for any failure, omission or defect in perfecting any Security or other rights intended to be constituted by any such document including: (a) failure to obtain any licence, consent or other authority for the execution of the same, (b) failure to register the same in accordance with the provisions of any of the documents of title of the Issuer to any of the Secured Property, and (c) failure to effect or procure registration of or otherwise protect any such document by registering the same under any registration laws in any territory, or by registering any notice, caution or other entry prescribed by or pursuant to the provisions of the said laws;
- (iv) the Security Agent shall not be responsible for the genuineness, validity or effectiveness of this Agreement or any of the other Finance Documents or any other document to which it is a party or any obligations or rights created or purported to be created thereby or any security constituted or purported to be constituted by or pursuant to any such document, nor shall it be responsible or liable to any person because of any invalidity of any provision of such documents, whether arising from statute, law or the decision of any court; and
- (v) the Security Agent shall not be liable or responsible for any loss, cost, damage, expense or inconvenience which may result from anything done or omitted to be done by it under this Agreement, any other Finance Document or any other document to which it is a party, except such as arise as a result of the gross negligence or wilful misconduct of the Security Agent;
- (o) except as otherwise expressly provided in this Agreement, the Security Agent shall not be bound or obliged to take any steps to ascertain whether any event, condition or act (including a Project Finance Default or a Bond Default), the happening of which would cause a right or remedy to become exercisable by the Security Agent under this Agreement, any other Finance Document or any other document to which it is a party has happened or to monitor or supervise the observance and performance by the Issuer or any of the other parties

thereto of their respective obligations thereunder or the obligations of the Secured Creditors and, until it shall have actual knowledge to the contrary, the Security Agent shall be entitled to assume that no such event, condition or act has happened and that the Issuer and each of the other parties thereto are observing and performing all their respective obligations thereunder;

- (p) without prejudice to the provisions hereof and of the Share Liens relating to insurance, the Security Agent shall not be under any obligation to insure or pay any premium in respect of any insurance of any of the Secured Property or any deeds or documents of title or other evidence in respect thereof, shall not be under any responsibility in respect of the insurances required to be taken out in respect of the Issuer pursuant to the terms of the other Finance Documents and shall not be responsible for any loss, expense or liability which may be suffered as a result of the lack of or inadequacy of any such insurance or any failure to pay any premium in respect of the same;
- (q) the Security Agent shall have no responsibility to the Issuer or any of the Secured Creditors as regards any deficiency or additional payment, as the case may be, which might arise because the Security Agent or the Issuer is subject to any tax in respect of the Secured Property or any part thereof or income therefrom or any proceeds thereof;
- (r) Section 1 of the Trustee Act 2000 shall not apply to any function of the Security Agent. Where there are any inconsistencies between the Trustee Act 1925 and the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent allowed by law prevail and, in case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act; and
- (s) if the Security Agent exercises reasonable care in selecting any custodian, agent, delegate or nominee appointed under this paragraph (an Appointee), it will not have any obligation to supervise the Appointee or be responsible for any loss, liability, cost, claim, action, demand or expense incurred by reason of the Appointee's misconduct or default or the misconduct or default of any substitute appointed by the Appointee.

15. PARTIES PERFORMING OBLIGATIONS

The Security Agent may assume without enquiry (in the absence of knowledge by or an express notice to it to the contrary acquired or received by it in its capacity as Security Agent hereunder) that each of the parties is duly performing and observing all its obligations contained in this Agreement.

16. OTHER CAPACITY AND BUSINESS

The Security Agent may, from time to time, be a Secured Creditor or act in any other capacity and shall in such event be entitled, notwithstanding that it is also Security

Agent, to take, or refrain from taking, any action which it would be entitled so to take if it was not the Security Agent and shall not be precluded, by virtue of its position as a Secured Creditor or acting in any other capacity, from exercising any of its discretions, powers and duties as Security Agent. The Security Agent may enter into any financial or business contracts or any other transaction or arrangement with the Issuer or any other person and the Security Agent shall not be in any way accountable to such Issuer or any other person for any profits or benefits arising from any such contract or transaction.

17. POWERS CONFERRED BY GENERAL LAW

The powers, trusts, authorities and discretions conferred upon the Security Agent by this Agreement shall be in addition to any which may from time to time be vested in the Security Agent by the general law or otherwise.

18. ADDITIONAL TRUSTEES

- (a) The statutory power to appoint new or additional trustees hereof shall be vested in the Security Agent. A trust corporation may be appointed as sole trustee hereof.
- (b) The Security Agent hereof may retire at any time and without being responsible for the costs occasioned by such retirement. Prior to confirmation by the Security Agent that the Secured Liabilities have been irrevocably discharged in full, the retirement of a Security Agent shall not take effect until the appointment of a new Security Agent has been made and accepted by the Agents (acting reasonably) after consultation, if practicable with the Security Agent and the new Security Agent shall have executed all deeds and documents as are necessary to effect such appointment and the transfer of the Security Agent's rights and obligations in respect hereof in a legal, valid and binding manner.
- (c) The Project Finance Agent may require the Security Agent to retire at any time, upon 60 days prior written notice. The Security Agent shall not be responsible for the costs occasioned by such retirement. The Security Agent agrees to co-operate in executing all deeds and documents as are necessary to effect the retirement of the Security Agent, the appointment of the new Security Agent and the transfer of the Security Agent's rights and obligations in respect hereof in a legal, valid and binding manner.

19. INDEMNITY

- (a) Each Secured Creditor hereby undertakes severally in the proportion which the amounts then due to it in respect of the Secured Liabilities bear to the then aggregate amount of the Secured Liabilities, to indemnify and hold harmless the Security Agent against (i) all costs, charges, losses, claims, damages, liabilities, expenses and other sums (or actions in respect thereof) including value added tax thereon suffered or incurred by the Security Agent or any

person appointed by the Security Agent to whom any power, trust, authority or discretion may be delegated by it pursuant hereto, in connection with this Agreement, the Share Liens and the powers, trusts, authorities and discretion and duties contemplated therein or actions in respect thereof (including legal fees and other expenses incurred in connection with the negotiation of this Agreement and the Share Liens) and all costs, charges, expenses and other sums suffered or incurred by the Security Agent or such person as a result of complying with the provisions hereof or as a result of any Secured Creditor challenging the right of the Security Agent so to comply, save in respect of any suffered or incurred directly as a result of the gross negligence or wilful default of the Security Agent (or any such person appointed by the Security Agent) and (ii) any fees owing, demanded and remaining unpaid to it by the Issuer in respect of the performance of the Security Agent's duties hereunder and under the Share Liens.

- (b) The Issuer shall on written request indemnify the Security Agent and keep it indemnified:
 - (i) in respect of all liabilities and expenses properly incurred by it or by any person appointed by it to whom any trust, power, authority or discretion may be delegated by it in the execution or purported execution of the trusts, powers, authorities or discretions vested in it by this Agreement, any of the Share Liens, any of the Finance Documents or any other document to which it and the Issuer is a party; and
 - (ii) against all losses, liabilities, actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to this Agreement, any of the Share Liens or any other document to which it and the Issuer is a party,

except (in both cases) to the extent that they are sustained or incurred as a result of the gross negligence, fraud or wilful misconduct of the Security Agent.

20. REMUNERATION

The Security Agent shall be entitled to such remuneration as it may from time to time agree with the Issuer and have approved by the Agents. If the Security becomes enforceable or if the Security Agent finds it expedient (acting reasonably and in good faith) or is required to undertake any additional or exceptional duties in the course of its trusteeship under this Agreement, any other Finance Document or any other document to which it and the Issuer or are a party which relates either directly or indirectly to any of the Finance Documents or any transaction contemplated by them (which shall, without limitation, be presumed once the Security Agent shall have become bound to enforce the Security constituted by the Share Liens or when, in the opinion of the Security Agent circumstances exist in which such event may occur) the Issuer shall pay such additional remuneration as shall be agreed between the Security Agent and the Issuer at such time or, failing agreement as to any of the matters in this

sub-paragraph, as determined by an investment bank (acting as an expert) selected by the Security Agent and approved by the Issuer or, failing such approval, nominated by the President for the time being of The Law Society of England and Wales. The expenses involved in such nomination and such investment bank's fee will be borne by the Issuer. The determination of such investment bank will be conclusive and binding on the Issuer and the Secured Creditors.

21. PAYMENT

All sums payable under paragraph 19 (*Indemnity*) and paragraph 20 (*Remuneration*) shall be payable within ten Business Days of demand. All sums payable by the Issuer under this paragraph shall carry interest at the rate of one per cent per annum above the normal lending rate of a leading bank that is available to the Security Agent in the principal financial centre relevant to the currency in which such amounts are due from the date of the same being demanded.

22. PERPETUITY PERIOD

The perpetuity period for each trust created pursuant to this Agreement shall be eighty years from today's date.

23. CONTINUATION OF TRUSTS

Any trusts constituted by the Share Liens or this Agreement shall (subject to paragraph 22 (*Perpetuity period*)) remain in full force and effect for so long as any amounts remain due to the Security Agent, any receiver or delegate of the Security Agent pursuant to the Share Liens or any of the Secured Liabilities remain due to any of the Secured Creditors.

24. DEBTOR'S UNDERTAKINGS TO SECURITY AGENT

The Issuer hereby undertakes to the Security Agent that, so long as any of the Secured Liabilities remain outstanding, it will:

- (a) comply with, perform and observe all the provisions of this Schedule 2 and the Finance Documents;
- (b) at all times give to the Security Agent such information as the Security Agent may require for the purpose of the discharge of the trusts, powers, rights, duties, authorities and discretions vested in it under this Agreement, the Share Liens or any other document to which it and the Security Agent is a party or by operation of law;
- (c) execute and do all such assurances, acts, deeds and things as the Security Agent may require for protecting or perfecting the Security over the Secured Property and the exercise of all powers, authorities and discretions vested in the Security Agent or in any receiver of the Secured Property and shall in particular execute and effect the granting of all transfers, conveyances, assignments, assurances and registrations of the Secured Property, whether to

the Security Agent or its nominees or purchasers or sub-purchasers, and give all notices, orders and discretions which the Security Agent may think necessary or expedient for such purposes; and

- (d) in the event that the Security Agent exercises its right to take possession of all or any of the Secured Property allow the Security Agent peaceably and quietly to hold and enjoy such Secured Property without any unlawful interruption or disturbance from or by the Issuer.

25. TAXES

Notwithstanding anything herein contained, to the extent required by any applicable law, if the Security Agent shall be required to deduct or withhold from any distribution or payment made by it hereunder or if the Security Agent shall otherwise be charged to tax as a consequence of performing its duties hereunder, any amount for which the Security Agent may be liable, whether as principal or agent, by reason of any assessment or prospective assessment to taxation of whatsoever nature and whenever made upon the Security Agent in connection with or arising from any sums received by it or to which it may be entitled under any of the Finance Documents (other than in connection with its remuneration specified in paragraph 21 (*Payment*)) or any investments from time to time representing the same, including any income or gains arising therefrom or any action of the Security Agent in or about the administration of the trusts of any of the Finance Documents (other than the remuneration specified in paragraph 21 (*Payment*)), the Security Agent shall be entitled to make such deduction or withholding or, as the case may be, retention in respect of taxation. If the Security Agent incurs any loss, cost, liability or expense by reason of any such assessment for which no such deduction or withholding or retention has been made by the Security Agent or if any such deduction or withholding or retention is insufficient, the Issuer will indemnify the Security Agent therefor and the Security Agent shall be entitled to reimbursement of such amounts from the proceeds of enforcement of the Share Liens.

If any deduction or withholding in respect of tax or otherwise is required to be made by the Issuer in respect of any payment under this Agreement to the Security Agent, the Issuer shall forthwith pay to the Security Agent such additional amount so that the net amount received by the Security Agent will equal the full amount which would have been received by it had no such withholding or deduction been made.

26. STAMP TAXES

The Issuer shall pay all stamp, registration and other documentary taxes to which this Agreement or any judgment given in connection herewith is or at any time may be subject and shall indemnify the Security Agent against any Secured Liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying such tax.

SIGNATORIES to the Intercreditor Agreement

The Issuer

[•]

By:

The Project Finance Agent

[•]

By:

The Bond Trustee

[•]

By:

The Security Agent

[•]

By:

SCHEDULE 5
PROVISIONS OF THE INTER-CREDITOR AGREEMENT

During the period from which any credit is first extended to the Project Company, until such time as the Inter-creditor Agreement is entered into, the following shall apply to the Trustee and Bondholders:

1. in circumstances where an Event of Default has occurred and a Negotiation Period has begun, immediately following the start of the Negotiation Period or, if later, the appointment by the Bondholders of a person or persons as a committee to represent the interests of the Bondholders in accordance with the Conditions and the Trust Deed, the Issuer, members of any such committee and the Project Finance Agent shall negotiate together in good faith to seek an agreement, one of the terms of which may be that the Bondholders' committee will direct the Trustee to waive (upon the terms of such agreement) each Event of Default which has given rise to the Negotiation Period; and
2. if before the later of the date on which the Project Finance Agent is satisfied that (i) all amounts owing to the Project Lenders have been fully paid and discharged (and all commitments of the Project Lenders have been cancelled) and (ii) neither the Project Company nor the Issuer has any actual or contingent payment obligations owing to the Project Lenders, any amount ("**Project Amount**") due to the Issuer from any third party (other than any of the Bondholders, the Trustee and the Security Trustee or to the extent received in accordance with the credit agreement or the documents creating security related to the Project Company Financing and other loan, support and other agreements related to the Project Company Financing, the Project Company) in respect of the Project and including any compensation received due to any expropriation of the Relevant Licence or any expropriation of the shares in the Project Company), is received by the Trustee (either directly or through the Issuer or any liquidator, receiver or other like officer) other than in accordance with Clause 2.1 or Clause 10 of the Inter-creditor Agreement then the Trustee shall promptly notify the Project Finance Agent and pay to the Project Finance Agent an amount ("**Project Turnover Amount**") to be equal to the lesser of:
 - (i) the outstanding amount of any liabilities owing by the Issuer or the Project Company to any Project Lender or such other entity to the extent expressed in the Inter-creditor Agreement to rank ahead of amounts owed and due to the Trustee; and
 - (ii) the Project Amount so received,

less the third party costs and expenses (if any) reasonably incurred by the Trustee in receiving or recovering the Project Turnover Amount and pending such payment the Trustee will hold the Project Turnover Amount in trust on behalf of the Project Finance Agent.

SCHEDULE 6

FORM OF TRANSFER CERTIFICATE FOR THE REMOVAL OF THE LEGEND FROM A DEFINITIVE BOND CERTIFICATE

[•] (as [Registrar]/[Transfer Agent])

In connection with the sale of our beneficial interest in the Bond Certificates with a face value of U.S.\$[•], we confirm that such sale has been effected pursuant to and in accordance with the requirements of Rule 904 of Regulation S under the U.S. Securities Act of 1933, as amended ("**Regulation S**"), and accordingly we represent that:

1. the sale of securities to which this declaration relates is being made in reliance on Rule 904 of Regulation S;
2. we are not an "affiliate" (as defined Rule 501(b) of the U.S. Securities Act of 1933, as amended (the "**Securities Act**")) of First Calgary Petroleums Ltd.;
3. the offer of such security was not made to a person the United States and either (a) at the time the buy order was originated, the buyer was outside the United State or (b) neither the seller nor any person acting on its behalf knows that the transaction has been pre-arranged with a buyer in the United States;
4. neither we nor any person acting on our behalf has engaged in any directed selling efforts in the United States within the meaning of Rule 903(a)(2) or Rule 904(a)(2) of Regulation S, as applicable in connection with the offer and sale of the securities;
5. the sale is bona fide and not for the purpose of "washing off" the resale restrictions imposed because the securities are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act;
6. We do not intend to replace the securities with fungible unrestricted securities; and
7. the contemplated sale is not a transaction, or a series of transactions, which although in technical compliance with Regulation S, is part of a plan or scheme to evade the registration requirements of the Securities Act.
8. Terms used herein have the meanings given to them by Regulation S.

Accordingly, we request that you transfer the Bond Certificates registered in the name of [insert name of transferee]. This certificate and the statements contained herein are made for your benefit and the benefit of the Issuer. Terms used in this certificate have the meanings set forth in Agency Agreement dated 14 December 2007 (and as amended or restated from time to time) in respect of the Bond Certificates.

[Name of Transferor]

By:
Authorised Signature

EXECUTION CLAUSES

EXECUTED as a deed)
by **FIRST CALGARY PETROLEUM LTD**)
acting by)
(signed) "Richard G. Anderson")

EXECUTED as a deed for and on behalf of)
BNY CORPORATE TRUSTEE SERVICES LIMITED)
)
)
(signed) "Michael Lee")
Authorised Signatory)
)
)
(signed) "Emma Wilkes")
Authorised Signatory)