
CDN\$250,000,000

AMENDED AND RESTATED CREDIT AGREEMENT

5N PLUS INC.
AS BORROWER

NATIONAL BANK OF CANADA
AS ADMINISTRATIVE AGENT

NATIONAL BANK FINANCIAL MARKETS
AND
HSBC BANK CANADA
AS CO-LEAD ARRANGERS
AND JOINT BOOKRUNNERS

THE LENDERS
set forth in Schedule "A" hereto

Dated as of August 11, 2011

**FASKEN
MARTINEAU** 

Table of Contents

	Page
ARTICLE 1	<u>INTERPRETATION</u> 1
1.1	General Definitions 1
1.2	Headings, etc 2
1.3	Number and Gender 2
1.4	Accounting Principles 2
ARTICLE 2	<u>THE REVOLVING FACILITY</u> 2
2.1	Grant of Revolving Facility 2
2.2	Purpose of Revolving Facility 3
2.3	Reduced availability during refinancing of Existing Credit Facilities 3
2.4	Revolving Facility Limit 4
2.5	Revolving Nature and Availability 5
2.6	Draw Requests 5
2.7	Drawdown 5
2.8	Cdn Swingline Facility 6
2.9	HK Swingline Facility and UK Swingline Facility 7
2.10	HSBC Accounts 8
ARTICLE 3	<u>INCREASES IN THE REVOLVING FACILITY</u> 8
3.1	Request for Increase in the Revolving Facility 8
3.2	Increase of the Commitment of an Existing Lender and Accession of a New Lender or of an ISDA Provider 9
3.3	Assignments 10
ARTICLE 4	<u>REDUCTIONS AND REPAYMENTS</u> 11
4.1	Repayment of Entire Loans 11
4.2	Compulsory Repayment of Excess Loans 11
4.3	Voluntary Repayment of Loans 11
4.4	Repayment Notice 12
4.5	Voluntary Cancellation or Reduction of the Revolving Facility 12
4.6	Reduction Notices 13
ARTICLE 5	<u>CDN PRIME AND US BASE RATE LOANS</u> 13
5.1	Request for Cdn Prime Rate Loans or US Base Rate Loans 13
5.2	Apportionment among the Lenders 13
5.3	Interest on Cdn Prime Rate Basis 13
5.4	Interest on US Base Rate Basis 13
5.5	Computation of Interest 14
5.6	Payment of Interest 14
5.7	Interest on Loans Generally 14
5.8	Annual Equivalents 14
ARTICLE 6	<u>BANKERS' ACCEPTANCES</u> 15
6.1	Requests for the Issuance of BAs 15

Table of Contents (continued)

	Page
6.2 Notice to Lenders of Particulars Relating to BAs.....	15
6.3 Lenders to Accept Drafts	16
6.4 Stamping Fee	16
6.5 Lenders to Discount BAs	16
6.6 Lenders to Make BA Proceeds Available to Administrative Agent	17
6.7 Payment of BAs	17
6.8 Waiver.....	17
6.9 Obligations Absolute	17
6.10 Power of Attorney to Sign Drafts	17
6.11 Special Provisions with respect to Non-BA Lenders.....	18
ARTICLE 7 <u>LIBOR LOANS</u>.....	19
7.1 Request for Libor Loans	19
7.2 Establishment of Libor and Selected Amounts.....	19
7.3 Interest on Libor Basis	20
7.4 Computation of Interest	20
7.5 Payment of Interest	20
7.6 Annual Equivalent	20
7.7 Payment on Selected Maturity Date	20
7.8 Existing Libor Loans under the Principal Credit Agreement	21
ARTICLE 8 <u>EUROLIBOR LOANS</u>	21
8.1 Request for EuroLibor Loans.....	21
8.2 Establishment of EuroLibor and Selected Amounts.....	22
8.3 Interest on EuroLibor Basis	22
8.4 Computation of Interest	22
8.5 Payment of Interest	22
8.6 Annual Equivalent	23
8.7 Payment on Selected Maturity Date	23
ARTICLE 9 <u>LETTERS OF CREDIT</u>.....	23
9.1 Requests for the Issuance of LCs.....	23
9.2 Issuance of LCs.....	24
9.3 LC Fee.....	24
9.4 LC Fronting Fee.....	25
9.5 Computation and Payment of LC Fee and LC Fronting Fee	25
9.6 Payment by the LC Issuing Lender under LCs.....	26
9.7 Lenders' Covenant to the LC Issuing Lender.....	27
9.8 Obligations Absolute	27
9.9 LCs in other Currencies	28
ARTICLE 10 <u>CONVERSIONS AND ROLLOVERS</u>	28
10.1 Request for Conversions	28
10.2 Conversion or Rollover.....	29

Table of Contents (continued)

	Page
10.3	Requirements for Conversions or Rollovers..... 29
10.4	No Revocation or Withdrawal of Conversion Requests 29
ARTICLE 11	<u>FEES</u>..... 30
11.1	Stand-By Fees 30
11.2	Agency Fees..... 30
ARTICLE 12	<u>MANNER OF PAYMENTS</u>..... 30
12.1	Currency of Payments..... 30
12.2	Imputation of Payments 31
12.3	Compulsory Repayment of BA Liabilities, Libor Loans and/or LC Liabilities 31
12.4	Proceeds Resulting from Repayment of BA Liabilities..... 31
12.5	Proceeds Resulting from Repayment of LC Liabilities 32
12.6	Payments of Loans to Administrative Agent Only 33
12.7	Payment on Any Business Day..... 33
12.8	Netting..... 34
12.9	Payment at Respective Branches of Account of the Lenders 34
12.10	Administrative Agent May Presume that Payments will be Made by the Borrower 34
ARTICLE 13	<u>SECURITY</u>..... 35
13.1	Security 35
13.2	Additional Guarantees from certain Restricted Parties..... 36
13.3	Accessory Documents with respect to Future Guarantors..... 37
13.4	Additional Security with Respect to Immovables 38
13.5	Assignment and Accession 39
13.6	Landlord waivers and consents..... 39
13.7	Sidech Security Documents 39
13.8	Security Documents prior to the Effective Date..... 40
ARTICLE 14	<u>CONDITIONS PRECEDENT</u> 40
14.1	Initial Conditions 40
14.2	Subsequent Advances under the Revolving Facility 44
14.3	Advances to repay the Existing Credit Facilities and Luxco Intercompany Loans..... 44
14.4	Subsequent Advances under the Cdn Swingline Facility, the HK Swingline Facility or the UK Swingline Facility..... 48
ARTICLE 15	<u>REPRESENTATIONS AND WARRANTIES</u>..... 49
15.1	Existence and Good Standing 49
15.2	Authority 49
15.3	Due Authorization..... 49
15.4	Due Execution..... 49

Table of Contents (continued)

	Page
15.5	Validity of Loan Documents – Non-Conflict 49
15.6	Enforceability..... 50
15.7	Absence of Litigation..... 50
15.8	Financial Statements 50
15.9	Accuracy of Information..... 51
15.10	Accuracy of Forecasts..... 51
15.11	No Material Adverse Change..... 51
15.12	Compliance with Laws 51
15.13	ERISA 51
15.14	Canadian Pension Plans 52
15.15	German Pension Plan..... 52
15.16	No Default..... 53
15.17	Movable and Immovable Property..... 53
15.18	Intellectual Property..... 53
15.19	Subsidiaries 53
15.20	Solvency..... 54
15.21	Taxes..... 54
15.22	Ownership of Properties 55
15.23	Insurance..... 55
15.24	Environment..... 55
15.25	Employee Relations 56
15.26	Occupational Health and Safety..... 56
15.27	Business 56
15.28	Centre of Main Interests..... 57
15.29	Environmental Reports 57
15.30	Guarantees by Restricted Parties 57
15.31	Existing Derivative Instruments 57
15.32	Initial MCP/HSBC Loans 57
15.33	Anti-Terrorism Laws:..... 57
15.34	Repetition of Representations and Warranties..... 58
15.35	Nature of Representations and Warranties 58
ARTICLE 16	<u>GENERAL COVENANTS</u>..... 58
16.1	Preservation of Existence, etc..... 59
16.2	Preservation of Authorizations 59
16.3	Use of Advances 59
16.4	Obtain Authorizations..... 59
16.5	Business, Compliance with Applicable Law 59
16.6	Keeping of Records..... 59
16.7	Insurance..... 60
16.8	Renewal of Registrations 60
16.9	Payment of Taxes and Claims..... 60
16.10	Environment..... 60

Table of Contents (continued)

	Page
16.11 Visits and Inspections	61
16.12 Payment of Legal and Other Fees and Disbursements	61
16.13 Maintenance of Properties	62
16.14 Anti-Money Laundering Legislation	62
16.15 Transactions with Affiliates	62
16.16 Domination Agreements	63
16.17 Material Parties	63
16.18 Luxco	63
16.19 5N Plus USA LLC	63
16.20 BDC Debt.....	63
ARTICLE 17	
<u>FINANCIAL AND INFORMATION COVENANTS</u>	63
17.1 Maintenance of Ratios	64
17.2 Quarterly Financial Statements and Information	64
17.3 Annual Financial Statements and Information	65
17.4 Financial Information prior to Completing any Permitted Acquisition.....	65
17.5 Budget Information.....	65
17.6 Other Information	66
17.7 Notice of Litigation and Other Matters.....	66
17.8 Notice with respect to Security	66
17.9 Luxco Intercompany Loans	67
17.10 MCP/HSBC Investment Loan Structure.....	67
17.11 "Know Your Customer" Rules and Regulations.....	68
ARTICLE 18	
<u>NEGATIVE COVENANTS</u>	68
18.1 Liens.....	68
18.2 Debt for Borrowed Money.....	68
18.3 Derivative Instruments.....	69
18.4 Amalgamations	70
18.5 Investments	72
18.6 Guarantees.....	72
18.7 Acquisitions	72
18.8 Distribution	73
18.9 Change of Year-End	73
18.10 Change in Business	73
18.11 ERISA Compliance.....	73
18.12 Ownership of Shares and Subsidiaries.....	73
18.13 Sale of Assets.....	74
18.14 Capital Expenditures.....	74
18.15 Material Contracts.....	74
18.16 Reductions of Capital.....	75
18.17 Prohibition on Limitation Concerning Distributions by members of the Group	75

Table of Contents

(continued)

	Page
18.18	Payment of VTB Debt 75
18.19	MCP/HSBC Loans, MCP/HSBC Derivative Instruments 75
18.20	Consigned Goods 76
ARTICLE 19	<u>EVENTS OF DEFAULT</u> 76
19.1	Non-Payment 77
19.2	Misrepresentation 77
19.3	Ratios 77
19.4	Negative Covenants 77
19.5	Breach of Other Covenants 77
19.6	Default on other Debt for Borrowed Money 77
19.7	Default under MCP/HSBC Loans, MCP/HSBC Derivative Instruments or others 77
19.8	Unsatisfied Awards 77
19.9	Enforcement Proceeding 78
19.10	Notice of Exercise of Hypothecary Rights 78
19.11	Security Documents 78
19.12	Additional Guarantee from certain Restricted Parties 78
19.13	Existing Credit Facility Repayments and Luxco Intercompany Loans 78
19.14	Insolvency 79
19.15	Sale or Encumbrance of real property by a German Company 79
19.16	Material Adverse Effect 79
19.17	Change in Control 79
ARTICLE 20	<u>REMEDIES</u> 79
20.1	Termination and Acceleration 79
20.2	Distribution of Proceeds of Realization 80
20.3	Pro Rata Sharing of Realization Costs 81
20.4	Indemnities and Payments 81
20.5	Equality of rank among the Liens created under the Operative Documents 81
20.6	Distribution of Payments among Creditors of a Same Class 81
20.7	Compensation and Set-Off 81
20.8	Recovery for the Lenders 82
20.9	Notices 82
20.10	Dealings with the Borrower 83
20.11	No Deemed Payment 83
20.12	ISDA Contracts 83
20.13	Lenders to Exercise Rights through Administrative Agent 83
ARTICLE 21	<u>TAXES AND OTHER CHARGES</u> 83
21.1	Payments without Deductions 83
21.2	Payments of Additional Amounts 84

Table of Contents (continued)

	Page
21.3 Increase in Interest Rates	85
21.4 Remittances by Taxed Party	85
21.5 Tax Representation and Covenant of Certain Lenders and Option to Replace Them	86
21.6 Survival of Agreements	87
ARTICLE 22 INDEMNITIES	87
22.1 Market Disruption.....	87
22.2 Suspension of Rights to Convert.....	88
22.3 Change in Law	89
22.4 Notice of Change in Law	90
22.5 Reimbursement of Losses and Expenses	90
22.6 Amount of Losses with respect to Libor Loans and EuroLibor Loans.....	91
22.7 Environmental Indemnity	92
22.8 General Indemnity	92
22.9 Claims under the Indemnity.....	93
22.10 Acknowledgement	93
ARTICLE 23 THE ADMINISTRATIVE AGENT	93
23.1 Appointment and Authorization	93
23.2 Declaration of Agency	94
23.3 Protection of Administrative Agent.....	94
23.4 Interest Holders.....	94
23.5 Consultation with Professionals.....	94
23.6 Operative Documents.....	94
23.7 Administrative Agent and its Subsidiaries and Affiliates.....	95
23.8 Responsibility of the Administrative Agent	95
23.9 Action by the Administrative Agent	95
23.10 Notice of Events of Default	96
23.11 Responsibility Disclaimed	96
23.12 Indemnification.....	97
23.13 Protection of Employees	97
23.14 Credit Decision	97
23.15 Replacement Administrative Agent.....	98
23.16 Waivers and Amendments	99
23.17 Articles 2138 to 2148 C.C.Q. Not Applicable.....	101
23.18 Rights, Benefits and Recourses Created by the Operative Documents	101
23.19 Québec <i>Fondé de Pouvoir</i>	101
23.20 Administrative Agent as Joint and Several Creditor; Parallel Debt owed to Administrative Agent; Administration of German Security	102
23.21 Belgian Parallel Debt	104

Table of Contents
(continued)

	Page
ARTICLE 24 <u>OPERATION OF ACCOUNTS</u>	105
24.1 Notice of Advance to the Finance Parties.....	105
24.2 Interlender Procedure for Making Advances	105
24.3 Deposits By or on Behalf of Lenders to Constitute Advances	105
24.4 Swingline Redistributions.....	105
24.5 Bank Accounts	108
24.6 Maintenance of Loan Records by the Administrative Agent.....	108
24.7 Authority to Debit and Credit	109
24.8 Failure by Any Lender to Advance or make a Redistribution	109
24.9 Temporary Advances by the Administrative Agent	110
 ARTICLE 25 <u>MISCELLANEOUS</u>	 112
25.1 Notices	112
25.2 Calculations and Determinations Shall Constitute Prima Facie Proof	113
25.3 Rights and Recourses Cumulative	113
25.4 Assignments by the Borrower.....	113
25.5 Assignments by Lenders	113
25.6 Disclosure of Confidential Information	115
25.7 Conversion Rules	116
25.8 Currency Indemnity	116
25.9 Counterparts.....	116
25.10 Severability	116
25.11 Replacement of Previous Agreements	117
25.12 No Novation.....	117
25.13 Obligation to Pay Absolute.....	117
25.14 Inconsistency with Security Documents.....	117
25.15 Risk of Superior Force.....	117
25.16 Governing Law	117
25.17 Submission to Jurisdiction	118
 ARTICLE 26 <u>FORMAL DATE</u>.....	 118
26.1 Formal Date	118
 ARTICLE 27 <u>LANGUAGE</u>	 118
27.1 English Language.....	118
27.2 Langue Anglaise	118

SCHEDULES

SCHEDULE "A"	The Lenders and their Commitments
SCHEDULE "B"	Definitions
SCHEDULE "C"	Definition of Relevant Margin and Stand-By Fee
SCHEDULE "D"	Accession Certificate
SCHEDULE "E"	Properties requiring Landlord/Bailee Waivers
SCHEDULE "F"	Public Register Searches
SCHEDULE "G"	Chinese Companies
SCHEDULE "H"	Registered Patents and Trademarks
SCHEDULE "I"	Subsidiaries of Borrower
SCHEDULE "J"	Acquisition Certificate
SCHEDULE "K"	Investments
SCHEDULE "L"	Loan Transfer Agreement
SCHEDULE "M"	Compliance Certificate
SCHEDULE "N"	Conversion Request
SCHEDULE "O"	Draw Request
SCHEDULE "P"	Increased Commitment Certificate
SCHEDULE "Q"	Reduction Notice
SCHEDULE "R"	Repayment Notice
SCHEDULE "S"	Environmental Matters
SCHEDULE "T"	Pledged Capital Stock
SCHEDULE "U"	Existing Credit Facilities
SCHEDULE "V"	Material Parties
SCHEDULE "W"	Security Documents required prior to the repayment of Existing Credit Facilities
SCHEDULE "X"	Environmental Reports
SCHEDULE "Y"	Initial Luxco Intercompany Loans
SCHEDULE "Z"	Certificate of Officers (Repayment of Existing Credit Facility)
SCHEDULE "AA"	Collective Bargaining Agreements
SCHEDULE "BB"	Libor Schedule
SCHEDULE "CC"	Existing Derivative Instruments
SCHEDULE "DD"	MCP/HSBC Loans
SCHEDULE "EE"	ISDA Provider Accession Certificate

THIS AMENDED AND RESTATED CREDIT AGREEMENT dated as of August 11, 2011.

AMONG: **5N PLUS INC.**, as Borrower;

AND: **THE LENDERS SET FORTH IN SCHEDULE "A" HERETO**, as Lenders;

AND: **NATIONAL BANK OF CANADA**, as Administrative Agent;

WITNESSETH:

WHEREAS the Lenders made available to the Borrower a two (2) years senior secured revolving facility in an amount of Cdn\$50,000,000 upon the terms and subject to the conditions contained in the credit agreement dated as of April 11, 2011 entered into among the Borrower, as borrower, the several lenders set forth in Schedule "A" thereto from time to time, as lenders, National Bank of Canada, as administrative agent, and National Bank Financial Inc., as lead arranger and sole bookrunner (the "**Principal Credit Agreement**");

WHEREAS additional financial institutions wish to become Lenders; and

WHEREAS the parties hereto wish to increase the amount of the Revolving Facility to Cdn\$250,000,000, provide the Borrower with the option to further increase the Revolving Facility by an additional amount of Cdn\$100,000,000 (no Lender, however, in such circumstance, being under any obligation to increase the amount of its respective Commitment), amend certain other provisions of the Principal Credit Agreement and restate the Principal Credit Agreement in its entirety, but without novation, the whole as herein provided;

NOW THEREFORE in consideration of the premises, the mutual covenants contained herein and for other consideration, the receipt and sufficiency of which are acknowledged, the parties hereto have agreed that the Principal Credit Agreement is hereby amended and restated in its entirety, but without novation, as follows:

ARTICLE 1

INTERPRETATION

1.1 General Definitions

The capitalized words and expressions, wherever used in this Agreement or in any agreement ancillary hereto, unless there be something in the subject or the context inconsistent therewith, shall have the meaning ascribed thereto in Schedule "B".

1.2 **Headings, etc.**

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

1.3 **Number and Gender**

In this Agreement, words in the singular (including defined terms) include the plural and vice versa (the necessary changes being made to fit the context) and words in one gender include all genders, and, unless otherwise specified, any reference to dollars shall constitute a reference to Canadian Dollars.

1.4 **Accounting Principles**

All accounting terms used in this Agreement shall be interpreted, and all accounting determinations and computations (including definitions) shall be made in accordance with GAAP. In the event of a change in GAAP including, without limitation, a change in favour of the application of IFRS to the Borrower, the Borrower and the Administrative Agent, further to a request from either party, will use reasonable efforts to negotiate amendments to the affected provisions hereof in order to facilitate their application provided that such amendments must preserve the original intent of the affected provisions. Any amendment so negotiated by the Agent must be approved by the Majority Lenders. Until any such amendments shall have been agreed upon, the terms, conditions and undertakings of this Agreement shall be interpreted and applied as if such change in GAAP did not apply to the Borrower and the accounting principles applicable to the Borrower immediately prior to the coming into force of such change in GAAP shall continue to apply to the Borrower for the purposes of determining if the Borrower complies with the financial covenants of this Agreement and the Borrower shall continue to provide Financial Statements prepared in accordance with such accounting principles.

ARTICLE 2

THE REVOLVING FACILITY

2.1 **Grant of Revolving Facility**

2.1.1 Each Lender, severally and neither jointly nor solidarily, agrees, upon the terms and subject to the conditions of this Agreement, to lend to the Borrower an amount of up to but not exceeding, in the aggregate, the Commitment of such Lender, as set forth beside its name in Schedule "A" hereto under the heading "Commitment". As of the Effective Date, subject to subsection 2.3.1, the amount of the Revolving Facility is Cdn\$250,000,000.

2.1.2 The Revolving Facility shall be apportioned as between (i) Tranche A, the amount of which shall be Cdn\$ [REDACTED] [dollar amount] as of

the Effective Date and at all times thereafter, or, where the Revolving Facility has been reduced to an amount equal to or less than Cdn\$ [redacted] [dollar amount], the amount of the Revolving Facility and (ii) Tranche B, the amount of which shall be as of the Effective Date and at all times thereafter the difference between the Revolving Facility at such time and Tranche A, or, where the result of such calculations is nil or a negative amount, nil. Each Lender agrees to make available its Rateable Share of any Advance made under Tranche A and Tranche B.

- 2.1.3 The parties hereto acknowledge and agree that on the Effective Date the aggregate amount of the Commitments of all the Lenders is Cdn\$250,000,000. However, in accordance with the provisions of Section 3.2, such amount, or any other amount as may result from a reduction of the Revolving Facility pursuant to the terms of this Agreement, may be increased by an aggregate amount not to exceed Cdn\$100,000,000, as a result of either of, or a combination of, as the case may be, (i) one or several existing Lenders increasing their respective Commitment by executing and delivering Increased Commitment Certificates (each such Lender shall be referred to herein as an "Existing Lender") and (ii) the accession hereto of one or several new Lenders who shall have executed and delivered Accession Certificates (each such Person shall be referred to herein as an "Acceding Lender"). Any request for an increase shall be for a minimum amount of Cdn\$ [redacted] [dollar amount] and whole multiples of Cdn\$ [redacted] [dollar amount]. The aggregate amount of all increases to the Facility resulting from the provisions hereof may in no case exceed Cdn\$100,000,000.

2.2 **Purpose of Revolving Facility**

All Advances under the Revolving Facility shall be used by the Borrower exclusively for the purposes of financing the general corporate purposes and Capital Expenditures of the Restricted Parties, including (i) refinancing all existing Indebtedness of the Restricted Parties (other than the Indebtedness of the Chinese Companies) under the Existing Credit Facilities, and (ii) financing Permitted Acquisitions. Notwithstanding the foregoing, no Advance under Tranche B shall be used to refinance the MCP Acquisition and no Advance under Tranche A shall be used to finance or refinance any portion of Tranche B.

2.3 **Reduced availability during refinancing of Existing Credit Facilities**

- 2.3.1 In order to permit the Borrower to cancel and repay the Existing Credit Facilities on a jurisdiction per jurisdiction basis, the availability of the Revolving Facility will, at all times until the Frozen Amount is reduced to zero (0), be reduced by the Frozen Amount.

- 2.3.2 With respect to each of the Existing Credit Facilities described hereunder, upon the Administrative Agent being satisfied that the conditions precedent to the repayment of such Existing Credit Facilities set forth in Section 14.3 have been met or, as the case may be, unanimously waived by the Lenders, the Frozen Amount shall be reduced by the amount set forth opposite such Existing Credit Facilities. The repayment of the Existing Credit Facilities pursuant to Section 14.3 shall be made in the order indicated to the left of each Existing Credit Facility in the table below. However, should unforeseen delays arise in a particular jurisdiction, the Borrower may change the repayment order contemplated below upon approval by the Administrative Agent.

Order	Existing Credit Facilities	Amount of reduction of Frozen Amount
1 st	Existing UK Credit Facilities	Cdn\$ [redacted] [dollar amount]
2 nd	Existing German Credit Facilities	Cdn\$ [redacted] [dollar amount]
3 rd	Existing HK Credit Facilities	Cdn\$ [redacted] [dollar amount]
4 th	Existing Belgian Credit Facilities	Cdn\$ [redacted] [dollar amount]
5 th	Existing US Credit Facilities	Cdn\$ [redacted] [dollar amount]

- 2.3.3 For the purpose of any Draw Request made pursuant to subsection 14.3.1 in order to repay any of the Existing Credit Facilities described above, the Available Revolving Facility shall be determined as if the Existing Credit Facilities intended to be repaid out of the proceeds of such Draw Request had already been repaid and the Frozen Amount had been reduced by the amount set forth opposite such Existing Credit Facility.
- 2.3.4 On the date on which the last Existing Credit Facility shall be repaid, the Frozen Amount shall automatically be reduced to zero (0) for the remainder of the Revolving Period.

- 2.3.5 The reductions in the Frozen Amount contemplated in this Section shall be completed and all Existing Credit Facilities shall have been repaid, no later than ninety (90) days after the Effective Date.

2.4 **Revolving Facility Limit**

- 2.4.1 Except for temporary excesses arising from the Administrative Agent's allocation of BA's in accordance with subsection 6.2.2, the Loan of each Lender shall not exceed its Commitment. The Revolving Facility is denominated in Cdn Dollars even though it may be drawn in Canadian Dollars, US Dollars and in Euros.
- 2.4.2 Where under any of the terms hereof, the Revolving Facility is cancelled, reduced or terminated (including, without limitation, pursuant to Sections 4.1, 4.5 and 20.1 of this Agreement), same may not subsequently be increased, any such cancellation, reduction or termination thereof being permanent. Unless otherwise expressly provided under the terms hereof, any reduction of the Revolving Facility shall be apportioned as among the respective Commitments of the Lenders on a Rateable Share basis.

2.5 **Revolving Nature and Availability**

- 2.5.1 The Revolving Period means the period commencing on the Effective Date and ending on the earliest of (i) four (4) years following the Effective Date, and (ii) the date on which the Revolving Facility is terminated and cancelled in its entirety (including, without limitation, pursuant to Sections 4.1, 4.5 and 20.1 of this Agreement);
- 2.5.2 During the Revolving Period, the Revolving Facility is available on a revolving basis such that, during the Revolving Period, subject to all the terms and conditions of this Agreement, the Borrower may reborrow the whole or any part of any Advance previously repaid to the extent of the then Available Revolving Facility.
- 2.5.3 The Revolving Facility is available in Canadian Dollars, US Dollars and Euros by way of Cdn Prime Rate Loans, BAs in Canadian Dollars, US Base Rate Loans, Libor Loans, EuroLibor Loans and by way of the issuance of LCs in Canadian Dollars, US Dollars or Euros, and any other freely convertible currency acceptable to the LC Issuing Lender.

2.6 **Draw Requests**

- 2.6.1 The Borrower may request a Drawdown under the Revolving Facility only during the Revolving Period.

- 2.6.2 In order to obtain a Drawdown under the Revolving Facility, the Borrower must deliver to the Administrative Agent a Draw Request by the times and stipulating the information specified hereunder. Once delivered, no Draw Request may subsequently be revoked or withdrawn by the Borrower.
- 2.6.3 Any Drawdown shall be allocated first to Tranche B, and any balance thereof to Tranche A. Notwithstanding the foregoing, on the Effective Date, a portion equal to Cdn\$ [redacted] [dollar amount] of the outstanding amount of the Loans made to the Borrower under the Principal Credit Agreement shall be allocated to Tranche A and the remainder thereof shall be allocated to Tranche B.

2.7 **Drawdown**

- 2.7.1 The proceeds of each Drawdown by way of Direct Advance requested by way of Draw Request, shall be disbursed by the Administrative Agent on the Drawdown Date by bank transfer to the credit of the Account denominated in the currency of the requested Advance.
- 2.7.2 With respect to each Drawdown by way of the issuance of BAs, the BA Proceeds relating to such BAs shall be disbursed by the Administrative Agent on the Drawdown Date by bank transfer to the credit of the Cdn Dollar Account, and, where applicable, in accordance with subsection 2.7.4.
- 2.7.3 With respect to each Drawdown by way of the issuance of an LC, the LC Issuing Lender shall disburse such Drawdown by delivering on the Drawdown Date the requested LC to the Borrower or to the Person designated by the Borrower.
- 2.7.4 With respect to Drawdowns to be made by way of Direct Advance or the issuance of BAs, where the Administrative Agent receives from the Borrower, in form and substance satisfactory to the Administrative Agent, an unconditional and irrevocable direction of payment instructing the Administrative Agent as to how to dispose of such funds, or alternatively, a particular Draw Request provides such a direction of payment, the Administrative Agent shall credit such funds to the appropriate Account as provided in subsections 2.7.1 and 2.7.2 above and immediately thereafter shall comply with such direction of payment and for all purposes of this Agreement, such funds, irrevocably and conclusively, shall be deemed to have been disbursed to the Borrower, if they are disposed of in the manner contemplated in any such direction of payment.

2.8 **Cdn Swingline Facility**

- 2.8.1 The Cdn Swingline Lender hereby establishes in favour of the Borrower the Cdn Swingline Facility for an amount not to exceed at any time the Cdn Swingline Commitment Amount at such time. The Cdn Swingline Facility is being made available to the Borrower as part of the Revolving Facility and not in addition to it.
- 2.8.2 Any cheque or payment instruction or debit authorization from the Borrower and resulting in an overdraft in any of the Cdn Dollar Account or the US Dollar Account will be deemed to be a request for a Swingline Cdn Prime Rate Loan or Swingline US Base Rate Loan, as the case may be, in an amount that is sufficient to cover such overdraft. Subject to the relevant provisions of this Agreement, including those of Section 14.4, the Cdn Swingline Lender shall deposit in the Cdn Dollar Account or the US Dollar Account, as the case may be, an amount sufficient to cover such overdraft. Any such Advance in Cdn Dollars shall bear interest on a Cdn Prime Rate Basis and in US Dollars shall bear interest on a US Base Rate Basis.
- 2.8.3 The Administrative Agent shall on a weekly basis, and in addition may at any time and from time to time, request that a Cdn Swingline Redistribution be effected, whereupon the Lenders and the Cdn Swingline Lender shall proceed with such Cdn Swingline Redistribution;
- 2.8.4 If a Default or Event of Default shall have occurred and be continuing, the Cdn Swingline Lender may, by notice to the Administrative Agent and the Borrower, inform them that it no longer desires to provide the Cdn Swingline Facility, whereupon a Cdn Swingline Redistribution shall be effected and the Cdn Swingline Commitment Amount shall thereafter and irrevocably be deemed to be nil. The Majority Lenders may also, by notice to the Administrative Agent and the Borrower, require that the Cdn Swingline Facility be terminated whereupon a Cdn Swingline Redistribution shall be effected and the Cdn Swingline Commitment Amount shall thereafter and irrevocably be deemed to be nil. In any event, upon any acceleration of the Loans pursuant to Section 20.1, the Cdn Swingline Facility shall be terminated and the Lenders shall proceed with a Cdn Swingline Redistribution and the Cdn Swingline Commitment Amount shall thereafter and irrevocably be deemed to be nil.

2.9 **HK Swingline Facility and UK Swingline Facility**

- 2.9.1 The Other Swingline Lender hereby establishes in favour of the Borrower the HK Swingline Facility and the UK Swingline Facility for

an amount not to exceed at any time, respectively, the HK Swingline Commitment Amount and the UK Swingline Commitment Amount at such time. The HK Swingline Facility and the UK Swingline Facility are being made available to the Borrower as part of the Revolving Facility and not in addition to it.

- 2.9.2 Any cheque or payment instruction or debit authorization from the Borrower and resulting in an overdraft in any of the HSBC HK US Dollar Account, the HSBC UK US Dollar Account, as the case may be, will be deemed to be a request for a Swingline HK US Base Rate Loan and a Swingline UK US Base Rate Loan, respectively, in an amount that is sufficient to cover such overdraft. Subject to the relevant provisions of this Agreement, including those of Section 14.4, the Other Swingline Lender shall deposit in the HSBC HK US Dollar Account, the HSBC UK US Dollar Account or the HSBC UK Euro Account, as the case may be, an amount sufficient to cover such overdraft. Any such Advance in US Dollars shall bear interest on a US Base Rate Basis.
- 2.9.3 The Administrative Agent shall on a weekly basis, and in addition may at any time and from time to time, request that a HK Swingline Redistribution or a UK Swingline Redistribution be effected, whereupon the Lenders and the Other Swingline Lender shall proceed with such HK Swingline Redistribution or UK Swingline Redistribution;
- 2.9.4 If a Default or Event of Default shall have occurred and be continuing, the Other Swingline Lender may, by notice to the Administrative Agent and the Borrower, inform them that it no longer desires to provide the HK Swingline Facility or the UK Swingline Facility, as the case may be, whereupon a HK Swingline Redistribution or a UK Swingline Redistribution shall be effected and the HK Swingline Commitment Amount or the UK Swingline Commitment Amount, as the case may be, shall thereafter and irrevocably be deemed to be nil. The Majority Lenders may also, by notice to the Administrative Agent and the Borrower, require that the HK Swingline Facility or the UK Swingline Facility be terminated whereupon a HK Swingline Redistribution or a UK Swingline Redistribution, as the case may be, shall be effected and the HK Swingline Commitment Amount or the UK Swingline commitment Amount, as the case may be, shall thereafter and irrevocably be deemed to be nil. In any event, upon any acceleration of the Loans pursuant to Section 20.1, the HK Swingline Facility and the UK Swingline Facility shall be terminated and the Lenders shall proceed with a HK Swingline Redistribution and a UK Swingline Redistribution and the HK Swingline Commitment Amount

and the UK Swingline Commitment Amount shall thereafter and irrevocably be deemed to be nil.

- 2.9.5 The parties acknowledge and agree that the Other Swingline Lender may offer the HK Swingline Facility and the UK Swingline Facility, at its option, directly or through one or more of its Affiliates, but that in either case any obligations of the Borrower pursuant to the HK Swingline Facility and the UK Swingline Facility shall constitute obligations due to the Other Swingline Lender hereunder, and accordingly Secured Obligations for all purposes hereof and of the other Operative Documents.

2.10 **HSBC Accounts**

On a weekly basis, or promptly at any time upon the written request of the Administrative Agent, the Other Swingline Lender shall notify the Administrative Agent of the amounts credited to the HSBC HK US Dollar Account and the HSBC UK US Dollar Account as at such time, as well as the amounts outstanding as at such time, under each of the Swingline HK US Base Rate Loan and the Swingline UK US Base Rate Loan as at such time.

ARTICLE 3

INCREASES IN THE REVOLVING FACILITY

3.1 **Request for Increase in the Revolving Facility**

- 3.1.1 By delivering written notice to the Administrative Agent, the Borrower may request that the Revolving Facility be increased as provided for in subsection 2.1.3.
- 3.1.2 Promptly upon receipt of such written notice, the Administrative Agent shall deliver to each Lender a copy thereof, and request each Lender to increase its Commitments up to an amount equal to such Existing Lender's Rateable Share of the requested increase.

No later than twenty (20) Business Days after its receipt from the Administrative Agent of a copy thereof, each Lender shall notify the Administrative Agent of its election to increase or not its Commitment, provided that any Lender who fails to so notify the Administrative Agent within such delay shall be deemed to have given notice of its election not to increase its Commitment. Upon receipt of all such notices (or deemed notices) from the Lenders, the Administrative Agent shall notify the Lenders and the Borrower.

- 3.1.3 Where less than all such Lenders have accepted to so increase their respective Commitments, the Administrative Agent, in agreement with

the Borrower, may (i) request from those Lenders that have accepted to increase their respective Commitments that they confirm whether they wish to increase their respective Commitments beyond their Rateable Share of the requested increase, and/or (ii) invite one or more Persons to become Acceding Lenders.

With respect to the commitments offered pursuant to this subsection 3.1.3, the Administrative Agent, in agreement with the Borrower, shall determine the amount of the requested increase to be attributed to each Lender and/or Acceding Lender, and shall notify the Borrower and such Lenders and/or Acceding Lender of such attribution. Without limiting the generality of the foregoing, the Borrower may refuse that any portion of the requested increase be attributed to an Acceding Lender where the Borrower considers that it would likely impose on it additional costs under Article 21 or Article 22.

3.1.4 No Lender is under any obligation to increase its Commitment.

3.2 **Increase of the Commitment of an Existing Lender and Accession of a New Lender or of an ISDA Provider**

3.2.1 In furtherance of the provisions of Section 3.1, where an Existing Lender has accepted to increase its Commitment hereunder such Existing Lender may do so, provided that an Increased Commitment Certificate shall have been executed by such Person and the Administrative Agent, and delivered to the Administrative Agent and the Borrower and the other conditions contemplated under this Section 3.2 shall have been fulfilled.

3.2.2 In furtherance of the provisions of Section 3.1, any Person who is not already a Lender may become a party hereunder in the capacity of a Lender provided that an Accession Certificate shall have been executed by such Person and the Administrative Agent and delivered to the Administrative Agent and the Borrower and the other conditions contemplated in this Section 3.2 shall have been met.

3.2.3 Any increase contemplated in subsection 3.2.1 and any accession contemplated in subsection 3.2.2 shall only be effective on the date that the following conditions shall have been met:

3.2.3.1 the Administrative Agent shall have received all such instruments, documents, certificates, agreements and opinions as it may have required pursuant to Section 13.5;

3.2.3.2 concurrently with the relevant Increased Commitment Certificate or Accession Certificate, the Existing Lenders shall have entered into the Loan Transfer Agreements required pursuant to Section 3.3; and

- 3.2.3.3 no Default or Event of Default shall have occurred and be continuing.
- 3.2.4 Any Person who is not already an ISDA Provider may become a party hereunder in such capacity provided that an ISDA Provider Accession Certificate shall have been executed by such Person and the Administrative Agent and delivered to the Administrative Agent and the Borrower.
- 3.2.5 Upon the execution and delivery of an Accession Certificate or of an ISDA Provider Accession Certificate, as the case may be, an Acceding Lender or any Person who delivered an ISDA Provider Accession Certificate pursuant to subsection 3.2.4 shall for all purposes be a Lender or an ISDA Provider, as the case may be, party to this Agreement and shall have all the rights and obligations of a Lender or of an ISDA Provider, under this Agreement and shall be entitled to the benefits of, and be bound by the provisions hereof, to the same extent as if it were an original party hereto and no further consent or action by the Borrower, the Lenders, any other ISDA Provider or the Administrative Agent shall be required.

3.3 Assignments

The parties hereto acknowledge and agree that in order to give effect to the increases and accessions contemplated in Section 3.2, the Existing Lenders and Acceding Lenders at the time of such increases or accessions, or combination of both, shall at such time execute and deliver such Loan Transfer Agreements as may be required in order that, following the increase in the amount of the Revolving Facility, the Commitment of each Lender shall correspond to its Rateable Share of the Revolving Facility as so increased. The provisions of subsection 25.5.4 shall be applicable to any such Assignment provided however.

ARTICLE 4

REDUCTIONS AND REPAYMENTS

4.1 Repayment of Entire Loans

The Borrower hereby binds and obliges itself to repay on the last day of the Revolving Period the entire amount of the Loans outstanding on such date in principal, interest, fees and accessories and interest on arrears of interest, fees and accessories.

4.2 Compulsory Repayment of Excess Loans

- 4.2.1 Where under any circumstances including any voluntary reduction of the Revolving Facility, the Loans exceed the Revolving Facility (or, as a result of Exchange Rate fluctuations, the Loans exceed ■■■)

[percentage] of the Revolving Facility) then the Borrower shall forthwith repay such portion of the Loans as will reduce such excess to nil.

- 4.2.2 Where any such repayment results from a cancellation or reduction of the Revolving Facility, such repayment shall be made on the effective date of such cancellation and reduction. Where any such repayment results from any other circumstance, including any Exchange Rate fluctuation, such repayment shall be effected by the Borrower on the Revolving Facility within five (5) Business Days of a written notice by the Administrative Agent in that regard.
- 4.2.3 Concurrently with any repayment under this Section, the Borrower shall pay any losses and expenses incurred or suffered by any Lender or the Administrative Agent as a result of such repayment, in accordance with the relevant provisions of Article 22.
- 4.2.4 Concurrently with any such repayment, the Borrower shall issue a Repayment Notice (except that no Repayment Notice is required for a repayment of the Cdn Swingline Loan, the HK Swingline Loan or the UK Swingline Loan).

4.3 **Voluntary Repayment of Loans**

- 4.3.1 At any time during the Revolving Period, the Borrower may voluntarily repay the whole or any part of the Loans, without penalty or premium (except applicable breakage costs for Libor Loans or Euro Loans), by issuing a Repayment Notice to the Administrative Agent. Any such repayment shall be for a minimum amount of Cdn\$ [redacted] [dollar amount] for any repayment of any Canadian Dollar Loan, US\$ [redacted] [dollar amount] for any repayment of any US Dollar Loan and [redacted] [dollar amount] Euros for any repayment of any Euro Loan, and in multiples of Cdn\$ [redacted] [dollar amount] for any repayment of any Canadian Dollar Loan, US\$ [redacted] [dollar amount] for any repayment of any US Dollar Loan and [redacted] [dollar amount] Euros for any repayment of any Euro Loan.
- 4.3.2 Where any such voluntary repayment relates to the whole or any part of the BA Liabilities, Libor Loans, EuroLibor Loans or LC Liabilities, then such repayment shall only be made on the Selected Maturity Date of the Selected Amounts proposed to be so repaid and the amount of such repayment shall be equal to the Selected Amounts proposed to be so repaid.
- 4.3.3 For greater certainty, no Repayment Notice shall be required for any repayment of the Cdn Swingline Loan, the HK Swingline Loan or the UK Swingline Loan.

4.4 **Repayment Notice**

Any Repayment Notice shall be delivered to the Administrative Agent at the latest three (3) Business Days prior to the date of the relevant repayment unless it relates to the whole or a portion of the Libor Loans or EuroLibor Loans, in which case such Repayment Notice shall be delivered to the Administrative Agent at least three (3) Business Days prior to the date of the relevant repayment. Once delivered, a Repayment Notice may not be revoked or withdrawn by the Borrower.

4.5 **Voluntary Cancellation or Reduction of the Revolving Facility**

- 4.5.1 At any time during the Revolving Period, the Borrower may voluntarily cancel or reduce the Revolving Facility, without penalty or premium (except applicable breakage costs for Libor Loans or Euro Loans), in each case, in whole or in parts, in minimum amounts of Cdn\$ [redacted] [dollar amount] and in whole multiples of Cdn\$ [redacted] [dollar amount] by delivering to the Administrative Agent a Reduction Notice.
- 4.5.2 Where any such voluntary reduction results in a compulsory repayment pursuant to subsections 4.5.3 or Section 4.2 of the whole or any part of the Loans, then the Borrower shall attach to the aforesaid notice a Repayment Notice.
- 4.5.3 The parties agree that (i) on the effective date of any cancellation or reduction of the Revolving Facility, the Borrower shall repay any portion of the Loans, in excess of such Revolving Facility (following such cancellation and reduction of such Revolving Facility) and (ii) where a cancellation of the whole of the Revolving Facility is requested, on the effective date thereof the Borrower shall repay the entire amount of the Loans outstanding on such date, including any Stand-By Fee and interest accrued and unpaid as at such date as well as any losses and expenses incurred or suffered by any Lender or the Administrative Agent as a result of such cancellation in accordance with the relevant provisions of Article 22.

4.6 **Reduction Notices**

Any Reduction Notice shall be delivered to the Administrative Agent at least five (5) Business Days prior to the effective date of the relevant cancellation and reduction. Once delivered, no Reduction Notice may be revoked or withdrawn by the Borrower.

ARTICLE 5

CDN PRIME AND US BASE RATE LOANS

5.1 Request for Cdn Prime Rate Loans or US Base Rate Loans

Any Draw Request or Conversion Request pursuant to which an Advance is requested by way of Cdn Prime Rate Loan or US Base Rate Loan shall be delivered at the latest by 11:00 a.m. (Montréal time) at least three (3) Business Days immediately prior to the proposed Borrowing Date.

Any such Draw Request or Conversion Request shall specify the following information:

- 5.1.1 the proposed Borrowing Date which must be a Business Day; and
- 5.1.2 the principal amount requested to be Advanced, such principal amount to be at least Cdn\$ [redacted] [dollar amount], for any Advance requested by way of Cdn Prime Rate Loan, and US\$ [redacted] [dollar amount] for any Advance requested by way of US Base Rate Loan and a whole multiple of Cdn\$ [redacted] [dollar amount], for any Advance requested by way of Cdn Prime Rate Loan and US\$ [redacted] [dollar amount] for any Advance requested by way of US Base Rate Loan.

5.2 Apportionment among the Lenders

The aggregate principal amount of any Advance requested under Section 5.1 shall be apportioned among the Lenders on a Rateable Share basis of the Revolving Facility.

5.3 Interest on Cdn Prime Rate Basis

The Borrower shall pay each Lender interest on such Lender's Cdn Prime Rate Loan at an annual rate applicable for each day during which such Loan is outstanding equal to the Cdn Prime Rate at the close of business on each such day plus the Relevant Margin applicable on each such day.

5.4 Interest on US Base Rate Basis

The Borrower shall pay each Lender interest on such Lender's US Base Rate Loan at an annual rate applicable for each day during which such Loan is outstanding equal to the US Base Rate at the close of business on each such day plus the Relevant Margin applicable on each such day.

5.5 Computation of Interest

- 5.5.1 Interest in respect of the Cdn Prime Rate Loans shall be computed on the basis of a 365 day year for the actual number of days elapsed;
- 5.5.2 interest in respect of the US Base Rate Loans shall be computed on the basis of (y) a 365 day year for the actual days elapsed during any period when the US Base Rate is calculated using the Administrative

Agent's US Base Rate and (z) a 360 day year for the actual number of days elapsed during any period when the US Base Rate is calculated using the Federal Funds Effective Rate;

- 5.5.3 interest payable on each Loan is calculated upon the daily outstanding balance of such Loan from and including the date it is advanced until, but excluding, the date it is repaid in full.

5.6 Payment of Interest

- 5.6.1 Interest with respect to Cdn Prime Rate Loans and US Base Rate Loans shall be payable in arrears on the applicable Interest Payment Date;
- 5.6.2 Overdue interest shall bear interest at an annual rate, applicable on each day during which such interest remains unpaid, equal to the rate applicable to principal during the period in which it remains unpaid, computed daily, compounded monthly on the applicable Interest Payment Date, such overdue interest being payable upon demand of the Administrative Agent;
- 5.6.3 Interest with respect to Cdn Prime Rate Loans and US Base Rate Loans shall be payable both before and after demand, default and judgement at the applicable rates set forth herein.

5.7 Interest on Loans Generally

Where no specific provision for interest on any amount outstanding and payable by the Borrower is made in this Agreement, interest thereon shall be computed and payable with respect to the Borrower, on a Cdn Prime Rate Basis if the amount outstanding is denominated in Canadian Dollars or on a US Base Rate Basis if the amount outstanding is denominated in US Dollars.

5.8 Annual Equivalents

The annual rates of interest to which are equivalent the rates determined in accordance with the provisions of clause (z) of subsection 5.5.2 are the following rate: $(\text{the quoted rate}) \times (\text{number of days in the year}) \div 360 = \% \text{ per annum}$. The annual rates to which are equivalent the rates determined in accordance with the provisions of subsection 5.5.1 and clause (y) of subsection 5.5.2 are the following rate: $(\text{the quoted rate}) \times (\text{number of days in the year}) \div 365 = \% \text{ per annum}$.

ARTICLE 6

BANKERS' ACCEPTANCES

6.1 Requests for the Issuance of BAs

Any Draw Request or Conversion Request pursuant to which the Borrower requests an issue of BAs shall be delivered to the Administrative Agent by 11:00 a.m. (Montréal time) at least three (3) Business Days prior to the proposed Issuance Date.

Any Draw Request or Conversion Request shall specify the following information:

- 6.1.1 the Selected Period during which it desires such issue of BAs to be outstanding. Such Selected Period must be of one, two, three, or six months, or any other period acceptable to the Administrative Agent (after consultation with the Lenders);
- 6.1.2 for each Selected Period, the aggregate face amount of such issue of BAs. Such aggregate face amount must be at least Cdn\$ [redacted] [dollar amount] and a whole multiple of Cdn\$ [redacted]; [dollar amount];
- 6.1.3 the proposed Issuance Date, which must be a Business Day; and
- 6.1.4 the Selected Maturity Date, which must be a Business Day falling during the Revolving Period.

6.2 Notice to Lenders of Particulars Relating to BAs

- 6.2.1 On the Business Day immediately preceding any Issuance Date, the Administrative Agent shall notify each Lender of the aggregate face amount of BAs to be accepted by it on the Issuance Date and of the Selected Period applicable to such BAs. The Administrative Agent shall promptly notify the Borrower and each Lender, prior to 11:00 a.m. (Montréal time) on any Issuance Date of the Discount Rate, Stamping Fee and BA Proceeds applicable to such BAs.
- 6.2.2 The aggregate face amount of an issue of BAs shall be apportioned as among the Lenders, on a Rateable Share basis of the Revolving Facility. Where such apportionment results in the aggregate face amount of BAs to be accepted by a Lender, for the same Selected Period not to be a whole multiple of Cdn\$ [redacted] [dollar amount], such aggregate face amount shall be increased or reduced by the Administrative Agent in its sole discretion to the nearest whole multiple of Cdn\$ [redacted] [dollar amount], without affecting the aggregate face amount of BAs accepted by the Lenders, for the same Selected Period.

6.3 Lenders to Accept Drafts

Each Lender hereby severally and neither jointly nor solidarily agrees to accept as BAs, on each Issuance Date, an aggregate face amount of Drafts equal to the amount specified to such Lender by the Administrative Agent pursuant to Section 6.2.

6.4 Stamping Fee

- 6.4.1 In connection with and in consideration for the acceptance by each Lender of Drafts as contemplated in Section 6.3, the Borrower shall pay to each Lender, a stamping fee equal to the product resulting from multiplying the face amount of each Draft so accepted by such Lender by a fraction, the numerator of which shall consist of the product resulting from multiplying the applicable Relevant Margin in effect on the relevant Issuance Date by the number of days in the Selected Period applicable to such BA and the denominator of which shall consist of 365.
- 6.4.2 Where during any Selected Period of any BA, the Relevant Margin changes, on the Reset Date of such BA (or when the Administrative Agent is unable to proceed on the Reset Date, within five (5) Business Days of any request from the Administrative Agent), the Borrower, on the one hand, and the Administrative Agent, for the account of the Lenders, on the other hand, shall settle as among themselves any amounts resulting from any adjustment of the Relevant Margin during such Selected Period, taking into consideration the Relevant Margin that would have been applicable on the date of any such change to any outstanding Advance made by way of BAs as of and from such Reset Date, the remaining term of the applicable Selected Period and the face amount of the relevant BAs. The Lenders and the Borrower, through the Administrative Agent, shall pay to each other, as required, the appropriate amounts resulting from any such adjustment.
- 6.4.3 In payment of the Stamping Fee payable in connection with any BA, each Lender shall retain from the Discounted Proceeds relating to such BA an amount equal to such Stamping Fee.

6.5 Lenders to Discount BAs

- 6.5.1 Each Lender hereby severally and neither jointly nor solidarily agrees to purchase the BAs accepted by it under the terms hereof on the Issuance Date of such BAs for an amount equal to the Discounted Proceeds of such BAs.
- 6.5.2 Any BA so purchased by any Lender may be held by it for its own account or sold or traded in (y) the money market, either directly or through securities brokers or dealers, in accordance with such

arrangements as such Lender may consider appropriate to make or (z) a clearing house within the meaning of the *Depository Bills and Notes Act* (Canada).

6.6 Lenders to Make BA Proceeds Available to Administrative Agent

On each Issuance Date, each Lender shall make available to the Administrative Agent the BA Proceeds relating to the BAs accepted and purchased by it on such date.

6.7 Payment of BAs

On each Selected Maturity Date, the Borrower shall pay the face amount of all BAs maturing on such date. Where the Borrower fails to make such payment, the Borrower shall be deemed to have requested that portion of the BA Liabilities corresponding to the BAs then maturing to be converted on such Selected Maturity Date into a Cdn Prime Rate Loan.

6.8 Waiver

The Borrower shall not claim from any Lender any days of grace for the payment at maturity of any BA issued and accepted by that Lender pursuant to the terms of this Agreement. Furthermore, the Borrower waives any defence to payment which might otherwise exist if for any reason a BA issued hereunder shall be held by or for the account of a Lender in its own right at the maturity thereof.

6.9 Obligations Absolute

The obligations of the Borrower with respect to BAs hereunder are unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following circumstances:

- 6.9.1 any lack of validity or enforceability of any Draft accepted by any Lender as a BA; or
- 6.9.2 the existence of any defence, right of action, right of compensation or set-off or claim of any nature whatsoever which the Borrower may at any time have or have had against the holder of a BA, the Administrative Agent, a Lender or any other Person, whether in connection with this Agreement or otherwise.

6.10 Power of Attorney to Sign Drafts

In order to facilitate the issuance of BAs hereunder, the Borrower hereby authorizes each of the Lenders to sign, endorse and complete Drafts on its behalf in handwritten or by facsimile or mechanical signature or otherwise and once so signed, endorsed and completed, to purchase, discount and negotiate same or, as the case may be, deposit same in a clearing house as contemplated in the *Depository Bills and Notes Act* (Canada), as and when deemed necessary by

any such Lender for all purposes of this Article 6. In this regard, the parties hereto do hereby agree as follows:

- 6.10.1 all Drafts so signed, endorsed and completed on behalf of the Borrower by any Lender shall bind the Borrower as fully and effectually as if signed in the handwriting of and duly issued by the proper signing officers of the Borrower;
- 6.10.2 neither the Administrative Agent nor the Lenders nor any of their respective directors, officers, employees or representatives shall be liable for any action taken or omitted to be taken by it or them under this Article 6, except for its or their own intentional or gross fault or wilful misconduct;
- 6.10.3 the Borrower shall pay upon demand to each Lender, the face amount of any form of Draft which on its face appears or purports to have been issued by the Borrower and circulated fraudulently or without authority by any Person other than the Administrative Agent, the Lenders or any of their respective directors, officers, employees or representatives and which was subsequently presented to a Lender for payment and paid by such Lender, and shall indemnify and hold harmless such Lender from and against any and all losses and expenses which may be imposed on or incurred by or asserted against such Lender in any way relating to, arising out of or resulting from such fraudulent, unauthorized or illegal issuance or use of such Drafts other than as a result of the intentional or gross fault or wilful misconduct of any such Lender or of any of its directors, officers, employees or representatives. Following any such payment by the Borrower, any amount recovered by the Lender from a third party in connection with such Draft shall be remitted to the Borrower by such Lender forthwith after deducting therefrom any amounts (including the reasonable costs and expenses incurred by such Lender in connection with such recovery) not otherwise paid by the Borrower; and
- 6.10.4 upon the request of the Borrower, any Lender shall cancel all of the forms of Drafts which shall have been signed, endorsed and completed by such Lender on behalf of the Borrower as hereinabove contemplated in this Section and which shall not as yet have been issued in accordance with such instructions of the Borrower, provided that under such circumstances, such Lender shall have no liability for failing to make any further requested Advance by way of BAs.

6.11 **Special Provisions with respect to Non-BA Lenders**

- 6.11.1 The provisions of this Article 6 shall apply to any Non-BA Lender, save and except that such Non-BA Lender shall perform its obligations

under this Article not by the acceptance of bills of exchange or, as the case may be, depository bills as such expression is defined in the *Depository Bills and Notes Act*, but rather, subject to all of the terms and conditions of this Agreement, shall make direct Advances to the Borrower equal to its Rateable Share of any Advance that, pursuant to a Draw Request or a Conversion Request, the Borrower may request be or become outstanding by way of BAs.

- 6.11.2 The principal amount of the Indebtedness of the Borrower towards such Non-BA Lender with respect to any Advance made by such Non-BA Lender under this Section 6.11, shall be equal to the face amount of any BA Equivalent Note issued by the Borrower in order to evidence such Advance.
- 6.11.3 In order to provide such Non-BA Lender with comparable benefits to those enjoyed by the other Lenders under this Article 6, in connection with each BA Equivalent Note issued by the Borrower to such Non-BA Lender, such Non-BA Lender shall retain for its own account the difference between the nominal amount of each such BA Equivalent Note and the BA Proceeds relating thereto and shall make available to the Borrower an amount equal to the BA Proceeds relating to such BA Equivalent Note.
- 6.11.4 Save as otherwise expressly altered by this Section 6.11, the remaining provisions of this Agreement pertaining to BAs shall apply in all respects to such BA Equivalent Notes and such Non-BA Lender *mutatis mutandis*.

ARTICLE 7

LIBOR LOANS

7.1 Request for Libor Loans

Any Draw Request or Conversion Request pursuant to which the Borrower requests a Libor Loan shall be delivered to the Administrative Agent by 11:00 a.m. (Montréal time) three (3) Business Days prior to the proposed Borrowing Date and shall specify the following information:

- 7.1.1 the Selected Period applicable to such Libor Loans. Such Selected Period must be of one, two, three, or six months. For purposes of this Section, the expression "months" shall have the meaning ascribed thereto in the market from time to time;
- 7.1.2 for each Selected Period, the aggregate principal amount requested to be outstanding on a Libor Basis. Such aggregate principal amount

must be at least US\$ [redacted] [dollar amount] and a whole multiple of US\$ [redacted] [dollar amount];

7.1.3 the proposed Borrowing Date, which must be a Business Day; and

7.1.4 the Selected Maturity Date, which must be a Business Day falling during the Revolving Period.

7.2 Establishment of Libor and Selected Amounts

7.2.1 Libor shall be established by the Administrative Agent on the applicable Quotation Date prior to the relevant Borrowing Date. By 2:00 p.m. (Montréal time) on the applicable Quotation Date prior to the relevant Borrowing Date, the Administrative Agent shall notify the Borrower and each Lender of:

7.2.1.1 the Selected Amount to be Advanced by each such Lender on the proposed Drawdown Date and the Selected Period applicable to each such Selected Amount; and

7.2.1.2 the Libor applicable to each Selected Amount for each Selected Period.

7.2.2 For each Selected Period, the aggregate principal amount requested by the Borrower to be outstanding on a Libor Basis shall be apportioned as among the Lenders on a Rateable Share basis of the Revolving Facility.

7.3 Interest on Libor Basis

The Borrower shall pay each Lender interest on each Selected Amount forming part of the Libor Loan of such Lender at an annual rate applicable for each day during which such Selected Amount is outstanding equal to the Libor applicable to such Selected Amount plus the Relevant Margin applicable on each such day to the Libor Loans.

7.4 Computation of Interest

7.4.1 Interest in respect of the Libor Loans shall be computed on the basis of a 360 day year for the actual number of days elapsed.

7.4.2 Interest payable on each Selected Amount is calculated upon the daily outstanding balance of such Selected Amount from and including the date it is advanced until, but excluding, the date it is repaid in full.

7.5 Payment of Interest

7.5.1 Interest in respect of the Libor Loans is payable in arrears on the applicable Interest Payment Date.

7.5.2 Overdue interest bears interest at an annual rate applicable for each day during which such interest is outstanding equal to the rate applicable to the principal amount for each day of the period during which such interest remains unpaid, calculated daily, compounded monthly on the first (1st) day of each month and payable upon the demand of the Administrative Agent.

7.5.3 Interest payable on the Libor Loans shall be payable both before and after demand, default and judgment at the applicable rates set forth herein.

7.6 Annual Equivalent

The annual rates of interest to which are equivalent the rates determined in accordance with the provisions of subsection 7.4.1 are the following rates: $(\text{the quoted rate}) \times (\text{number of days in the year}) \div 360 = \% \text{ per annum}$.

7.7 Payment on Selected Maturity Date

On each Selected Maturity Date, the Borrower shall pay in full the Selected Amounts maturing on such date and which form part of the Libor Loans. Where the Borrower fails to make such payment, the Borrower shall be deemed to have requested that portion of the Libor Loans corresponding to such Selected Amounts then maturing to be converted on such Selected Maturity Date into a US Base Rate Loan.

7.8 Existing Libor Loans under the Principal Credit Agreement

Immediately prior to the Effective Date, the Borrower is indebted by way of Libor Loans under the Principal Credit Agreement as indicated in Schedule "BB" (the "**Existing Libor Loans**").

The parties hereto agree that, with effect as of the Effective Date, the Existing Libor Loans shall form part of the Libor Loan of National Bank of Canada, such that until the Selected Maturity Date of the Existing Libor Loans, namely September 12, 2011, the amount of the Libor Loan, and, consequently, of the Loan, of National Bank of Canada shall be greater than the Libor Loan and Loan of National Bank of Canada would otherwise have been if calculated on the basis of the Rateable Share of National Bank of Canada. On the Selected Maturity Date of the Existing Libor Loans, namely September 12, 2011 the aggregate principal amount of the Existing Libor Loans shall be reallocated among the Lenders on a Rateable Share basis.

ARTICLE 8

EUROLIBOR LOANS

8.1 Request for EuroLibor Loans

Any Draw Request or Conversion Request pursuant to which the Borrower requests a EuroLibor Loan shall be delivered to the Administrative Agent by 11:00 a.m. (Montréal time) three (3)

Business Days prior to the proposed Borrowing Date and shall specify the following information:

- 8.1.1 the currency and Selected Period applicable to the requested Advance. Such Selected Period must be of one, two, three, or six months. For purposes of this Section, the expression "months" shall have the meaning ascribed thereto in the market from time to time;
- 8.1.2 for each Selected Period, the aggregate principal amount of the requested Advance. Such aggregate principal amount must be at least [REDACTED] [dollar amount] Euros and a whole multiple of [REDACTED] [dollar amount] Euros, provided, however, that notwithstanding the foregoing, as long as BDC is a Lender hereunder, the minimum principal amount of any requested advance shall be such that BDC's Rateable Share thereof shall be at least [REDACTED] [dollar amount] Euros.
- 8.1.3 the proposed Borrowing Date, which must be a Business Day; and
- 8.1.4 the Selected Maturity Date, which must be a Business Day falling during the Revolving Period for an Advance under the Revolving Facility.

Notwithstanding the foregoing, the maximum principal amount of EuroLibor Loans shall not exceed at any time [REDACTED] [dollar amount] Euros.

In addition, until LBC advises in writing the Administrative Agent otherwise, LBC shall not be required to make any Advance hereunder in Euros and accordingly, for the purpose of any requested Advance in Euros, the Rateable Share of any Lender (other than LBC) shall be determined without taking into account the Commitment of LBC. Where, at any time, the Loans are close to the then maximum amount of the Revolving Facility, the Administrative Agent shall be entitled to allocate to LBC a higher share of any requested Advance in another Type of Loan in order to permit the Borrower to draw the full amount of the Revolving Facility.

8.2 **Establishment of EuroLibor and Selected Amounts**

- 8.2.1 EuroLibor shall be established by the Administrative Agent on the applicable Quotation Date prior to the relevant Borrowing Date. By 2:00 p.m. (Montréal time) on the applicable Quotation Date prior to the relevant Borrowing Date, the Administrative Agent shall notify the Borrower and each Lender, of:
 - 8.2.1.1 the Selected Amount to be Advanced by each such Lender on the proposed Drawdown Date and the Selected Period applicable to each such Selected Amount; and

8.2.1.2 the EuroLibor applicable to each Selected Amount for each Selected Period.

8.2.2 For each Selected Period, the aggregate principal amount requested by the Borrower to be outstanding on a EuroLibor Basis shall be apportioned as among the Lenders on a Rateable Share basis of the Revolving Facility.

8.3 **Interest on EuroLibor Basis**

The Borrower shall pay each Lender interest on each Selected Amount forming part of the EuroLibor Loan of such Lender at an annual rate applicable for each day during which such Selected Amount is outstanding equal to the EuroLibor applicable to such Selected Amount plus the Relevant Margin applicable on each such day to the EuroLibor Loans.

8.4 **Computation of Interest**

8.4.1 Interest in respect of the EuroLibor Loans shall be computed on the basis of a 360 day year for the actual number of days elapsed.

8.4.2 Interest payable on each Selected Amount is calculated upon the daily outstanding balance of such Selected Amount from and including the date it is advanced until, but excluding, the date it is repaid in full.

8.5 **Payment of Interest**

8.5.1 Interest in respect of the EuroLibor Loans is payable in arrears on the applicable Interest Payment Date.

8.5.2 Overdue interest bears interest at an annual rate applicable for each day during which such interest is outstanding equal to the EONIA Rate plus the Relevant Margin then applicable to the EuroLibor Loans, calculated daily, compounded monthly on the first (1st) day of each month and payable upon the demand of the Administrative Agent.

8.5.3 Interest payable on the EuroLibor Loans shall be payable both before and after demand, default and judgment at the applicable rates set forth herein.

8.6 **Annual Equivalent**

The annual rates of interest to which are equivalent the rates determined in accordance with the provisions of subsection 8.4.1 are the following rates: $(\text{the quoted rate}) \times (\text{number of days in the year}) \div 360 = \% \text{ per annum}$.

8.7 Payment on Selected Maturity Date

On each Selected Maturity Date, the Borrower shall pay in full the Selected Amounts maturing on such date and which form part of the EuroLibor Loans. Where the Borrower fails to make such payment, it shall be deemed to have requested that portion of the EuroLibor Loans corresponding to such Selected Amounts then maturing to be converted on such Selected Maturity Date into a Cdn Prime Rate Loan. The amount of the Cdn Prime Rate Loan thus converted corresponds to the amount in Canadian Dollars that the Administrative Agent, in accordance with usual banking procedures, can buy in the Canadian money market with the amount of Euros, corresponding to the Selected Amount thus converted.

ARTICLE 9

LETTERS OF CREDIT

9.1 Requests for the Issuance of LCs

Any Draw Request or Conversion Request pursuant to which the Borrower requests the issuance of one or more LCs shall be delivered to the Administrative Agent and the LC Issuing Lender by 11:00 a.m. (Montréal time) at least three (3) Business Days prior to the proposed Issuance Date and shall specify the following information:

- 9.1.1 the Selected Maturity Date of each LC so requested. Each such Selected Maturity Date must not fall beyond the last day of the Revolving Period. Notwithstanding the foregoing, the LC Issuing Lender may, at its discretion, issue LCs the Selected Maturity Dates of which fall beyond the last day of the then current Revolving Period provided that the Liens granted under the Security Documents will continue to guarantee the obligations of the Borrower under such LC and shall survive the termination or cancellation of the Revolving Facility pursuant to Sections 4.1, 4.5 or 20.1 of this Agreement;
- 9.1.2 the Selected Period of each LC so requested, which Selected Period shall not exceed one (1) year;
- 9.1.3 the face amount of each LC so requested. Such face amount must be denominated in Canadian Dollars, US Dollars or Euros or any other freely convertible currency acceptable to the LC Issuing Lender;
- 9.1.4 the beneficiary of each LC so requested, the conditions of payment under each such LC and all other information required to prepare each such LC; and
- 9.1.5 the Person (if not the Borrower that requested same) to whom each such LC should be delivered.

No LC may be requested to be issued under the Revolving Facility where as a result of the issuance of such LC, the aggregate LC Liabilities then outstanding, expressed in their Equivalent in Canadian Dollars, would exceed Cdn\$ [REDACTED] [dollar amount].

9.2 Issuance of LCs

- 9.2.1 The LC Issuing Lender is the only Lender entitled to issue LCs under the Revolving Facility and, in connection with each LC issued under such Revolving Facility, the LC Issuing Lender acts as the fronting bank for the Lenders.
- 9.2.2 Provided all conditions of this Agreement have been met, by no later than 12:00 p.m. (Montréal time) on the relevant Issuance Date, the LC Issuing Lender shall deliver to the Borrower, or to the Persons designated in the relevant Draw Request or Conversion Request, the LCs requested to be issued on such date.

9.3 LC Fee

- 9.3.1 With respect to any LC that is not a documentary LC:
 - 9.3.1.1 the Borrower shall pay the Administrative Agent, for the benefit of each Lender:
 - 9.3.1.1.1 an LC fee in Canadian Dollars on such Lender's Cdn Dollar LC Liability;
 - 9.3.1.1.2 an LC fee in US Dollars on such Lender's US Dollar LC Liability;
 - 9.3.1.1.3 an LC Fee in Canadian Dollars on such Lender's Euro LC Liability;

in each case, for each day during which it is outstanding at an annual rate equal to the Relevant Margin applicable on each such day.

The LC Fee referred to in clause 9.3.1.1.3 though calculated in Euros shall be payable on the applicable Interest Payment Date in Canadian Dollars by converting same in Canadian Dollars by using the Exchange Rate on such date.
- 9.3.2 With respect to any LC that is a documentary LC, the Borrower shall pay the Administrative Agent, for the benefit of each Lender, a fee in accordance with the fee schedule of the LC Issuing Lender in force from time to time with respect to the issuance, renewal, amendment or cancellation of such LCs, such LC Fee to be apportioned among the

Lenders (including the LC Issuing Lender), as the case may be, on a Rateable Share basis.

9.4 **LC Fronting Fee**

In addition to the LC Fees:

- 9.4.1 the Borrower shall pay to the LC Issuing Lender a fee in Canadian Dollars on the Cdn Dollar LC Liabilities for each day during which they are outstanding at an annual rate equal to [REDACTED] [percentage rate];
- 9.4.2 the Borrower shall pay to the LC Issuing Lender a fee in US Dollars on the US Dollar LC Liability, for each day during which they are outstanding at an annual rate equal to [REDACTED] [percentage rate];
- 9.4.3 the Borrower shall pay to the LC Issuing Lender a fee in Canadian Dollars on the Euro LC Liability, for each day during which they are outstanding at an annual rate equal to [REDACTED] [percentage rate]. Such LC fronting fees, though calculated respectively in Euros, shall be payable in Canadian Dollars by converting same in Canadian Dollars on the applicable Interest Payment Date by using the Exchange Rate on such date.

Notwithstanding the foregoing, no LC Fronting Fee shall be payable for any period during which National Bank of Canada is the sole Lender under the Revolving Facility.

Without limiting the generality of the foregoing, a minimum fee of Cdn\$250 shall be payable to the LC Issuing Lender with respect to the issuance, renewal, amendment or cancelling of any LC.

9.5 **Computation and Payment of LC Fee and LC Fronting Fee**

- 9.5.1 The LC Fees (other than with respect to any LC that is a documentary LC) and LC Fronting Fees shall be computed on the basis of a 365 day year for the actual number of days elapsed;
- 9.5.2 The LC Fees (other than with respect to any LC that is a documentary LC) and LC Fronting Fees are payable in arrears on the applicable Interest Payment Date, with interest on any overdue amount calculated on a Cdn Prime Rate Basis (as it pertains to the Cdn Dollar LC Liabilities and Euro LC Liabilities) or a US Base Rate Basis (as it pertains to the US Dollar LC Liabilities). The LC Fees, LC Fronting Fees and any interest on any of such overdue amounts shall be payable both before and after demand, default and judgment at the applicable rates set forth herein;

- 9.5.3 The LC Fees with respect to any LC that is a documentary LC are payable on the date of issuance of such documentary LC or as otherwise contemplated in the fee schedule of the LC Issuing Lender.

9.6 **Payment by the LC Issuing Lender under LCs**

- 9.6.1 The aggregate principal amount or amounts of monies paid by the LC Issuing Lender at any time and from time to time under any LC which is in excess of the amount previously provided to the LC Issuing Lender by the Borrower, in connection with such LC in accordance with Section 12.5, shall constitute an Advance to the Borrower under the Revolving Facility where such LC was issued by the LC Issuing Lender in Canadian Dollars, US Dollars in Euros, or any other freely convertible currency acceptable to the LC Issuing Lender, as the case may be, and shall form part of the Cdn Prime Rate Loans, the US Base Rate Loans or the EuroLibor Loans, as the case may be, the Selected Amount of which shall be deemed to be the excess thus paid by the LC Issuing Lender and the Selected Period of which shall be deemed to be thirty (30) days.
- 9.6.2 Where the LC Issuing Lender shall have received a demand for payment under any LC it has issued hereunder and has determined to effect payment, unless it shall have been previously put into funds by the Borrower sufficient to effect such payment, it shall issue a written notice to the Administrative Agent and the Borrower, advising them of the amount of and the currency in which such payment shall be made by the LC Issuing Lender and requesting that the Lenders make an Advance by way of Cdn Prime Rate Loans, US Base Rate Loans or EuroLibor Loans, as the case may be, equal to such amount on or before the Business Day next following such notice.
- 9.6.3 Where the Administrative Agent has received such a notice prior to 11:00 a.m. (Montréal time), on any Business Day, it shall issue a notice to the Lenders and the Borrower under Section 24.1, and the Lenders, before 11:00 a.m., Montréal time, on the Business Day following the receipt of such notice from the Administrative Agent, or, in the case of EuroLibor Loans on the second (2nd) Business Day following such notice, shall make available to the Administrative Agent, in the Administrative Agent's Account, in same-day funds, the amount specified for such Lender in the aforesaid notice. The Administrative Agent shall on such Business Day disburse the amounts requested by the LC Issuing Lender, on behalf of the Lenders, by crediting the funds it shall have received to the account of the LC Issuing Lender at its LC Issuing Office.

- 9.6.4 In the event that the LC Issuing Lender shall have effected payment under a LC prior to receipt of the amounts requested from the Administrative Agent, the LC Issuing Lender shall have the exclusive benefit of the interest accruing on such amounts under the terms of this Agreement.
- 9.6.5 Where the Administrative Agent receives a notice from the LC Issuing Lender at any time after 11:00 a.m., Montréal time on any Business Day, it shall be deemed to have received such notice prior to 11:00 a.m., Montréal time, on the following Business Day.
- 9.6.6 The Borrower covenants and agrees to indemnify the LC Issuing Lender for any amount which it may be required to pay under any LC issued by it under the terms hereof.

9.7 **Lenders' Covenant to the LC Issuing Lender**

- 9.7.1 Each Lender does hereby unconditionally and irrevocably covenant and agree to and in favour of the LC Issuing Lender, to purchase, at the request of the LC Issuing Lender, up to its Rateable Share of any amount the LC Issuing Lender is required to pay under any LC issued under the Revolving Facility which may be outstanding, its claim against the Borrower for any amount the LC Issuing Lender may be required to pay under any LC issued under the Revolving Facility which may be outstanding. Each Lender hereby covenants to pay to the LC Issuing Lender as the purchase price of such claim an amount equal to such Rateable Share, in the same currency as that in which any LC issued under the Revolving Facility is denominated, in the manner and within the delays contemplated in Section 9.6. Any arrears on the payment of any such Rateable Share shall bear interest on a Cdn Prime Rate Basis applicable to the Revolving Facility if the amount of such arrears is denominated in Canadian Dollars, a US Base Rate Basis applicable to the Revolving Facility if the amount of such arrears is denominated in US Dollars or a EuroLibor Basis on the basis of a Selected Period of thirty (30) days as if the amount of such arrears was the Selected Amount if the amount of such arrears is denominated in Euros and shall be payable to the LC Issuing Lender by the Lender having defaulted in the payment of its Rateable Share as contemplated above, the Borrower being exonerated from such payment.

9.8 **Obligations Absolute**

The obligations of the Borrower with respect to LCs hereunder are unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following circumstances:

- 9.8.1 any lack of validity or enforceability of any draft or other document presented in connection with any payment requested under any LC; or
- 9.8.2 the existence of any defence, right of action, right of compensation or set-off or claim of any nature whatsoever which the Borrower may at any time have or have had against the beneficiary of a LC, the LC Issuing Lender, the other Lenders or any other Person, whether in connection with this Agreement or otherwise.

Neither the LC Issuing Lender nor any of its correspondents, participants or assignees shall be liable or responsible for any of the matters described in clauses 9.8.1 or 9.8.2.

9.9 LCs in other Currencies

Where the LC Issuing Lender has agreed to issue an LC in a currency other than Cdn\$, US\$ or Euros the LC Fee and LC Fronting Fee in respect thereof shall be calculated as provided above and such LC Fee and LC Fronting Fee shall be converted and paid in Cdn\$ by using the rate of exchange quoted by the Bank of Canada on the first day of the month during which such LC Fee and LC Fronting Fee is calculated as the noon mid-market spot rate for conversions from such currency into Canadian Dollars.

Where the LC Issuing Lender is required to make payment under an LC issued in a currency other than Cdn\$, US\$ or Euros on the Business Day of such payment, the LC Issuing Lender shall convert the amount so paid from the currency in which it was paid to Cdn\$ by using the Exchange Rate applicable on such Business Day and the amount so converted shall form part of the Prime Rate Loans of the Borrower.

The obligation of the Lenders to the LC Issuing Lenders under the provisions of Sections 9.6 and 9.7 shall be with respect to the converted amount in Cdn\$ contemplated in the preceding paragraph.

ARTICLE 10

CONVERSIONS AND ROLLOVERS

10.1 Request for Conversions

The Borrower may request the Lenders to convert all or any portion of any Type of the Loans into another Type of Loans or to rollover any Type of the Loans into the same Type, by delivering to the Administrative Agent a Conversion Request within the delays herein contemplated. Any Conversion Request must be issued by the Borrower. Any Conversion Request delivered after 11:00 a.m. (Montréal time) on any Business Day shall be deemed to have been received prior to 11:00 a.m. on the following Business Day.

10.2 **Conversion or Rollover**

On the relevant Conversion Date, the Borrower shall be deemed to have repaid, without novation, such portion of the Type of Loans, that it desires be converted or rolled-over and shall be deemed to have requested a Drawdown under the Revolving Facility in the amount, the currency and the Type of Loan into which it desires to convert or rollover.

The provisions of this Agreement relating to Drawdowns shall apply *mutatis mutandis* to any such Advance requested by way of conversion or rollover.

10.3 **Requirements for Conversions or Rollovers**

Any conversion or rollover requested pursuant to Section 10.1:

- 10.3.1 of BA Liabilities, may only be made on a Selected Maturity Date and only with respect to such part of the BA Liabilities represented by the BAs maturing on such date;
- 10.3.2 of LC Liabilities, may only be made on a Selected Maturity Date and only with respect to the LCs maturing on such date;
- 10.3.3 of Libor Loans, may only be made on a Selected Maturity Date and only with respect to such part of the Libor Loans maturing on such date;
- 10.3.4 of EuroLibor Loans may only be made on a Selected Maturity Date and only with respect to such part of the EuroLibor Loans, as the case may be, maturing on such date; and
- 10.3.5 of Cdn Prime Rate Loans or US Base Rate Loans may only be made on a Business Day.

Save as otherwise provided in Sections 6.7, 7.7 and 8.7, a conversion or rollover requested pursuant to Section 10.1 may only be effected if, on the relevant Conversion Date, no Default or Event of Default has occurred and is continuing.

10.4 **No Revocation or Withdrawal of Conversion Requests**

Once delivered, no Conversion Request may subsequently be revoked or withdrawn by the Borrower.

ARTICLE 11

FEES

11.1 Stand-By Fees

- 11.1.1 The Borrower hereby covenants and agrees to pay to the Administrative Agent for the account of each Lender, with respect to such Lender's Commitment, a stand-by fee equal for each day to the percentage per annum set out in Schedule "C" applicable on each such day. Such fee is computed daily by the Administrative Agent on the daily balance of the difference between the Commitment and the Loan of such Lender as of and from the Effective Date until the last day of the Revolving Period and is payable in Canadian Dollars.
- 11.1.2 The Stand-By Fees are payable quarterly in arrears on the first Business Day of each fiscal quarter of the Borrower. The first such payment of the Stand-By Fees shall become due and payable on October 1, 2011 and the last payment thereof shall become due and payable on the last day of the Revolving Period whether or not such day coincides with the first Business Day of a fiscal quarter of the Borrower. The Borrower also covenants to pay on the Effective Date the stand-by fees accrued and unpaid on the Effective Date pursuant to the Principal Credit Agreement.
- 11.1.3 Any arrears on the payment of the Stand-By Fees shall bear interest, computed daily, on the daily balance thereof, on a Cdn Prime Rate Basis from and including the date it becomes due up to but excluding the day of full payment thereof.
- 11.1.4 The Stand-By Fees in respect of the Revolving Facility are calculated on the basis of a 365 day year.

11.2 Agency Fees

The Borrower covenants and agrees to pay to the Administrative Agent, for its exclusive benefit, the fees contemplated in a separate letter agreement to be entered into between the Administrative Agent and the Borrower in accordance with the terms and conditions of said letter agreement. The obligations of the Borrower with respect to the payment of such fees shall form part of the Secured Obligations.

ARTICLE 12

MANNER OF PAYMENTS

12.1 Currency of Payments

All payments or repayments, as the case may be:

- 12.1.1 of principal under any of the Loans or any part thereof shall be made in the same currency in which such Loans are outstanding;
- 12.1.2 of interest, shall be made in the same currency as the outstanding principal amount to which it relates;
- 12.1.3 of the Stamping Fee and the fees referred to in Section 11.2 shall be made in Canadian Dollars only;
- 12.1.4 of the Stand-By Fees shall be made in Canadian Dollars only; and
- 12.1.5 of amounts referred to in Article 21 and Article 22, shall be made in the same currency as the losses and expenses to which they relate.

12.2 Imputation of Payments

- 12.2.1 Where the Borrower makes a payment or repayment of the Loans, unless the Borrower issues to the Administrative Agent a Repayment Notice, the Administrative Agent shall apply such payment or repayment:
 - 12.2.1.1 first, in reduction of the Cdn Prime Rate Loans and/or US Base Rate Loans; and then
 - 12.2.1.2 in reduction of such of the Libor Loans, EuroLibor Loans, BA Liabilities and/or LC Liabilities as the Administrative Agent considers appropriate.
- 12.2.2 Any repayment of the Loans shall be first allocated to Tranche A, and any balance thereof to Tranche B.

12.3 Compulsory Repayment of BA Liabilities, Libor Loans and/or LC Liabilities

Where the Borrower is required to make a repayment, then, if the amount of the repayment required to be made is greater than the sum of the Cdn Prime Rate Loans and the US Base Rate Loans, then, subject to the provisions of Article 22 with respect to losses and expenses, the Borrower shall repay such portion of the relevant Libor Loans, EuroLibor Loans, BA Liabilities and/or LC Liabilities prior to a Selected Maturity Date as will permit the Borrower to make such repayment, as set forth in Section 12.4 with respect to BA Liabilities or in Section 12.5 with

respect to LC Liabilities, the whole subject to the provisions of Article 22 pertaining to losses and expenses.

12.4 Proceeds Resulting from Repayment of BA Liabilities

Where the Borrower repays any part of the BA Liabilities on any day other than the Selected Maturity Date of the BAs to which such BA Liabilities relate, with respect to the amount so repaid, the parties hereto do hereby acknowledge and agree:

- 12.4.1 that same no longer forms part of the patrimony of the Borrower;
- 12.4.2 that same shall be held by the Administrative Agent, with interest thereon at a fluctuating rate per annum equal to the interbank rate for overnight funds which is applicable to Canadian Dollar deposits with the Administrative Agent in accordance with market practice, for the account and benefit of the Lender or Lenders that accepted such BAs; and
- 12.4.3 that on the Selected Maturity Date of the BAs constituting such BA Liabilities, same shall be made available by the Administrative Agent to such Lender or Lenders, including any interest thereon, in the same manner as for any other repayment of principal of their Loans and they shall be responsible for all payments to third parties under such BAs, the Borrower being entirely exonerated from such payment, but only for up to an amount equal to the amount repaid pursuant to this Section;

and the Borrower shall have no further liability in respect of each such BA and the Lender or Lenders that accepted such BAs shall be entitled to all of the benefits of the amounts so repaid by the Borrower, including any interest thereon, in the same manner as any other payment of the principal amount of their Loans and it shall be responsible for all payments to third parties under such BAs, the Borrower being entirely exonerated from such payment, but only for up to an amount equal to the amount repaid pursuant to this Section.

12.5 Proceeds Resulting from Repayment of LC Liabilities

Where the Borrower repays any part of the LC Liabilities on any day other than the Selected Maturity Date of the LC to which such LC Liabilities relate, with respect to the amount so repaid, the parties hereto do hereby acknowledge and agree:

- 12.5.1 that same no longer forms part of the patrimony or estate of the Borrower;
- 12.5.2 that same shall be held by the Administrative Agent, with interest thereon at a fluctuating rate per annum equal to the interbank rate for overnight funds which is applicable to deposits with the Administrative Agent in the same currency as that in which such

repayment is made in accordance with market practice, for the account and benefit of the Lenders;

- 12.5.3 upon the receipt by the Administrative Agent of a notice from the LC Issuing Lender relating to a demand for payment made upon the LC Issuing Lender under the terms of any LC forming part of the LC Liabilities so repaid, the Administrative Agent shall make available to the LC Issuing Lender, from the amounts, including any interest they so generated, so held by the Administrative Agent under the provisions of this Section 12.5, an amount sufficient to allow the LC Issuing Lender to meet its obligations under such LC, the Borrower being entirely exonerated from such payment, but only for up to an amount equal to the amount repaid under this Section; and
- 12.5.4 where no such demand for payment is made upon the LC Issuing Lender under such LC at the relevant Selected Maturity Date, the Administrative Agent shall apply a portion of the amounts so held by it under the provisions of this Section 12.5 in the Account denominated in the relevant currency or, when the Majority Lenders have exercised their rights under Section 20.1, the Administrative Agent shall use the amounts so held by the Administrative Agent under this Section 12.5 in conformity with the provisions of Section 20.2.

12.6 Payments of Loans to Administrative Agent Only

- 12.6.1 Notwithstanding any provisions in this Agreement to the contrary, all payments or repayments of principal and interest on the Loans and of fees and other amounts due and to become due hereunder with respect to the Loans (other than the Cdn Swingline Loan, the HK Swingline Loan and the UK Swingline Loan) and the Revolving Facility by the Borrower must be effected by direct payments to the Administrative Agent at the Administrative Agent's Office only and payments of principal or interest on the Cdn Swingline Loan shall be effected directly to the Cdn Swingline Lender, and on the HK Swingline Loan and the UK Swingline Loan shall be effected directly to the Other Swingline Lender. The Borrower hereby authorizes the Administrative Agent, the Cdn Swingline Lender and the Other Swingline Lender to effect all necessary debits in the Accounts, the HSBC HK US Dollar Account or the HSBC UK US Dollar Account, as the case may be, to effect such payments. The receipt by the Administrative Agent of such amounts shall be deemed to constitute the receipt of such amounts by the Lenders.
- 12.6.2 Except as otherwise expressly provided herein upon receipt of any such payments or repayments, the Administrative Agent shall forthwith distribute to each of the Lenders, their respective Rateable

Share of such payments and repayments as relate to the Loans so repaid. Where any such payment or repayment pertains to any of the BA Liabilities, the Rateable Share of any Lender with respect thereto shall, for all purposes hereof, be deemed to be the aggregate of the face amounts of the BAs of such Lender forming part of such BA Liabilities.

- 12.6.3 If for whatever reason any such payment or repayment is made directly to any Lender, such Lender shall promptly remit any amounts so received to the Administrative Agent at the Administrative Agent's Office for distribution.

12.7 Payment on Any Business Day

Whenever any payment or repayment falls due on a day which is not a Business Day, such payment or repayment shall be made on the next following Business Day. Furthermore, any amount received after 3:00 p.m., Montréal time, or, in the case of a payment made in Euros, after 2:00 p.m. (Montreal time), on any Business Day shall be applied to the appropriate payment or repayment which was required to be made on such Business Day, on the next following Business Day. Any payment or repayment must be made in same-day funds. Until the amount of the payment or repayment is received in same-day funds, interest shall continue to accrue as provided in this Agreement on the amount of such payment or repayment.

12.8 Netting

Where on the date that any Advance is required to be made to the Borrower, the Borrower is required to make or voluntarily makes any payment or repayment of any of the Loans and such payment or repayment is denominated in the same currency as that of the requested Advance, the Administrative Agent shall be entitled to net amounts payable by the Borrower to the Administrative Agent for the account of any Lender against amounts that such Lender is requested to pay to the Administrative Agent in such currency for the purpose of effecting its Rateable Share of such Advance.

12.9 Payment at Respective Branches of Account of the Lenders

All payments required to be made by the Administrative Agent to any of the Lenders or of the LC Issuing Lender, as the case may be, shall be made at such office or branch of such Lender or LC Issuing Lender as such Lender or LC Issuing Lender may specify from time to time, in same day funds.

12.10 Administrative Agent May Presume that Payments will be Made by the Borrower

- 12.10.1 Unless the Administrative Agent shall have received a written notice from the Borrower by 5:00 p.m., Montréal time, on the Business Day prior to the due date of any payment or repayment, or is otherwise informed prior to making any amount available to any Lender as contemplated in this Section 12.10, that the Borrower will not make

such payment or repayment, the Administrative Agent may assume that the Borrower shall make such payment or repayment on the due date thereof in accordance with the applicable provisions of this Agreement, and the Administrative Agent may, in reliance upon such assumption, make available to each Lender on such date, the Rateable Share of such Lender of such payment or repayment.

- 12.10.2 If the Borrower does not make such payment or repayment and the Administrative Agent does make available to such Lender its Rateable Share of such payment or repayment, the Indebtedness under this Agreement of the Borrower, with respect to any amount so made available by the Administrative Agent, shall not be novated and the Borrower shall thereupon be and become liable to the Administrative Agent for the immediate payment of the amount so made available by the Administrative Agent to such Lender, together with interest thereon for each day from and including the date the Administrative Agent shall have so made available such amount to such Lender at the rate that such amount would have borne under the terms of this Agreement had the Administrative Agent not so made it available, computed and payable in the manner herein contemplated, the whole without any notice or demand on the part of the Administrative Agent. A certificate of the Administrative Agent submitted to the Borrower with respect to any amount owing under this Section shall be *prima facie* evidence thereof, absent manifest error.
- 12.10.3 If such amount is so made available to such Lender, such payment to the Administrative Agent by the Borrower shall constitute the Borrower's payment or repayment of the share of such Lender of the relevant payment or repayment on the date the Borrower pays same to the Administrative Agent, for all purposes of this Agreement. If such amount is not so paid to the Administrative Agent by the Borrower, then the Administrative Agent shall notify such Lender of such failure and, without in any way affecting or otherwise diminishing the obligation of the Borrower to pay such amount to the Administrative Agent immediately, as herein contemplated, on the first (1st) Business Day following the due date of such payment or repayment, such Lender shall pay to the Administrative Agent the amount made available to it by the Administrative Agent together with interest thereon for each day that such Lender had the use of such amount at a rate per annum equal to the rate payable by the Borrower on such amount under the terms hereof computed daily, compounded monthly on the first day of each calendar month and payable upon the demand of the Administrative Agent.

ARTICLE 13

SECURITY

13.1 Security

As a general and continuing collateral security for the performance by the Borrower and each of the other Restricted Parties of all of their respective obligations under the Operative Documents including, without limitation, the obligation of the Borrower to repay the Loans in principal, interest, fees and accessories and interest on arrears of interest, fees and accessories upon the terms and conditions provided for hereunder and the obligations and liabilities of the Material Parties under ISDA Contracts (all such obligations are collectively referred to herein as the "**Secured Obligations**", provided, however, that with respect to MCP, "**Secured Obligations**" shall exclude obligations of the Borrower under Tranche A):

13.1.1 in regard to any Restricted Party that is required to be a Guarantor on the Effective Date, prior to or concurrently with the Effective Date, and in regard to any Restricted Party that at any time is required to become a Guarantor pursuant to the terms hereof, prior to or concurrently to such time:

13.1.1.1 the Borrower shall Guarantee the Secured Obligations of all other Restricted Parties and subordinate and postpone any Indebtedness of any other Guarantor to it to the prior payment in full of the Secured Obligations, the whole pursuant to documents and agreements in form and substance satisfactory to the Administrative Agent, acting reasonably;

13.1.1.2 the Borrower shall grant the Finance Parties first ranking Liens, subject only to Permitted Liens, on all of its assets present and future, movable and immovable, corporeal and incorporeal (including all rights, titles and interest in the [REDACTED] [name of client] Contracts to which it is a party and any receivable thereunder), and shall pledge in favour of the Finance Parties the Capital Stock that it owns in any other Guarantor, the whole pursuant to documents and agreements in form and substance satisfactory to the Administrative Agent, acting reasonably, and the stated amount of any Quebec hypothec granted in furtherance of the foregoing shall be Cdn\$ [REDACTED] [dollar amount], plus an additional amount of Cdn\$ [REDACTED] [dollar amount];

13.1.1.3 the Borrower shall cause each Guarantor to solidarily Guarantee, within the limits of Applicable Laws, the Secured Obligations and to subordinate and postpone any Indebtedness of any Guarantor to it to the prior payment in full of the Secured Obligations, the whole

pursuant to documents and agreements in form and substance satisfactory to the Administrative Agent, acting reasonably;

13.1.1.4 the Borrower shall cause each Material Party to grant in favour of the Finance Parties, within the limits of Applicable Laws, first ranking Liens, subject only to Permitted Liens, on, subject to Schedule "W", all of its assets, present and future, movable and immovable, corporeal and incorporeal (including, if applicable, all rights, titles and interest in the [redacted] [name of client] Contracts to which it is a party and any receivable thereunder), pursuant to documents and agreements in form and substance satisfactory to the Administrative Agent acting reasonably, and the stated amount of any Quebec hypothec granted in furtherance of the foregoing shall be Cdn\$ [redacted] [dollar amount], plus an additional amount of Cdn\$ [redacted] [dollar amount]; and

13.1.1.5 the Borrower shall cause each Restricted Party identified in Schedule "T" to grant in favour of the Finance Parties, within the limits of Applicable Laws, a pledge on the Capital Stock described next to its name in such Schedule "T", pursuant to documents and agreements in form and substance satisfactory to the Administrative Agent acting reasonably.

13.2 **Additional Guarantees from certain Restricted Parties**

Where, at any time if (i) the Borrower voluntarily designates one or more Non-Material Parties to become Guarantors or, (ii) following the period starting on the Effective Date and ending ninety (90) days thereafter, the Administrative Agent determines, following receipt of a Compliance Certificate or Acquisition Certificate, that either:

13.2.1 the aggregate non-consolidated value of the Business Assets of the Material Parties represents less than [redacted] [percentage] of the consolidated value of the Business Assets of the Borrower (excluding the MCP/HSBC Deposits or any other restricted cash); or

13.2.2 the aggregate non-consolidated EBITDA of the Material Parties for the four most recently completed fiscal quarters of the Borrower represents less than [redacted] [percentage] of the consolidated EBITDA of the Borrower for the same period;

then, in the case of clause (i) above, the Borrower shall notify the Administrative Agent in writing of its intention to designate such Non-Material Parties to become Guarantors and, in the case of clause (ii) above, pursuant to a written request to that effect from the Administrative Agent, the Borrower shall cause (i) within thirty (30) days of such notice or request, as the case may be, one or more Non-Material Parties to become Guarantors (and, consequently, Material Parties) under a Guarantee such that, thereafter, both of the above-mentioned ratios shall be met, (ii) within forty-five (45) days of such notice or request, as the case may be, (a) each such Non-

Material Party to provide and enter into, in support of its guarantee referred to above, such additional Security Documents as the Administrative Agent may consider appropriate or desirable in order for such Restricted Party to provide the Liens contemplated in Section 13.1, and (b) all of the Capital Stock of each such Non-Material Party and of each direct or indirect shareholder of each such Non-Material Party to be pledged in favour of the Finance Parties. Such additional Security Documents shall be in form and substance satisfactory to the Administrative Agent.

13.3 Accessory Documents with respect to Future Guarantors

In connection and concurrently with any Person becoming a Guarantor, the Borrower covenants to deliver or cause to be delivered to the Administrative Agent, in form and substance reasonably satisfactory to it:

- 13.3.1 with respect to each such Guarantor, the documentation referred to in subsection 14.1.1;
- 13.3.2 with respect to each such Guarantor, results of current searches of public records by the Companies' Counsel, within the limits of Applicable Laws, and to the extent available in the relevant jurisdiction and, a copy of the shareholder register of such Guarantor, and the results of such searches and the copy of such register shall be as up to date as reasonably possible relative to the date on which such Guarantor shall have become a Guarantor and shall reveal no Liens other than Permitted Liens and Liens for which releases, discharges and mainlevées are referred to in subsection 13.3.6;
- 13.3.3 a detailed corporate chart of the Borrower, its Subsidiaries and any other Person within which the Borrower or its Subsidiaries holds Capital Stock following such Person becoming a Guarantor;
- 13.3.4 with respect to each such Guarantor that is a German Company, a certified copy of its commercial register extract (*Handelsregisterauszug*) dated no later than fifteen (15) days before the date on which such German Company becomes a Guarantor and a copy of the Domination Agreement entered into with such Guarantor and its majority shareholder;
- 13.3.5 with respect to each such Guarantor incorporated under the laws of the Grand Duchy of Luxembourg, an up-to-date copy of an extract from the Luxembourg Companies' Register and an up-to-date negative certificate (*certificat de non-inscription d'une décision judiciaire*) issued by the Luxembourg Companies' Register in relation to that Guarantor;
- 13.3.6 with respect to each such Guarantor, releases, discharges and mainlevées, or, as the case may be, irrevocable undertakings, in form

and substance satisfactory to the Administrative Agent, acting reasonably, to grant releases, discharges and mainlevées with respect to all Liens, other than Permitted Liens, affecting such Guarantor or its Business Assets, duly executed by all relevant Persons;

- 13.3.7 with respect to each such Guarantor that owns an immovable, the documents required pursuant to Section 13.4, as if such Guarantor had acquired such immovable as of the moment it became a Guarantor;
- 13.3.8 with respect to each such Guarantor, a certificate as to matters of fact dated as of the date on which such Person became a Guarantor, duly executed by two (2) Responsible Officers of the Borrower or of such Guarantor if the officers of the Borrower are not officers of such Guarantor or by any other person acceptable to the Administrative Agent, addressing any question of fact in connection with the Guarantee granted by such Guarantor and the granting of security by such Guarantor as the Administrative Agent may reasonably require; and
- 13.3.9 the legal opinions of such of the Companies' Counsel and/or the Lenders' Counsel as the Administrative Agent may request, acting reasonably, addressed to the Administrative Agent, the Finance Parties and Lenders' Counsel, dated as of the date on which such Person became a Guarantor. Such opinions shall cover such matters incident to the Guarantee granted by such Guarantor and the granting of security by such Guarantor as the Administrative Agent may reasonably require.

13.4 **Additional Security with Respect to Immovables**

When at any time any Material Party acquires an immovable, the Borrower covenants to (i) cause such Material Party to deliver or enter into any document, instrument, deed, contract or any other agreement and to execute any act, as the Administrative Agent shall deem necessary, acting reasonably, so as to grant in favour of the Finance Parties, within the limits of any Applicable Laws, Liens on such immovable in order to secure the Secured Obligations, and (ii) deliver or cause the delivery of, in accordance with practice in any relevant jurisdiction, any legal opinion, title opinion, title insurance or other document as the Administrative Agent may require, acting reasonably.

Within forty-five (45) days following such acquisition, the Borrower covenants to deliver or execute or cause the delivery or execution of any such documents, instruments, deeds, contracts or other agreements, and of any such legal opinion, title opinion, title insurance or other document, and to carry out or cause the carrying out of any act as the Administrative Agent may require, acting reasonably. All such documents, instruments, deeds, contracts and other agreements, legal opinions, title opinions and/or title insurance shall be in form and substance satisfactory to the Administrative Agent, acting reasonably.

13.5 **Assignment and Accession**

Concurrently with any Assignment or with any accession by an Acceding Lender pursuant to Article 3 or subsection 25.5, the Borrower shall, and shall cause such of the Material Parties at or prior to such date to, execute and deliver all such documents, instruments, deeds, contracts or other agreements as the Administrative Agent shall consider necessary, acting reasonably, and carry out such other acts as the Administrative Agent, acting reasonably, shall consider necessary, the whole so as to (i) ensure that any such Assignee or Acceding Lender shall benefit from the Security Documents granted by the Material Parties, to the same extent as the other Lenders, (ii) preserve all the rights of the Lenders under such Security Documents subsequent to such Assignment or accession, and (iii) ensure that the Security Documents adequately secure all Secured Obligations as could be outstanding at any time and from time to time subsequent to such accession or increase in Commitment, including, without limitation, by increasing the amount of any hypothec or any other Lien under any of the Security Documents, if considered necessary by the Administrative Agent, acting reasonably.

13.6 **Landlord waivers and consents**

The Borrower agrees to use its best efforts to obtain, no later than ninety (90) days from the Effective Date, in respect of each of its leased premises listed in Schedule "E", landlord waivers and consents in form and substance satisfactory to the Administrative Agent, acting reasonably.

13.7 **Sidech Security Documents**

The parties acknowledge and agree that in order to accommodate the Borrower by limiting the underlying registration costs, the Lenders have accepted to limit the amount recoverable from Sidech under the Sidech Pledge on Business Assets and the Sidech Land Charge to [redacted] [dollar amount] Euros and [redacted] [dollar amount] Euros, respectively. Mandates shall also be granted in favour of the Administrative Agent pursuant to which the Administrative Agent, at the request of the Majority Lenders, shall have at any time and from time to time the right to require that, within forty-five (45) days of written request therefor, such amounts be increased by up to an amount of [redacted] [dollar amount] Euros in the case of the Sidech Pledge on Business Assets and [redacted] [dollar amount] Euros in the case of the Sidech Land Charge to secure the full amount of the Secured Obligations at any time and from time to time, it being understood that such amounts remain subject to the discretion of the Administrative Agent, such discretion to be exercised acting reasonably on the basis of, without limitation, the evolution of the underlying value of the Business Assets of Sidech and of the EBITDA of Sidech. For greater certainty, but without limiting the security to be granted by Sidech pursuant to Schedule "W", Sidech shall also grant a pledge on the receivables of Sidech in favour of the Administrative Agent, the amount of which pledge on receivables shall not be limited.

13.8 **Security Documents prior to the Effective Date**

Notwithstanding that certain of the Security Documents executed prior to the Effective Date make reference to an amended and restated credit agreement dated on or about July 15, 2011, the parties hereto acknowledge and agree that said reference shall constitute a reference to this Agreement.

ARTICLE 14

CONDITIONS PRECEDENT

14.1 **Initial Conditions**

Notwithstanding the execution of this Amended and Restated Credit Agreement by the parties hereto, the provisions hereof shall not come into force and the provisions of the Principal Credit Agreement shall continue to bind the parties hereto until such time as the Administrative Agent shall have issued a notice in writing to the Borrower declaring that each of the following conditions precedent (the "**Conditions Precedent to the Amendment and Restatement**") shall have been met to the satisfaction of the Lenders or, as the case may be, waived by the Lenders (the date of such notice shall be referred to herein as the "**Effective Date**"):

CORPORATE MATTERS

14.1.1 the Administrative Agent shall have received:

[REDACTED]

[REDACTED]

[REDACTED]

14.1.1.4

[REDACTED]

[description of conditions precedent]

MATTERS RELATING TO SECURITY

- 14.1.2 the Administrative Agent shall have received all Security Documents described in Schedule "W" with respect to the Existing Canadian Credit Facilities duly executed by all required Existing Material Parties, together with evidence in form and substance satisfactory to the Administrative Agent of all filings, recordings, registrations or other actions necessary or, in the opinion of the Administrative Agent, acting reasonably, desirable in order to grant in favour of the Administrative Agent and the Lenders first ranking Liens, subject only to Permitted Liens and to the Liens with respect to which releases, discharges and mainlevées are to be obtained pursuant to subsection 14.1.4;
- 14.1.3 the Administrative Agent shall have received, with respect to each of the Existing Material Parties, results of current searches of the public records referred to in Schedule "F" by the Companies' Counsel, and the results of such searches shall be as close to the Effective Date as possible, and shall reveal no Liens other than Permitted Liens and Liens for which releases, discharges and mainlevées are referred to in subsections 14.1.4;
- 14.1.4 the Administrative Agent shall have received prior to the Effective Date, releases, discharges and mainlevées, or, as the case may, irrevocable undertakings to grant releases, discharges and mainlevées, in form and substance satisfactory to the Administrative Agent, with respect to all Liens, other than Permitted Liens, affecting any of the Existing Material Parties or their Business Assets, duly executed by all required Persons;
- 14.1.5 the Administrative Agent shall have entered into an intercreditor agreement with HSBC Hong Kong in form and substance satisfactory to the Administrative Agent;

INSURANCE

- 14.1.6 the Administrative Agent shall have received:
 - 14.1.6.1 copies of certificates of insurance or other documentation satisfactory to the Administrative Agent evidencing the effectiveness of all insurance covering the Existing Material Parties and required to be maintained by the Existing Material Parties pursuant to Section 16.7; and

- 14.1.6.2 an endorsement with respect to the all risk insurance policies contemplated in Section 16.7 and covering the Existing Material Parties naming the Administrative Agent as additional insured, and, as the case may be, as beneficiary, and a satisfactory mortgagee clause or such other documentation satisfactory to the Administrative Agent;

FEES, EXPENSES AND COSTS

- 14.1.7 the Administrative Agent and the Lenders shall have received all fees which any of them is entitled to receive on or prior to the Effective Date under any agreement with the Borrower;

FINANCIAL INFORMATION

- 14.1.8 the Administrative Agent shall have received updated consolidated forecasts of the Borrower on a quarterly basis up to December 31, 2012 and on an annual basis for the 2013 and 2014 fiscal years;
- 14.1.9 receipt by the Lenders of "Know your client" documentation;

TITLE MATTERS

- 14.1.10 the Administrative Agent shall have received prior to the Effective Date current surveys and/or certificates of location or other documentation satisfactory to the Administrative Agent for each of the real and immovable properties of each Existing Material Party prepared and certified by qualified land surveyors, addressed to the Lenders, the Administrative Agent and Lenders' Counsel, in form and substance satisfactory to the Administrative Agent, acting reasonably, together with descriptions and plans deemed necessary and appropriate in accordance with current land surveying standards;
- 14.1.11 the Administrative Agent shall have received title opinions (or title insurance if title opinions are not available) from the Companies' Counsel or other documentation satisfactory to the Administrative Agent each dated the Effective Date with respect to the real or immovable properties of the Existing Material Parties which are subject to the Liens created under the Security Documents referred to in subsection 14.1.2, in form and substance satisfactory to the Administrative Agent, acting reasonably;

ENVIRONMENTAL MATTERS

- 14.1.12 the Administrative Agent shall have received copies of all environmental reports listed in Schedule "X";

OPINIONS

- 14.1.13 the Administrative Agent shall have received the legal opinions of such of the Companies' Counsel and/or the Lenders' Counsel as the Administrative Agent may request, acting reasonably, each dated the Effective Date, addressed to the Finance Parties and Lenders' Counsel in form and substance satisfactory to the Administrative Agent, acting reasonably.

Such legal opinions shall cover such matters incident to the transactions contemplated by the Operative Documents as the Administrative Agent, may reasonably request, including (i) the legality, validity, binding nature and enforceability of this Agreement and the other Operative Documents, and (ii) the validity, enforceability and due registration of the Liens granted pursuant to the Security Documents referred to in subsection 14.1.2, (iii) the conflicts of laws rules governing the enforceability of foreign judgments.

COMPLIANCE

- 14.1.14 the representations and warranties made by the members of the Group under any of the Operative Documents are true and correct in all material respects as at the Effective Date and will remain true and correct immediately following the Effective Date;
- 14.1.15 the Administrative Agent shall have received a certificate of officers attesting as to certain matters of fact dated the Effective Date and duly executed by two (2) Responsible Officers of the Borrower;
- 14.1.16 the Administrative Agent shall have received a Compliance Certificate dated the Effective Date, which Compliance Certificate shall, *inter alia*, set forth calculations showing, on a pro forma basis after giving effect to this financing, compliance with the Ratios as of the date of the most recently completed fiscal quarter of the Borrower, as well as the balance of the Initial MCP/HSBC Loans and the Initial MCP/HSBC Deposits outstanding as of such date;
- 14.1.17 no Default or Event of Default shall have occurred and be continuing;

and, on the third (3rd) Business Days following the Effective Date, the existing Loans (other than the Existing Libor Loans) under the Principal Credit Agreement shall be allocated between the Lenders on the basis of their Rateable Share, and all interest accrued on such existing Loans during such three (3) Business Day period shall be payable to National Bank of Canada in accordance with the terms and conditions set out herein.

14.2 Subsequent Advances under the Revolving Facility

Subject to and upon compliance with all of the relevant terms and conditions of this Agreement, at any time and from time to time during the Revolving Period, upon or following the Conditions Precedent to the Amendment and Restatement having been met, or as the case may be, waived by the Majority Lenders, the Borrower can request an Advance under the Revolving Facility (other than the Cdn Swingline Facility, the HK Swingline Facility and the UK Swingline Facility), only if on the requested Borrowing Date:

- 14.2.1 the Administrative Agent and, in the case where an LC is requested to be issued, the LC Issuing Lender, shall have received the Draw Request, in each case, within the delays herein provided;
- 14.2.2 the representations and warranties made by the Group under the Operative Documents shall be true and correct in all material respects as of the date of such requested Advance and shall be true and correct immediately following the making of such Advance;
- 14.2.3 the Administrative Agent shall have determined that the amount of the requested Advance is not greater than the Available Revolving Facility;
- 14.2.4 where an LC is requested to be issued, the LC Issuing Lender shall have received (y) concurrently with such Draw Request all documents and information as it may consider necessary as to the beneficiary of such LC and to the conditions under which it shall become obliged to make payments thereunder so that it can prepare the appropriate form thereof and (z) by 11:00 a.m., Montréal time, of the date that such LC is to be issued, a confirmation from the Administrative Agent that the Advance requested to be made by the issuance of such LC may be made at such time under the terms of this Section 14.2;
- 14.2.5 no event shall have occurred which has or could be reasonably expected to have a Material Adverse Effect; and
- 14.2.6 no Default or Event of Default shall have occurred and be continuing, or shall result from such Advance.

14.3 Advances to repay the Existing Credit Facilities and Luxco Intercompany Loans

Subject to and upon compliance with all of the relevant terms and conditions of this Agreement, including, without limitation, the order of repayment of the Existing Credit Facilities indicated in subsection 2.3.2, the Borrower can (i) at any time and from time to time during the Revolving Period but no later than ninety (90) days after the Effective Date, request an Advance under the Revolving Facility (other than the Cdn Swingline Facility, the HK Swingline Facility and the UK Swingline Facility), for the purposes of repaying in full any Existing Credit Facility, and (ii) at any time and from time to time during the Revolving Period, cause the Initial Luxco

Intercompany Loans to be put in place, if, on the requested Borrowing Date or on the day the Luxco Intercompany Loans are put in place, as the case may be:

- 14.3.1 in the case of a repayment of an Existing Credit Facility, the Administrative Agent shall have received the Draw Request within the delays herein provided;
- 14.3.2 the representations and warranties made by the Group under the Operative Documents shall be true and correct in all material respects as of such date and shall be true and correct immediately following such date;
- 14.3.3 no event shall have occurred which has or could be reasonably expected to have a Material Adverse Effect;
- 14.3.4 no Default or Event of Default shall have occurred and be continuing, or shall result from such Advance or the putting in place of the Initial Luxco Intercompany Loans;
- 14.3.5 the Administrative Agent shall have received:
 - 14.3.5.1 true and complete copies of the constitutive documents, charter and by-laws or other organizational documents of the Restricted Parties granting the Liens referred to in subsection 14.3.6;
 - 14.3.5.2 true and complete copies of the resolutions of the relevant governing body (including, where appropriate, shareholders), authorizing or ratifying the execution and delivery of, and the performance by each Restricted Party granting the Liens referred to in subsection 14.3.6 of its obligations under the Operative Documents to which it is a party and stating the offices of the Responsible Officers or other Persons who are authorized to sign such documents;
 - 14.3.5.3 a certificate stating the name, office and the true signature of each Responsible Officer or other representative of each Restricted Party granting the Liens referred to in subsection 14.3.6;
 - 14.3.5.4 in respect of each Restricted Party granting the Liens referred to in subsection 14.3.6 (other than the German Companies), a certificate of good standing (including where appropriate, a *certificat de régularité* and a *certificat d'attestation*) or the equivalent thereof (if any) from the jurisdiction of its incorporation or organization issued by the appropriate authorities in its jurisdiction of incorporation and, if applicable, in the jurisdiction of its chief executive office (including, with respect to any Restricted Party incorporated under the laws of the Grand Duchy of Luxembourg,

an up-to-date copy of an extract from the Luxembourg Companies' Register and an up-to-date negative certificate (*certificat de non-inscription d'une décision judiciaire*) issued by the Luxembourg Companies' Register in relation to that Restricted Party);

- 14.3.6 the Administrative Agent shall have received all Security Documents described in Schedule "W" for the Existing Credit Facility so repaid or for the putting in place of the Initial Luxco Intercompany Loans, duly executed by all required Restricted Parties, together with evidence in form and substance satisfactory to the Administrative Agent of all filings, recordings, registrations or other actions necessary or, in the opinion of the Lenders, acting reasonably, desirable in order to grant in favour of the Administrative Agent and the Lenders first ranking Liens, subject only to Permitted Liens and to the Liens with respect to which releases, discharges and mainlevées are to be obtained pursuant to subsection 14.3.8;
- 14.3.7 the Administrative Agent shall have received, with respect to each of the Restricted Parties granting the Liens referred to in subsection 14.3.6, results of current searches of the public records referred to in Schedule "F" by the Companies' Counsel, and the results of such searches shall be as close to the repayment date as possible, and shall reveal no Liens other than Permitted Liens and Liens for which releases, discharges and mainlevées are referred to in subsection 14.3.8;
- 14.3.8 the Administrative Agent shall have received on or prior to the repayment date, releases, discharges and mainlevées, or, as the case may be, irrevocable undertakings to grant releases, discharges and mainlevées, in form and substance satisfactory to the Administrative Agent, with respect to all Liens, other than Permitted Liens, affecting any of the Restricted Parties granting the Liens referred to in subsection 14.3.6, or their Business Assets, duly executed by all required Persons;
- 14.3.9 the Administrative Agent shall have received:
 - 14.3.9.1 copies of certificates of insurance or other documentation satisfactory to the Administrative Agent evidencing the effectiveness of all insurance covering the Restricted Parties granting the Liens referred to in subsection 14.3.6 and required to be maintained by such Restricted Parties pursuant to Section 16.7; and
 - 14.3.9.2 an endorsement with respect to the all risk insurance policies contemplated in Section 16.7 and covering the Restricted Parties

granting the Liens referred to in subsection 14.3.6 naming the Administrative Agent as additional insured, and, as the case may be, as beneficiary, and a satisfactory mortgagee clause or such other documentation satisfactory to the Administrative Agent;

- 14.3.10 in the case of the putting in place of the Initial Luxco Intercompany Loans, the Lenders shall have received executed copies of the intercompany loan documentation, in form and substance satisfactory to them, evidencing the loans to be made pursuant to the Initial Luxco Intercompany Loans;
- 14.3.11 in the case of the putting in place of the Initial Luxco Intercompany Loans, the Lenders shall have received a tax opinion from the Borrower's financial advisors dated the Effective Date and addressed to the Finance Parties in connection with the Initial Luxco Intercompany Loans, which tax opinion shall be in form and substance satisfactory to the Administrative Agent;
- 14.3.12 in the case of a repayment of an Existing Credit Facility, the Administrative Agent shall have received a certificate of officers in the form attached hereto as Schedule "Z" dated as of such Borrowing Date and confirming the percentage of the consolidated value of the Business Assets of the Borrower represented by the aggregate non-consolidated value of the Business Assets of the Material Parties, and the percentage of the consolidated EBITDA of the Borrower represented by the aggregate non-consolidated EBITDA of the Material Parties, following the repayment in full of such Existing Credit Facility, together with all calculations and financial information as shall be necessary in support of such attestation, the whole in form and substance satisfactory to the Lenders;
- 14.3.13 in the case of a repayment of an Existing Credit Facility, the Administrative Agent shall have received irrevocable directions of payment addressed to it by the Borrower as to the payment of the proceeds of the Drawdown requested under the Draw Request contemplated in subsection 14.3.1 to cancel the Existing Credit Facility intended to be so repaid;
- 14.3.14 in the case of the repayment of the Existing HK Credit Facilities, the Administrative Agent shall have received satisfactory evidence that each creditor thereunder including, without limitation, HSBC Hong Kong has released all Restricted Parties (other than the Borrower under the 5N Guarantee), including, without limitation, MCP, that Guaranteed the obligations of MCP Asia under the Existing HK Credit Facilities, MCP/HSBC Loans or the MCP/HSBC Derivative

Instruments prior to the repayment of such Existing HK Credit Facilities;

- 14.3.15 in the case of the repayment of the Existing Belgian Credit Facilities, the Administrative Agent shall have received satisfactory evidence that the Existing Derivative Instruments other than the Initial MCP/HSBC Derivative Instruments and the Sidech/Natixis Derivative Instruments have been cancelled and all Liens and Guarantees granted in connection therewith have been released;
- 14.3.16 the Administrative Agent shall have received the legal opinions of such of the Companies' Counsel and/or Lenders' Counsel as the Administrative Agent may request, acting reasonably, addressed to the Finance Parties and Lenders' Counsel in form and substance satisfactory to the Administrative Agent, acting reasonably.

Such legal opinions shall cover such matters incident to the transactions contemplated by the Security Documents described in Schedule "W" for the Existing Credit Facility so repaid, or for the putting in place of the Luxco Intercompany Loans, as the Administrative Agent, may reasonably request, including (i) the legality, validity, binding nature and enforceability of such Security Documents, and (ii) the validity, enforceability and due registration of the Liens granted pursuant to such Security Documents, (iii) the conflicts of laws rules governing the enforceability of foreign judgments.

14.4 **Subsequent Advances under the Cdn Swingline Facility, the HK Swingline Facility or the UK Swingline Facility**

Subject to and upon compliance with all of the relevant terms and conditions of this Agreement, at any time and from time to time during the Revolving Period prior to the Cdn Swingline Facility, the HK Swingline Facility or the UK Swingline Facility, as the case may be, being terminated, the Borrower can request an Advance under the Cdn Swingline Facility, the HK Swingline Facility or the UK Swingline Facility, as the case may be, only if on the requested Borrowing Date:

- 14.4.1 the Cdn Swingline Lender shall have determined that the amount of the requested Advance is not greater than the Available Cdn Swingline Facility, or, as the case may be, the Other Swingline Lender shall have determined that the amount of the requested Advance is not greater than the Available HK Swingline Facility or the Available UK Swingline Facility, as the case may be;
- 14.4.2 the representations and warranties made by the Restricted Parties under the Operative Documents shall be true and correct as of the date of such requested Advance and shall be true and correct immediately following the making of such Advance; and

- 14.4.3 no Default or Event of Default shall have occurred and be continuing, or shall result from such Advance.

ARTICLE 15

REPRESENTATIONS AND WARRANTIES

To induce the Lenders to make the Revolving Facility available to the Borrower, the Borrower represents and warrants to and in favour of the Lenders as follows:

15.1 Existence and Good Standing

Each member of the Group is a corporation, general or limited partnership or other legal person duly and validly incorporated or formed, organized and existing under the Laws of its jurisdiction of incorporation or formation and has the legal capacity and right to own its Business Assets and to carry on its business in each jurisdiction in which its Business Assets are located or it carries on business.

15.2 Authority

Each member of the Group has the legal capacity and right to enter into the Operative Documents to which it is a party and do all acts and things and execute and deliver all agreements, documents and instruments as are required thereunder to be done, observed or performed by it in accordance with the terms and conditions thereof.

15.3 Due Authorization

Each member of the Group has taken all necessary action to authorize the execution and delivery of each Operative Document to which it is a party, the creation and performance of its obligations thereunder and the creation of Liens, as the case may be, on its Business Assets as well as the consummation of the transactions contemplated in the Operative Documents to which it is a party.

15.4 Due Execution

Each member of the Group has duly executed and delivered each Operative Document and to which it is a party.

15.5 Validity of Loan Documents – Non-Conflict

None of the authorization, execution, delivery or performance of the Operative Documents by any member of the Group, nor the consummation of any of the transactions contemplated in the Operative Documents to which such member of the Group is a party:

- 15.5.1 requires any Authorization to be obtained or Registration to be made (except such as have already been obtained or made and are now in full force and effect and those not yet required) except for the

registration or filing of Security Documents to be effected on or about the Effective Date;

- 15.5.2 conflicts with, contravenes or gives rise to any default under (i) any of the articles or by-laws (or equivalent or analogous formation documents) or resolutions of the directors, shareholders, partners or other governing body of such member of the Group, (ii) the provisions of any Material Contract, indenture, instrument, agreement or undertaking to which such member of the Group is a party or by which such member of the Group or any of its Business Assets are or may become bound or (iii) any Applicable Law;
- 15.5.3 has resulted or will result in the creation or imposition of any Lien (other than a Permitted Lien) upon any of the Business Assets of such member of the Group.

15.6 **Enforceability**

Each Operative Document to which each member of the Group is a party constitutes a valid and legally binding obligation enforceable against it in accordance with its terms, subject (i) only to Laws relating to bankruptcy, insolvency, winding-up, dissolution, administration, reorganization, arrangement or other statutes or judicial decisions affecting the enforcement of creditors' rights in general and to general principles of equity under which specific performance and injunctive relief may be refused by a court in its discretion and (ii) qualifications and other reserves contained in the legal opinions of the Companies' Counsel and/or the Lenders' Counsel in connection with such Operative Documents.

15.7 **Absence of Litigation**

There is no existing, pending or, to the Borrower's knowledge, threatened litigation against any member of the Group which, if adversely determined, (i) would have a Material Adverse Effect, or (ii) could be reasonably be expected to result in a judgement or order ordering one or more members of the Group to pay more than Cdn\$ [redacted] [dollar amount] (or the Equivalent thereof in any other currency) or judgements or orders ordering one or more members of the Group to pay more than Cdn\$ [redacted] [dollar amount] (or the Equivalent thereof in any other currency) in the aggregate. To the Borrower's knowledge, no event has occurred, and no state or condition exists, which could reasonably be expected to give rise to any such litigation and there is no judgement or order outstanding against any member of the Group which could reasonably be expected to have a Material Adverse Effect or could reasonably be expected to impede a Permitted Acquisition.

15.8 **Financial Statements**

Each Financial Statement previously delivered (at the time this representation is made or is deemed to be made) to the Lenders or the Administrative Agent pursuant to or in connection with this Agreement has been prepared in accordance with GAAP (subject to year end audit adjustments, where applicable) and fairly and accurately presents the financial information and

the financial condition and results of operations of such member of the Group contained therein as at their respective preparation dates.

15.9 Accuracy of Information

No information furnished by any member of the Group to the Lenders or the Administrative Agent in connection with any of the Operative Documents contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein not misleading in light of the circumstances in which they were made and as of the date made. No undisclosed fact is currently known to the members of the Group which has or could be expected to have a Material Adverse Effect which has not been specifically disclosed in writing to any Finance Party.

15.10 Accuracy of Forecasts

Each financial forecast, estimate and projection with respect to any member of the Group prepared by any member of the Group and furnished to the Finance Parties was based upon assumptions believed to be reasonable by the members of the Group as of the date of preparation.

With respect to such financial forecasts, estimates and projections, the Borrower represents and warrants only that each such member of the Group has acted in good faith and has used those assumptions that it has deemed reasonable at the time at which they were made (provided however that such forecasts, estimates and projections with respect to future events cannot be deemed to constitute facts or warranties with respect to any future performance, that the results obtained during the period or the periods with respect to which such forecasts, estimates and projections were prepared and delivered may differ from results actually obtained, that such differences may be material and that the Borrower does not declare that such forecasts, estimates and projections will be realized).

15.11 No Material Adverse Change

Since the date of the most recent audited Financial Statements of the Borrower furnished to the Lenders, there has been no change which could be expected to have a Material Adverse Effect.

15.12 Compliance with Laws

To the best of the knowledge of the members of the Group, each member of the Group is in compliance in all material respects with all Applicable Laws, non-compliance with which could reasonably be expected to have a Material Adverse Effect.

15.13 ERISA

- 15.13.1 No member of the Group has breached the fiduciary rules of ERISA or engaged in any prohibited transaction in connection with which such member of the Group would be subjected to (in the case of any such breach) a suit for damages or (in the case of any such prohibited

transaction) either a civil penalty assessed under Section 502(i) of ERISA.

- 15.13.2 No member of the Group has ever established, maintains, has ever made contributions to, has liabilities with respect to, any Plan (other than a defined contribution plans).
- 15.13.3 Full timely payment has been made of all amounts, if any, which any member of the Group is required under Applicable Law, the terms of each Plan, or any collective bargaining agreement to have paid as contributions to such Plan, and no accumulated funding deficiency (as defined in Section 302 of ERISA), whether or not waived, exists or is reasonably expected to exist with respect to any Plan.

15.14 **Canadian Pension Plans**

There exists no Canadian Plan as of the Effective Date, and the provisions of this Section 15.14 shall apply at all times during the existence of any such Canadian Plan. Each Canadian Plan is in substantial compliance in all material respects with all applicable pension benefits and Tax Laws. As of the date of the last completed actuarial evaluation, no Canadian Plan had any unfunded liability, determined in accordance with all Applicable Laws and using assumptions and methods that are appropriate in the circumstances and in accordance with generally accepted actuarial principles and practices in the relevant jurisdiction in connection with an on-going Canadian Plan, save and except for any unfunded liability being funded or amortized in accordance with Applicable Laws. All contributions, including any special payments to amortize any unfunded liability, required to have been made in accordance with all Applicable Laws and the terms of each Canadian Plan have been made. All actuarial evaluations have been made and filed with the appropriate Governmental Authority in accordance with all Applicable Laws and the terms of each relevant Canadian Plan. No event has occurred and no condition exists with respect to any Canadian Plan that has resulted or is reasonably likely to result in any Canadian Plan being ordered or required to be wound up in whole pursuant to any pension benefits Applicable Law or having its registration revoked or refused for the purposes of any applicable pension benefits or Tax Laws or being placed under the administration of any relevant pension benefits regulatory authority or being required to pay any Taxes or penalties under any applicable pension benefits or Tax Laws except, in each case, as would not have a Material Adverse Effect. No event has occurred and no condition exists that has resulted, or could reasonably be expected to result, in any member of the Group being required to pay, repay or refund any amount (other than contributions required to be made or benefits or expenses required to be paid in the ordinary course) to or on account of any Canadian Plan or a current or former member thereof where such requirement to pay, repay or refund could have a Material Adverse Effect. No event has occurred and no condition exists that has resulted, or could reasonably be expected to result, in a payment being made out of a guarantee fund established under any applicable pension benefits Laws in respect of a Canadian Plan.

15.15 German Pension Plan

The Group is in full compliance with the terms of all German Pension Plans and all Applicable Laws, non-compliance with which could reasonably be expected to have a Material Adverse Effect.

15.16 No Default

No Default or Event of Default has occurred which has not been disclosed to any Finance Party and either remedied (or otherwise ceased to be continuing) or expressly waived by the Lenders in writing.

15.17 Movable and Immovable Property

Each member of the Group is the sole legal and beneficial owner of, free and clear of all Liens, other than Permitted Liens, all movable and immovable property reflected as an asset in the latest relevant Financial Statements provided to the Administrative Agent, except for personal property disposed since the date of those Financial Statements in compliance with the provisions of the Operative Documents.

15.18 Intellectual Property

Each member of the Group owns, possesses, or is the beneficiary of licences on or otherwise has the right to own all patents, trademarks, service marks, trade names and copyrights, technology, know-how and processes, and all rights with respect to the foregoing that are necessary for the operation of its business as presently conducted and as currently proposed to be conducted without any known material conflict with the rights of others, except those the failure to own or possess (or be licensed or otherwise have the right to use) could not, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect. The consummation of the transactions contemplated by the Operative Documents will not alter or impair in any material respect any such rights. To the knowledge of each member of the Group, none of the products of the members of the Group infringes any patent, trademark, service mark, trade name, copyright, license or other right owned by any other Person in any manner that could, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect; no litigation is pending or (to the knowledge of each member of the Group) threatened against any member of the Group or affecting any member of the Group, contesting its right to sell or use any product or material which litigation could, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the knowledge of each member of the Group, there is no violation by any Person of any of its rights with respect to any patent, trademark, trade name or service mark and copyright owned by any member of the Group or used by any member of the Group or used in connection with the assets of any member of the Group in any manner that could, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Schedule "H" contains a complete list of registered patents and trademarks, which, as at the Effective Date, are owned by the members of the Material Parties, or with respect to which the members of the Material Parties are the beneficiaries of licences or otherwise have the right to use such patents and trademarks.

15.19 Subsidiaries

As of the Effective Date:

- 15.19.1 the only Subsidiaries of the Borrower, the owners, beneficially and of record, of the issued Capital Stock of each member of the Group (other than the Borrower), the percentage of capital stock held by each such owner, beneficially or of record, and in respect of each Guarantor, the amount and type of Capital Stock of such Guarantor issued and outstanding, shall be as indicated in the Schedule "I". Moreover, Schedule "I" shall also identify each Restricted Party as being a "Restricted Party", and each Material Party as being a "Material Party"; and
- 15.19.2 no option or right to acquire any Capital Stock in any member of the Group shall have been granted to any Person.

15.20 Solvency

No member of the Group is unable to meet its obligations as they become due or has ceased paying its current obligations in the ordinary course of business as they generally become due and the aggregate of the property of each member of the Group is, at fair valuation, sufficient to enable payment of all the due obligations of each such member of the Group or, in respect of a German Company, is over-indebted with a lack of going concern (*keine positive Fortführungsprognose*) pursuant to Section 19 of the German Insolvency Code (*Insolvenzordnung*) or, in respect of a Luxembourg Company, it is not in state of *cessation des paiements* (i.e. the Luxembourg Company is not unable to pay its debt as they become due and payable out of its own cash flow and has not lost its commercial credit worthiness (*ébranlement du crédit*)).

15.21 Taxes

Each member of the Group has:

- 15.21.1 delivered or caused to be delivered, as and when required, all income, sales, goods and services and other returns for Taxes to the appropriate Governmental Authorities;
- 15.21.2 paid and discharged all Taxes payable by it when due except with respect to any such Tax which is being contested in good faith by appropriate proceedings and which is not required, by Applicable Law, to be paid prior to such contestation and for which appropriate reserves have been provided in its books and as to which neither any Lien (other than a Permitted Lien) has attached nor any foreclosure, distraint, seizure, attachment, sale or similar proceedings shall have been commenced;

- 15.21.3 made provision for appropriate reserves in respect of any Taxes likely to be payable in accordance with GAAP;
- 15.21.4 withheld and collected all Taxes required to be withheld and collected by it and remitted as and when required such Taxes to the appropriate Governmental Authority;

and the charges, accruals and reserves on its books in respect of Taxes are adequate, in its judgement.

15.22 **Ownership of Properties**

Each member of the Group has good title to or leasehold interest in all material Business Assets that are necessary for the operations of its business as currently conducted, free and clear of all Liens other than Permitted Liens.

15.23 **Insurance**

Each member of the Group insures its Business Assets and maintains business interruption insurance and civil liability insurance, in each case for such coverage as a prudent administrator would obtain or do in the case of similar property, assets and business.

15.24 **Environment**

Except as disclosed in Schedule "S", with respect to environmental matters:

- 15.24.1 to the best of the knowledge of each member of the Group, each member of the Group is in compliance with all Environmental Laws;
- 15.24.2 to the best of the knowledge of each member of the Group, the Business Assets of each member of the Group are owned, leased, managed, controlled or operated in compliance with all Environmental Laws;
- 15.24.3 there are no existing, pending or, to the knowledge of the members of the Group threatened:
 - 15.24.3.1 claims, complaints, notices or requests for information received by any member of the Group with respect to any alleged violation by any member of the Group of or alleged liability of any member of the Group under any Environmental Law relating to any of the Business Assets of any member of the Group, or
 - 15.24.3.2 orders from any Governmental Authority, including stop, clean-up or preventative orders, directions or action requests issued under Environmental Law which have been received by any member of the Group requiring any work, repair, clean-up, construction or

capital expenditures by any member of the Group with respect to any of the Business Assets of the members of the Group;

- 15.24.4 to the best of the knowledge of each member of the Group, except in compliance with Environmental Law, no Hazardous Materials have been generated, received, handled, used, stored, treated or shipped at or from, and there has been no Release of Hazardous Materials at, on, from or under any of the Business Assets of any of the members of the Group;
- 15.24.5 except in compliance with Environmental Law, as far as the members of the Group are aware, none of the lands and premises comprising any of the Business Assets of the members of the Group has been used for the disposal of waste or as a landfill or waste disposal site; and
- 15.24.6 to the best of the knowledge of each member of the Group, no member of the Group has directly transported or directly arranged for the transportation of any Hazardous Materials to any location, except in compliance in all material respects with Environmental Law,

with the exception of any matter or matters that could not reasonably be expected to, singly or in the aggregate, have a Material Adverse Effect.

15.25 Employee Relations

Except as described in Schedule "AA", as of the Effective Date, there exists no collective bargaining agreement applicable to any employees of any of the members of the Group, and the provisions of this Section 15.25 shall apply at any time when one or more collective bargaining agreements applicable to the employees of any of the members of the Group are in existence. Each of the collective bargaining agreements with respect to employees of the members of the Group is in force and in good order or, if it has expired, the renewal thereof is being negotiated except where the failure of such collective bargaining agreements to be in force and in good order or to negotiate the renewal thereof, singly or in the aggregate, has not or could not reasonably be expected to have a Material Adverse Effect. There are no grievances filed or threatened with respect to any of the collective bargaining agreements which, if adversely determined, singly or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect. There are no strikes, slowdowns, lock-outs or stoppages against any member of the Group or its employees, or any of them, and no strikes, slow downs, lock-outs or stoppages are pending or have been threatened against any member of the Group or its employees, or any of them which, singly or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

15.26 Occupational Health and Safety

Each member of the Group is in compliance with all Applicable Laws relating to occupational health and safety with the exception of any non-compliance which, singly or in the aggregate, could not be reasonably expected to have a Material Adverse Effect.

15.27 **Business**

The members of the Group specialize in the production, recycling and distribution of highly-purified metals, compounds and wafers such as tellurium, bismuth, gallium, cadmium, germanium, indium, antimony, selenium and related compounds, including cadmium telluride, cadmium sulphide and indium antimonide.

15.28 **Centre of Main Interests**

Each member of the Group incorporated under the laws of the Grand Duchy of Luxembourg has its principal place of business (*principal établissement*), the seat of its central administration (*siège de l'administration centrale*) and its centre of main interests (*centre des intérêts principaux*) located at the place of its registered office (*siège statutaire*) in the Grand Duchy of Luxembourg and has no establishment (as defined by Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, as amended) outside the Grand Duchy of Luxembourg.

15.29 **Environmental Reports**

As at the Effective Date, Schedule "X" sets forth an exhaustive list of the material reports and memorandums relating to the environmental status of the Business Assets of the members of the Group and which are in the possession of the Restricted Parties.

15.30 **Guarantees by Restricted Parties**

Other than the Guarantees provided by MCP in connection with the Existing HK Credit Facilities, the Initial MCP/HSBC Loans and the Initial MCP/HSBC Derivative Instruments and the 5N Guarantee, none of the Restricted Parties has Guaranteed the obligations of any other Restricted Party under the Existing Credit Facilities, the MCP/HSBC Loans, the MCP/HSBC Derivative Instruments, the MCP HEK Pension Fund Loan or the Existing Derivative Instruments.

15.31 **Existing Derivative Instruments**

As at the Effective Date, Schedule "CC" sets forth an exhaustive list of the Existing Derivative Instruments.

15.32 **Initial MCP/HSBC Loans**

As at the Effective Date, Schedule "DD" sets forth an exhaustive list of the Initial MCP/HSBC Loans.

15.33 **Anti-Terrorism Laws:**

- 15.33.1 No member of the Group is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

15.33.2 No member of the Group or to the Borrower's knowledge, any of their respective agents acting or benefiting in any capacity in connection with the transactions hereunder, is any of the following (each a "**Blocked Person**"):

15.33.2.1 a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

15.33.2.2 a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

15.33.2.3 a Person with which US Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

15.33.2.4 a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order No. 13224;

15.33.2.5 a Person that is named as a "specially designated national" on the most current list published by the US Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or

15.33.2.6 a Person who is affiliated with a Person listed above.

15.33.2.7 a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order No. 13224;

15.33.2.8 a Person that is named as a "specially designated national" on the most current list published by the US Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or

15.33.2.9 a Person who is affiliated with a Person listed above.

15.34 **Repetition of Representations and Warranties**

The representations and warranties made under this Agreement shall be deemed to be repeated by the Borrower on each Borrowing Date by reference to the facts and circumstances then existing.

15.35 **Nature of Representations and Warranties**

The representations and warranties made under this Agreement shall survive the execution and delivery of this Agreement any investigation by or in the name of any Finance Party and any Advance, conversion or rollover under the terms hereof, and the Lenders do not renounce to the

benefit of such representations and warranties and shall be deemed to have relied on such representations and warranties in the making of each Advance, conversion and rollover.

ARTICLE 16

GENERAL COVENANTS

So long as any Loan or any other amount payable hereunder is outstanding and unpaid or the Borrower shall have the right to borrow hereunder (whether or not the conditions to borrowing have been or can be fulfilled), and unless the Administrative Agent shall otherwise consent in writing, the Borrower hereby covenants to act in accordance with the following and to cause each member of the Group to act in accordance with the following:

16.1 Preservation of Existence, etc.

Subject to Section 18.4, each member of the Group will preserve and maintain its existence and preserve and maintain all Authorizations and Registrations necessary or required in the normal conduct of its business and qualify and remain qualified and authorized to do business in each jurisdiction in which it carries on business or owns or leases Business Assets.

16.2 Preservation of Authorizations

Each member of the Group will maintain, and take all actions necessary to maintain, in full force and effect the action taken by it to authorize the execution, delivery and performance in accordance with their respective terms of each of the Operative Documents to which it is a party and the consummation of the transactions contemplated by each one thereof.

16.3 Use of Advances

The Borrower shall use the Advances under the Revolving Facility exclusively for the purposes set out in Section 2.2.

16.4 Obtain Authorizations

Each member of the Group will obtain and maintain any Authorization of or from any Governmental Authority which may be or become necessary or required in order that it may fulfil its obligations under each of the Operative Documents and Material Contracts to which it is a party.

16.5 Business, Compliance with Applicable Law

Each member of the Group will engage, directly or indirectly, principally in the business referred to in Section 15.27 and carry on and conduct its business in a proper and efficient manner so as to preserve and protect the earnings, incomes and profits therefrom and comply with all requirements of Applicable Law, and the terms and conditions of all Authorizations necessary or required in the normal conduct of its business, provided, however, that nothing herein shall require it to comply with the requirements of any Applicable Law or the terms or conditions of

any Authorization so long as the applicability or validity thereof shall be contested by it or on its behalf in good faith and so long as non-compliance while so contesting could not reasonably be anticipated to have a Material Adverse Effect.

16.6 **Keeping of Records**

Each member of the Group will keep or cause to be kept, proper records and books of account in accordance with the Law, and make or cause to be made therein, true and faithful entries of all dealings and transactions in relation to its business, all in accordance with GAAP applied on a consistent basis.

16.7 **Insurance**

Each member of the Group will maintain insurance upon all its Business Assets against all such liabilities and risks contemplated in a global coverage standard fire insurance policy and in order to insure against loss of income, business interruption, product liability and third party liability, and will maintain all other insurance that adequately protects it and as is customary for companies carrying on businesses similar to that being carried on by it and owning the same types of assets, and, if applicable, as may be required by Applicable Law, or as otherwise may be reasonably requested by the Administrative Agent. All such insurances contemplated hereinabove shall be maintained with financially sound, independent and reputable insurers and shall be contracted for amounts and subject to deductibles as the Borrower may determine in good faith as being reasonable and appropriate under the circumstances.

Each member of the Group will duly and punctually pay or cause to be paid the premiums and other sums of money payable in connection with such insurance.

16.8 **Renewal of Registrations**

Each member of the Group will renew and keep renewing the Registrations made in connection with the Security Documents, the whole by no later than 90 days before the expiry of the delays stipulated for the preservation of the Liens created under the terms of such documents and, from time to time, upon any demand from the Administrative Agent to that effect, execute and deliver all other documents and do all other things which the Administrative Agent may require with respect to the Security Documents in order to maintain the validity and the rank of the Liens created thereunder.

16.9 **Payment of Taxes and Claims**

Each member of the Group will pay and discharge all Taxes imposed upon it or upon its income, capital or profits or upon any properties belonging to it prior to the date on which penalties attach thereto, and all lawful claims for rents, labour, materials and supplies which, if unpaid, might become a Lien upon any of its properties; provided, however, that, no such Tax need be paid which is being contested in good faith by appropriate proceedings and for which appropriate reserves shall have been set aside on the appropriate books, but only so long as such Tax does not become a Lien, other than a Permitted Lien, and no foreclosure, distraint, seizure, attachment, sale or similar proceedings shall have been commenced.

16.10 Environment

In the event (i) a Release of Hazardous Materials has occurred at, on, from or under any of the Business Assets of any member of the Group in contravention with any Environmental Law, and such Release could reasonably be expected to have a Material Adverse Effect, (ii) a Governmental Authority has issued an order against any member of the Group, including, without limitation, any staying order, decontamination order, preventive order, direction or action request issued pursuant to any Environmental Law with respect to any Release of Hazardous Materials on, from or under any of the Business Assets of any member of the Group, or (iii) an Event of Default has occurred and is continuing, the Borrower covenants to provide the Administrative Agent and the Lenders, at the expense of the Borrower, and upon written request from the Administrative Agent, with respect to such of the Business Assets of such member of the Group specified in such request (and with respect only to the relevant Business Assets of such member of the Group, as far as the events referred to in clauses (i) and (ii) are concerned), with an environmental site assessment or environmental audit report prepared by an environmental consultant of recognized standing chosen by such member of the Group, but reasonably acceptable to the Administrative Agent, to assess the likelihood of the presence or absence of any Hazardous Material in violation of Environmental Laws and the potential clean-up costs. In the event such member of the Group shall fail to so appoint an environmental consultant acceptable to the Administrative Agent, then the Administrative Agent shall be entitled to retain, at such member of the Group's expense, an environmental consultant of its choice to prepare such environmental site assessment or environmental audit report provided that the extent of such environmental site assessment or environmental audit report shall be reasonable having due regard to the motives invoked by the Administrative Agent.

16.11 Visits and Inspections

Upon reasonable notice, each member of the Group shall permit representatives of any Finance Party to visit and inspect its properties during normal business hours, inspect and make extracts from and copies of its books and records and discuss with its principal officers its business, assets, liabilities, financial position, results of operations and business prospects.

16.12 Payment of Legal and Other Fees and Disbursements

The Borrower covenants to pay upon demand all duly documented and reasonable legal, notarial, consulting and professional fees and disbursements or any out of pocket costs and expenses incurred from time to time by the Finance Parties or any one thereof, in connection with:

- 16.12.1 the negotiation, preparation and delivery of this Agreement, the other Operative Documents as well as any amendment to be made to any of the foregoing at any time and from time to time;
- 16.12.2 any Registrations made in connection with the Operative Documents;
- 16.12.3 any advice sought by the Finance Parties or any one thereof on the construction of this Agreement, any of the other Operative Documents, any of the Acquisition Documents or in anticipation of the exercise of

or for the purpose of determining whether or not to exercise any or all of their rights and recourses under the Operative Documents; and

- 16.12.4 any recovery of any sums due pursuant to the Operative Documents or in order to insure compliance with the provisions of the Operative Documents;

provided, however, that, the obligations of the Borrower under this Section as they relate to legal fees and disbursements, shall be limited only to the legal fees and disbursements charged or to be charged by Lenders' Counsel.

16.13 **Maintenance of Properties**

Each member of the Group will maintain, preserve, protect and keep its properties in good repair, working order and condition (ordinary wear and tear excepted), and make necessary repairs, renewals and replacements so that the business carried on by it may be properly conducted in all material respects at all times, unless such member of the Group determines in good faith that the continued maintenance of such property is no longer economically desirable, necessary or useful to the business of such member of the Group or the disposition of such property is otherwise permitted hereunder.

16.14 **Anti-Money Laundering Legislation**

- 16.14.1 Since, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" laws (collectively, including any guidelines or order thereunder, "**AML Legislation**"), the Lenders and the Administrative Agent may be required to obtain, verify and record information regarding any member of the Group, its directors, authorized signing officers, direct or indirect shareholders or other Persons in control, directly or indirectly, of 25% or more of the shares of any member of the Group, and the transactions contemplated hereby, the Borrower shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or the Administrative Agent, or any prospective assignee or participant of a Lender or the Administrative Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

- 16.14.2 Notwithstanding the provisions of subsection 16.14.1, each of the Lenders agrees that the Administrative Agent has no obligation in connection with any information relating to the AML Legislation to ascertain the identity of any member of the Group or any authorized signatories of any member of the Group on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from the Borrower or any such authorized signatory in doing so.

16.15 Transactions with Affiliates

Each member of the Group will cause all agreements or transactions to be entered into from time to time, as between such member of the Group and any one or more of its Affiliates or Subsidiaries, to be negotiated and concluded on an arms length basis for fair market value on commercially reasonable market terms prevailing from time to time in the industry.

16.16 Domination Agreements

The Borrower shall at all times maintain the Domination Agreements in full force and effect and shall not restate, amend or otherwise change the terms thereof without the prior written consent of the Majority Lenders or terminate or novate same without the prior written consent of all the Lenders.

16.17 Material Parties

The Borrower shall ensure that, at all times following the period starting on the Effective Date and ending ninety (90) days thereafter, the aggregate non-consolidated value of the Business Assets of the Material Parties shall represent at least [REDACTED] [percentage] of the consolidated value of the Business Assets of the Borrower (excluding the MCP/HSBC Deposits or any other restricted cash) and the aggregate non-consolidated EBITDA of the Material Parties shall represent at least [REDACTED] [percentage] of the consolidated EBITDA of the Borrower.

16.18 Luxco

[REDACTED] [description of
Luxco's activities]

16.19 5N Plus USA LLC

The Borrower shall cause the delivery, within forty-five (45) days of the Effective Date, of all opinions in connection with 5N Plus USA LLC that would otherwise have been required on the Effective Date pursuant to subsection 14.1.13.

16.20 BDC Debt

The Borrower hereby covenants and agrees to repay the BDC Debt in full no later than 30 days from the Effective Date, and, within such same 30-day period, to execute and deliver all documents as may be required, and cause the execution and delivery by BDC and any other Person as may be necessary of all documents as may be required, to fully release and discharge the Borrower of all its obligations thereunder and of all Liens granted in connection therewith.

seventy-five (75) days) in each of the fiscal years of the Borrower, the Borrower shall furnish to the Administrative Agent one (1) electronic copy of:

- 17.2.1 the unaudited consolidated Financial Statements of the Borrower;
- 17.2.2 a consolidating spreadsheet;
- 17.2.3 a Compliance Certificate.

Where, under the provisions of this Section 17.2, unaudited Financial Statements are required to be provided, but audited Financial Statements are available, then the audited Financial Statements will be provided.

17.3 Annual Financial Statements and Information

Within ninety (90) days after the end of each fiscal year of the Borrower, the Borrower shall furnish to the Administrative Agent one (1) electronic copy of:

- 17.3.1 the audited consolidated Financial Statements of the Borrower as audited by a national firm of chartered accountants of recognized standing and accompanied by such auditors' report which must not contain any expression of any material concern as to whether or not such Financial Statements do present fairly the financial position of the Borrower as at the end of such fiscal year;
- 17.3.2 the unaudited non-consolidated Financial Statements of each Material Party;
- 17.3.3 a consolidating spreadsheet; and
- 17.3.4 a Compliance Certificate.

Where, under the provisions of this Section 17.3, unaudited Financial Statements are required to be provided, but audited Financial Statements are available, then the audited Financial Statements will be provided.

17.4 Financial Information prior to Completing any Permitted Acquisition

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17.4.3 [REDACTED]

[description of
Financial Information to be provided to the Administrative Agent by
the Borrower prior to a Permitted Acquisition]

17.5 Budget Information

No later than ninety (90) days after the beginning of each fiscal year of the Borrower, the Borrower shall furnish to the Administrative Agent one (1) electronic copy of the budget and financial projections of the Borrower, on a consolidated basis for such fiscal year, with all reasonable explanations and copies of the information and assumptions upon which such budget, projections are based, as well as evidence that based on such budget and projections, the Borrower will comply with the Ratios during such fiscal year.

17.6 Other Information

Promptly upon each request, the Borrower shall furnish to the Administrative Agent, such data, certificates, reports, statements, documents or further information regarding the business, assets, liabilities, financial position, results of operations or business prospects of the Group as the Administrative Agent may reasonably request.

17.7 Notice of Litigation and Other Matters

The Borrower shall furnish to the Administrative Agent prompt notice of the following events after any member of the Group has become aware thereof and has made a reasonable determination with respect thereto (which notice shall in any event be given within ten (10) Business Days after any member of the Group has become aware thereof):

- 17.7.1 the commencement of all litigations against such member of the Group, or (to the extent known to any member of the Group) in any other way relating adversely to such member of the Group or any of its Business Assets which, if adversely determined, singly or when aggregated with all other such litigations, could have a Material Adverse Effect;
- 17.7.2 any event or events which, singly or in the aggregate, could reasonably be expected to have a Material Adverse Effect; and
- 17.7.3 any Default or Event of Default.

17.8 Notice with respect to Security

The Borrower hereby covenants and agrees to notify the Administrative Agent in writing of:

- 17.8.1 any change in the location of the registered office or chief executive office of any Guarantor;
- 17.8.2 any change in the location of any of the movable or personal property of any Guarantor (other than inventory in transit, mobile equipment and equipment with repairers for repair and return to such Guarantor) other than where such change in the location occurs within the same jurisdiction and Security Documents to which it is a party have been published or registered in such jurisdiction;
- 17.8.3 any change in the name, identity or corporate structure of any Guarantor or the adoption by any Guarantor of an alternate language form of its name;
- 17.8.4 any change in the jurisdiction of incorporation or organization of any Guarantor or in the type of entity;
- 17.8.5 any change in the residence of any director or officer of any Guarantor that would result in a majority of such directors or officers residing outside of the jurisdiction where the majority of such directors or officers resided as of the Effective Date;
- 17.8.6 any transfer or issue of the Capital Stock of any Restricted Party in accordance with the provisions of Section 18.12;
- 17.8.7 any transaction made in accordance with the provisions of Section 18.4;

in each case, not less than ten (10) Business Days prior to any such change, clearly describing such new location, name, identity, corporate structure, jurisdiction of incorporation or organization, transfer or transaction and providing such other information in connection therewith as the Administrative Agent may reasonably request.

17.9 Luxco Intercompany Loans

The Borrower will notify the Administrative Agent in writing not less than fifteen (15) days prior to (i) any intercompany loan being made by any Restricted Party (other than Luxco) to Luxco or by Luxco to another Restricted Party (other than the Initial Luxco Intercompany Loans); or (ii) any amendment to any Initial Luxco Intercompany Loan or any other intercompany loan contemplated under this Section, and the Restricted Parties shall, within forty-five (45) days following request therefor, provide or enter into such additional Security Documents as the Administrative Agent may require in order to grant first ranking Liens on any such intercompany loans (or to maintain first ranking Liens on such amended Initial Luxco Intercompany Loans),

subject only to Permitted Liens, and to do such further acts and things and to execute and deliver, at the expense of such Restricted Parties, such further documents and instruments as may be necessary or desirable from time to time in order to permit the registration and publication of such additional Security Documents wherever required and, in the case of any amendment to any Initial Luxco Intercompany Loan or any other intercompany loan contemplated under this Section, provide the Administrative Agent with drafts of such amendments prior to the execution thereof.

The Borrower further covenants and agrees to provide copies of the agreements evidencing such intercompany loans, and all such documents, certificates, instruments and opinions in connection with such additional Security Documents as are contemplated in Section 13.3.

17.10 MCP/HSBC Investment Loan Structure

The Borrower hereby covenants and agrees to notify the Administrative Agent in writing of (i) the receipt by MCP Asia of any notice from HSBC Hong Kong of any demand for repayment, or the cancellation or termination of any MCP/HSBC Loan, MCP/HSBC Derivative Instrument or the MCP/HSBC Investment Loan Structure, (ii) the receipt by MCP Asia of any request from HSBC Hong Kong to pledge additional MCP/HSBC Deposits or to grant any additional Lien in connection with the MCP/HSBC Loans or the MCP/HSBC Derivative Instruments, and (iii) the occurrence of, or the receipt by MCP Asia of any notice from HSBC Hong Kong of, any default or event of default under or pursuant to any MCP/HSBC Loan, any MCP/HSBC Derivative Instrument or under or in connection with the MCP/HSBC Investment Loan Structure.

17.11 "Know Your Customer" Rules and Regulations

The Borrower shall promptly deliver or cause to be delivered to the US Lender such information with documentation required by bank regulatory authorities under the applicable "**Know your customer**" requirements of the Anti-Terrorism Laws as from time to time may be reasonably requested by the US Lender and the US Lender hereby notifies the Borrower that pursuant to the requirements of the Anti-Terrorism Laws, the US Lender is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of Borrower and other information that will allow the US Lender to identify the Borrower in accordance with the requirements of the Anti-Terrorism Laws.

ARTICLE 18

NEGATIVE COVENANTS

So long as any Loan or any other amount payable hereunder is outstanding and unpaid or the Borrower shall have the right to borrow hereunder (whether or not the conditions to borrowing have been or can be fulfilled) and unless the Administrative Agent shall otherwise consent in writing, the Borrower hereby covenants that:

18.1 Liens

No member of the Group will create, incur, assume or suffer to exist any Lien upon or in respect of any of its present or future Business Assets other than Permitted Liens.

18.2 Debt for Borrowed Money

No Restricted Party will incur, create, assume or suffer to exist any Debt for Borrowed Money except for:

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

18.2.13 [REDACTED] [description of
authorized Debt for Borrowed Money.]

18.3 Derivative Instruments

No member of the Group will enter into, be a party to or Guarantee any Derivative Instrument other than (i) ISDA Contracts, (ii) until repayment of the Existing Belgian Credit Facilities, the Existing Derivative Instruments other than the Sidech/Natixis Derivative Instruments and the Initial MCP/HSBC Derivative Instruments, (iii) until February 15, 2012, the Sidech/Natixis Derivative Instruments; (iv) the MCP/HSBC Derivative Instruments, provided, however, that the MCP/HSBC Investment Loan Structure remains unamended other than as permitted under subsection 18.19.5, and (v) Derivative Instruments entered into with another member of the Group, in each case solely for the purpose of covering the then existing positions of such member of the Group and not for speculative purposes of any kind.

18.4 Amalgamations

No member of the Group will wind-up, liquidate or dissolve its affairs or enter into any transaction of amalgamation, merger or consolidation or convey, sell, alienate, lease or otherwise dispose of (or agree to do any of the foregoing, at any future time) all or substantially all of its Business Assets, provided that:

- 18.4.1 any conveyance, sale, alienation, lease or other disposition of all or substantially all of the Business Assets of any Restricted Party to any Material Party shall be permitted and the wind-up and liquidation of any Restricted Party in favour of any Material Party shall be permitted, provided, however, that (i) where Liens have been granted pursuant to

the Security Documents on the assets being conveyed, sold, alienated, leased or otherwise disposed of or on the assets of the Restricted Party being wound-up, then the Material Party acquiring such assets shall concurrently grant first ranking Liens, within the limits of Applicable Laws, subject only to Permitted Liens, on such assets as security for the Secured Obligations, and (ii) such transaction shall not result in a breach under any Material Contract;

18.4.2 any change in the jurisdiction of incorporation or organization of any Restricted Party or in the type or entity shall be permitted provided that (i) any such change shall not have any adverse effect on the value, validity or enforceability of the Guarantees or Liens granted by such Restricted Party as security for the Secured Obligations or on the Liens granted on the Capital Stock of that Restricted Party, and (ii) any such change shall not result in a breach under any Material Contract;

18.4.3 the dissolution of any member of the Group that no longer holds any Business Asset is permitted; and

18.4.4 any amalgamation, merger or consolidation between Restricted Parties is permitted provided, however, that:

18.4.4.1 the Person formed by or surviving any such transaction (i) where one of the amalgamated, merged or consolidated Restricted Parties is the Borrower, is a company organized or in existence under the Laws of Canada or of any province of Canada, (ii) where the amalgamated, merged or consolidated Restricted Parties are Canadian Companies, other than the Borrower, is a company organized or in existence under the terms of the Laws of Canada, of any province of Canada, or of any jurisdiction to which the Administrative Agent has consented, acting reasonably, (iii) where the amalgamated, merged or consolidated Restricted Parties are American Companies, is a company organized or in existence under the Laws of the United States of America, or any state of the United States of America, or of any jurisdiction to which the Administrative Agent has consented, acting reasonably, (iv) where the amalgamated, merged or consolidated Restricted Parties are German Companies, is a company organized or in existence under the terms of the Laws of Germany or under the terms of the Laws of any jurisdiction to which has consented the Administrative Agent, acting reasonably, (v) where the amalgamated, merged or consolidated Restricted Parties are Belgian Companies, is a company organized or in existence under the terms of the Laws of Belgium or under the terms of the Laws of any jurisdiction to which has consented the Administrative Agent, acting reasonably, and (vi) where the amalgamated, merged or consolidated

Restricted Parties are English Companies, is a company organized or in existence under the terms of the Laws of England and Wales or under the terms of the Laws of any jurisdiction to which has consented the Administrative Agent, acting reasonably, (vi) where the amalgamated, merged or consolidated Restricted Parties are Luxembourg Companies, is a company organized or in existence under the terms of the Laws of Luxembourg or under the terms of the Laws of any jurisdiction to which has consented the Administrative Agent, acting reasonably, and (vii) where the amalgamated, merged or consolidated Restricted Parties are Hong Kong Companies, is a company organized or in existence under the terms of the Laws of Hong Kong or under the terms of the Laws of any jurisdiction to which has consented the Administrative Agent, acting reasonably;

18.4.4.2 the Person formed by or surviving any such transaction shall expressly assume as primary obligor, by an agreement satisfactory in form and substance to the Administrative Agent, acting reasonably, the Secured Obligations, and shall execute and deliver to the Administrative Agent all such instruments, acts, deeds or documents required by the Majority Lenders with respect to the Security Documents in order to maintain the validity and ranking of the Liens granted thereunder and acknowledge that the Liens thereof are valid with respect to all of the relevant assets of such Person, subject only to Permitted Liens (which agreement, instruments, acts, deeds or documents may require the delivery of such opinions of the Companies' Counsel and Lenders' Counsel as the Administrative Agent may reasonably request); and

18.4.4.3 if one of the amalgamated, merged or consolidated companies is the Borrower, the Person resulting from such an amalgamation, merger or consolidation shall act as a successor to the Borrower and shall substitute it, and may exercise the rights and powers of the Borrower pursuant to the terms of this agreement as if such successor had initially been the Borrower under the terms of this agreement;

provided, however, that immediately before and after any transaction contemplated in subsections 18.4.1, 18.4.2 and 18.4.4, no Default or Event of Default exist.

18.5 **Investments**

No member of the Group will make any Investment other than:

[REDACTED]

18.5.2 [REDACTED]

[description of the authorized
Investments]

18.6 Guarantees

No member of the Group will create, assume or otherwise become or remain obligated in respect of, or permit to be outstanding any Guarantee, other than:

- 18.6.1 Guarantees pursuant to the Operative Documents;
- 18.6.2 Guarantees by the Restricted Parties in respect of the obligations of other Restricted Parties other than the Chinese Companies;
- 18.6.3 Guarantees by the Sylarus Parties in respect of the obligations of any member of the Group;
- 18.6.4 Unsecured Guarantees by any Restricted Party in respect of the obligations of the Chinese Companies; and
- 18.6.5 Guarantees by any Restricted Party in respect of any other Person (including any Sylarus Party) in an amount not to exceed US\$ [REDACTED] [dollar amount] in the aggregate at any time.

18.7 Acquisitions

No member of the Group will make any Acquisition except for Permitted Acquisitions provided, however, that the aggregate consideration for all such Permitted Acquisitions made during any fiscal year shall not exceed US\$ [REDACTED] [dollar amount] and that on the date of any such Permitted Acquisition, no Default or Event of Default shall have occurred and be continuing or would result therefrom.

18.8 Distribution

The Borrower may not declare, set apart for payment or make any Distributions.

18.9 Change of Year-End

Except to change the year-end to December 31, no member of the Group will change its fiscal year-end or the end of any of its fiscal quarters, without the prior written consent of the Administrative Agent which shall not be unreasonably withheld. On the Effective Date, the fiscal

year-end of (i) the members of the Restricted Parties other than the MCP Parties and 5N Plus GmbH is May 31, and (ii) the Sylarus Parties, MCP Parties and 5N Plus GmbH is December 31.

18.10 **Change in Business**

No member of the Group will effect any material change in the nature of its business as described in Section 15.27.

18.11 **ERISA Compliance**

With respect to any Plan, no member of the Group will:

- 18.11.1 engage in any "prohibited transaction" (as such term is defined in Section 406 of ERISA) for which a civil penalty pursuant to Section 502(i) of ERISA could be imposed;
- 18.11.2 incur any "accumulated funding deficiency" (as such term is defined in Section 302 of ERISA), whether or not waived, or permit any "unfunded liability";
- 18.11.3 permit the occurrence of any Termination Event which could result in a liability to it or any other member of the Group; or
- 18.11.4 fail to comply with the applicable provisions of ERISA with respect to any Plan which could result in liability to it or any member of the Group; or
- 18.11.5 accumulate a funding deficiency;

which, in the aggregate for all such liabilities, results in liabilities in excess of Cdn\$ [redacted] [dollar amount] outstanding at any time in the aggregate for all members of the Group.

18.12 **Ownership of Shares and Subsidiaries**

No member of the Group (other than the Borrower) will issue, transfer or authorize the transfer of its Capital Stock or any instrument convertible into its Capital Stock except for an issuance or transfer in favour of another member of the Group. Where the Capital Stock of such member of the Group is pledged in favour of the Finance Parties, then the Capital Stock so issued or transferred shall also be pledged in favour of the Finance Parties.

Each Guarantor of the Borrower shall at all times be a wholly owned Subsidiary of the Borrower.

18.13 **Sale of Assets**

No member of the Group will sell, lease, alienate or otherwise dispose of any of its Business Assets or enter into or be party to any Sale and Leaseback Transaction, except for:

- 18.13.1 dispositions of inventory made in the ordinary course of the carrying on of its day to day business for cash or Cash Equivalent Investments;
- 18.13.2 dispositions of Business Assets by a member of the Group to another member of the Group provided that where Liens have been granted pursuant to the Security Documents on the assets being disposed of, then the member of the Group acquiring such assets shall concurrently grant first ranking Liens, within the limits of Applicable Laws, subject only to Permitted Liens, on such assets as security for the Secured Obligations;
- 18.13.3 dispositions of Business Assets in any fiscal year to other Persons with whom it deals at arm's length at fair market value, that do not constitute Sale and Leaseback Transactions, and, provided that the aggregate amount of consideration received for all such dispositions over the course of any fiscal year shall not exceed an aggregate principal amount of US\$ [redacted] [dollar amount], provided, however, that no disposition by MCP Specialties Realty Inc. or by MCP Metal Specialties Inc. of their respective rights and obligations under the US Intercompany Lease shall be permitted pursuant to this subsection; or
- 18.13.4 in relation to a German Company, where such disposal cannot be prohibited due to Section 1136 of the German Civil Code (*Bürgerliches Gesetzbuch*).

18.14 **Capital Expenditures**

No member of the Group shall incur any Capital Expenditure if, as a result, the aggregate principal amount of Capital Expenditures incurred by the members of the Group during any fiscal year would exceed US\$ [redacted] [dollar amount].

18.15 **Material Contracts**

No member of the Group will amend or allow any material amendment of, waive compliance, tolerate any default under or fail to comply with any of the Material Contracts to which it is a party, or terminate any such Material Contract if such amendment, waiver, failure to comply or default could have a Material Adverse Effect.

18.16 **Reductions of Capital**

The Borrower will not purchase, redeem or otherwise acquire or retire for value any of its Capital Stock or any options, warrants or rights to purchase or acquire shares of its Capital Stock other than pursuant to a normal course issuer bid as permitted from time to time by the rules of the Ontario Securities Commission and the Autorités des marchés financiers (Québec).

18.17 Prohibition on Limitation Concerning Distributions by members of the Group

No member of the Group other than the Borrower will enter into or suffer to exist any encumbrance or restriction on its ability to:

- 18.17.1 make any Distribution to any other member of the Group;
- 18.17.2 pay any Indebtedness owed to any other member of the Group;
- 18.17.3 make loans or advances to any other member of the Group; or
- 18.17.4 transfer any of its Business Assets to any other member of the Group;

except, in any such case, any such encumbrance or restriction resulting from any Applicable Law or contained in any Operative Document.

18.18 Payment of VTB Debt

The Borrower will not make any interest payments and scheduled payments of principal under the VTB Debt if, (i) on the date of such payments, there exists a Default or Event of Default, or (ii) a Default or Event of Default would result therefrom and, when any such payments cannot be made for such reasons, the Borrower shall cause same to be postponed until such Default or Event of Default shall have been waived by the Majority Lenders or remedied to the satisfaction of the Majority Lenders.

18.19 MCP/HSBC Loans, MCP/HSBC Derivative Instruments

- 18.19.1 The Borrower shall do and shall cause all such things as are required to be done such that pursuant to the Initial MCP/HSBC Facilities Letter no loans other than the Initial MCP/HSBC Loans shall be made and no Derivative Instruments other than the Initial MCP/HSBC Derivative Instruments shall be entered into;
- 18.19.2 notwithstanding subsection 18.19.1, the Initial MCP/HSBC Facilities Letter may be renewed, provided, however, that the Majority Lenders (i) shall have determined in their discretion, acting reasonably, prior to such renewal that the terms and conditions of the MCP/HSBC Facilities Letter resulting from such renewal, and of any MCP/HSBC Loan made thereunder and of any MCP/HSBC Derivative Instrument entered into in connection therewith, shall be in form and substance similar to the terms and conditions of the MCP/HSBC Investment Loan Structure, including, for greater certainty, and without limitation, terms and conditions providing for MCP/HSBC Loans not exceeding, in the aggregate, HKD [REDACTED] [dollar amount], (ii) shall be satisfied that the intercreditor agreement referred to in subsection 14.1.5 shall also apply to such renewal, and (iii) shall be

satisfied that such renewal would not have a material negative impact on the financial situation of the Borrower;

- 18.19.3 the Borrower shall do and shall cause all such things as are required to be done such that HSBC Hong Kong shall have no recourses against any Restricted Party for the payment of the MCP/HSBC Loans or any obligations under the MCP/HSBC Derivative Instruments other than against the MCP/HSBC Deposits, under the 5N Guarantee and against the other Business Assets of MCP Asia on an unsecured basis, and such that HSBC Hong Kong will not require any security on any additional collateral from MCP Asia or any other Restricted Party, including, for greater certainty, that HSBC Hong Kong will not require a pledge of deposits from MCP Asia in addition to the Initial MCP/HSBC Deposits, to secure the Initial MCP/HSBC Loans or the Initial MCP/HSBC Derivative Instruments;
- 18.19.4 the Borrower shall do and shall cause all such things as are required to be done such that no MCP/HSBC Loan and no obligations under any MCP/HSBC Derivative Instrument shall be repaid from any Business Asset of any Restricted Party other than the MCP/HSBC Deposits, under the 5N Guarantee or the other Business Assets of MCP Asia on an unsecured basis; and
- 18.19.5 the Borrower shall deliver all documents existing at any time and from time to time and pertaining to the MCP/HSBC Facilities Letter, the MCP/HSBC Loans, the MCP/HSBC Derivative Instruments and the MCP/HSBC Investment Loan Structure, and hereby covenants to not allow the amendment of any one thereof without the Administrative Agent's prior written consent.

18.20 **Consigned Goods**

No Material Party will permit any of its Business Assets to be held in consignment other than to the extent necessary to allow it to conduct its business in a prudent and diligent manner in the normal course.

ARTICLE 19

EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall constitute an Event of Default (each such event being herein referred to as an "**Event of Default**");

19.1 Non-Payment

The Borrower fails (i) to pay, when due, any amount of principal owed by it and outstanding hereunder or (ii) to pay any interest or other amount outstanding hereunder or under any other Operative Document within five (5) Business Days of the due date thereof.

19.2 Misrepresentation

Any representation or warranty made or deemed made by any member of the Group hereunder or in any other Operative Document is found to have been either substantially incorrect or inaccurate with respect to a material aspect when made or deemed made.

19.3 Ratios

The Borrower fails to maintain any Ratio in accordance with Section 17.1.

19.4 Negative Covenants

Any member of the Group fails to comply with the provisions of Article 18.

19.5 Breach of Other Covenants

Any member of the Group fails to perform or comply with any provision or obligation (other than those specifically referred to in the other Sections of this Article) contained in any Operative Document to which it is a party and such failure continues unremedied for a period of thirty (30) days following the issuance to the Borrower by the Administrative Agent of notice thereof.

19.6 Default on other Debt for Borrowed Money

Any member of the Group defaults under any one or more agreements, documents or instruments relating to Debt for Borrowed Money (including, without limitation, the VTB Debt) the amount of which, when aggregated with all other Debt for Borrowed Money, in default of the Group, exceeds US\$ [REDACTED] [dollar amount].

19.7 Default under MCP/HSBC Loans, MCP/HSBC Derivative Instruments or others

If (i) MCP Asia, the Borrower or MCP defaults under any one or more agreements, documents or instruments relating to the MCP/HSBC Loans, the MCP/HSBC Derivative Instruments or the MCP/HSBC Investment Loan Structure, (ii) MCP HEK GmbH defaults under any one or more agreements, documents or instruments relating to the MCP HEK Pension Fund Loan, or (iii) MCP or Sidech defaults under any one or more agreements, documents or instruments relating to the Existing Derivative Instruments.

19.8 Unsatisfied Awards

Any one or more judgments are entered against any one or more members of the Group which judgments are not vacated, discharged, stayed or bonded pending appeal within thirty (30) days

of the entry thereof or shall not have been vacated or discharged prior to the expiration of any such stay and involve a liability (not paid or fully covered by insurance) the amount of which, singly or when aggregated with all such liabilities of the members of the Group, exceeds US\$ [REDACTED] [dollar amount].

19.9 Enforcement Proceeding

Any proceeding or action seeking issuance of a warrant of attachment, execution, distraint or similar process is commenced against a member of the Group and is, for fifteen (15) days, neither (i) dismissed nor (ii) stayed pending a final decision, and, with respect to the obtaining of such stay, the member of the Group fails to obtain such final decision that dismisses such proceeding or action.

19.10 Notice of Exercise of Hypothecary Rights

A notice of exercise of hypothecary rights is published against any member of the Group or any of its Business Assets and such member of the Group fails to:

- 19.10.1 request the cancellation thereof within fifteen (15) days of its publication;
- 19.10.2 obtain (i) the cancellation thereof within fifteen (15) days of its publication or (ii) a stay order with respect to such notice of exercise of hypothecary rights within fifteen (15) days of its publication; and
- 19.10.3 in the event that the stay contemplated in subsection 19.10.2 is obtained, to obtain the final decision dismissing such notice of exercise of hypothecary rights.

19.11 Security Documents

The obligations of any member of the Group under the Operative Documents, or any Lien granted pursuant to any Security Document, cease to be valid or of full force or effect, or are terminated for any reason, or there occurs a loss of rank with respect to any Lien granted pursuant to any Security Document, except that no Event of Default shall occur under this Section where the Default can be remedied and the Borrower does so within ten (10) Business Days of becoming aware thereof.

19.12 Additional Guarantee from certain Restricted Parties

The Borrower fails to cause the occurrence of any of the events required pursuant to Section 13.2 within the periods contemplated therein.

19.13 Existing Credit Facility Repayments and Luxco Intercompany Loans

Any Restricted Party fails within ninety (90) days after the Effective Date to execute and deliver the Security Documents required from it pursuant to subsection 14.3.6 (other than Security

Documents in connection with the Initial Luxco Intercompany Loans), or fails to deliver any other document required in connection therewith pursuant to Section 14.3.

19.14 **Insolvency**

An Insolvency Event shall have occurred with respect to any member of the Group.

19.15 **Sale or Encumbrance of real property by a German Company**

A German Company disposes of and/or encumbers real property owned by it and such encumbrance and/or disposal cannot be prohibited due to Section 1136 of the German Civil Code (*Bürgerliches Gesetzbuch*).

19.16 **Material Adverse Effect**

An event or series of events occurs that results in a Material Adverse Effect.

19.17 **Change in Control**

Any Person acquires Control of the Borrower.

ARTICLE 20

REMEDIES

20.1 **Termination and Acceleration**

If an Event of Default shall have occurred and be continuing, the Administrative Agent may do any one or more of the following:

- 20.1.1 declare the whole or any item or part of the Revolving Facility to be cancelled, terminated or reduced, whereupon the Lenders shall not be required to make any further Advance hereunder in respect of such portion of the Revolving Facility cancelled, terminated or reduced;
- 20.1.2 accelerate the maturity of all or any item or part of the Loans and declare them to be immediately due and payable, whereupon they shall be so accelerated and become so due and payable;
- 20.1.3 demand that the Borrower prepay the BA Liabilities then outstanding, whereupon the Borrower shall be obliged to prepay to the Administrative Agent the face amount of all outstanding BAs issued for its account notwithstanding that the holders of the outstanding BAs shall not have demanded payment or shall not then be entitled to do so;
- 20.1.4 demand that the Borrower prepay the LC Liabilities then outstanding whereupon the Borrower shall be obliged to prepay to the

Administrative Agent the aggregate maximum liability of the LC Issuing Lender under the LCs issued under the Revolving Facility and then outstanding notwithstanding that the beneficiaries of such outstanding LCs shall not have demanded payment in whole or in part, or shall have demanded payment in part only, or shall not then be entitled to do so;

- 20.1.5 enforce or realize upon all or any Lien granted under the Operative Documents subject to any notice required pursuant to any applicable law;
- 20.1.6 suspend any rights of any member of the Group under any Operative Document, whereupon such rights shall be so suspended; and
- 20.1.7 take any other action, commence any other suit, action or proceeding or exercise such other rights as may be permitted by applicable Law (whether or not provided for in any Operative Document) at such times and in such manner as the Administrative Agent may consider expedient,

all without any additional notice, demand, presentment for payment, protest, noting of protest, dishonour, notice of dishonour or any other action being required other than those required by Law. If an Event of Default referred to in Section 19.12 occurs, the Revolving Facility shall immediately and automatically be cancelled and the Loans shall be accelerated and become immediately and automatically due and payable without any action on the part of any Finance Party being required.

20.2 **Distribution of Proceeds of Realization**

Any Proceeds of Realization received by any one of the Finance Parties, shall be applied as follows:

- 20.2.1 firstly, to pay all Realization Costs incurred by any Finance Party;
- 20.2.2 secondly, on a *pari passu* basis, (i) to repay in full the Loans (such Proceeds of Realization to be firstly applied to Tranche A and secondly applied to Tranche B, unless the Majority Lenders determine that it is preferable otherwise in order to optimize the recovery of the Proceeds of Realization for all the Lenders) and (ii) to repay the Secured Obligations under ISDA Contracts entered into with any Lender or any ISDA Provider, but only up to Cdn\$ [REDACTED] [dollar amount] in the aggregate;
- 20.2.3 thirdly, to pay in full the other Secured Obligations; and
- 20.2.4 fourthly, to pay any other Person having a right to same.

20.3 Pro Rata Sharing of Realization Costs

Until such time as the Realization Costs are paid in the manner contemplated in Section 20.2, all Realization Costs incurred and paid by any one of the Finance Parties shall be shared by the Lenders on the basis of their respective Rateable Share.

20.4 Indemnities and Payments

Nothing herein contained shall be construed or interpreted as in any way obliging any Finance Party to make any payment as provided for in this Agreement unless they or it are firstly supplied with such indemnifications as the Majority Lenders may consider to be necessary or desirable to protect and save the Finance Parties, harmless from any liability or penalty for which any one thereof may become liable under any Applicable Law as a result of making such payment.

20.5 Equality of rank among the Liens created under the Operative Documents

The Finance Parties expressly acknowledge, declare and agree that, except as otherwise expressly provided for herein and notwithstanding any other provision to the contrary contained, at any time and from time to time, in the Operative Documents, all Rights, Remedies and/or Recourses that now are or may at any time hereafter be granted to the Lenders, directly or indirectly, under the terms of any Applicable Law or the Security Documents and all Liens which now or may, at any time hereafter, secure the payment of the Secured Obligations shall rank *pari passu* for the benefit of all of the Finance Parties in accordance with their respective rateable share notwithstanding any priorities that might otherwise be established by Law resulting from the nature of the Liens which now are or may, at any time hereafter, be created under any of the Security Documents or from the date or time of execution, issue, delivery, registration, filing, notification, publication or perfection of any deed, instrument, application for registration, notice or financing statement.

20.6 Distribution of Payments among Creditors of a Same Class

Where any payment is made under any subsection of Section 20.2 and the amount of such payment is insufficient to cover all of the debts contemplated under such subsection, then such payment shall be distributed among each creditor referred to in such subsection on the basis of the proportion that bear the debts owed to such creditor and contemplated in such subsection to the aggregate of the debts contemplated in such subsection.

20.7 Compensation and Set-Off

20.7.1 In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, upon the occurrence of an Event of Default, each Lender is hereby authorized by the Borrower, at any time and from time to time, without notice to the Borrower or to any other Person, any such notice being hereby expressly waived (provided, however, that each Lender shall notify the Borrower of the exercise of its rights under this subsection within a

reasonable period from the moment of such exercising of its rights) to effect compensation, to set-off and to appropriate and to apply any and all deposits (general or special, time or demand, including Indebtedness evidenced by certificates of deposit, in each case whether matured or unmatured), and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of the Borrower against and on account of the obligations and liabilities of the Borrower to such Lender under the Operative Documents, irrespective of whether or not the Administrative Agent shall have made any demand hereunder or shall have declared the Loans to be due and payable as permitted hereunder and although said obligations and liabilities, or any of them, shall be contingent or unmatured.

20.7.2 For the purposes of the application of this Section 20.7, the Borrower and the Lenders agree that the benefit of any term applicable to any Lender's deposit or other Indebtedness referred to in this Section 20.7 shall be lost immediately before the time when such Lender shall exercise its rights under this Section 20.7 in respect of such deposit or Indebtedness of such Lender.

20.7.3 Furthermore, in the exercise of its rights under this Section 20.7, where any Indebtedness of any Lenders to the Borrower is not outstanding in the same currency as the Indebtedness of the Borrower against which such Lender desires to exercise its rights under this Section 20.7, then such Lender may effect all currency conversions with respect to any such Indebtedness as it considers appropriate in accordance with its normal practices by using its own rate of exchange in effect on the Business Day preceding that on which it exercised its rights under this Section.

20.8 **Recovery for the Lenders**

Each Lender agrees that if it shall exercise any right under Section 20.7 or any other right of counterclaim, compensation, set-off, banker's lien, realization of security, or similar right with respect to property of the Borrower or if, under any applicable bankruptcy, insolvency or other similar Law, it receives a secured claim the security for which is a debt owed by it to the Borrower, the amount thereof shall constitute Proceeds of Realization under Section 20.2. All amounts thus recovered by any Lender shall promptly be delivered to the Administrative Agent for distribution. The provisions of this Section 20.8 shall not apply to the exercise of any such right of counterclaim, compensation, set-off, banker's lien, realization of security or similar right, with respect to property of the Borrower, in favour of such Lender as regards any Indebtedness of the Borrower to such Lender, as the case may be, which would not constitute a part of the Secured Obligations or the Loan of such Lender, as the case may be, or which was not created in furtherance of the Commitment of such Lender, as the case may be.

20.9 Notices

Save as otherwise expressly provided for herein, no notice or *mise en demeure* of any kind shall be required to be given to the Borrower by the Finance Parties for the purpose of putting the Borrower in default, the Borrower being in default by the mere lapse of time allowed for the performance of an obligation or by the mere occurrence of any event constituting an Event of Default.

20.10 Dealings with the Borrower

The Administrative Agent may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Borrower as the Majority Lenders may see fit, without prejudice to the liability of the Borrower or to the Lenders' rights in respect of the security conferred upon them pursuant to the terms of the Operative Documents.

20.11 No Deemed Payment

Where any Lender, whether under the provisions of the Operative Documents or otherwise, receives or recovers from the Borrower an amount ultimately payable to it under the provisions of the Operative Documents, but as a consequence of the provisions of Section 12.6 or 20.8 does not retain the totality of such amount, as between the Borrower, on the one hand, and that Lender, on the other hand, that excess amount not retained by such Lender shall be treated as not having been paid to such Lender for the purposes of this Agreement, but shall be treated as if it constituted a payment to the Administrative Agent in accordance with the provisions of this Agreement.

20.12 ISDA Contracts

In the event the Administrative Agent exercises any one of the rights referred to in Section 20.1, any Lender or any ISDA Provider having entered into an ISDA Contract with any Material Party shall have the right to declare an early termination of such ISDA Contract, and to claim from that member of the Group all amounts due under such ISDA Contract as a consequence of the exercise by such Lender or ISDA Provider of its right to terminate such agreement under the terms thereof.

20.13 Lenders to Exercise Rights through Administrative Agent

Subject only to the extent that under the provisions of Article 21 and Article 22 a single Lender is affected, subject to the provisions of Section 20.7, the Lenders shall only exercise their Rights, Remedies and/or Recourses with respect to the Operative Documents through the Administrative Agent.

ARTICLE 21

TAXES AND OTHER CHARGES

21.1 Payments without Deductions

The Borrower agrees to pay the Loans of each Lender in principal, interest, fees and accessories, and any other fees or amounts payable hereunder, free and clear of and without deduction or withholding for (i) any and all present and future Taxes (but excluding, however, Taxes (including Taxes imposed in connection with such Lender's overall net income or net worth and any capital or franchise tax imposed in lieu of net income tax payable by such Lender) imposed upon such Lender (any such Lender shall be referred to herein as a "**Taxed Party**") by the jurisdiction and political subdivision in which it or its relevant lending office may be located or under the Laws of which it may have been constituted), that may be imposed from time to time by any jurisdiction (including any jurisdiction from which payment is made) in connection with any amount required to be paid to such Lender pursuant to this Agreement or by any jurisdiction with respect to the preparation, execution, delivery, registration, performance, amendment or enforcement of this Agreement (all of the foregoing, other than the excluded items shall be collectively referred to herein as the "**Local Taxes**"), and (ii) any and all present and future Taxes that may be imposed from time to time by any jurisdiction with respect to the payment by the Borrower of or the reimbursement by the Borrower for any Local Taxes (all of the foregoing listed in clauses (i) and (ii) other than the excluded items shall be collectively referred to herein as the "**Indemnified Taxes**"). In the event that any Taxed Party shall have paid any Indemnified Taxes, which under the terms of this Section 21.1, the Borrower is obliged to pay, the Borrower covenants and agrees to reimburse, upon demand, such Taxed Party on an after-tax-basis as contemplated in Section 21.2 for the amount of any such Indemnified Taxes so paid by the latter, with interest on such amount as contemplated in this Agreement, and any such reimbursement paid by the Borrower shall benefit from and be subject to the provisions of this Section 21.1 and Section 21.2.

A payment shall not be increased under the paragraph above by reason of a tax deduction on account of tax imposed by the jurisdiction of incorporation of a Restricted Party on a payment of interest on a Loan made to the Borrower, if on the date on which the payment falls due, the obligation to make the tax deduction is caused by a written notice of the competent German tax authorities pursuant to Section 50 a para. 7 German Income Tax Act in cases where the Loans are secured (directly or indirectly) by real estate located in Germany (*inländische Grundstücke*) or domestic rights treated as real property under German civil law (*inländische Rechte die den Vorschriften des Bürgerlichen Rechts über Grundstücke unterliegen*).

21.2 Payments of Additional Amounts

If the Borrower is at any time (x) required by Law to make any deduction or withholding in respect of any Indemnified Taxes from any amount payable under this Agreement or (y) prevented by operation of Law from paying, causing to be paid or reimbursing the payment of any Indemnified Taxes or (z) required to reimburse a Taxed Party for any Indemnified Taxes paid by the latter but which, under the terms hereof, the Borrower is obliged to pay, the Borrower

covenants and agrees to pay such additional amounts as may be necessary in order that the net amounts retained by any Taxed Party, after any deduction or withholding, after the deduction of any such Indemnified Taxes not paid, caused to be paid or reimbursed by the Borrower, after the payment of such Indemnified Taxes by the Taxed Party and after any Taxes imposed on or measured by the net income, profit or capital of the Taxed Party as a result of its receipt of additional amounts hereunder, shall equal the net after-tax amounts which would have been retained by such Taxed Party if any deduction or withholding had not been made, if such Indemnified Taxes had been paid, caused to be paid or reimbursed by the Borrower, if such Indemnified Taxes had not been paid by the Taxed Party and if no additional amounts had been paid hereunder. Such additional amounts shall be paid (i) in the case of amounts payable as a result of a deduction or withholding from an amount payable under this Agreement, on the date the latter amount is payable, (ii) in the case of amounts payable as a result of the failure by the Borrower to pay or reimburse such Indemnified Taxes, on the earlier of the date on which such Indemnified Taxes are due and the fifth day following the receipt by the Borrower of a notice from the Taxed Party that such Indemnified Taxes have been paid by such Taxed Party, (iii) in the case of Indemnified Taxes paid by a Taxed Party and that the Borrower is obliged to pay, on demand from the Taxed Party and (iv) in the case of amounts payable as a result of Taxes imposed on or measured by the net income, profit or capital of any Taxed Party as a result of its receipt of additional amounts hereunder, on the fifth day following the receipt by the Borrower of a request therefor by such Taxed Party. Upon request from the Borrower, the Taxed Party claiming payment of Indemnified Taxes under the provisions of this Section shall provide such Borrower with such information and documentation as the Borrower may reasonably request.

21.3 **Increase in Interest Rates**

If the Borrower is prevented by operation of Law from paying or causing to be paid any amount required to be paid by Section 21.2, the Borrower covenants and agrees to pay as additional interest payable under this Agreement an amount equal to such required amount, on the applicable Interest Payment Date if such amount is in respect of interest or, if otherwise, on the next succeeding Interest Payment Date, it being expressly understood and agreed that any such additional interest payment shall be paid on an after-tax-basis as contemplated in Section 21.2 and shall be subject to the provisions of Sections 21.1 and 21.2. The Borrower, at the request of any Taxed Party, shall sign such documents, deeds and instruments and shall do all such things as such Taxed Party shall reasonably consider useful or necessary to give full force and effect to such increase in the rate of interest.

21.4 **Remittances by Taxed Party**

With respect to any of such Indemnified Taxes, the Borrower shall make any required payment thereof within the time allowed under Applicable Law and, within 15 days thereafter, shall furnish to the Administrative Agent and any Taxed Party evidence of such payment together with such certificates, receipts and other documents as may be available to establish any Tax credit or tax benefit to which such Taxed Party may be entitled. If such Taxed Party shall determine that it has irrevocably obtained a credit or similar Tax benefit with respect to income Taxes imposed by a jurisdiction in which it or its relevant lending office may be located or under the Laws of which it has been constituted, on the basis of the payment of such Taxes by the Borrower, such Taxed

Party shall remit to the Borrower promptly an amount equal to the amount of such credit or benefit as is, in its discretion, exercised in good faith, equitably allocable to such payment by the Borrower having taken into account all its dealings giving rise to similar credits or benefits in relation to the same Tax period. If such Taxed Party shall determine subsequently that, for any reason, the amount of such credit or benefit has directly or indirectly been reduced, the Borrower covenants and agrees to pay, upon the request of such Taxed Party accompanied by evidence of such reduction, to such Taxed Party an amount equal to the amount of such reduction. All determinations and computations required or permitted by this Section shall be made, and all assumptions, methods of allocation and other principles necessary for or related to such determinations and computations shall be made or selected, by such Taxed Party in its sole discretion (exercised in good faith) and shall constitute, in the absence of manifest error, *prima facie* evidence of the amounts or matters so determined or computed.

21.5 Tax Representation and Covenant of Certain Lenders and Option to Replace Them

- 21.5.1 Each Lender represents either that (i) it is not a non-resident Person of Canada for purposes of the *Income Tax Act* (Canada) or (ii) it is an authorized foreign bank within the meaning of the *Income Tax Act* (Canada) and that any amount paid or credited to it under the terms of this Agreement with respect to its Loan is an amount paid to such Lender, or to its credit, with respect to its "Canadian banking business", within the meaning given to such expression under Section 248(1) of the *Income Tax Act* (Canada). With respect to any Lender that issues a notice pursuant to clause (i) of subsection 21.5.2, the representation and warranty shall cease to have effect on the thirtieth (30th) day following such notice. However, with respect to any Lender that issues a notice under clause (ii) of subsection 21.5.2, this representation and warranty shall cease to have effect as soon as such notice is given.
- 21.5.2 A Lender referred to in the preceding subsection shall notify the Borrower in writing (i) at least thirty (30) days before its representation and warranty ceases to be accurate, if it anticipates or realizes that such will be the case or (ii) promptly after it realizes that its representation and warranty has ceased to be accurate.
- 21.5.3 Upon receipt of any of the notices referred to in the preceding subsection, the Borrower shall have the right to replace such Lender or cancel its Commitment. The replacement of such Lender must be effected for the total amount of its Loan and its Commitment, and within thirty (30) days from receipt of the notice.
- 21.5.4 For any period during which a Lender's representation under the provisions of subsection 21.5.1 is false or inaccurate, provided such falseness or inaccuracy does not result from a Change in Law, the Borrower shall not be required to indemnify such Lender as

contemplated in this Article 21 with respect to losses and expenses resulting from such falseness or inaccuracy. However, with respect to a Lender that has delivered the notice referred to in subsection 21.5.2 and that the Borrower has neither replaced nor cancelled its Commitment within thirty (30) days of the receipt of such notice, such Lender shall fully benefit from the indemnity contemplated in this Article 21 from the expiry of such delay.

- 21.5.5 The provisions of this Section 21.5 shall not apply to any Person that becomes a Lender after the Effective Date unless, in the document whereby such Person becomes a Lender, it is agreed that the provisions of this Section 21.5 shall apply to it.

21.6 **Survival of Agreements**

The agreements of the Borrower under this Article 21 shall survive the repayment of the Loans and the cancellation in full of the Revolving Facility.

ARTICLE 22

INDEMNITIES

22.1 **Market Disruption**

Each time that the Administrative Agent shall determine that by reason of circumstances affecting the relevant markets for Canadian Dollar deposits, US Dollar deposits or Euro deposits generally, adequate and reasonable means do not exist for ascertaining the Discount Rate or the interest rate applicable to the Libor Loans or the EuroLibor Loans or any part thereof, for any Selected Period, or the Administrative Agent shall receive a notice from any Affected Lender that:

- 22.1.1 by reason of circumstances affecting the relevant markets generally, deposits in Canadian Dollars, in US Dollars or in Euros are not available to such Affected Lender in such market in the ordinary course of business in sufficient amounts to enable it to make a Libor Loan or a EuroLibor Loan to accept Drafts or discount BAs for the relevant Selected Period; or
- 22.1.2 by reason of circumstances affecting the market for BAs, no purchasers are available to such Affected Lender to enable it to discount BAs having any Selected Period; or
- 22.1.3 by reason of any Change in Law, it is impracticable for such Affected Lender to accept or discount BAs or to make or maintain a Libor Loan or a EuroLibor Loan for any Selected Period; or

- 22.1.4 Libor, EuroLibor or the Discount Rate do not represent, for such Affected Lender, by an amount which such Affected Lender deems in its sole discretion (exercised in good faith) to be material, the effective cost of funding or maintaining the Libor Loan, EuroLibor Loan or the BA Liabilities of such Affected Lender or any part thereof to be made for any Selected Period or continued for any new Selected Period by such Affected Lender;

the Administrative Agent shall promptly give notice to the Borrower and the Lenders of such determination by it or of receipt by it of such notice from an Affected Lender.

22.2 **Suspension of Rights to Convert**

If notice has been given by the Administrative Agent pursuant to Section 22.1:

- 22.2.1 the Libor Loans, EuroLibor Loans or any part thereof, as the case may be, shall not be made, the Drafts shall not be accepted or the BAs shall not be discounted (whether pursuant to an Advance, a conversion or a rollover) by the Affected Lenders and the Borrower's right to elect that Advances be made or once made be converted into or continued as BAs, Libor Loans or EuroLibor Loans by an Affected Lender or Affected Lenders, as the case may be, shall be suspended until such time as the Administrative Agent shall notify the Borrower that the circumstances having given rise to such suspension no longer exist. In the meantime, each Affected Lender shall fulfill its obligations to the Borrower under this Agreement by way of Cdn Prime Rate Loans in respect of any Advance, conversion or rollover requested by the Borrower in BAs or EuroLibor Loans, and by way of US Base Rate Loans in respect of any Advance, conversion or rollover requested by the Borrower in Libor Loans;
- 22.2.2 each Affected Lender, over the course of the next ten (10) Business Days following the issuance of the notice by the Administrative Agent under Section 22.1, shall negotiate in good faith with the Borrower and deliver to the Borrower in writing the terms of a substitute basis for the continuation of the BA Liability, Libor Loan or EuroLibor Loan of such Affected Lender or any part thereof, as the case may be, which is, financially, the substantial equivalent to such Affected Lender of the terms provided herein. The terms of the Substitute Basis for the BA Liability, Libor Loan or EuroLibor Loan of such Affected Lender or any part thereof, as the case may be, if they are accepted by the Borrower, shall be effective from any such acceptance and the provisions of this Agreement respecting such BA Liability, Libor Loan, EuroLibor Loan as the case may be, *ipso facto*, shall be amended to accord with the terms of the Substitute Basis for such Affected Lender. The Borrower shall sign such documents, deeds and

instruments, and shall do all such things as the Affected Lenders shall reasonably consider useful or necessary to give effect to the Substitute Basis. If by the expiry of the said ten (10) Business Days no agreement has been reached with respect to the Substitute Basis, the affected outstanding Libor Loan of each Affected Lender will automatically be converted into a US Base Rate Loan of such Affected Lender retroactively to the affected Borrowing Date, the affected outstanding US Libor Loan of each Affected Lender will automatically be converted into a US Base Rate Loan of such Affected Lender retroactively to the affected Borrowing Date, and the affected outstanding EuroLibor Loan of each Affected Lender will automatically be converted into a Cdn Prime Base Loan of such Affected Lender (in the manner contemplated in Section 8.7) retroactively to the Affected Borrowing Date, and the Borrower shall immediately repay in full the affected BA Liabilities or any part thereof, as the case may be, of each Affected Lender together with, in all cases, forthwith upon receipt of a demand therefor, the amounts referred to in Sections 22.5 and 22.6. The Borrower shall have the right to request from each Affected Lender Advances by way of Cdn Prime Rate Loans in order to effect such payment of BA Liabilities.

22.3 Change in Law

If any Lender determines (which determination shall be evidenced by a certificate submitted to the Borrower and the Administrative Agent by such Lender and, in the absence of demonstrable error, such certificate shall constitute *prima facie* evidence of the subject matter thereof among the parties hereto) that:

- 22.3.1 a Change in Law has made or shall make it unlawful or contrary to any Applicable Law for such Lender to maintain or give effect to all or any part of its obligations as contemplated by this Agreement and the other Operative Documents, or to make or maintain all or any part of the BA Liabilities, the Libor Loan or EuroLibor Loan hereunder of such Lender, then the obligations of such Lender to maintain or give effect to such part of such obligations, or to make or maintain such part of such BA Liabilities, such Libor Loan or such EuroLibor Loan shall terminate and, subject to the provisions of any such Applicable Law and those of Sections 22.5 and 22.6 with respect to losses and expenses, the Borrower may convert such BA Liabilities, such Libor Loan or such EuroLibor Loan, such or any part thereof or alternatively may repay in full any such or other affected Loan or liability to such Lender, together, in each case, with all interest accrued thereon, which conversion or repayment shall be made, with respect to each relevant Selected Amount, at the expiry of its Selected Period, or if in the judgment of such Lender immediate conversion or repayment is required, immediately upon demand of such Lender; or

22.3.2 a Change in Law has:

- 22.3.2.1 imposed, modified, or deemed applicable any loan ceiling against such Lender or imposed, modified or deemed applicable any special Tax (other than a Tax on the overall net income of such Lender) deposit insurance, reserve, deposit or similar requirement with respect to assets held by, deposits in or for the account of, the acquisition of funds by, or loans by such Lender; or
- 22.3.2.2 changed the basis of taxation of payments to such Lender under this Agreement (other than a change affecting taxation on the overall net income of such Lender); or
- 22.3.2.3 imposed on such Lender any other condition (including the amount of capital required or expected to be maintained by such Lender as a result of this Agreement or its Commitment) or monetary restraint with respect to this Agreement, the BA Liabilities, the Libor Loan or the EuroLibor Loan or any part thereof of such Lender or any other Operative Document; and

the result of any of the foregoing is to increase the cost to such Lender of making or maintaining its Commitment, BA Liabilities, Libor Loan or EuroLibor Loan or LC Liabilities or any part of any one thereof or to reduce any amount receivable by such Lender with respect to the BA Liabilities, the Libor Loan or the EuroLibor Loan or LC Liabilities or any part of any one thereof of such Lender by an amount which such Lender deems in its sole discretion to be material, then, the Borrower, within ten (10) Business Days of receipt of the certificate referred to above (which certificate shall contain all required computations and reasonable explanations of the amounts required to be paid):

- 22.3.2.4 shall pay to such Lender, such additional amount computed by such Lender as will, on an after-tax basis, compensate such Lender for such additional cost or reduction in amounts receivable which such Lender determines to be attributable to the Borrower or the Loans made to the Borrower; and
- 22.3.2.5 subject to the provisions of Sections 22.5 and 22.6 with respect to losses and expenses, may (i) convert such Libor Loans or any part thereof into a US Base Rate Loan, or (ii) convert such EuroLibor Loan or any part thereof into a Cdn Prime Rate Loan (in the manner contemplated in Section 8.7), or may without penalty, but subject to the expenses and penalties contemplated in Sections 22.5 and 22.6, repay its Libor Loans and its EuroLibor Loans and, without penalty, shall repay in full the BA Liabilities and LC Liabilities together, in each case, without accrued interest thereon.

22.4 Notice of Change in Law

The Administrative Agent shall promptly give notice of receipt by it of any certificate delivered pursuant to the provisions of Section 22.3 to the Borrower and the Lenders.

22.5 Reimbursement of Losses and Expenses

Whenever any Lender or the Administrative Agent shall sustain or incur any losses and expenses in connection with:

- 22.5.1 the failure of the Borrower to borrow pursuant to a Draw Request once delivered (whether by reason of the Borrower's decision not to proceed, the non-fulfilment of any of the conditions set forth in this Agreement, the existence of a Default or Event of Default on the relevant Drawdown Date or for any other reason); or
- 22.5.2 the declaration by the Administrative Agent following the occurrence and during the continuance of an Event of Default, that the Loans are immediately due and payable; or
- 22.5.3 the failure of the Borrower to pay when due principal, interest, fees or any other amount under this Agreement (whether at maturity, by reason of acceleration or otherwise); or
- 22.5.4 the conversion or repayment of the whole or any part of the BA Liabilities, the LC Liabilities, the Libor Loans or the EuroLibor Loans on any day other than a Selected Maturity Date; or
- 22.5.5 the conversion or repayment of the whole or any part of any affected Loans or liabilities pursuant to Sections 22.1 or 22.3; or
- 22.5.6 the failure to convert pursuant to a Conversion Request any part of the Loans into or continue any part thereof as BA Liabilities, LC Liabilities, Libor Loans or EuroLibor Loans (whether by reason of the Borrower's decision not to proceed, the non-fulfilment of any of the conditions set forth in this Agreement, the existence of a Default or Event of Default on the relevant Conversion Date or for any other reason);

(the events contemplated above shall be referred to individually as a "**Loss Event**" and the funds converted, repaid, not borrowed or not repaid, as the case may be, which are subject to any such Loss Event shall be collectively referred to as the "**Affected Funds**");

the Borrower agrees to pay such Lender or the Administrative Agent, upon demand, an amount certified by such Lender or the Administrative Agent to be necessary to compensate it for all such losses and expenses. The certificate of such Lender or the Administrative Agent, as the case may be, shall also specify the computation and reasonable explanations of the amount to be paid.

The agreements of the Borrower under this Section 22.5 shall survive the repayment of the Loans and the termination of the Revolving Facility.

22.6 Amount of Losses with respect to Libor Loans and EuroLibor Loans

With respect to the Libor Loans or the EuroLibor Loans the losses and expenses referred to in Section 22.5 shall consist of and be limited to, losses and expenses incurred by any Lender in connection with the redeployment of the Affected Funds in an amount equal to the premium, if any, that such Lender would be required to pay were it to purchase, in the relevant market, prior to its maturity, on the date of such Loss Event, a term deposit instrument in a principal amount equal to the affected Selected Amount and whose maturity is equal to the remaining term of the affected Selected Period and bearing interest at a rate equal to the rate applicable or that would have been applicable under the terms hereof to the Affected Funds on the date of such Loss Event.

22.7 Environmental Indemnity

The Borrower shall at all times indemnify and hold harmless the Indemnified Parties against and from any and all losses and expenses of any nature whatsoever, incurred, suffered, sustained or required to be paid by them or any one thereof, whether as secured party under any of the Security Documents, as hypothecary creditor or mortgagee in possession, or as successor-in-interest to the Borrower by foreclosure deed, deed of taking of possession or deed in lieu of foreclosure or taking of possession, or by any other means relating to the Borrower under or on account of Environmental Laws, including the assertion of any Lien thereunder (collectively, the "**Environmental Losses**"), with respect to:

- 22.7.1 any violation or alleged violation of Environmental Laws, or the presence of any Hazardous Material affecting any Business Asset of any member of the Group in violation of Environmental Laws including any loss of value of such property as a result of any of the foregoing;
- 22.7.2 any clean-up costs incurred by any Governmental Authority or any costs incurred by any other Person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss incurred in relation with the property, operations and activities of such other Person or the property, operations and activities of any member of the Group as a result of the violation of Environmental Laws by such member of the Group;
- 22.7.3 liability for personal injury or property damage arising under any statutory or common or civil law tort or civil responsibility theory; and
- 22.7.4 any other environmental matter affecting any Business Asset of the Borrower or the operations and activities of the Borrower within the jurisdiction of any Governmental Authority.

The Borrower's obligations under this Section shall arise upon the discovery of any Hazardous Material, whether or not any Governmental Authority has taken or threatened any action in connection with the presence of any Hazardous Material, provided, however, that the Borrower shall not be required to reimburse or indemnify the Indemnified Parties for that portion of any such Environmental Losses caused by or resulting from the action or conduct of any Indemnified Party determined to be responsible for that portion of such Environmental Losses.

22.8 General Indemnity

The Borrower hereby indemnifies and holds harmless the Indemnified Parties from and against any and all losses and expenses, solidary, joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense with respect thereto arising out of or in connection with or relating to this Agreement, the other Operative Documents or the transactions contemplated hereby or thereby, or any use made or proposed to be made with the proceeds of the Revolving Facility, whether or not such investigation, litigation or proceeding is brought by the Borrower, any shareholder or creditor thereof, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated, except to the extent such losses and expenses are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's intentional or gross fault or wilful misconduct.

22.9 Claims under the Indemnity

The Indemnified Party claiming indemnification under Section 22.7 or 22.8 shall give the Borrower prompt notice in writing of particulars of any claim asserted by third parties against it which is covered by such indemnities.

22.10 Acknowledgement

The Borrower acknowledges that the Lenders have agreed to make the Loans in reliance upon the representations, warranties and covenants in this Agreement relating to the environment. For this reason, it is the intention of the Borrower and the Lenders that the Borrower shall be personally liable for any liability or Indebtedness arising under this Article even if the amount of liability incurred exceeds the amount of the Loans. The liability and Indebtedness of the Borrower arising under this Article shall constitute part of the Secured Obligations, shall be secured by the Security Documents, are absolute and unconditional and shall not be affected by any act, omission, or circumstance whatsoever, whether or not occasioned by the fault of the Lenders, the administrative Agent or any one thereof, except in respect of intentional or gross fault or wilful misconduct by the Lenders, the Administrative Agent, their respective directors, officers, employees, advisors, representatives and agents or any one thereof. All of the representations, warranties, covenants and indemnities of this Agreement relating to the environment shall survive the repayment of the Loans for a period of three (3) years following the repayment in full of the Loans and the cancellation of the Revolving Facility.

The obligations and the Indebtedness arising under Section 22.7 are not in any way diminished by the knowledge of any one of such beneficiaries of the non-compliance by any member of the Group with Environmental Laws; they shall survive the repayment of the Loans for a period of three (3) years following the repayment in full of the Loans and the cancellation of the Revolving Facility.

ARTICLE 23

THE ADMINISTRATIVE AGENT

23.1 Appointment and Authorization

Each Lender and ISDA Provider irrevocably appoints and authorizes, and hereby agrees that it will require any Assignee, irrevocably to appoint and authorize the Administrative Agent to execute, deliver and take such actions as its agent under each Operative Document to which the Administrative Agent is party and to exercise such rights under each such Operative Document as are specifically delegated to the Administrative Agent by the terms thereof, together with such rights as are reasonably incidental thereto. The Administrative Agent accepts such appointment and agrees to perform its obligations as Administrative Agent under the Operative Documents in accordance with the provisions thereof.

23.2 Declaration of Agency

The Administrative Agent declares that it shall hold the Liens entrusted to it, the properties and assets charged thereby and the rights granted to it under each Operative Document, for its own benefit and as Administrative Agent for the rateable benefit of each Lender and ISDA Provider. The rights vested in the Administrative Agent by any Operative Document shall be performed by the Administrative Agent in accordance with the provisions of this Article.

23.3 Protection of Administrative Agent

The Administrative Agent shall not be liable for any action taken or omitted to be taken by it under any Operative Document or in connection therewith, except for its own gross negligence or wilful misconduct.

23.4 Interest Holders

The Administrative Agent may treat each Lender as the holder of all of the interests of such Lender in respect of the Revolving Facility until a duly executed and delivered Loan Transfer Agreement in form and substance satisfactory to the Administrative Agent, has been delivered to the Administrative Agent and the Administrative Agent has been paid its required processing fee for such Assignment.

23.5 Consultation with Professionals

The Administrative Agent may engage and consult with Lenders' Counsel, accountants, consultants, financial advisors and other experts, and the Administrative Agent shall not be liable

for any action taken or not taken or suffered by it in good faith and in accordance with the advice and opinion of Lenders' Counsel or such accountants, consultants, financial advisors or other experts.

23.6 Operative Documents

The Administrative Agent shall be under no duty or obligation to examine, enquire into or pass upon the validity, effectiveness or genuineness of any Operative Document or any other agreement, document, instrument or communication furnished pursuant to or in connection with any Operative Document, and the Administrative Agent shall be entitled to assume that the same are valid, effective and genuine, have been signed or sent by the proper parties and are what they purport to be. In order to give effect to any instructions received from time to time by the Required Lenders, the Administrative Agent is hereby authorized to enter into and deliver, on behalf of the Lenders and the ISDA Providers, all such Operative Documents as it may consider necessary or required and such Operative Documents shall be binding on all the Lenders and ISDA Providers. Without limiting the generality of the provisions of the foregoing sentence, the Administrative Agent is expressly authorized to enter into and deliver, on behalf of the Lenders and the ISDA Providers, all such Operative Documents referred to or contemplated in Article 13 and Article 14.

23.7 Administrative Agent and its Subsidiaries and Affiliates

With respect to its Commitments and Loans, the Administrative Agent shall have the same rights hereunder as any other Lender and may exercise the same as though it were not the Administrative Agent, and the Administrative Agent and its Subsidiaries and Affiliates may accept deposits from, lend money to and generally engage in any kind of business with any member of the Group and its Affiliates and Persons doing business with any member of the Group or any of its Affiliates as if it were not the Administrative Agent and without any obligation to account therefor.

23.8 Responsibility of the Administrative Agent

The obligations of the Administrative Agent to the other Finance Parties under the Operative Documents are only those expressly set forth therein. The Administrative Agent shall have no fiduciary obligation to any other Finance Party. The Administrative Agent shall only have those contractual obligations expressly set forth in the Operative Documents. The Administrative Agent shall have no duty or obligation to investigate whether any Default or Event of Default has occurred. The Administrative Agent shall be entitled to assume that no Default or Event of Default has occurred and is continuing, unless an officer of the Administrative Agent charged with the administration of this Agreement has actual knowledge or has been notified by the Borrower of such fact or has been notified by the Majority Lenders that they consider that a Default or Event of Default has occurred and is continuing, such notification to specify in detail the nature thereof.

23.9 Action by the Administrative Agent

- 23.9.1 The Administrative Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any right which may be vested in it by, and with respect to taking or refraining from taking any action which it may be able to take under or in respect of, any Operative Document, unless the Administrative Agent has been instructed by the Majority Lenders to exercise such rights or to take or refrain from taking such action; provided, however, that the Administrative Agent shall not exercise any right under Article 20 without being instructed to do so by the Majority Lenders. The Administrative Agent shall incur no obligation under or in respect of the Operative Documents with respect to anything which it may do or refrain from doing in the reasonable exercise of its judgment or which may seem to it to be necessary or desirable in the circumstances, except for its intentional or gross fault or wilful misconduct.
- 23.9.2 The Administrative Agent shall in all cases be fully protected in acting or refraining from acting under any Operative Document in accordance with the instructions of the Majority Lenders, and any action taken or failure to act pursuant to such instructions shall be binding on all Finance Parties.
- 23.9.3 Notwithstanding anything else herein contained, the Administrative Agent may refrain from doing anything which would or might in its opinion be contrary to any Applicable Law, 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 Applicable Law.
- 23.9.4 Notwithstanding subsection 23.9.1, the Administrative Agent may refrain from acting in accordance with any instructions of the Majority Lenders to begin any litigation, arising out of or in connection with any Operative Document or to take management or control of any of the properties and assets on which a Lien is created pursuant to the Security Documents until it has received such security as it may require (whether by way of payment in advance or otherwise) for all losses and expenses which it will or may expend or incur in complying with such instructions.

23.10 Notice of Events of Default

- 23.10.1 In the event that an officer of the Administrative Agent charged with the administration of this Agreement is notified of any Default or Event of Default, the Administrative Agent shall promptly notify the Finance Parties, and, subject to Section 23.9, the Administrative Agent shall take such action and assert such rights under the Operative

Documents as the Majority Lenders shall request in writing, and the Administrative Agent shall not be subject to any liability by reason of its acting pursuant to any such request.

- 23.10.2 Prior to receiving any instructions from the Majority Lenders in respect of such Default or Event of Default, the Administrative Agent may, but shall not be obliged to, take such action or assert such rights (other than those matters requiring unanimous Lender consent) as it deems in its discretion to be advisable for the protection of the Finance Parties, except that, if the Majority Lenders have instructed the Administrative Agent not to take such action or assert such rights, in no event shall the Administrative Agent act contrary to those instructions.

23.11 Responsibility Disclaimed

The Administrative Agent in its capacity as Administrative Agent shall be under no obligation whatsoever:

- 23.11.1 to any member of the Group as a consequence of any failure or delay in the performance by, or any breach by, any Finance Party of any of its obligations under any Operative Document;
- 23.11.2 to any Finance Party, as a consequence of any failure or delay in the performance by, or any breach by, any member of the Group of any of its obligations under any Operative Document; or
- 23.11.3 to any Finance Party for any statements, representations or warranties in any Operative Document or any other agreement, document or instrument contemplated by any Operative Document or in any other information provided pursuant to any Operative Document, or for the validity, effectiveness, enforceability or sufficiency of any Operative Document.

23.12 Indemnification

Each of the Lenders, jointly and not solidarily, agrees to indemnify the Administrative Agent (to the extent not reimbursed by the Borrower on demand) pro rata according to their respective Rateable Share from and against any and all losses and expenses which may be imposed on, incurred by, or asserted against the Administrative Agent in any way relating to or arising out of any Operative Document except that no Lender shall be liable to the Administrative Agent for any portion of such losses and expenses that results from the intentional or gross fault or wilful misconduct of the Administrative Agent.

23.13 Protection of Employees

Each reference in Sections 23.1, 23.9, 23.10, 23.11, 23.12 and 23.15 to the Administrative Agent shall (to the extent the context so admits) be deemed to include the Administrative Agent and its directors, officers, employees, agents, solicitors, accountants, consultants, financial advisors, other experts and all other representatives and the Administrative Agent shall be constituted as Administrative Agent and bare trustee of each such Person and shall hold and enforce their rights under said Sections for their respective benefits.

23.14 Credit Decision

Each Finance Party represents and warrants to the Administrative Agent that:

- 23.14.1 in making its decision to enter into this Agreement and to make its Commitment and its Loan, it has independently taken whatever steps it considers necessary to evaluate the financial condition and affairs of each member of the Group and that it has made an independent credit judgment without reliance upon any information furnished by the Administrative Agent; and
- 23.14.2 so long as any portion of its Loan remains outstanding it will continue to make its own independent evaluation of the financial condition and affairs of each member of the Group.

23.15 Replacement Administrative Agent

- 23.15.1 The Administrative Agent (a "**Resigning Administrative Agent**") may resign at any time by giving written notice thereof to the other Finance Parties and the Borrower. Such resignation shall only be effective upon the earlier of (i) the appointment of a replacement agent and its acceptance of such appointment and (ii) the 30th day following such notice. Upon receipt of notice of any such intended resignation, the Majority Lenders shall have the right to appoint a replacement to the Resigning Administrative Agent which shall be one of the Lenders, and, provided no Event of Default shall have then occurred and be continuing, which shall be acceptable to the Borrower, acting reasonably. If no replacement to the Resigning Administrative Agent shall have been so appointed and shall have accepted such appointment within fifteen (15) days of receipt of such notice, the Majority Lenders shall, within the following fifteen (15) days, appoint a replacement that may, but need not be, a Lender, and, provided no Event of Default shall have then occurred and be continuing, that shall be acceptable to the Borrower, acting reasonably. If the Majority Lenders fail to appoint a replacement to the Resigning Administrative Agent within such fifteen (15) day period, without limitation of its rights under this Section 23.15, the Resigning Administrative Agent may, on behalf of the Lenders and ISDA Providers, appoint a

replacement administrative agent which shall be a financial institution authorized to conduct business in Canada and which has a branch in Montréal, Québec. Upon the resignation of a Resigning Administrative Agent, the replacement administrative agent shall thereupon succeed to and become vested with all the rights and obligations of the Resigning Administrative Agent and the Resigning Administrative Agent shall be discharged from its obligations under the Operative Documents. After any Resigning Administrative Agent's resignation hereunder as Administrative Agent the provisions of this Article 23 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent. In the event no replacement Administrative Agent shall have been appointed, the provisions hereof shall continue in full force and effect and each Lender and each ISDA Provider shall be deemed to be its Administrative Agent.

- 23.15.2 The Administrative Agent may also be removed at any time by the Majority Lenders on the grounds that the Administrative Agent has failed to comply, in all material respects, with its obligations towards any Lender and has not remedied such failure within a reasonable delay following its receipt of a notice from the Majority Lenders describing such failure. The provisions of subsection 23.15.1 above will apply *mutatis mutandis* to an Administrative Agent that is being so removed.

23.16 **Waivers and Amendments**

- 23.16.1 Except as otherwise provided in subsections 23.16.2 and 23.16.3, any term, covenant, agreement, condition or obligation of any Operative Document (other than any ISDA Contract) may be amended with the consent of the members of the Group that are party thereto and the Administrative Agent, acting in accordance with the instructions of the Majority Lenders, or compliance therewith may be waived by the Majority Lenders (either generally or in a particular instance and either retroactively or prospectively).
- 23.16.2 Without the prior consent of every Lender, no amendment, waiver or other action under, or in respect of, any Operative Document (other than any ISDA Contract) shall:
- 23.16.2.1 increase the aggregate amount of the Revolving Facility, the amount or term of any of the Commitments or the proportion represented by the Rateable Share of any Lender, except to the extent expressly permitted or required in this Agreement provided that the consent of the Lenders shall not be required with respect to

any increase in the amount of the Revolving Facility pursuant to 2.9;

- 23.16.2.2 postpone or defer the time for the payment of the principal of or interest on the Loans or any part thereof, any Stamping Fee or any other amount payable hereunder or amend subsection 12.6.2;
 - 23.16.2.3 decrease the rate or amount or change the currency of any principal, interest or fees (including Stamping Fees) payable hereunder or the requirement of pro rata application in accordance with each Lender's Rateable Share of all amounts received by the Administrative Agent in respect of the Revolving Facility;
 - 23.16.2.4 change the definition of "Required Lenders" or "Majority Lenders";
 - 23.16.2.5 amend Sections 2.3, 13.1, 13.2, 14.1, 14.3, 16.17, 20.2, 20.5 or this Section 23.16;
 - 23.16.2.6 release or postpone any guarantee of any member of the Group under any Operative Document or release, discharge or subordinate any Lien created under the Security Documents except as otherwise expressly permitted or required by the provisions of any Operative Document;
 - 23.16.2.7 reduce the amount secured pursuant to the Sidech Pledge on Business Assets or the Sidech Land Charge or the amount of the mandates referred to in Section 13.7.
- 23.16.3 No amendment or waiver of any provision of any Operative Document shall affect any of the rights or obligations of the Administrative Agent or the LC Issuing Lender under any Operative Document without the prior consent of the Administrative Agent or the LC Issuing Lender, as the case may be.
- 23.16.4 No amendment or waiver of any provision of any Operative Document shall affect any of the rights or obligations of the Cdn Swingline Lender under any Operative Document without the prior consent of the Cdn Swingline Lender.
- 23.16.5 In connection with the sale by any member of the Group of any Business Asset in compliance with the provisions of Section 18.13, at the request of the Borrower, the Administrative Agent, without seeking instructions from the Finance Parties or the Majority Lenders, may confirm to the purchaser of such Business Asset that the Liens granted pursuant to the Security Documents no longer affect such Business Asset and discharge the Liens granted pursuant to the

Security Documents on such Business Asset provided that the Administrative Agent (i) has received a certificate duly executed by two (2) Responsible Officers of the Borrower confirming that the provisions of Section 18.5 are being complied with and providing detailed information in support of such confirmation, the whole to the satisfaction of the Administrative Agent, acting reasonably, and (ii) is satisfied that no Default or Event of Default has occurred and is continuing, nor would result therefrom. Notwithstanding the foregoing, the Administrative Agent may seek the instructions of the Lenders with respect to any request from the Borrower made pursuant to this paragraph. The Administrative Agent shall not be liable for any action taken or not taken by it in good faith in reliance upon the certificate referred to in clause (i) above.

- 23.16.6 Notwithstanding any other provision herein to the contrary, where the consent of the Administrative Agent is required pursuant to paragraph 25.5.1.2, such consent may be given by the Administrative Agent without obtaining any instructions in that regard from any of the Lenders and the Administrative Agent shall not be liable for any action taken or not taken by it in good faith in furtherance of the provisions of this subsection. Notwithstanding the foregoing, the Administrative Agent may, at its discretion, seek the instructions of the Lenders with respect to any such consent.

Nothing contained in this Agreement or the other Operative Documents, including, without limitation, the specific reference to Lenders in certain provisions and to Majority Lenders in other provisions, should be construed or interpreted as in any way limiting or restricting the generality of the provisions of this Section 23.16. The parties hereto acknowledge and agree that any waiver to which reference is made in this Section 23.16, once it has been established in writing by the Administrative Agent in favour of the Borrower and in the name of the Majority Lenders, shall bind all parties hereunder.

23.17 Articles 2138 to 2148 C.C.Q. Not Applicable

The mandate of the Administrative Agent under this Agreement is not governed by the provisions of Articles 2138 to 2148 of the *Civil Code of Québec* and the Lenders and ISDA Providers do hereby expressly renounce to the benefit of each and every one of such Articles.

23.18 Rights, Benefits and Recourses Created by the Operative Documents

The parties hereto do hereby expressly acknowledge, declare and agree that the Liens, rights, benefits and recourses created and intended to be created at any time and from time to time by any of the Operative Documents in favour of the Administrative Agent or in favour of the other Finance Parties or in favour of the other Finance Parties and the Administrative Agent, jointly, as the case may be, are created and intended to be created in favour of the Finance Parties and in favour of the Administrative Agent as agent for such Person or Persons that now are or may, at

any time and from time to time, become Lenders or ISDA Providers, in the same manner and to the same extent as though each such Person was personally an original party to or a Person specifically named as a beneficiary in the said documents, notwithstanding the invalidity or unenforceability of any Lien created pursuant to any Security Document or the inexistence for any Lender or any ISDA Provider of, or the failure by any Lender or any ISDA Provider to take a Lien on any asset or property intended to be charged under the Security Documents. In furtherance of the provisions of this Section 23.18, the parties hereto do hereby irrevocably mandate the Administrative Agent, for and on their behalf, to confirm to and confer upon each Person that becomes a Lender or an ISDA Provider, the benefits of the Operative Documents and to execute any instrument necessary to evidence same. The acceptance by the Administrative Agent of any Loan Transfer Agreement or of an ISDA Provider Accession Certificate, as the case may be, shall constitute for all purposes of the Operative Documents, the carrying out by the Administrative Agent of the irrevocable mandate given to it under this Section 23.18.

23.19 Québec Fondé de Pouvoir

For greater certainty, but without limiting the powers of the Administrative Agent pursuant to the terms hereof or of the Operative Documents, for the purposes of holding any Liens that secure the payment of any bond (or similar instrument), granted by any Restricted Party pursuant to the Laws of the province of Québec pursuant to the Operative Documents, the Lenders and ISDA Providers hereby acknowledge that the Administrative Agent shall be and act as the person holding the power of attorney of all present and future Lenders for all purposes of Article 2692 of the *Civil Code of Quebec*, and, more specifically, all present and future holders of bonds or similar instruments. Each Lender and ISDA Provider therefore appoints, to the extent necessary, the Administrative Agent as its irrevocable *fondé de pouvoir* to hold the Liens created pursuant to such Operative Documents in order to secure the payment of any bonds or similar instruments. By executing a Loan Transfer Agreement or an ISDA Provider Accession Certificate, as the case may be, each future Lender and ISDA Provider shall be deemed to ratify the power of attorney granted to the Administrative Agent hereunder.

Notwithstanding the provisions of Section 32 of *An Act Respecting the Special Powers of Legal Persons* (Quebec), the Administrative Agent may acquire bonds and similar instruments.

The Borrower acknowledges that any bond or other similar instrument executed by it or any other Restricted Party shall constitute a title of indebtedness as such expression is defined in Article 2692 of the *Civil Code of Québec*. The Administrative Agent accepts to act as *fondé de pouvoir* of the Lenders.

23.20 Administrative Agent as Joint and Several Creditor; Parallel Debt owed to Administrative Agent; Administration of German Security

- 23.20.1 With respect to all Liens constituted pursuant to the terms hereof and the other Operative Documents that are governed by the Laws of Germany, the Borrower and each Restricted Party which becomes a Guarantor and each of the Finance Parties agrees that the Administrative Agent shall be the joint and several creditor

(*Gesamtgläubiger*) (together with the relevant Finance Party) of each and every obligation of the Restricted Parties towards each of the Finance Parties under this Agreement and each other Operative Document, and that accordingly, the Administrative Agent will have its own independent right to demand performance by the Borrower and each other Guarantor of those obligations. However, any discharge of any such obligation to one of the Administrative Agent or a Finance Party shall, to the same extent, discharge the corresponding obligation owing to the other.

- 23.20.2 For the avoidance of doubt, the Borrower and each other Guarantor shall have all other defences (*Einreden*) against claims of the Administrative Agent hereunder as it has against the primary obligation. Any claims under this Section 23.20 may only be assigned to any person acting as Administrative Agent under this Agreement and appointed in accordance with the terms of the Operative Documents.
- 23.20.3 Without limiting or affecting the Administrative Agent's rights against the Borrower or any other Guarantor (whether under this Section 23.20 or under any other provision of the Operative Documents), the Administrative Agent agrees with each other Finance Party (on a several and divided basis) that, subject as set out in the next sentence, it will not exercise its rights as a joint and several creditor with a Finance Party except with the consent of the relevant Finance Party. However, for the avoidance of doubt, nothing in the previous sentence shall in any way limit the Administrative Agent's right to act in the protection or preservation of its rights under or to enforce any Operative Document as contemplated by this Agreement and/or the relevant Operative Document.
- 23.20.4 The Borrower hereby irrevocably and unconditionally undertakes, for itself and on behalf of the Guarantors, to pay, as an independent payment obligation (*abstraktes Schuldversprechen*) to the Administrative Agent amounts equal to any amounts owing from time to time by any Restricted Party to any Finance Party under any Operative Document as and when those amounts are due.
- 23.20.5 The Borrower and the Administrative Agent acknowledge that the obligations of the Borrower and the other Guarantors under Section 23.20.3 are several and are separate and independent from, and shall not in any way limit or affect, the corresponding obligations of the Borrower or any other Guarantor to any Finance Party under any Operative Document (its "**Corresponding Debt**") nor shall the amounts for which the Borrower or any other Guarantor is liable under

Section 23.20.3 (its "**Parallel Debt**") be limited or affected in any way by its Corresponding Debt provided that:

- 23.20.5.1 The Parallel Debt of any Guarantor shall be decreased to the extent that its Corresponding Debt has been irrevocably paid or (in the case of guarantee obligations) discharged; and
- 23.20.5.2 the Corresponding Debt of any Guarantor shall be decreased to the extent that its Parallel Debt has been irrevocably paid or (in the case of guarantee obligations) discharged; and
- 23.20.5.3 the amount of the Parallel Debt of any Guarantor shall at all times be equal to the amount of its Corresponding Debt.
- 23.20.6 For the purpose of these provisions, the Administrative Agent acts in its own name and not as a trustee, and its claims in respect of the Parallel Debt shall not be held on trust. The security and Lien granted under the Security Documents to the Administrative Agent to secure the Parallel Debt is granted to the Administrative Agent in its capacity as creditor of the Parallel Debt and shall not be held on trust.
- 23.20.7 All monies received or recovered by the Administrative Agent pursuant to this Section 23.20, and all amounts received or recovered by the Administrative Agent from or by the enforcement of any security under any Security Document granted to secure the Parallel Debt, shall be applied in accordance with this Agreement.
- 23.20.8 Without limiting or affecting the Administrative Agent's rights against the Borrower or any other Guarantor (whether under this clause 23.20 or under any other provision of the Operative Documents), the Borrower, for itself and on behalf of the Guarantors, acknowledges that:
 - 23.20.8.1 nothing in this clause 23.20 shall impose any obligation on the Administrative Agent to advance any sum to the Borrower or other party under any Operative Document, except in its capacity as Lender; and
 - 23.20.8.2 for the purpose of any vote taken under any Operative Document, the Administrative Agent shall not be regarded as having any participation or commitment other than those which it has in its capacity as a Lender.
- 23.20.9 The Administrative Agent will:
 - 23.20.9.1 hold and administer any German Security which is security assigned or otherwise transferred to it under a non-accessory

security right (nicht akzessorische Sicherheit) as trustee (Treuhand) for the benefit of the Finance Parties; and

- 23.20.9.2 administer any German Security which is pledged (Verpfändung) or otherwise transferred to any or each Finance Party under an accessory security right (akzessorische Sicherheit).
- 23.20.10 Each Finance Party authorises the Administrative Agent (whether or not by or through employees or agents) to execute for and on its behalf any and all German Security Documents which create non-accessory (nicht akzessorisch) security.
- 23.20.11 Each Finance Party hereby ratifies and approves all acts and declarations previously done by the Administrative Agent on such Finance Party's behalf (including, for the avoidance of doubt, the declarations made by the Administrative Agent as representative without power of attorney (Vertreter ohne Vertretungsmacht) in relation to the creation of any pledge (Pfandrecht) or any other accessory security right (akzessorische Sicherheit) on behalf and for the benefit of any Finance Party).
- 23.20.12 The Administrative Agent may take such action (including, without limitation, the exercise of all rights, discretions or powers and the granting of consents or releases or the engagement of a notary for execution of any documents required in notarial form) or, as the case may be, refrain from taking such action under or pursuant to the German Security Documents as it may specifically be directed by the persons authorised to do so under this Agreement in writing from time to time or that it is required to take or refrain from taking under this Agreement.
- 23.20.13 Each other Finance Party hereby exempts the Administrative Agent from the restrictions pursuant to section 181 German Civil Code (Bürgerliches Gesetzbuch) and similar restrictions applicable to it pursuant to any other applicable law, in each case to the extent legally possible for such Finance Party. A Finance Party which is barred by its constitutional documents or by-laws from granting such exemption shall notify the Administrative Agent accordingly.

23.21 **Belgian Parallel Debt**

The Borrower acknowledges and agrees that the Administrative Agent acts for the benefit of the Lenders and the ISDA Providers under the parallel debt undertaking created pursuant to Article 11.2 of the Guarantee and Subordination Agreement (*Belgian Parallel Debt*) and as representative of the Lenders and of the ISDA Providers within the meaning of Article 5 of the Belgian Law of 15 December 2004 concerning financial collateral, as the case may be.

ARTICLE 24

OPERATION OF ACCOUNTS

24.1 Notice of Advance to the Finance Parties

Upon receipt of any Draw Request, Conversion Request, Reduction Notice or Repayment Notice, the Administrative Agent shall promptly notify each Lender of the receipt of such request or notice and, subject to Section 6.2, of the Rateable Share of the requested Advance of such Lender or of the contemplated repayment, as the case may be.

24.2 Interlender Procedure for Making Advances

- 24.2.1 With respect to any Direct Advance, by no later than 11:00 a.m. (local time in the place of payment) on the requested Borrowing Date, each Lender shall make available to the Administrative Agent its Rateable Share of the requested Advance in same-day funds in the appropriate currency by wire-transferring such amount in the Administrative Agent's Account.
- 24.2.2 With respect to Advances requested by way of BAs, by no later than 11:00 a.m. (local time in the place of payment) on the relevant Issuance Date, subject to the relevant provisions of Article 14, each Lender shall make available to the Administrative Agent the BA Proceeds referred to in Section 6.6 in same-day funds in Canadian Dollars by wire-transferring such amount in the Administrative Agent's Account.
- 24.2.3 With respect to Advances requested by way of LCs, the appropriate LC Issuing Lender shall deliver the requested LCs as contemplated in Section 9.2.

24.3 Deposits By or on Behalf of Lenders to Constitute Advances

With respect to each of the Accounts, all deposits and credits made into said accounts under the terms hereof by the Administrative Agent, on behalf of the Lenders, and required to be so deposited or credited pursuant to a Draw Request or Conversion Request, shall constitute Advances by the Lenders under the terms hereof.

24.4 Swingline Redistributions

- 24.4.1 Where the Lenders, following a request therefor from the Administrative Agent, proceed with a Cdn Swingline Redistribution and the Cdn Swingline Lender has a disproportionately higher or a disproportionately lower share of the Loans, than its Rateable Share of the Revolving Facility, then:

- 24.4.1.1 in the case of a disproportionately higher share of the Loans, each of the other Lenders shall purchase from the Cdn Swingline Lender, within three (3) Business Days following such request, a portion of the Swingline Cdn Prime Rate Loan or of the Swingline US Base Rate Loan, as the case may be, of the Cdn Swingline Lender such that, thereafter, the Loan of each of the Lenders shall be on a Rateable Share basis of the Revolving Facility, for a consideration equal to the principal amount of the Swingline Cdn Prime Rate Loan or of the Swingline US Base Rate Loan, as the case may be, of the Cdn Swingline Lender so purchased. Each Lender shall, on such Business Day, wire-transfer in the Administrative Agent's Account, in same-day funds, in Canadian Dollars or US Dollars, as the case may be, the aggregate amount of such consideration;
- 24.4.1.2 in the case of a disproportionately lower share of the Loans, the Cdn Swingline Lender shall purchase on such Business Day from the other Lenders a portion of the Loan of each other Lender such that, thereafter, the Loan of each of the Lenders shall be on a Rateable Share basis of the Revolving Facility, for a consideration equal to, for each such other Lender, the principal amount of the Loan of such other Lender so purchased. The Cdn Swingline Lender shall, on such Business Day, wire-transfer in the Administrative Agent's Account, in same-day funds, in Canadian Dollars or US Dollars, as the case may be, the aggregate amount of such consideration.
- 24.4.2 Where the Lenders, following a request therefor from the Administrative Agent, proceed with a HK Swingline Redistribution and the Other Swingline Lender has a disproportionately higher or a disproportionately lower share of the Loans, than its Rateable Share of the Revolving Facility, then:
 - 24.4.2.1 in the case of a disproportionately higher share of the Loans, each of the other Lenders shall purchase from the Other Swingline Lender, within three (3) Business Days following such request, a portion of the Swingline HK US Base Rate Loan of the Other Swingline Lender such that, thereafter, the Loan of each of the Lenders shall be on a Rateable Share basis of the Revolving Facility, for a consideration equal to the principal amount of the Swingline HK US Base Rate Loan of the Other Swingline Lender so purchased. Each Lender shall, on such Business Day, wire-transfer in the Administrative Agent's Account, in same-day funds, in US Dollars, the aggregate amount of such consideration;

- 24.4.2.2 in the case of a disproportionately lower share of the Loans, the Other Swingline Lender shall purchase on such Business Day from the other Lenders a portion of the Loan of each other Lender such that, thereafter, the Loan of each of the Lenders shall be on a Rateable Share basis of the Revolving Facility, for a consideration equal to, for each such other Lender, the principal amount of the Loan of such other Lender so purchased. The Other Swingline Lender shall, on such Business Day, wire-transfer in the Administrative Agent's Account, in same-day funds, in US Dollars, the aggregate amount of such consideration.
- 24.4.3 Where the Lenders, following a request therefor from the Administrative Agent, proceed with a UK Swingline Redistribution and the Other Swingline Lender has a disproportionately higher or a disproportionately lower share of the Loans, than its Rateable Share of the Revolving Facility, then:
 - 24.4.3.1 in the case of a disproportionately higher share of the Loans, each of the other Lenders shall purchase from the Other Swingline Lender, within three (3) Business Days following such request, a portion of the Swingline UK US Base Rate Loan of the Other Swingline Lender such that, thereafter, the Loan of each of the Lenders shall be on a Rateable Share basis of the Revolving Facility, for a consideration equal to the principal amount of the Swingline UK US Base Rate Loan of the Other Swingline Lender so purchased. Each Lender shall, on such Business Day, wire-transfer in the Administrative Agent's Account, in same-day funds, in US Dollars or Euros, as the case may be, the aggregate amount of such consideration;
 - 24.4.3.2 in the case of a disproportionately lower share of the Loans, the Other Swingline Lender shall purchase on such Business Day from the other Lenders a portion of the Loan of each other Lender such that, thereafter, the Loan of each of the Lenders shall be on a Rateable Share basis of the Revolving Facility, for a consideration equal to, for each such other Lender, the principal amount of the Loan of such other Lender so purchased. The Other Swingline Lender shall, on such Business Day, wire-transfer in the Administrative Agent's Account, in same-day funds, in US Dollars or Euros, as the case may be, the aggregate amount of such consideration.

Upon receipt in the Administrative Agent's Account of the funds referred to above, the Administrative Agent shall wire-transfer, in same-day funds, to each Lender the amount to which it is entitled under the provisions of this Section.

Notwithstanding the foregoing, in no event shall a Lender have to purchase any portion of the Loan of another Lender pursuant to this Section which would result in such first Lender's Loan exceeding its Commitment and, in such circumstances, the obligation of such Lender under this Section shall be reduced to the maximum amount that such Lender may purchase without resulting in such Lender's Loan exceeding its Commitment. For the purpose of this Section, where the Revolving Facility has been cancelled immediately prior to the Cdn Swingline Redistribution, HK Swingline Redistribution or UK Swingline Redistribution, as the case may be, herein contemplated, the Commitment of each Lender shall be deemed the same as immediately prior to the cancellation of such Revolving Facility.

24.5 Bank Accounts

The Administrative Agent will open and maintain on its books, for the purpose of this Agreement for the account of the Borrower, at the Account Branch, a bank account for debits, deposits, credits and transfers in Canadian Dollars, a bank account for debits, deposits, credits and transfers in US Dollars and a bank account for debits, deposits, credits and transfers in Euros, it being expressly understood that the Borrower shall not close such accounts while any of the Loans remain outstanding, save only in the case of a change in the Administrative Agent, where the Borrower may close the accounts that they had maintained with the Resigning Administrative Agent.

24.6 Maintenance of Loan Records by the Administrative Agent

24.6.1 The Administrative Agent will open and maintain on its books, at the Administrative Agent's Office, a loan record for the Borrower evidencing the aggregate Indebtedness of the Borrower to the Lenders hereunder and each constituent part of the Loans. The Administrative Agent shall record therein the amount of each Direct Advance and the issuance of each LC and BA, and shall enter therein each payment of principal and interest on the said loans and all amounts paid by the Borrower on account of BAs and LC Liabilities and all other amounts paid by the Borrower and becoming due under this Agreement.

24.6.2 The said loan records shall constitute, in the absence of manifest error, *prima facie* evidence of the whole and each constituent part of the Loans, the date any Advance is made to the Borrower and the aggregate amounts from time to time paid by the Borrower on account of such Loans, in principal, interest, fees and other amounts due hereunder. Any failure of the Administrative Agent to record a transaction on any loan record in a timely fashion shall not affect or impair the validity of the obligation of the Borrower to repay the Loans owed by it, as and when herein provided. The obligation of the Borrower to repay the Loans owed by it shall be evidenced by this Agreement and by the loan records maintained by the Administrative Agent, it being the intent of the parties hereto that, save as otherwise expressly provided in Section 6.11, the obligations of the Borrower

with respect to the Loans are to be evidenced only as stated herein and not by separate promissory notes.

- 24.6.3 Upon request of the Borrower, the Administrative Agent shall notify in writing the Borrower of the entries in such loan records and of the aggregate amounts due by the Borrower to the Lenders hereunder and shall deliver to the Borrower, upon request, copies of all such loan records.

24.7 **Authority to Debit and Credit**

The Borrower does hereby expressly and irrevocably authorize the Administrative Agent to effect all any necessary debits, deposits, credits and transfers (with respect to the Accounts) in order to accommodate the Lenders in making Advances and in order to accommodate the Borrower in making payments to the Lenders and the Administrative Agent, the whole under and subject to the provisions of this Agreement.

24.8 **Failure by Any Lender to Advance or make a Redistribution**

- 24.8.1 The failure by any Lender (a "**Defaulting Lender**") to make an Advance or a Redistribution in accordance with its obligations hereunder shall not relieve the other Lenders of their several obligations to make an Advance or a Redistribution (in accordance with their respective obligations) equal to their respective Rateable Share (pertaining to the Revolving Facility) of the aggregate amount of any Advance or Redistribution requested by the Borrower nor shall any Lender be responsible for the obligations of any other Lender.
- 24.8.2 Within ten (10) days of the failure of a Defaulting Lender to make an Advance or a Redistribution as set forth in subsection 24.8.1, and provided such Defaulting Lender has continued to fail to make such Advance or Redistribution available during such ten (10) day period, the Borrower shall have the right (but not the obligation) to replace such Defaulting Lender as contemplated in subsection 24.8.3 or cancel its Commitment as contemplated in subsection 24.8.4, provided however, that no Default or Event of Default has occurred and is continuing.
- 24.8.3 With respect to each Defaulting Lender that the Borrower wishes to replace:
 - 24.8.3.1 the Borrower shall initially be required to ask each Lender that is not a Defaulting Lender, through the Administrative Agent, if it wishes to have the Loan or any portion thereof of such Defaulting Lender Assigned to it and assume the corresponding portion of the Commitment of such Defaulting Lender. The Lenders shall inform the Administrative Agent of their answer within ten (10) days of

the request of the Borrower and the Administrative Agent shall promptly inform the Borrower of same; and

- 24.8.3.2 in the event that no such Lender informs the Administrative Agent of its intention to proceed with such an Assignment or that the aggregate amount of the Loan and the Commitment that the Lenders desire to have Assigned to them is less than the amount of the Loans and the Commitment of such Defaulting Lender, the Borrower may request that the portion of the Loan and the Commitment of such Defaulting Lender that the other Lenders do not wish to have Assigned to them, be Assigned to one or more financial institutions that are acceptable to the Borrower and that such financial institution(s) assume the corresponding portion of the Loan and of the Commitments of such Defaulting Lender that the other Lenders do not wish to have Assigned to them provided, however, that the Administrative Agent consents to such Assignment, which consent shall not be unreasonably withheld.

Any Assignment made in furtherance of the provisions of this subsection shall be made in compliance with Section 25.5 provided however, that the Borrower shall pay to the Administrative Agent the fees contemplated in paragraph 25.5.1.5. The Defaulting Lenders shall collaborate with the Borrower and the Administrative Agent and take all such actions as are required in order that any Assignment requested by the Borrower be completed on a timely basis.

- 24.8.4 With respect to each Defaulting Lender whose Commitment the Borrower wishes to cancel, the Borrower shall so notify in writing the Administrative Agent and such Defaulting Lender five (5) Business Days prior to the effective date of such cancellation. On the effective date of such cancellation specified in the notice from the Borrower, the Commitment of such Defaulting Lender, as specified in such notice, shall be cancelled if:

- 24.8.4.1 the Loan of such Defaulting Lender on such date have been paid in full, with all interest accrued and unpaid on any amount so repaid;
- 24.8.4.2 with respect to the Commitment of such Defaulting Lender, all Stand-By Fees accrued and unpaid on such date have been paid in full; and
- 24.8.4.3 no Default or Event of Default has occurred and is continuing on such date.

- 24.8.5 Any replacement of a Defaulting Lender or cancellation of its Commitment pursuant to the foregoing subsections shall not release the Defaulting Lender from any obligation to indemnify the Borrower

for any damages caused to the Borrower from the failure of such Defaulting Lender to make an Advance or a Redistribution in accordance with its obligations hereunder.

24.9 Temporary Advances by the Administrative Agent

- 24.9.1 Without in any way limiting the generality of the provisions of Section 24.2, unless the Administrative Agent shall have received a written notice from a Lender by 5:00 P.M., Montreal time, on the Business Day prior to the date of any requested Advance that such Lender will not make available to the Administrative Agent such Lender's Rateable Share of such Advance, the Administrative Agent may irrevocably and unconditionally assume that such Lender shall make available to the Administrative Agent on the relevant Borrowing Date its Rateable Share thereof in accordance with the provisions of Section 24.2 and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount;
- 24.9.2 If a Lender does not so make available to the Administrative Agent its Rateable Share of such Advance and the Administrative Agent does make available to the Borrower such amount, such Lender shall pay such Rateable Share to the Administrative Agent on demand, together with interest thereon for each day from and including the date such Rateable Share of such requested Advance was not made available, at a fluctuating rate per annum equal to the interbank rate for overnight funds which is applicable to the currency in which such Advance is to be denominated in accordance with market practice. A certificate of the Administrative Agent submitted to any Lender with respect to any amount owing under this Section shall be *prima facie* evidence thereof, absent manifest error. If such amount and interest thereon is so made available to the Administrative Agent, such payment to the Administrative Agent by such Lender shall constitute such Lender's Advance on the relevant Borrowing Date for all purposes of this Agreement;
- 24.9.3 If, after delivery to such Lender of such certificate by the Administrative Agent, such amount is not so made available to the Administrative Agent, then the Administrative Agent shall notify the Borrower of such failure and, without in any way affecting or otherwise diminishing the obligation of such Lender to pay such amount to the Administrative Agent on demand, on the third (3rd) Business Day following the date of such requested Advance, the Borrower shall pay to the Administrative Agent such Rateable Share together with interest thereon for each day that the Borrower had the use of such Rateable Share of the requested Advance at:

- 24.9.3.1 where such amount is denominated in Canadian Dollars, an annual rate applicable for each such day equal to the Administrative Agent's Cdn Prime Rate at the close of business on each such day, plus the Relevant Margin applicable on each such day to the Prime Rate Loans; and
- 24.9.3.2 where such amount is denominated in US Dollars, an annual rate applicable for each such day equal to the US Base Rate at the close of business on each such day, plus the Relevant Margin applicable on each such day to the US Base Rate Loans.
- 24.9.4 Any such amount advanced by and not repaid to the Administrative Agent shall be deemed to be a Loan of the Administrative Agent hereunder, and shall be part of the Secured Obligations. To the extent that a Lender repays any such amount to the Administrative Agent pursuant to the terms of this Section, any such amount shall be deemed to be a Loan of such Lender as of and from the date of the relevant Borrowing Date, and shall be part of the Secured Obligations. Such rates of interest shall be computed in the same manner as that contemplated in Sections 5.2 and 5.4, shall be compounded monthly on the first day of each calendar month and shall be payable upon the demand of the Administrative Agent. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfil its obligations hereunder or to prejudice any rights which the Borrower, the Administrative Agent or any other Lender may have against a Lender as a result of any failure by such Lender hereunder.
- 24.9.5 In the event any Lender fails to make a Redistribution or informs the Administrative Agent that such Lender will not make available to the Administrative Agent, the Cdn Swingline Lender, the HK Swingline Lender or the UK Swingline Lender, as the case may be, such Lender's Rateable Share of such Redistribution, then the provisions set out in subsections 24.9.2 and 24.9.3 shall apply *mutatis mutandis*.

ARTICLE 25

MISCELLANEOUS

25.1 Notices

Except as otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall be deemed to have been duly given or made to the party to which such notice, request, demand or other communication is required or permitted to be given or made under this Agreement, when delivered to such party (by certified mail, postage prepaid, or by telecopier or hand delivery) at its address and attention set forth with its signature below or at such other address as any of the parties hereto may hereafter notify the others in

writing. No other method of giving notice is hereby precluded, provided, however, that electronic mail and internet and intranet sites may be used only to distribute routine communications, such as financial statements and other similar information, and may not be used for any other purposes. Any notice given by certified mail is deemed to have been received on the fourth (4th) Business Day following the date on which the envelope containing such notice was deposited in a post office or a mail box in Canada. Any notice given by messenger is deemed to have been received on the same date as its delivery if delivered during the normal business hours of the recipient and otherwise the next succeeding Business Day. Any notice given by telecopier, with confirmation of receipt, is deemed to have been received, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day. If postal service is interrupted by a strike, work slow-down, a superior force (force majeure) or otherwise, the party issuing a notice must hereupon use the telecopier or shall deliver such notice by messenger in order to assure the prompt receipt hereof by the other parties.

25.2 Calculations and Determinations Shall Constitute Prima Facie Proof

Any calculation or determination to be made by any Finance Party or the Majority Lenders under this Agreement, when made, shall constitute *prima facie* evidence for all of the parties hereto.

25.3 Rights and Recourses Cumulative

The rights and remedies of each Finance Party under this Agreement shall be cumulative and not exclusive of any right or remedy which each Finance Party would otherwise have and no failure or delay by any Finance Party or any Lender in exercising any right shall operate as a waiver thereof, nor shall any single or partial exercise of any power or right preclude its other or further exercise or the exercise of any other power or right.

25.4 Assignments by the Borrower

The rights of the Borrower hereunder are declared to be purely personal and may therefore not be assigned or transferred, nor can the Borrower assign or transfer any of its obligations, any such assignment being null and void insofar as the Finance Parties are concerned and rendering any balance then outstanding of the Loans immediately due and payable at the option of the Administrative Agent and relieving the Lenders from the obligation of making any or any further Advances hereunder.

25.5 Assignments by Lenders

25.5.1 Any Lender may at any time, grant Participations or enter into Assignments, (other than Assignments in favour of the Borrower or any Affiliate thereof) provided that no such Assignment to a separate legal entity shall be effective unless:

25.5.1.1 the assignee or potential participant is a Person other than a natural Person, the Borrower, any other Restricted Party or any Affiliate or Subsidiary of the Borrower or any other Restricted Party;

- 25.5.1.2 except where the assignee or potential participant is already a Lender or an Affiliate of a Lender, the Administrative Agent shall consent to same, which consent shall not be unreasonably withheld;
- 25.5.1.3 the Borrower shall consent to same, which consent shall not be unreasonably withheld, provided, however, that where such Assignment is to occur at a time where an Event of Default has occurred and is continuing, no such consent shall be required;
- 25.5.1.4 a Loan Transfer Agreement shall have been executed by such Lender, the Assignee, the Administrative Agent and the Borrower and delivered to the Administrative Agent and the Borrower. The Borrower hereby covenants and agrees not to unreasonably withhold its execution of the aforesaid instrument. The signature of the Borrower shall only be required under the terms of this subsection where such Assignment is to occur at a time where no Default or Event of Default has occurred and is continuing; and
- 25.5.1.5 such Lender has paid to the Administrative Agent, for its exclusive benefit, a fee of Cdn\$ [redacted] [dollar amount].
- 25.5.2 Upon such execution and delivery and provided the other conditions of this Section 25.5 shall have been met, such Lender shall be released from its Commitment and other obligations hereunder to the extent of such Assignment (but shall not be released from any obligation towards the Borrower with respect to any action it may have taken while it was a Lender), and such Assignee shall for all purposes be a Lender party to this Agreement, and shall have all the rights and obligations of a Lender under this Agreement and shall be entitled to the benefit of the provisions hereof, to the same extent as if it were an original party hereto, and no further consent or action by the Borrower, the Lenders or the Administrative Agent shall be required. Each Loan Transfer Agreement shall constitute an amendment to this Agreement and more particularly to Schedule "A" hereto to the extent, and only to the extent, necessary to reflect the addition of such Assignee as a Lender and the resulting adjustment of the Commitments, if any, resulting from the aforesaid Assignment.
- 25.5.3 Without in any way limiting the generality of any of the foregoing, the Borrower shall, at the request of any Lender which so Assigns any of its interest under this Agreement, execute and deliver to such Lender or to such party or parties as such Lender may designate any and all further instruments or documents (including, where such a Person is a bank pursuant to the terms of the *Bank Act* (Canada) the documents required with respect to granting by the Borrower to such a Person of

security pursuant to Section 427 of the *Bank Act* (Canada)) and use its best efforts to obtain any and all further authorizations or approvals, and make any and all further registrations, filings or notifications, as may be necessary or desirable to give full force and effect to such Assignment.

- 25.5.4 Any Assignment contemplated in this Section 25.5 must be either for the entire amount of the Commitment and the Loan of a Lender or where it is for a lesser amount, such amount must not be such that the Commitment of the Assigning Lender would be reduced by less than Cdn\$ [redacted] [dollar amount] nor must the remaining amount of the Commitments of the Assigning Lender following such an Assignment be less than Cdn\$ [redacted] [dollar amount]. Notwithstanding the foregoing, where any such Assignment is being made while a Default or an Event of Default has occurred and is continuing, none of the restrictions contained in this subsection 25.5.4 shall apply to such Assignment.
- 25.5.5 Except as specifically set forth in this Section 25.5, nothing in this Agreement, expressed or implied, is intended to or shall confer on any Person other than the respective parties hereto and their successors or assignees permitted hereunder any benefit or any legal or equitable right, remedy or other claim under this Agreement.
- 25.5.6 Any Lender may at any time create a Lien on all or a portion of its rights hereunder in order to secure all of its obligations, provided, however, that the creation of such Lien shall not result in the release of such Lender with respect to any of its obligations hereunder or a substitution of such Lender as a party hereto by any beneficiary of such Lien.
- 25.5.7 The fees incurred by any Lender with respect to any assignment or participation contemplated in this Section (including, without limitation, the fees incurred with respect to the taking of security in favour of such Lender) shall be payable by such Lender.
- 25.5.8 Any Assignment under this Section 25.5 by any Lender of its Commitment and Loan shall be effected concurrently with an Assignment in the same proportion by such Lender's affiliate or branch in Canada, that is also a Lender, of its Commitment and Loan.
- 25.5.9 The parties hereby acknowledge and agree that, to the extent the consent of the Borrower is required in order to proceed with any Assignment, it is reasonable for the Borrower to withhold its consent to the extent that, acting reasonably, the Borrower considers that any

such Assignment is likely to impose on them additional costs under Article 21 and Article 22.

- 25.5.10 Each Restricted Party which is incorporated under the laws of the Grand Duchy of Luxembourg expressly accepts and confirms for the purposes of articles 1281 and 1278 of the Luxembourg civil code that, notwithstanding any assignment, transfer and/or novation made pursuant to this Agreement, the guarantee given by it guarantees all Secured Obligations (including without limitation, all obligations with respect to all rights and/or obligations so assigned, transferred or novated) and that any security interest created under any Security Document to which it is a party shall be preserved for the benefit of any successor and assign of the Finance Parties.

25.6 Disclosure of Confidential Information

For the purposes of Article 3, Section 25.5 and in order to allow the Lenders to enter into Derivative Instruments in connection with the Revolving Facility, the Borrower hereby authorizes each Lender to provide, on a confidential and need-to-know basis, any prospective assignees, transferees, participants or swap counterparty with this Agreement and the other Operative Documents, as well as all information, reports, budgets, projections and documents, which are made available to each Lender by the Borrower in connection with this Agreement, from time to time, except as regards the [REDACTED] [name of a client] Contracts, the disclosure of which shall be subject to entering into of satisfactory confidentiality agreements.

25.7 Conversion Rules

If for the purpose of obtaining or enforcing a judgment in any court or for any other purpose hereunder (such as, without limitation, to determine the value of any amount expressed in a currency other than that in which is expressed hereunder the amount to which it is being compared), it is necessary to convert any amount in the currency in which it is denominated (the "Original Currency") into another currency (the "Second Currency"), the rate of exchange applied shall be the Exchange Rate for conversion of the Original Currency into the Second Currency applicable on the Business Day on which judgment is given or such determination must be made.

25.8 Currency Indemnity

The Borrower agrees that its obligations in respect of any amount due and payable to the Finance Parties in the Original Currency hereunder shall, notwithstanding any payment or tender, including pursuant to any judgment expressed or payment made in the Second Currency, be discharged only to the extent that, on the Business Day following receipt of any sums so paid or adjudged to be due hereunder in the Second Currency, the Administrative Agent, on behalf of the Finance Parties, in accordance with normal banking procedure, may purchase in the Canadian money market or the Canadian foreign exchange market, as the case may be, the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and, if the amount of the Original Currency so purchased is less than the amount originally due in the

Original Currency, the Borrower agrees, as a separate obligation and notwithstanding any such payment or judgment to indemnify the affected Finance Parties against such loss and, if the amount of the Original Currency so purchased is greater than the amount originally due in the Original Currency, the Finance Parties agree, notwithstanding any such payment or judgment, to promptly remit to the Borrower any such excess.

25.9 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument.

25.10 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction.

25.11 Replacement of Previous Agreements

This Agreement replaces and supersedes all verbal or oral agreements, understandings and undertakings between the Finance Parties, or any one thereof, and the Borrower relating to the Revolving Facility, the whole subject to and except for the letter agreement contemplated in Section 11.2.

25.12 No Novation

Any security provided to the Finance Parties by the Borrower shall not constitute a payment, nor shall it operate novation of any amount due hereunder and shall not operate by way of compensation, set-off or confusion of, or merge with, any Indebtedness or liability of the Borrower or of any other Person or Persons to the Finance Parties or any one thereof under any deed, guarantee, contract, bill of exchange, promissory note, letter of credit, certificate of deposit or other instrument by which the same may now or at any time hereafter be represented or evidenced.

25.13 Obligation to Pay Absolute

The obligations of the Borrower to make payments on the Loans as and when in this Agreement provided shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances without any right of compensation or set-off and notwithstanding any defence, right of action or claim of any nature whatsoever which the Borrower may at any time have or have had against the Finance Parties, whether in connection with this Agreement or otherwise provided, however, that following the occurrence of any Default or Event of Default, the Borrower may effect the compensation between any amount that may be due to it at such time by any Lender or any ISDA Provider pursuant to an ISDA Contract and any amount due to such Lender or ISDA Provider pursuant to the terms hereof.

25.14 Inconsistency with Security Documents

Unless otherwise herein provided, to the extent that any provision of this Agreement is inconsistent with the provisions of any of the Security Documents, the provisions of this Agreement shall prevail.

25.15 Risk of Superior Force

The Borrower expressly assumes all risks of superior force, such that the Borrower shall be bound to timely execute each and every of its obligations under this Agreement notwithstanding the existence or occurrence of any event or circumstance constituting a superior force within the meaning of Article 1693 of the *Civil Code of Québec*.

25.16 Governing Law

This Agreement and the interpretation and enforcement thereof shall be governed by and in accordance with the Laws of the province of Québec and the federal Laws of Canada applicable therein, except for (i) Section 23.20 which shall be governed by the Laws of Germany and (ii) Section 23.21 which shall be governed by the Laws of Belgium.

25.17 Submission to Jurisdiction

Each of the parties hereto irrevocably submits to the non-exclusive jurisdiction of the Courts of the Province of Québec sitting in the judicial district of Québec with respect to any matter arising hereunder or in relation herewith. The parties hereto irrevocably consent to service of process by mail or in any other manner permitted by relevant Law.

ARTICLE 26

FORMAL DATE

26.1 Formal Date

For the purpose of convenience, this Agreement may be referred to as bearing formal date of August 11, 2011 irrespective of the actual date of its execution.

ARTICLE 27

LANGUAGE

27.1 English Language

The parties hereto have expressly required that this Agreement and all deeds, documents and notices relating thereto be drafted in the English language.

27.2 Langue Anglaise

Les parties aux présentes ont expressément exigé que la présente convention et tous les autres contrats, documents ou avis qui y sont afférents soient rédigés en langue anglaise.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have signed this Agreement.

5N PLUS INC.

Per: (signed) Jacques L'Écuyer

and Per: (signed) David Langlois

Address: 4385 Garand Street
Saint-Laurent, Québec
H4R 2B4

Attention: Chief Financial Officer

Telecopier: 514-856-9611

**NATIONAL BANK OF CANADA
as Lender**

Per: (signed) Bruno Lévesque

and Per: (signed) Dominic Albanese

Address: 5th Floor
1155 Metcalfe Street
Montréal, Québec
H3B 4S9

Attention: Director

Telecopier: 514-390-7850

AMENDED AND RESTATED CREDIT AGREEMENT
(5N PLUS INC.) – SIGNATURE PAGE

HSBC BANK CANADA
as Lender

Per: (signed) Charles Douville

and Per: (signed) Patrick Freiwah

Address: 2001, McGill College
Suite 300
Montréal, Québec
H3A 1G1

Attention: Charles Douville, Vice President
Patrick Freiwah, Senior Relationship Manager

Telecopier:

AMENDED AND RESTATED CREDIT AGREEMENT
(5N PLUS INC.) – SIGNATURE PAGE

KBC BANK NV
as Lender

Per: (signed) Stephen R. Perry

and Per: (signed) Susan M. Silver

Address: 1177 Avenue of the Americas
New York
New York 10036

Attention: Stephen R. Perry, Director

Telecopier:

THE TORONTO-DOMINION BANK
as Lender

Per: (signed) Sylvain Perras

and Per: (signed) Louise Ann Maziak

Address: 999, De Maisonneuve West
Suite 200
Montréal, Québec
H3A 3L4

Attention: Sylvain Perras, Senior Manager
Frederic Brunet, Senior Analyst

Telecopier:

**CANADIAN IMPERIAL BANK OF
COMMERCE**
as Lender

Per: (signed) Alain Longpré

and Per: (signed) Stephen Redding

Address: 600, De Maisonneuve West
31st Floor
Montréal, Québec
H3A 3J2

Attention: Alain Longpré, Executive Director
Jonathan Allenger, Associate

Telecopier:

**BUSINESS DEVELOPMENT BANK OF
CANADA
as Lender**

Per: (signed) Michel Paulo

and Per: (signed) Annie Marceau

Address: 5, Place Ville-Marie
Suite 400
Montréal, Québec
H3B 5E7

Attention: Annie Marceau, Senior Manager
Michel Paulo, Senior Manager

Telecopier:

**LAURENTIAN BANK OF CANADA
as Lender**

Per: (signed) Jean-Michel Zakhour

and Per: (signed) Daniele Valiquette

Address: 1981, McGill College
Suite 1500
Montréal, Québec
H3A 3K3

Attention: Sophie Boucher, Assistant Vice President
Danièle Valiquette, Assistant Vice President

Telecopier:

**NATIONAL BANK OF CANADA
as Administrative Agent**

Per: (signed) Dominic Albanese

and Per: (signed) François Montigny

For purposes of all Draw Requests, Conversion Requests, Reduction Notice, Repayment Notice, Compliance Certificate or Increased Commitment Certificate as well as Financial Statements and Information:

Address: Loan Administration
Customer Service Center
Suite 603
5650 Iberville Street
Transit no. 0897-1
Montréal, Québec
H2G 2B3

Attention: Manager

Telecopier: 514-271-5294

E-mail: syndication@fds.bnc.ca

For all other purposes:

Address: 5th Floor
1155 Metcalfe Street
Montréal, Québec
H3B 4S9

Attention: Director

Telecopier: 514-390-7860

SCHEDULE "A"

THE LENDERS AND THEIR COMMITMENTS

NAME OF LENDER	COMMITMENT (CDN\$)	RATEABLE SHARE OF REVOLVING FACILITY
National Bank of Canada	██████████ [dollar amount]	██████% [percentage]
HSBC Bank Canada	██████████ [dollar amount]	██████% [percentage]
KBC Bank NV	██████████ [dollar amount]	██████% [percentage]
The Toronto-Dominion Bank	██████████ [dollar amount]	██████% [percentage]
Canadian Imperial Bank of Commerce	██████████ [dollar amount]	██████% [percentage]
Business Development Bank of Canada	██████████ [dollar amount]	██████% [percentage]
Laurentian Bank of Canada	██████████ [dollar amount]	██████% [percentage]
TOTAL	\$250,000,000	100%

SCHEDULE "B"

DEFINITIONS

1. Definitions

"5N Guarantee" means the unsecured Guarantee granted or to be granted by the Borrower in favour of HSBC Hong Kong in the maximum amount of US\$ [dollar amount] and expiring on May 4, 2012 as security for the obligations of MCP Asia under the Initial MCP/HSBC Derivative Instruments;

"Account Branch" means the branch of the Administrative Agent located at 600 de la Gauchetière Street West, Level A, Transit 0001-1, Montréal, Québec, H3B 4L2, or such other branch of the Administrative Agent in Canada as the Administrative Agent may specify from time to time;

"Acceding Lender" shall have the meaning ascribed thereto in subsection 2.1.3;

"Accession Certificate" means the instrument referred to in subsection 2.1.3, substantially in the form of the one attached hereto as Schedule "D";

"Accounts" refers collectively to the Cdn Dollar Account, the US Dollar Account and the Euro Account, and **"Account"** refers to any one thereof;

"Acquisition" with respect to any Person, means any transaction or series of transactions whereby such Person purchases, acquires or obtains:

1. the Control of another Person;
2. the whole or a substantial part of another Person's properties and assets; or
3. the whole or a substantial part of a business, line of business or division of another Person;

the whole either directly or through Subsidiaries;

"Acquisition Certificate" means a certificate, substantially in the form of the one attached hereto as Schedule "J" signed by one (1) Responsible Officer of the Borrower;

"Administrative Agent" means National Bank of Canada, in its capacity as Administrative Agent for the Lenders for the purposes of this Agreement and the other Operative Documents, and includes any successor thereto in such capacity;

"Administrative Agent's Accounts" means the bank accounts of the Administrative Agent designated from time to time by the Administrative Agent to the Lenders for purposes of making the inter-lender advances contemplated in Section 24.2;

"Administrative Agent's Office" means generally, the office of the Administrative Agent located at 1155 Metcalfe Street, 5th Floor, Montréal, Québec, or such other office as the Administrative Agent may specify from time to time;

"Administrative Agent's Cdn Prime Rate" means the rate of interest, expressed as an annual rate, quoted or announced on such day by the Administrative Agent in the City of Montréal, as being its reference rate then in effect for determining interest rates on commercial loans made in Canada, in Canadian Dollars;

"Administrative Agent's US Base Rate" means the rate of interest, expressed as an annual rate, quoted or announced on such day by the Administrative Agent in the City of Montréal, as being its reference rate then in effect for determining interest rates on commercial loans made in Canada, in US Dollars;

"Advance" means any amount of money or credit advanced or to be advanced (as the context requires) to the Borrower pursuant to this Agreement, whether by way of Direct Advance by the Lenders, discounting of BAs by the Lenders or issue by the LC Issuing Lender of LCs;

"Affected Funds" has the meaning ascribed to it in Section 22.5;

"Affected Lender" means a Lender who shall have issued a notice to the Administrative Agent pursuant to Section 22.1;

"Affiliate" means any Person which, directly or indirectly, Controls, is Controlled by or is under direct or indirect common Control with, any other Person;

"American Companies" refers collectively, at any time, to the members of the Group duly constituted or constituted under the Laws of the United States of America or of any state of the United States of America, and includes any respective successors thereto, and **"American Company"** refers to any one thereof;

"Anti-Terrorism Laws" means any Law relating to terrorism or money laundering, including Executive Order No. 13224 and the USA Patriot Act;

"Applicable Law" means Law applicable to any specified Person, property, transaction or event or any of such Person's Business Assets, and any award of any Governmental Authority or arbitrator in any proceeding or action to which the Person in question is a party or by which such Person or any of its Business Assets is bound;

"Assignment" or **"Assign"** means the sale, assignment, transfer or other disposition of the Loan or any portion thereof, of a Lender and the equivalent portion of the corresponding Commitment and other obligations of such Lender under this Agreement (provided that, even if no Loans are outstanding, the Commitment of any Lender may be transferred) but expressly excludes any Participation, and **"Assigning"**, **"Assignor"** and **"Assignee"** have the correlative meanings;

"Attributable Debt" means, with respect to any Person, in connection with any Sale and Leaseback Transaction, at any date as of which the amount thereof is to be determined, the lesser

of (y) the fair market value of the property subject to such Sale and Leaseback Transaction (as determined in good faith by the board of directors of such Person) and (z) the total net amount of rent required to be paid by such Person under the lease which is the subject of such Sale and Leaseback Transaction during the remaining term thereof, (including the initial term and any period for which such lease may be renewed or extended), discounted from the respective due dates thereof to such date at the debt rate implicit in such lease per annum compounded annually. The net amount of rent required to be paid under any such lease for any such period shall be the amount of the rent payable by the lessee with respect to such period, after excluding amounts required to be paid on account of maintenance and repairs, insurance, taxes, assessments, water rates and similar charges. In the case of any lease which is terminable by the lessee upon the payment of a penalty, such net amount shall also include the amount of such penalty, but no rent shall be considered as required to be paid under such lease subsequent to the first date upon which it may be so terminated;

"Authorization" means any authorization, approval, consent, exemption, licence, permit, franchise or no-action letter from any Governmental Authority having jurisdiction with respect to any specified Person, property, transaction or event, or with respect to any of such Person's Business Assets or from any Person in connection with any easement, servitude or contractual rights;

"Available Cdn Swingline Facility" means, as at any time, as determined by the Cdn Swingline Lender, the difference between the Cdn Swingline Commitment Amount then in effect and the Cdn Swingline Loan then outstanding;

"Available HK Swingline Facility" means, as at any time, as determined by the Other Swingline Lender, the difference between the HK Swingline Commitment Amount then in effect and the HK Swingline Loan then outstanding;

"Available UK Swingline Facility" means, as at any time, as determined by the Other Swingline Lender, the difference between the UK Swingline Commitment Amount then in effect and the UK Swingline Loan then outstanding;

"Available Revolving Facility" means, as at any time, as determined by the Administrative Agent, the difference between (i) the Revolving Facility then in effect and (ii) the sum of the Loans then outstanding, expressed in the Equivalent in Canadian Dollars if any portion thereof is outstanding in US Dollars or Euros, as the case may be, and the Frozen Amount at such time;

"BA" means, with respect to any Lender other than a Non-BA Lender, a Draft issued by the Borrower and accepted by such Lender pursuant to this Agreement and, with respect to a Non-BA Lender, means a BA Equivalent Note;

"BA Equivalent Note" means, with respect to any Non-BA Lender, a non-interest bearing promissory note and any depository bill within the meaning of the *Depository Bills and Notes Act* (Canada);

"BA Liability", with respect to any Lender, means, as at any time, the aggregate of the face amount of the BAs accepted by such Lender under the Revolving Facility, and **"BA Liabilities"** refers collectively to the BA Liabilities of all Lenders;

"BA Proceeds" means, with respect to any BA, the difference between the Discounted Proceeds thereof and the Stamping Fee relating thereto;

"BC Debt" means the unsecured non-interest bearing Indebtedness owed by any member of the Group to the Government of Canada pursuant to the Technology Partnerships Canada Program;

"BDC" means the Business Development Bank of Canada, and includes any successor thereof;

"BDC Debt" means the interest bearing Indebtedness of the Borrower to the BDC at any time under the letter of financing dated March 20, 2008 made by the BDC to the Borrower and secured by a first-ranking hypothec on the immovable property of the Borrower located at 4385 Garand Street, Ville St-Laurent, Quebec, as same may be amended, restated or supplemented from time to time;

"Belgian Companies" refers collectively at any time to the members of the Group duly constituted or continued under the Laws of Belgium, and includes any respective successor thereto, and **"Belgian Company"** refers to any one thereof;

"Belgian Parallel Debt" shall have the meaning ascribed thereto in Section 23.21;

"Borrower" refers to 5N Plus Inc., a corporation constituted under the Laws of Canada and includes any successor thereto;

"Borrowing Date" means any day on which an Advance is made, whether it be a Drawdown, a conversion or a rollover;

"Business Assets" means the property and assets, tangible and intangible, corporeal and incorporeal, movable and immovable, of a specified Person;

"Business Day" means any day excluding Saturday, Sunday or any other day which in Montréal, Québec, Toronto, Ontario, New York, United States of America and London, England (and , in the case of a HK Swingline Redistribution, in HongKong, China) is a legal holiday or a day on which banks are authorized by Law or by local proclamation to close;

"Canadian Companies" refers collectively at any time to the members of the Group duly constituted or continued under the Laws of Canada or any province of Canada, and includes any respective successor thereto, and **"Canadian Company"** refers to any one thereof;

"Canadian Dollars" or **"Cdn\$"** means the lawful currency of Canada;

"Canadian Plan" means any plan, program, arrangement or understanding that provides pension or retirement benefits (whether or not registered under any applicable pension benefits or Tax Laws in Canada) which is maintained or contributed to by (or to which there is or may be an

obligation to contribute of) a member of the Group in respect of any individual's employment in Canada or a province or territory thereof with a member of the Group;

"Capital Expenditures", with respect to any Person, means any and all expenditures of money or money's worth made by such Person for or in connection with the acquisition, repair (the expenditure with respect to which is capitalized), improvement or extension of capital property or assets (other than an Acquisition);

"Capital Stock" means common shares, preferred shares or other equivalent equity interests (howsoever designated) of capital stock of a body corporate, equity preferred or common interests in a limited liability Company, limited or general partnership interests in a partnership or any other equivalent such ownership interest;

"Cash Equivalent Investments" means:

1. direct obligations of the Government of Canada or the United States of America, or any other sovereign nation having a AA credit rating or more as attributed by S&P or its equivalent from Moody's, or obligations the principal of and interest on which are unconditionally guaranteed by, the government of Canada or the United States of America or any other sovereign nation having a AA credit rating or more as attributed by S&P or its equivalent from Moody's (or by any agency thereof to the extent such obligations are backed by the full faith and credit of Canada, the United States of America or any such other sovereign nation), in each case maturing within one year of the date such Investment is made;
2. marketable general obligations issued by any Province of Canada or by any State of the United States of America or any political subdivision of any such Province or State or any corporation or public instrumentality of Canada, the United States of America or any other sovereign nation, in each case maturing within one year of the date such Investment is made and, at the time of such Investment, having a credit rating of A-1 from S&P or its equivalent from Moody's;
3. Investments in commercial paper or other similar marketable promissory notes maturing no longer than twelve (12) months from the date such Investment is made and, at the time of such Investment, having a credit rating of A-1 from S&P or its equivalent from Moody's;
4. Investments in certificates of deposit, bankers' acceptances and Canadian or American time deposits maturing within twelve (12) months of the date such Investment is made, issued, guaranteed by or placed with, and money market deposit accounts issued or offered by (y) any Lender, or (z) any commercial bank or trust company organized or licensed under the Laws of Canada, the United States of America or any sovereign nation member of the European Union, or any province of Canada or state of the United States of America, and, in the case of this clause (z), at the time of such Investment, having a credit rating of A-1 from S&P or its equivalent from Moody's; and

5. Investments in money market funds or other mutual funds that invest in, or repurchase obligations that are comprised of the types of Cash Equivalent Investments described in clauses 1 to 4 above;

"Cdn Dollar Account" means the Canadian Dollar account established on behalf of the Borrower by the Administrative Agent at the Account Branch pursuant to Section 24.5;

"Cdn Dollar LC Liability", with respect to any Lender, means, as at any time, the Rateable Share of such Lender in the face amount of the LCs denominated in Canadian Dollars issued under the Revolving Facility, and **"LC Liabilities"** refers collectively to the LC Liabilities of all Lenders;

"Cdn Dollar Loan", with respect to any Lender, means, as at any time, the aggregate of the principal amount of Advances of such Lender then outstanding in Canadian Dollars under the Revolving Facility, including the BA Liabilities and the LC Liability of such Lender;

"Cdn Prime Rate" means for any Lender on any day, a rate per annum equal to the greater of (i) the Administrative Agent's Cdn Prime Rate on such date and (ii) the CDOR BA Rate for bankers' acceptances having a one (1) month maturity on such day plus ■■■ [percentage];

"Cdn Prime Rate Basis" means the calculation of interest on the Cdn Prime Rate Loans, or any portion thereof, or on any other amount with respect to which this Agreement or any other Agreement contemplated hereunder stipulates that it shall bear interest at a rate established calculated and payable in accordance with Sections 5.3 and 5.5;

"Cdn Prime Rate Loan", with respect to any Lender, means, as at any time, that portion of the Loan of such Lender with respect to which the Borrower has elected or, under the terms of this Agreement, is required to pay interest on a Cdn Prime Rate Basis, and **"Cdn Prime Rate Loans"** means the aggregate of all Cdn Prime Rate Loans of all Lenders;

"Cdn Swingline Commitment" means, on any date, the lesser of (i) the Commitment of the Cdn Swingline Lender on such date, and (ii) Cdn\$■■■■ [dollar amount];

"Cdn Swingline Facility" means the swingline facility which the Cdn Swingline Lender has agreed to make available to the Borrower pursuant to subsection 2.8;

"Cdn Swingline Lender" means National Bank of Canada and includes any successor thereof in such capacity;

"Cdn Swingline Loan" means, at any time, the aggregate of the principal amount of Advances of the Cdn Swingline Lender then outstanding under the Cdn Swingline Facility;

"Cdn Swingline Redistribution" means a redistribution among the Lenders of the amounts outstanding under the Loans and the Cdn Swingline Loan, the whole as contemplated in Section 24.4;

"CDOR BA Rate" means, for any day, the rate quoted on the Reuters Money Market CDOR page as of 10:00 a.m., Montréal time, on such day for bankers' acceptances having a maturity similar to the Selected Maturity of the Requested Advance, or if such day is not a Business Day, on the preceding Business Day. If for any such Business Day such rate does not appear on such CDOR Page, **"CDOR BA Rate"** shall mean for such day, with respect to any Lender, the discount rate (expressed as an annual percentage, rounded upwards to the nearest fifth decimal point), charged by money market jobbers for bankers' acceptances accepted by the Administrative Agent, having a maturity of one month and having a face amount which is closest to the aggregate principal amount of Cdn Prime Rate Loan of such Lender;

"Change in Law" means (i) the adoption or the coming into force of any Law, directive, guideline (whether or not having the force of law) or the interpretation or the administration thereof by a Governmental Authority or other authority charged with such interpretation or administration, (ii) any change in any Law, directive or guideline (whether or not having the force of law), or in the interpretation or the administration thereof by any Governmental Authority or other authority charged with the interpretation or administration thereof, (iii) any reversal by any Governmental Authority or other authority of an interpretation of any Law, directive or guideline (whether or not having the force of Law);

"Chinese Companies" refers collectively, at any time, to the members of the Group duly constituted or continued under the Laws of the People's Republic of China, and includes any respective successor thereto, and **"Chinese Company"** refers to any one thereof. For greater certainty, the Chinese Companies shall exclude MCP Asia or any other member of the Group which is incorporated under the laws of Hong Kong. As of the Effective Date, the Chinese Companies are listed in Schedule "G";

"CNY", "RMB" or "Renminbi" means the lawful currency of the People's Republic of China;

"Commitment" means, with respect to any Lender, as at any time, subject to Section 2.3, the aggregate amount which such Lender has agreed to make available to the Borrower pursuant to subsection 2.1.1, and **"Commitments"** refers to the Commitments of all the Lenders;

"Companies' Counsel" means (i) in Canada, Heenan Blaikie LLP, (ii) in the United States of America, Torys LLP, Berkowitz Trager & Trager, LLC and K & L Gates LLP, (iii) in Germany, Latham & Watkins LLP, (iv) in Belgium, Bird & Bird LLP, (v) in Luxembourg, NautaDutilh, Avocats Luxembourg, (vi) in Hong Kong, Bird & Bird, Hong Kong, and (vii) in the United Kingdom, Latham & Watkins LLP and Wilson Browne LLP, in each other relevant jurisdiction, such additional or replacement firm of solicitors of recognized local standing as the Borrower may select from time to time;

"Compliance Certificate" means a certificate, substantially in the form of the one attached hereto as Schedule "M", signed by one (1) Responsible Officer of the Borrower;

"Conditions Precedent to the Amendment and Restatement" has the meaning ascribed to it in Section 14.1;

"Consolidated EBITDA" for any Test Period, means the EBITDA of the Borrower determined on a consolidated basis;

"Control", "Controls" and "Controlled" has the meaning ascribed to it from time to time in the *Canada Business Corporations Act* (Canada), and **"Controls"** and **"Controlled"** shall have the correlative meanings;

"Conversion Date" means any day on which a conversion or rollover is effected;

"Conversion Request" means a notice, substantially in the form of the one attached hereto as Schedule "N", issued to the Administrative Agent by the Borrower pursuant to Section 10.1;

"Corresponding Debt" shall have the meaning ascribed to it in subsection 23.20.5;

"Debt for Borrowed Money", with respect to any Person, means, without duplication, such Person's:

1. obligations for borrowed money;
2. obligations under letters of credit or letters of guarantee or obligations to financial institutions who issued such letters of credit or letters of guarantee for the account of such Person;
3. obligations under bankers' acceptances, depository bills or depository notes (as these latter two expressions are defined in the *Depository Bills and Notes Act* (Canada));
4. Purchase Money Obligations;
5. obligations evidenced by bonds, debentures or promissory notes;
6. redeemable shares of its Capital Stock which are either redeemable at the option of the holder thereof, are redeemable at a fixed date or are redeemable during fixed intervals. For the purposes hereof, the amount of Debt for Borrowed Money of any such Capital Stock which shall be taken into consideration at any time shall be the maximum fixed redemption or repurchase price therefor;
7. obligations, secured by Liens on the Business Assets owned by such Person, or payable out of the proceeds of production arising therefrom;
8. Attributable Debt with respect to Sale and Leaseback Transactions;
9. the Mark to Market Exposure of such Person pursuant to any Derivative Instrument. For greater certainty, the Mark to Market Exposure of MCP, Sidech and MCP Asia under the Existing Derivative Instruments shall be included in the Debt for Borrowed Money of MCP, Sidech and MCP Asia, as the case may be; and

10. obligations under Guarantees with respect to obligations referred to in paragraphs 1 to 9 inclusively;

"Default" means any one of the events set forth in Article 19, the occurrence or failure to occur of which constitutes, or with the passage of time or the giving of notice or both, would constitute an Event of Default;

"Derivative Instruments" means any interest rate swap, index swap, forward rate swap, commodity swap, floor transaction, tunnel transaction, foreign exchange swap, cross-currency rate swap transaction, currency option, credit derivative transaction, or any other similar transaction (including any option with respect to any of these transactions) as well as any other transaction contemplated by the expression "swap transaction" in accordance with the 2000 definitions of the International Swaps and Derivatives Association, Inc., as amended and supplemented from time to time;

"Direct Advance" refers to any Advance with respect to which the Borrower has requested that interest thereon be calculated on a Cdn Prime Rate Basis, US Base Rate Basis, Libor Basis or EuroLibor Basis;

"Direct Debt" shall have the meaning ascribed thereto in Section 23.21;

"Discount Rate", with respect to:

1. any Lender that is a bank whose name is set forth in Schedule "I" of the *Bank Act* (Canada), the CDOR BA Rate on the date of determination for the applicable Selected Period; and
2. with respect to any other Lender that is not a bank under Schedule "I" of the *Bank Act* (Canada) or any BA Equivalent Note discounted by any Non-BA Lender, the CDOR BA Rate on the date of determination for the applicable Selected Period, plus [redacted] [percentage];

"Discounted Proceeds" means, with respect to any BA, an amount equal to the result of the following mathematical formula, rounded to the nearest whole cent:

$$BA's \text{ NOMINAL AMOUNT} \times \left(\frac{1}{1 + \left(A \times \frac{B}{C} \right)} \right)$$

where,

"A" is the Discount Rate;

"B" is the number of days comprised in the Selected Period selected by the Borrower with respect to the relevant BAs such Lender is requested to issue; and

"C" is 365;

"Distributions", with respect to any Person, means:

1. the payment or declaration of any dividend or the making of any distribution of any kind or character (whether in cash or property but expressly excluding any such distribution by way of the payment of dividends by the issuance of common stock) in respect of any class of the Capital Stock of such Person or to the holders of any class of its Capital Stock;
2. the payment of management fees, commissions, guarantee fees and other fees to any holder of its Capital Stock; and
3. the setting aside of any funds for any of the foregoing purposes;

"Domination Agreements" refers collectively to the domination agreements governed by the laws of Germany to be entered into between each German Company which is a Guarantor and its respective majority shareholder, as same may be amended, restated and supplemented from time to time;

"Draft" means a blank non-interest bearing bill of exchange within the meaning of the *Bills of Exchange Act* (Canada) or a blank depository bill within the meaning of the *Depository Bills and Notes Act* (Canada), as applicable, drawn by the Borrower and addressed to a Lender, made payable to that Lender, bearer or a clearing house bearing such distinguishing letters and numbers and being in such form as each Lender may require;

"Draw Request" means a notice, substantially in the form of the one attached hereto as Schedule "O", issued by the Borrower to the Administrative Agent in connection with any Drawdown requested by the Borrower under the terms hereof;

"Drawdown" means a fresh Advance which is not derived from a conversion or rollover pursuant to Article 10;

"Drawdown Date" means any day on which a Drawdown is made;

"EBITDA" for any Test Period, means net income of the Borrower before Net Interest Expenses, taxes, depreciation and amortization and other non-cash items (such as unrealized foreign exchange gains or losses) and excluding non-controlling interests, extraordinary and unusual items and any agreed upon non-recurring items;

"Effective Date" has the meaning ascribed to it in Section 14.1;

"English Companies" refers collectively, at any time, to the members of the Group constituted or continued under the laws of England and Wales, and includes any respective successor thereto and **"English Company"** refers to any one thereof;

"Environmental Law" means any statute, Law, ordinance, code, rule, regulation, directive, guideline, policy, authorization, injunction, order in council, judgment, having force of law or being *res judicata*, as the case may be, with respect in whole or in part to the environment or its protection, adopted, issued or rendered by any Governmental Authority, court or arbitrator, including, without limitation, environmental permits, and that are applicable to any one of the members of the Group;

"Environmental Losses" has the meaning ascribed to it in Section 22.7;

"EONIA Rate" means, each day, the rate that is the weighted mean for interbank transactions with respect to overnight funds in the Euro zone, as reported and calculated by the European Central Bank. The EONIA Rate is calculated on the basis of a 360 day year and the annual equivalent is determined in accordance with the provisions of Section 8.6;

"Equivalent" means the equivalent in any currency of any value or sum denominated in any other currency using the Exchange Rate, the whole as calculated by the Administrative Agent as required under the terms hereof on the date that any such calculation is so required to be made;

"ERISA" means the *Employee Retirement Income Security Act* of 1974 and the regulations promulgated and rulings issued thereunder, the whole as amended from time to time;

"Euro Account" means the Euro Account established on behalf of the Borrower by the Administrative Agent at the Account Branch pursuant to Section 24.5;

"Euro LC Liability", with respect to any Lender, means as at any time, the Rateable Share of such Lender in the face amount of the LCs denominated in Euros issued under the Revolving Facility, and **"Euro LC Liabilities"** refers collectively to the Euro LC Liabilities of the Lenders;

"Euro Loan", with respect to any Lender, means, as at any time, the aggregate of the principal amount of Advances of such Lender then outstanding in Euros under the Revolving Facility, including the Euro LC Liability of such Lender;

"EuroLibor" means, for the Selected Period of any Selected Amount in Euros, the interest rate per annum, as a percentage, which appears for such Selected Period on the Telerate Page 3750 as of 11:00 A.M., London (England) time, on the relevant Quotation Date. If such rate is not available on such day, **"EuroLibor"** means, for the Selected Period of any Selected Amount, the interest rate per annum, as a percentage, which the Administrative Agent, in accordance with its normal practice, would be prepared to offer to leading banks in the London Interbank Market, for delivery on the first day of the Selected Period and for such Selected Period deposits in Euros of comparable amounts to such Selected Amount, at or about 11:00 A.M., London (England) time on the relevant Quotation Date;

"EuroLibor Basis" means the calculation of interest on the Loans in Euros or any portion thereof as provided in Sections 8.3 and 8.4;

"EuroLibor Loan", with respect to any Lender, means, as at any time that portion of the Loan of such Lender with respect to which the Borrower has elected to pay interest on a EuroLibor Basis, and **"EuroLibor Loans"** means the aggregate of all EuroLibor Loans of all Lenders;

"Euros" means the lawful currency of the members of the European union that participate from time to time in the European Economic and Monetary Union;

"Event of Default" means any of the events described in Article 19;

"Exchange Rate" means, with respect to any Lender, the rate of exchange quoted by the Bank of Canada on the Business Day preceding the day as of which any determination of such rate is required to be made under the terms hereof, as the noon mid-market spot rate for conversions of the Original Currency into the Second Currency;

"Executive Order No. 13224" means the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same may be in effect from time to time;

"Existing Belgian Credit Facilities" has the meaning ascribed thereto in Schedule "U";

"Existing Canadian Credit Facilities" has the meaning ascribed thereto in Schedule "U";

"Existing Credit Facilities" refers collectively to the Existing Belgian Credit Facilities, the Existing Canadian Credit Facilities, the Existing German Credit Facilities, the Existing HK Credit Facilities, the Existing UK Credit Facilities and the Existing US Credit Facilities and **"Existing Credit Facility"** refers to any one thereof;

"Existing Derivative Instruments" means the Derivative Instruments of MCP, Sidech and MCP Asia and described in Schedule "CC" hereto;

"Existing German Credit Facilities" has the meaning ascribed thereto in Schedule "U";

"Existing HK Credit Facilities" has the meaning ascribed thereto in Schedule "U";

"Existing Libor Loans" has the meaning ascribed thereto in Section 7.8;

"Existing Material Parties" refers collectively to the Borrower, 5N PV GmbH, 5N Plus Corp., 5N Plus USA LLC, 5N Plus Holding US Corp., Firebird Technologies Inc. and Firebird Germanium Inc. and **"Existing Material Party"** refers to any one thereof;

"Existing UK Credit Facilities" has the meaning ascribed thereto in Schedule "U";

"Existing US Credit Facilities" has the meaning ascribed thereto in Schedule "U";

"Federal Funds Effective Rate" means, for any day, an annual interest rate equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for

any day that is a Business Day, the average quotations for the day of such transactions received by the Administrative Agent from three (3) federal funds brokers of recognized standing selected by the Administrative Agent;

"**Finance Parties**" refers collectively to the Lenders, the ISDA Providers and the Administrative Agent, and "**Finance Party**" refers to any one thereof;

"**Financial Statements**" means, with respect to any Person, for any period, all prepared in accordance with GAAP, the balance sheet of such Person as at the end of such period and the related statements of income, of retained earnings, of the shareholders' equity and of cash flows for such period, setting forth in each case, in comparative form, the figures for the corresponding period of the previous fiscal quarter or for the previous fiscal year, as the case may be;

"**Firebird Debt Agreement**" means the Firebird Debt Agreement dated as of August 26, 2009 entered into between the Majesty the Queen in Right of Canada, as represented by the Minister of Western Economic Diversification, as lender, and Firebird Technologies Inc. and the Borrower, as recipients, as same has been amended on March 2, 2011 and March 31, 2011 providing for an unsecured non-interest bearing contribution of the lender thereunder of up to Cdn\$ [redacted] [dollar amount] in the 100mm InSb Technology Development Project of Firebird Technologies Inc.;

" [redacted]
[redacted] [client name];

" [redacted] [name of client] **Contracts**" refers collectively to [redacted]
[redacted]
[redacted] [description of agreements between the
Borrower and a client];

"**Fixed Charge Coverage Ratio**" means for any Test Period, means the ratio of (i) EBITDA for such Test Period less Maintenance Capital Expenditures incurred during such Test Period to (ii) the sum of (u) Net Interest Expenses paid or required to be paid during such Test Period, (v) Taxes paid or required to be paid during such Test Period, (w) scheduled repayment of Debt for Borrowed Money made or required to be made during such Test Period (excluding, however, the payment on maturity of the VTB Debt), (x) dividends and other Distributions paid in cash by the Borrower during such Test Period, (y) and amounts used to repurchase shares of the Capital Stock of the Borrower during such Test Period, and (z) any payment on the MCP/HSBC Loans or the MCP/HSBC Derivative Instruments that is not made from the MCP/HSBC Deposits or a portion thereof;

"Frozen Amount" means an amount of Cdn\$ [REDACTED] [dollar amount], as such amount may be reduced in accordance with the provisions of Section 2.3;

"GAAP" means as of any date, (i) with respect to any Canadian Company, the generally accepted accounting principles, consistently applied, as recommended in the Handbook of the Canadian Institute of Chartered Accountants on such date, (ii) with respect to any American Company, the generally accepted accounting principles, consistently applied in the United States of America, (iii) with respect to any German Company, the generally accepted accounting principles, consistently applied in Germany, (iv) with respect to any Belgian Company, the generally accepted accounting principles consistently applied in Belgium, and (v) with respect to any member of the Group of any other jurisdiction, the generally accepted accounting principles, consistently applied in the relevant jurisdictions;

"German Companies" refers collectively at any time to the members of the Group duly constituted or continued under the Laws of Germany, and includes any respective successor thereto, and **"German Company"** refers to any one thereof;

"German Security" means any security and/or Lien assumed or accepted by or through the Administrative Agent or the Finance Parties, as the case may be, pursuant to any German Security Document and held or administered by the Administrative Agent on behalf of or on trust for the Finance Parties under this Agreement and includes any addition, replacement or substitution thereof;

"German Security Document" means any document creating security and/or Lien which is governed by German law;

"German Pension Plan" means any plan, program, arrangement or understanding that provides pension or retirement benefits (whether or not registered under any applicable pension benefits or Tax Laws in Germany) which is maintained or contributed to by (or to which there is or may be an obligation to contribute of) a member of the Group in respect of any individual's employment in Germany with a member of the Group;

"Governmental Authority" means Canada, the Provinces thereof, the United States of America, the States thereof, any other sovereign country and any other regional, municipal, state, provincial, local or other subdivision of any such jurisdiction, and any other governmental entity of any such jurisdiction and includes any agency, department, commission, office, régime, ministry, tribunal, central bank or other Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government including the European Union, the European Court of Justice, the European Commission, the European Parliament and the European Central Bank;

"Group" refers collectively to the Restricted Parties and the Syllabus Parties, and **"Borrower Group"** shall have the same meaning;

"Guarantee and Subordination Agreement" refers to the amended and restated credit agreement entered into on or about the date hereof between the Borrower and the other

Guarantors named therein, as guarantors, and the Administrative Agent, as same may be further amended, restated and supplemented from time to time;

"Guarantees" means, with respect to any Person (the **"First Person"**), any Indebtedness of another Person (the **"Second Person"**) which such First Person has guaranteed or in respect of which such First Person is liable, contingently or otherwise, including, without limitation, liable by way of agreement to purchase property or services, to provide funds for payment, to supply funds to or otherwise Invest in such Second Person, or to assure a creditor of such Second Person against loss, other than endorsements for collection or deposit in the ordinary course of business. Furthermore, **"Guarantee"** and **"Guaranteeing"** shall have correlative meanings;

"Guarantor" refers collectively at any time to the Restricted Parties which at such time have guaranteed the Secured Obligations in accordance with the provisions of Article 13. For greater certainty, the Guarantors shall include the Borrower and shall exclude any Chinese Company;

"Hazardous Materials" means any contaminant, pollutant, toxic substances, hazardous material, residual material, waste, dangerous goods, hazardous substances whether similar terms as such terms are defined in any Environmental Law;

"HSBC Hong Kong" means The HongKong and Shanghai Banking Corporation Limited and includes any successors thereto;

"HK Dollars" or **"HKD"** means the lawful currency of Hong Kong;

"HK Swingline Commitment" means, on any date, the lesser of (i) the Commitment of the Other Swingline Lender minus the UK Swingline Commitment, as calculated on such date, and (ii) Cdn\$ [redacted] [dollar amount];

"HK Swingline Facility" means the swingline facility which the Other Swingline Lender has agreed to make available to the Borrower pursuant to subsection 2.9;

"HK Swingline Loan" means, at any time, the aggregate of the principal amount of Advances of the Other Swingline Lender then outstanding under the HK Swingline Facility;

"HK Swingline Redistribution" means a redistribution among the Lenders of the amounts outstanding under the Loans and the HK Swingline Loan, the whole as contemplated in Section 24.4;

"Hong Kong Companies" refers collectively, at any time, to the members of the Group incorporated under the Laws of Hong Kong, and includes any respective successor thereto and **"Hong Kong Company"** refers to any one thereof;

"HSBC HK US Dollar Account" means the US Dollar account established on behalf of the Borrower by HSBC Bank Canada, or one of its Affiliates, at a branch of HSBC Bank Canada or such Affiliate in Hong Kong;

"HSBC UK US Dollar Account" means the US Dollar account established on behalf of the Borrower by HSBC Bank Canada, or one of its Affiliates, at a branch of HSBC Bank Canada or such Affiliate in the United Kingdom;

"Income Taxes" means taxes based on or measured by income or profit of any nature of kind;

"Increased Commitment Certificate" means the instrument referred to in subsection 2.1.3, substantially in the form of the one attached hereto as Schedule "P";

"Indebtedness" includes, for any Person:

1. Debt for Borrowed Money of such Person;
2. obligations representing the deferred purchase price of property or services;
3. any other obligations which in accordance with GAAP would constitute a liability on the balance sheet of such Person; and
4. obligations of another Person of the kind referred in any of items 1 to 3 of this definition and that such Person has Guaranteed;

"Indemnified Parties" refers collectively to the Finance Parties, each of their Affiliates as well as their respective directors, officers, employees, advisors, representatives and agents and **"Indemnified Party"** refers to any one thereof;

"Indemnified Taxes" has the meaning ascribed to it in Section 21.1;

"Initial Luxco Intercompany Loans" refers to the intercompany loans described in Schedule "Y" hereto, each to be entered into between Luxco and a Restricted Party following the Effective Date, the whole subject to Section 14.3;

"Initial MCP/HSBC Deposits" refers to the security deposits of at least CNY314,103,195 made by MCP Asia in favour of HSBC Hong Kong from February 23, 2011 to May 4, 2012, as security for the obligations of MCP Asia under the Initial MCP/HSBC Loans and which bear interest at a rate of between [REDACTED] [percentage] and [REDACTED] [percentage], which interest is earned at the maturity date thereof concurrently with the anticipated repayment of the Initial MCP/HSBC Loans;

"Initial MCP/HSBC Derivative Instruments" refers to the Derivative Instruments entered into between MCP Asia and HSBC Hong Kong pursuant to the Initial MCP/HSBC Facilities Letter and identified in Schedule "CC";

"Initial MCP/HSBC Facilities Letter" refers to the banking facilities letter dated July 18, 2011 entered into between HSBC Hong Kong and MCP Asia regarding the granting of the Initial MCP/HSBC Loans and the entering into of the Initial MCP/HSBC Derivative Instruments;

"Initial MCP/HSBC Loans" refers to the 12-month loans bearing interest at the rate of [percentage] over the 3-month HIBOR per annum referred in Schedule "DD" hereof and made available to MCP Asia by HSBC Hong Kong in accordance with the terms and provisions of the Initial MCP/HSBC Facilities Letter and to be reimbursed in accordance with the repayment schedule set out in Schedule "DD" hereof;

"Insolvency Event" means with respect to any Person, the occurrence of any of the following events:

1. an order is made that such Person be wound up; or
2. an order appointing a liquidator, an administrator or a provisional liquidator in respect of such Person is made, or one of them is appointed; or
3. a receiver, receiver and manager, statutory manager, trustee or similar official, is appointed in respect of such Person or all or substantially all of its assets; or
4. such Person enters into, or resolves to enter into, an arrangement or reconstruction or composition with, or assignment for the benefit of, all or any class of its creditors or it proposes a reorganization, moratorium or other administration involving any of them for reasons relating to insolvency; or
5. such Person is or states that it is unable to pay its debts generally when they fall due or, in relation to a German Company, is over-indebted pursuant to Section 19 of the German Insolvency Code (*Insolvenzordnung*); or
6. such Person resolves to wind itself up, assigns itself into bankruptcy or commits any act of bankruptcy as such term is defined in the *Bankruptcy and Insolvency Act* (Canada) or in any other legislation applicable to such Person, or gives notice of its intention to do so for reasons relating to insolvency; or
7. such Person takes any steps to obtain or is granted protection from its creditors, under any Applicable Law; or
8. (a) the commencement of an involuntary proceeding against such Person (i) seeking bankruptcy, liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts, or other relief with respect to it or its debts under any bankruptcy laws or other customary insolvency actions or (ii) seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets, the issuance of a writ of attachment, execution, or similar process, or like relief if, in each such case, subparagraphs (b), (c) or (d) of this paragraph 8 do not apply and such involuntary proceeding shall remain undismissed and unstayed for a period of twenty (20) days, (b) an order for relief is entered against such Person under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any other present or future federal bankruptcy or insolvency Laws of Canada or of the United States as now or hereafter in

effect, (c) filing by such Person of an answer admitting the material allegations of a petition filed against it in any involuntary proceeding commenced against it, (d) the commencement of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or (e) consent by such Person to any relief referred to in this paragraph 8 or to the appointment of or taking possession by any such official in any involuntary proceeding commenced against it; or

9. anything analogous or having a substantially similar effect to any of the events specified above happens under the Law of any applicable jurisdiction, including, without limitation, such Person or any other Person taking any steps toward filing any plan of arrangement proceedings seeking to restructure such first Person's Indebtedness; and

for purposes of definition of "Insolvency Event":

- a) a **winding-up, administration or dissolution** includes, without limitation, bankruptcy (*faillite*), insolvency, voluntary or judicial liquidation (*liquidation volontaire ou judiciaire*), composition with creditors (*concordat préventif de faillite*), reprieve from payment (*sursis de paiement*), controlled management (*gestion contrôlée*), fraudulent conveyance (*action pauliana*), general settlement with creditors, reorganisation or similar laws affecting the rights of creditors generally;
- b) a **receiver, administrative receiver, administrator** or the like includes, without limitation, a *juge délégué, commissaire, juge-commissaire, liquidateur* or *curateur*; and
- c) a Person being **unable to pay its debts or unable to meet its obligations** includes that Person being in a state of cessation of payments (*cessation de paiements*).

"Intercreditor Agreement" means the intercreditor agreement referred to in subsection 14.1.5, as same may be amended, restated and supplemented from time to time;

"Interest Payment Date" means:

1. with respect to the Cdn Prime Rate Loans and the US Base Rate Loans, the first (1st) Business Day of each and every calendar month of each year with respect to amounts of interest accrued to and including the last day of the previous month;
2. with respect to the Libor Loans and the EuroLibor Loans, for each Selected Amount;

- 2.1 the Selected Maturity Date applicable to such Selected Amount where the relevant Selected Period is 3 months or less; and
- 2.2 where the relevant Selected Period is greater than 3 months, the first Business Day following each period of 3 months during such Selected Period and the Selected Maturity Date applicable to such Selected Amount;

in each case, with respect to amounts of interest accrued to and including the immediately preceding day; and

3. with respect to LC Fees and LC Fronting Fees, the first (1st) Business Day of each fiscal quarter of the Borrower;

"Investment" means any loan, advance (other than commission, travel and similar advances to officers and employees made in the ordinary course of business), extension of credit (other than accounts receivable arising in the ordinary course of business) or contribution of capital to any other Person or any acquisition of Capital Stock, deposit accounts, certificates of deposit, mutual funds, bonds, notes, debentures or other securities of any other Person or any structured notes, other than a Permitted Acquisition, and **"Investing"** and **"Invested"** shall have correlative meanings;

"ISDA Contracts" is the collective reference to the Derivative Instruments entered into from time to time between any of the Material Parties and any Lender or any ISDA Provider, and **"ISDA Contract"** refers to any one thereof and, for greater certainty, the Existing Derivative Instruments and the MCP/HSBC Derivative Instruments (whether same form part of the Existing Derivative Instruments or not) do not form part of the ISDA Contracts;

"ISDA Providers" refers collectively to the Affiliates of the Lenders (other than HSBC Hong Kong, in regards to the MCP/HSBC Derivative Instruments) which entered into ISDA Contracts with any Material Parties and delivered to the Administrative Agent an executed copy of an ISDA Provider Accession Certificate, and **"ISDA Provider"** refers to any one thereof;

"ISDA Provider Accession Certificate" means the instrument substantially in the form of the one attached hereto as Schedule "EE";

"Issuance Date" means:

1. with respect to any BA, as the context requires, the date on which the relevant Lender accepted same, or the date on which the Borrower requested that such BA be accepted; and
2. with respect to any LC, as the context requires, the date on which the relevant LC Issuing Lender issued same, or the date on which the Borrower requested that such LC be issued;

"Law" means all applicable provisions of Laws, ordinances, codes, rules, regulations, orders, orders in council, directives, decrees, administrative orders, guidelines, policies of any

governmental entity, as well as the applicable provisions of any treaty and any order and decree of any tribunal and arbitrator after the expiration of any appeal period;

"LBC" refers to Laurentian Bank of Canada and includes any successor thereto;

"LC Fees" refers collectively to the fees payable pursuant to the provisions of Section 9.3;

"LC Fronting Fees" refers collectively to the fees payable pursuant to the provisions of Section 9.4;

"LC Issuing Lender" means National Bank of Canada in its capacity as the Lender that, under the terms of Section 9.2, has the exclusive right to issue LCs under the Revolving Facility and includes any successor thereto in such capacity;

"LC Issuing Office" means the office of the LC Issuing Lender located at 1155 Metcalfe Street, 5th Floor, Montréal, Québec, or such other office in Canada as the LC Issuing Lender may specify from time to time;

"LC Liability", with respect to any Lender, is the collective reference to the Cdn Dollar LC Liability, the US Dollar LC Liability, the Euro LC Liability of such Lender, and **"LC Liabilities"** means the aggregate of all LC Liabilities of all Lenders;

"LCs" is the collective reference to any outstanding letter of guarantee or any stand-by or other letter of credit (including a documentary letter of credit) and all renewals and substitutions therefor, issued from time to time by the LC Issuing Lender under the Revolving Facility, in accordance with the provisions hereof, and **"LC"** means any one of the LCs;

"Lender" refers to any Person named in Schedule "A" hereto and includes any successor and assignee of such Person but does not include any Person which ceases to be a party hereto in accordance with the terms hereof, and **"Lenders"** is the collective reference to all such Persons;

"Lenders' Counsel" means (i) in Canada and the United Kingdom, Fasken Martineau DuMoulin LLP, (ii) in the United States of America, DLA Piper LLP (US), (iii) in Germany, Belgium and Hong Kong, DLA Piper UK LLP, (iv) in Luxembourg, Allen & Overy Luxembourg, and (v) in each of the other relevant jurisdictions, such firms of solicitors as the Administrative Agent may select from time to time;

"Libor" means, for the Selected Period of any Selected Amount, the interest rate per annum, as a percentage, which appears on the Telerate Page 3750 as of 11:00 A.M., London (England) time, on the relevant Quotation Date. If such rate is not available on such day, **"Libor"** means, for the Selected Period of any Selected Amount, the interest rate per annum, as a percentage, which the Administrative Agent, in accordance with its normal practice, would be prepared to offer to leading banks in the London Interbank Market, for delivery on the first day of the Selected Period and for such Selected Period deposits in US Dollars of comparable amounts to such Selected Amount, at or about 11:00 A.M., London (England) time on the relevant Quotation Date;

"Libor Basis" means the calculation of interest on the US Dollar Loan, or any portion of any thereof as provided in Sections 7.3 and 7.4;

"Libor Loan", with respect to any Lender, means, as at any time, that portion of the Loan of such Lender with respect to which the Borrower has elected to pay interest on a Libor Basis, and **"Libor Loans"** means the aggregate of all Libor Loans of all Lenders;

"Lien" means any interest in property, or the fruits, revenues or profits derived therefrom, securing an obligation owed to, or a claim by, a Person other than the owner (which for the purposes hereof shall include a possessor under a title retention agreement and a lessee under a capital lease or in a sale and leaseback transaction), whether such right arises under common law, civil law, any Law or a contract, including, without limitation, by way of mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, *nantissement*, *gage*, *privilege*, *sûreté réelle*, *droit de rétention*, *transfert de propriété à titre de garantie* and any type of real security or agreement or arrangement having a similar effect and any transfer of title by way of security, hire purchase agreement, conditional sale agreement, deposit arrangement, deemed trust, title retention, capital lease, discount, factoring or securitization arrangement deemed trust, on recourse terms, and any right of a lessor pursuant to a lease or capital lease that would be capitalized in the balance sheet of the owner of such property or pursuant to an analogous deed with respect to property or the fruits or revenues or profits derived therefrom;

"Loan", with respect to any Lender, is the collective reference to the Cdn Dollar Loan, the US Dollar Loan, the Euro Loan, of such Lender, and **"Loans"** means the aggregate of all Loans of all Lenders;

"Loan Transfer Agreement" refers to an agreement substantially in the form of the one attached hereto as Schedule "L" whereby a Lender makes an Assignment;

"Local Taxes" has the meaning ascribed to it in Section 21.1;

"Loss Event" has the meaning ascribed to it in Section 22.5;

"Luxco" means 5N Plus Luxembourg S.à r.l, a company constituted under the Laws of the Grand Duchy of Luxembourg, and includes any successor thereto;

"Luxco Intercompany Loans" means the Initial Luxco Intercompany Loans, and such other intercompany loans as may be entered into from time to time between Luxco and any Restricted Party in accordance with the terms of this Agreement;

"Luxembourg Companies" refers collectively at any time to the members of the Group duly constituted or continued under the Laws of the Grand Duchy of Luxembourg, and includes any respective successor thereto, and **"Luxembourg Company"** refers to any one thereof;

"Luxembourg Companies Register" means the Luxembourg Register of Commerce and Companies;

"Maintenance Capital Expenditures" with respect to any Person, means Capital Expenditures made on an ongoing basis by such Person to repair and maintain the useful life of existing Business Assets of such Person or replace such Business Assets;

"Majority Lenders" means at any time if (i) there are two Lenders, both Lenders and (ii) there more than two Lenders, the Lenders to which at least 66 2/3% of the Loans are due or, if no Loans are then outstanding, Lenders whose Commitments represent at least 66 2/3% of the Revolving Facility;

"Mark to Market Exposure" in connection with a Person's liability under any Derivative Instrument to which it is a party, means, as at any determination date, the net amount that would be payable by such Person under such Derivative Instrument as though such day were an **"Early Termination Date"** and the **"Transaction"** was a **"Terminated Transaction"** in accordance with the payment measure provided for in Section 6(e)(i)(3) of the 2002 ISDA Master Agreement (Multicurrency-Cross Border) as published by the International Swaps and Derivatives Association, Inc. as amended or replaced from time to time. Furthermore, the amount of such liability shall be established by such Person in good faith after informing itself with the relevant counterparties to such Derivative Instruments who themselves shall determine same in accordance with their respective customary practices;

"Material Adverse Effect" means the occurrence or the failure to occur of any event or series of events which (a) has or could have a material adverse effect (i) upon the business, liabilities, affairs, assets, operations, management, properties or condition (financial or otherwise) of the Group taken as a whole, or (ii) on the ability of the Group (taken as a whole) to perform their obligations under the Operative Documents, or (b) has, could have or could result in a risk of loss of rank with respect to any Lien granted pursuant to the terms of the Operative Documents, or in that any Lien or Guarantee granted pursuant to the Operative Documents would cease to be in full force and effect;

"Material Contracts" refers to the [REDACTED] [name of a client] Contracts;

"Material Parties" as at any time, refers collectively to the Borrower and such of the Restricted Parties who are Guarantors at such time excluding, however, such Material Parties which have become Guarantors for the sole purpose of pledging the Capital Stock of other Material Parties, and **"Material Party"** refers to any one thereof. As of the Effective Date, Schedule "V" lists the Material Parties which are expected, upon repayment of the Existing Credit Facilities, to be Material Parties;

"MCP" means MCP Group S.A., a company constituted under the Laws of Belgium, and includes any successor thereto;

"MCP Acquisition" refers to the Acquisition by the Borrower of 100% of the Capital Stock of MCP on April 11, 2011 pursuant to the MCP Acquisition Documents;

"MCP Acquisition Documents" refers collectively, at any time, to all documents, instruments, agreements or other documents entered into, at such time or at any time prior thereto, in connection with the MCP Acquisition;

"MCP Asia" means MCP (Asia) Limited, a company constituted under the Laws of Hong Kong, and includes any successor thereto;

"MCP HEK Pension Fund" means the plan, program, arrangement or understanding that provides pension or retirement benefits in respect of MCP HEK GmbH's employees;

"MCP HEK Pension Fund Loan" refers to the loan made by Unterstützungseinrichtung der Firma HEK-GMBH e.V. to MCP HEK GmbH based on paragraph 8.3 of the statute of incorporation dated September 29, 1969 in respect of the MCP HEK Pension Fund, which on the Effective Date is for a principal amount of [REDACTED] [dollar amount] Euros, bearing interest at the *diskont* rate, plus [REDACTED] [percentage], which interest is capitalized on the principal amount. The principal amount of such loan also increases as a result of certain insurance payouts received by MCP HEK GmbH on behalf of Unterstützungseinrichtung der Firma HEK-GMBH e.V.;

"MCP/HSBC Deposits" shall refer collectively to the Initial MCP/HSBC Deposits and to any security deposits made by MCP Asia pursuant to any MCP/HSBC Facilities Letter resulting from the renewal of the Initial MCP/HSBC Facilities Letter in accordance with subsection 18.19.2;

"MCP/HSBC Derivative Instruments" shall refer collectively to the Initial MCP/HSBC Derivative Instruments and to any Derivative Instruments entered between MCP Asia and HSBC Hong Kong pursuant to any MCP/HSBC Facilities Letter resulting from the renewal of the Initial MCP/HSBC Facilities Letter in accordance with subsection 18.19.2;

"MCP/HSBC Facilities Letter" shall refer collectively to the Initial MCP/HSBC Facilities Letter and to any facility letter between MCP Asia and HSBC Hong Kong resulting from the renewal of the Initial MCP/HSBC Facilities Letter in accordance with subsection 18.19.2;

"MCP/HSBC Investment Loan Structure" refers to the investment loan structure entered into between MCP Asia and HSBC Hong Kong pursuant to which (i) the Initial MCP/HSBC Loans have been made available by HSBC Hong Kong to MCP Asia, (ii) the Initial MCP/HSBC Deposits have been pledged as sole security for the obligations of MCP Asia under the Initial MCP/HSBC Loans, (iii) the Initial MCP/HSBC Derivative Instruments have been entered into between MCP Asia and HSBC Hong Kong to hedge interest rate and exchange rate transactions for the duration of the Initial MCP/HSBC Loans and Initial MCP/HSBC Deposits, (iv) the Initial MCP/HSBC Loans are repayable solely from the proceeds of the Initial MCP/HSBC Deposits and (v) at maturity of the Initial MCP/HSBC Loans, the Initial MCP/HSBC Deposits shall be for an amount equal to the aggregate amount due and payable on such date on the Initial MCP/HSBC Loans, in principal, interest, fees and accessories, the whole as more fully set forth in the Initial MCP/HSBC Facilities Letter. For the sake of clarity, although the foregoing makes reference to the Initial MCP/HSBC Facilities Letter, the Initial MCP/HSBC Loans, the Initial MCP/HSBC Derivative Instruments and the Initial MCP/HSBC Deposits, the parties acknowledge and agree that the definition of "MCP/HSBC Investment Loan Structure" is

intended to apply to the treatment pursuant to this Agreement of all MCP/HSBC Facilities Letters, MCP/HSBC Loans, MCP/HSBC Derivative Instruments and MCP/HSBC Deposits, including, without limitation, pursuant to subsection 18.19.2;

"MCP/HSBC Loans" shall refer collectively to the Initial MCP/HSBC Loans and to any loans made available to MCP Asia by HSBC Hong Kong pursuant to any MCP/HSBC Facilities Letter resulting from the renewal of the Initial MCP/HSBC Facilities Letter in accordance with subsection 18.19.2;

"MCP Parties" refers collectively to MCP and its direct and indirect Subsidiaries and **"MCP Party"** refers to any one thereof;

"Moody's" means Moody's Investors Service, Inc.;

"Multiemployer Plan" means any Plan which is a multiemployer plan (as such term is defined in Section 4001(a)(3) of ERISA);

"Net Interest Expenses" means, for any period, on a consolidated basis, without duplication, the sum of all interest expenses paid or required to be paid during such period (whether or not capitalized thereafter) (net of interest income), including, without limitation, interest and discounts in respect of Debt for Borrowed Money, discounts and stamping fees in respect of bankers' acceptances, depository bills or depository notes (as these latter two expressions are defined in the *Depository Bills and Notes Act* (Canada)), fees with respect to the issuance of letters of credit or letters of guarantee and the interest portion of payments under capital leases;

"Non-BA Lender" means any Lender which does not or cannot in the ordinary course of business accept bills of exchange under the *Bills of Exchange Act* (Canada) or depository bills under the *Depository Bills and Notes Act* (Canada), which would constitute bankers' acceptances for the remaining Lenders, and **"Non-BA Lenders"** is the collective reference to all such Persons;

"Non-Material Parties" as at any time, refers collectively to such of the Restricted Parties who are not Material Parties at such time, and **"Non-Material Party"** refers to any one thereof;

"Operative Documents" refers collectively to this Agreement, the Security Documents, the ISDA Contracts, the Intercreditor Agreement and each document, instrument or agreement entered into by or between any member of the Group, any Finance Party or any other Person in connection with the transactions contemplated herein or therein or which is supplemental hereto or thereto, and **"Operative Document"** refers to any one thereof;

"Original Currency" has the meaning ascribed to it in Section 25.7;

"Other Swingline Lender" means, with respect to the UK Swingline Facility, HSBC Bank PLC and, with respect to the HK Swingline Facility, The HongKong and Shanghai Banking Corporation Limited and includes any successor thereof in such capacity;

"Parallel Debt" shall have the meaning ascribed to it in subsection 23.20.5;

"PBGC" means the Pension Benefit Guaranty Corporation or any Governmental Authority succeeding to any of its functions;

"Participation" means the sale or granting by any Lender of any participating interest in any Loan owing to such Lender and in the Commitment of such Lender or any other interest of such Lender under this Agreement, provided however, that (v) the granting or sale of such participating interest does not result in any change to the obligations of such Lender under this Agreement to any other party hereto, nor does it provide the purchaser or grantee of such interest with any rights hereunder, (w) such Lender shall remain a party to this Agreement and solely responsible for the performance of its obligations hereunder, (x) the Borrower, the Finance Parties and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with this Agreement, (y) the purchaser or grantee of such interest shall not be considered as a "Lender" pursuant to this Agreement and (z) all amounts payable by the Borrower to such Lender shall be determined as if such Lender had not granted such Participation;

"Permitted Acquisition" means any Acquisition by a member of the Group (i) the purchase price of which when added to all other Permitted Acquisitions made during any fiscal year shall not exceed US\$ [redacted] [dollar amount], (ii) where the Person being acquired pursuant to such Acquisition carries out the same activities as the Group, as contemplated in Section 15.27, (iii) that contributes positively to the consolidated EBITDA of the Borrower as established on a *pro forma* basis, on the basis of the most recent audited consolidated financial statements of the Person being acquired pursuant to such Acquisition, (iv) that could not be reasonably expected to have a Material Adverse Effect, (v) where the Person being acquired pursuant to such Acquisition is not involved in any environmental litigation and/or material litigation, (vi) that does not constitute a hostile or unsolicited acquisition, (vii) where the Business Assets of the Person acquired pursuant to such Acquisition are situated in Canada, in the United States of America, in Europe or in any other region acceptable to the Lenders, and (viii) where on the date of such Acquisition, the Ratios of the Borrower established on a *pro forma* basis after giving effect to such Acquisition are complied with;

"Permitted Liens", with respect to any Person, means, as at any time, any one or more of the following:

1. the reservations expressed in the original grant of an immovable or real property from the Crown or letters patent from the Crown;
2. servitudes or rights of way for purposes of public utilities, including for sewers, drains, gas and water mains, electric light and power or telephone and telegraph conduits, poles and cables, pipelines or zoning restrictions affecting the use of such Person's immovable or real properties, in each case, which do not materially or adversely impair the use for which any one of such immovable or real properties is intended or reduce the Liens created pursuant to the Security Documents;
3. any Lien:

- 3.1 for taxes, assessments or other governmental charges or levies not yet due or, if due, the validity of which is being contested diligently and in good faith by or on behalf of the Person allegedly liable therefor, or on its behalf, and for which such Person has set aside appropriate reserves on its books, as and if required by GAAP;
- 3.2 of any judgment rendered or claim filed against such Person, which such Person or others on its behalf shall be contesting diligently and in good faith, and for which such Person has set aside appropriate reserves on its books, as and if required by GAAP;
- 3.3 of any craftsman, workman, builder, contractor, supplier of materials, architect, engineer or subcontractor of any one thereof or any other similar Lien related to the construction or the maintenance of such Person's real or immovable properties or any undetermined or inchoate Lien, or any retention of title right (*Eigentumsvorbehalt*) granted in the ordinary course of business and which is released and discharged in accordance with the applicable payment terms, provided that any such Lien is not registered or published or that such Person has not received a notice in respect of same in accordance with the provisions of any Applicable Law or, if notice has been given or if such Lien is registered or published, which such Person or others on its behalf shall be contesting diligently and in good faith by or on behalf of such Person and for which such Person has set aside appropriate reserves on its books, as and if required by GAAP;
- 3.4 granted or to be granted by a German Company which cannot be restricted due to Section 1136 of the German Civil Code (*Bürgerliches Gesetzbuch*);
- 3.5 in relation to a German Company, arising out of the general terms and conditions (*Allgemeine Geschäftsbedingungen*) of such German Company's account bank;
- 3.6 in relation to a Belgian Company, any legal Lien arising out of the *Belgian Act of 16 December 1851* forming the Title XVIII, Book III of the *Belgian Civil Code* or arising out of any other Belgian legal provisions, which prevail by law on the Liens to be granted by the Belgian Company pursuant to this Agreement and the Operative Documents;
4. minor title defects, homologated lines, by-laws, ordinances, regulations and other governmental restrictions on the use of immovable or real property, provided that none of the foregoing adversely affects the use for which such immovable or real property is intended;
5. the pledges or deposits made pursuant to Laws relating to workmen's compensation or similar Laws, or deposits made in good faith in connection with offers, tenders, leases or contracts (excluding, however, the borrowing of money or the repayment of money borrowed), deposits of cash or securities in order to secure appeal bonds or bonds required in respect of judicial proceedings;

6. any Lien resulting from the Security Documents;
7. any Lien in existence at the time a Person becomes a member of the Group and not created in anticipation of so becoming a member of the Group provided that each such Lien (other than a Lien which would otherwise constitute a Permitted Lien) no longer secures any Indebtedness and is released and discharged within thirty (30) Business Days following the date such Person becomes a member of the Group;
8. any Lien securing Debt for Borrowed Money of the Sylarus Parties, provided, however, such Lien is limited to assets of the Sylarus Parties and that the aggregate amount of obligations secured by such Liens does not exceed Cdn\$ [REDACTED] [dollar amount];
9. any Lien securing Purchase Money Obligations permitted to be outstanding under subsection 18.2.10 provided that each such Lien only affects the property with respect to which the Purchase Money Obligation it secures was incurred;
10. the Lien existing as of the Effective Date in favour of BDC on the immovable property located at 4385 Garand Street, Saint-Laurent, Quebec, H4R 2B4 in order to secure the BDC Debt, provided, however, that such Lien shall no longer constitute a Permitted Lien upon the payment in full of the BDC Debt pursuant to Section 16.20;
11. the Lien to be granted in favour of the Wisconsin Department of Commerce in order to secure the Wisconsin Debt, provided, however, that, such Lien shall no longer constitute a Permitted Lien upon the payment in full of the Wisconsin Debt;
12. the Liens on the Business Assets of the Chinese Companies granted to secure the Debt for Borrowed Money of the Chinese Companies described in subsection 18.2.2;
13. the Liens granted to secure the Debt for Borrowed Money of the MCP Parties described in subsection 18.2.4;
14. the Liens granted by any Restricted Party on any of its Business Assets to secure the Existing Credit Facilities;
15. the Liens granted to secure the Debt for Borrowed Money of the Restricted Parties described in subsection 18.2.13; and
16. the Liens granted by MCP Asia on the MCP/HSBC Deposits to secure the Debt for Borrowed Money of MCP Asia described in subsection 18.2.5;

"Person" means an individual, corporation, estate, partnership, trust, joint venture, other legal entity, unincorporated association or Governmental Authority;

"Plan" means an "employee pension benefit plan" (as defined in Section 3 of ERISA) which is subject to ERISA and is or has been established or maintained, or to which contributions are or have been made, by a member of the Group, or an employee pension benefit plan which is subject to ERISA and as to which a member of the Group would be treated as a contributing

sponsor under Section 4069 of ERISA if it were to be terminated, or such a plan which is subject to ERISA and as to which a member of the Group would be treated as a contributing sponsor under Section 4212(c) of ERISA;

"Principal Credit Agreement" has the meaning ascribed thereto in the first preamble paragraph hereof;

"Proceeds of Realization" refers to any and all monies received, collected, generated or that arose from the exercise of any Rights, Remedies and/or Recourses including any monies involved in any operation of compensation or set-off;

"Purchase Money Obligation" means, with respect to any Person, any indebtedness incurred in respect of the cost of acquisition of movable property, including by way of conditional sales contract, lease or capital lease that would be capitalized in the balance sheet of the owner of such property, in accordance with GAAP, which indebtedness existed at the time of acquisition, or was created, issued, incurred, assumed or Guaranteed approximately at the same time as the acquisition and includes any extension, renewal or refinancing of any such indebtedness if the amount thereof outstanding on the date of such extension, renewal or refinancing is not increased, it being expressly understood that **"Purchase Money Obligation"** shall not include any Indebtedness incurred in connection with any Sale and Leaseback Transaction;

"Quotation Date" means, in relation to any Selected Period, the day on which quotations would ordinarily be given by prime banks in the relevant interbank market for deposits in the currency in relation to which such rate is to be determined for delivery on the first day of that Selected Period provided that, if, for any such Selected Period, quotations would ordinarily be given on more than one date, the Quotation Date for that Selected Period shall be the last of those dates. As of the Effective Date, the Quotation Date for a Selected Period relating to a Libor Loan or a EuroLibor Loan is two (2) Business Days' prior to the first day of such Selected Period;

"Rateable Share" means, with respect to any Lender:

1. in connection with the fees, expenses and costs as well as the Proceeds of Realization and the Realization Costs, the credit and compensating balances and indemnities, the ratio of the Loan of such Lender to the Loans; and
2. for all other purposes, subject to the provisions of Section 8.1, the ratio of the Commitment of such Lender to the Revolving Facility rounded off to the nearest 3rd decimal;

"Ratios" refers collectively to the financial ratios referred to in Section 17.1;

"Realization Costs" refers collectively to:

1. all costs and expenses incident to the exercise of Rights, Remedies and/or Recourses including reasonable fees and out-of-pocket expenses of counsel, accountants and other professionals, escrow fees, recording fees, broker's fees, any fees, costs and expenses

incurred in connection with any sale or foreclosure of any property or assets, and all applicable transfer and mutation taxes that may be imposed by reason of any such sale or foreclosure and the delivery of any and all instruments in connection therewith;

2. any claim or debt, in principal, interest, fees and accessories which, notwithstanding the provisions of this Agreement, by Law is payable by preference over the Loans; and
3. the fees, costs and expenses of the Finance Parties, including, without limitation, any indemnity in favour of any one thereof;

"Redistribution" refers collectively to a Cdn Swingline Redistribution, a HK Swingline Redistribution, a UK Swingline Redistribution and the reallocation described in Section 14.1 and **"Redistribution"** means any one thereof;

"Reduction Notice" means a notice, substantially in the form of the one attached hereto as Schedule Q", issued by the Borrower to the Administrative Agent in connection with any reduction of the Revolving Facility;

"Registration" means any notice to or filing, publication, recording or registration with any Governmental Authority having jurisdiction with respect to any specified Person, transaction or event, or any of such Person's Business Assets;

"Release" shall mean (i) when used as a verb: release, spill, leak, emit, deposit, discharge, leach, migrate, dump, issue, empty, place, seep, exhaust, abandon, bury, incinerate or dispose into the environment and (ii) when used as a noun, has a correlative meaning;

"Relevant Margin", with respect to all the Lenders, has the meaning ascribed to it in Schedule "C";

"Repayment Notice" means a notice, substantially in the form of the one attached hereto as Schedule "R", issued by the relevant Borrower to the Administrative Agent in connection with any repayment of the whole or any part of the Loans;

"Required Lenders" means, for any purpose, either the Majority Lenders or all of the Lenders depending on who has the authority to instruct the Administrative Agent for that purpose as provided for in this Agreement;

"Reset Date" has the meaning ascribed to it in Schedule "C";

"Resigning Administrative Agent" has the meaning ascribed to it in subsection 23.15.1;

"Responsible Officer" means, with respect to any Person, the president, the chief executive officer, the chief financial officer, a vice-president, the corporate secretary or the assistant corporate secretary of such Person, provided that, with respect to financial matters, one of the Responsible Officers shall be the president and chief executive officer or the chief financial officer of the Borrower;

"Restricted Parties" refers collectively to the Borrower and all of its direct and indirect wholly-owned Subsidiaries, and **"Borrower Parties"** shall have the same meaning, and **"Restricted Party"** refers to any one thereof, and **"Borrower Party"** shall have the same meaning;

"Revolving Facility" as at any time, subject to Section 2.3, refers collectively to the aggregate of the Commitments of the Lenders at such time;

"Revolving Period" means the period described in subsection 2.5.1;

"Rights, Remedies and/or Recourses" with respect to any Person, refers to any personal action, provisional measure, any other real or personal right, any other remedy, whether or not hypothecary, or whether same is exercised under the terms of any security or any other recourse whatsoever and including:

1. the right to accelerate any Indebtedness owed to such Person or to demand payment of any Indebtedness payable on demand or to demand payment under any Guarantee;
2. the right to institute or prosecute any litigation;
3. the right, whether legal or conventional, to effect compensation or set-off;
4. the right to initiate or prosecute insolvency proceedings or enforcement proceedings; and
5. the exercise of the rights of a creditor under any bankruptcy, insolvency, reorganization and enforcement proceeding;

"S&P" means Standard and Poor's Ratings Services, a division of The McGraw Hill Companies, Inc.;

"Sale and Leaseback Transaction" with respect to any Person, means any transaction or series of transactions whereby such Person sells, transfers or otherwise disposes of any of its properties and assets to another Person and within one (1) year of such sale, transfer or other disposition such Person leases or rents, as lessee, the same property under a lease, the term of which (including the initial term and any period for which the lease may be renewed or extended) exceeds two (2) years;

"Sales Taxes" means sales, transfer, turnover or value added taxes of any nature or kind, including Canadian goods and services taxes and federal, state and provincial sales and excise taxes;

"Second Currency" has the meaning ascribed to it in Section 25.7;

"Secured Obligations" has the meaning ascribed thereto in Section 13.1;

"Security Documents" is the collective reference to documents and agreements entered into from time to time pursuant to Article 13;

"Selected Amount" means, with respect to each Lender:

1. in connection with BAs, the aggregate face amount of BAs of such Lender having the same Issuance Date and Selected Maturity Date and outstanding or requested to be outstanding under the Revolving Facility;
2. in connection with Libor Loans, such portion of the aggregate principal amount of the Libor Loan of such Lender outstanding or requested to be outstanding under the Revolving Facility for a Selected Period;
3. in connection with EuroLibor Loans, such portion of the aggregate principal amount of the EuroLibor Loan of such Lender outstanding or requested to be outstanding under the Revolving Facility for a Selected Period;
4. in connection with LCs, the Rateable Share of such Lender of the maximum liability of the LC Issuing Lenders under each LC outstanding or requested to be outstanding;

"Selected Maturity Date" means, with respect to BAs, Libor Loans, EuroLibor Loans and LC Liabilities, the maturity date selected by the Borrower under any Draw Request or Conversion Request, as the case may be;

"Selected Period" means, with respect to any Selected Amount, the period commencing as of and from the Borrowing Date applicable to such Selected Amount up to and including the day preceding the Selected Maturity Date applicable to such Selected Amount;

"Senior Debt" means at any time, determined on a consolidated basis, the Total Funded Debt of the Borrower, excluding the short and long term portions of the VTB Debt;

"Senior Funded Debt" means at any time, determined on a consolidated basis, the Total Funded Debt of the Borrower, excluding the long term portion of the VTB Debt;

"Sidech" means Société Industrielle d'Études et d'Exploitation SA (S.I.D.E.C.H.), a company constituted under the Laws of Belgium, and includes any successor thereto;

"Sidech/Natixis Derivative Instruments" refers to the Derivative Instrument in connection with a forward sale of lead, entered into between Sidech and Natixis on February 14, 2011 as evidenced by confirmation bearing number 0001528154, which is scheduled to terminate on February 15, 2012 and which is referenced in Schedule "CC" hereto;

"Sidech Land Charge" means the deed of mortgage ("*hypothèque*" / "*hypotheek*") in accordance with Chapter III of the *Belgian Act of 16 December 1851* constituting Title XVIII, Book III of the *Belgian Civil Code* to be entered into between Sidech, as mortgagor, and the Administrative Agent, as beneficiary, pursuant to which Sidech shall establish a first ranking mortgage in respect of all immovable properties owned by it, with the exception of the land on which a long lease ("*emphytéose*" / "*erfpacht*") was granted to the municipality of Villers-la-Ville by deed dated 9 October 2007, located Rue de la Station in Tilly (Belgium), registered in the land register in the 5th division, Section C, nr 243 T4;

"Sidech Pledge on Business Assets" means the pledge over business to be entered into between Sidech, as pledgor, and the Administrative Agent, as pledgee, pursuant to which Sidech shall establish a first ranking pledge over all present and future assets being part of its business which are (i) located on the premises of the business or at any other location and (ii) which may be pledged in accordance with the Law of 25 October 1919 (as amended from time to time) including, but not limited to, the clientele, goodwill, the commercial names and signs of Sidech, the commercial organisation of Sidech, the trademarks, patents, know-how, and all other intellectual property rights, whether exclusive or not, of Sidech, all rights out of leases, including real property leases of Sidech, all furniture, commercial records, materials, machines, equipment, raw materials, unfinished products, vehicles, including all items of movable property deemed immovable by destination of Sidech, [REDACTED] [percentage] of the inventory of Sidech, all permits, licenses and authorisations of Sidech, all shareholdings and participations of Sidech in other Persons, all receivables, cash, securities and all assets on accounts of Sidech with financial institutions, and all such other items which are useful to Sidech's business and which may be pledged under a pledge over the business, the whole to guarantee the proper performance of all obligations due under this Agreement, to the extent and up to the amounts set forth in Section 13.7;

"Stamping Fee" refers to the fee payable with respect to any BA pursuant to the provisions of Section 6.4;

"Stand-By Fees" refers collectively to the fees payable pursuant to the provisions of Section 11.1;

"Subsidiary" of any Person means any Person (i) which is Controlled, directly or indirectly by such first Person or (ii) a majority of whose voting Capital Stock, on a fully diluted basis, is owned directly or indirectly, beneficially or otherwise, by such first Person. A Person shall be deemed to be a Subsidiary of another Person if it is a Subsidiary of a Person that is that other's Subsidiary;

"Substitute Basis" means the substitute basis for the BA Liabilities, the Libor Loans or the EuroLibor Loans referred to in subsection 22.2.2;

"Swingline Cdn Prime Rate Loan" means, as at any time, that portion of the Cdn Swingline Loan with respect to which the Borrower is required to pay interest on a Cdn Prime Rate Basis;

"Swingline HK US Base Rate Loan" means, as at any time, that portion of the HK Swingline Loan with respect to which the Borrower is required to pay interest on a US Base Rate Basis;

"Swingline UK US Base Rate Loan" means, as at any time, that portion of the UK Swingline Loan with respect to which the Borrower is required to pay interest on a US Base Rate Basis;

"Swingline US Base Rate Loan" means, as at any time, that portion of the Cdn Swingline Loan with respect to which the Borrower is required to pay interest on a US Base Rate Basis;

"Sylarus" means Sylarus Technologies, LLC, a limited liability company constituted under the Laws of Delaware, and includes any successor thereto;

"Sylarus Parties" refers collectively to Sylarus and its direct and indirect Subsidiaries, and **"Sylarus Party"** refers to any one thereof;

"Taxed Party" has the meaning ascribed to it in Section 21.1;

"Taxes" means all taxes of any kind or nature whatsoever including capital taxes, realty taxes (including utility charges which are collectible like realty taxes), business taxes, property transfer taxes, Income Taxes, Sales Taxes, levies, stamp taxes, royalties, duties, and all fees, deductions, compulsory loans and withholdings imposed, levied, collected, withheld or assessed as of the Effective Date or at any time in the future, by any Governmental Authority having power to tax, together with penalties, fines, additions to tax and interest thereon, and **"Tax"** shall have a correlative meaning;

"Termination Event" means (i) a transaction in connection with which a member of the Group could be subject to either a civil penalty assessed pursuant to section 502(i) of ERISA or a tax imposed by section 4975 of the Code; (ii) a termination or withdrawal from any Plan (other than a Multiemployer Plan) in such a manner, or any other action with respect to any such Plan (including, without limitation, a substantial cessation of operations within the meaning of section 4062(e) of ERISA), which could result in any liability of a member of the Group to the PBGC, or to a trustee appointed under section 4042(b) of ERISA; (iii) a termination of a Plan such that a member of the Group incurs liability to the PBGC under section 4064 of ERISA; (iv) the existence of an accumulated funding deficiency (as defined in section 302 of ERISA or section 412 of the Code) with respect to any Plan (other than a Multiemployer Plan) which could result in any liability of a member of the Group; (v) a complete or partial withdrawal from a "multiemployer plan" (as described in section 4063(a) of ERISA) or a Multiemployer Plan in such a manner which could result in any liability of a member of the Group to any such plan; and (vi) a failure to make full payment when due of all amounts with respect to any Plan which, under Section 412(m) of the Code, a member of the Group is required to pay as contributions thereto;

"Test Period" means any period of four consecutive and completed fiscal quarters of the Borrower;

"Total Funded Debt" means at any time, on a consolidated basis, the Debt for Borrowed Money of the Borrower at such time, including for greater certainty the Debt for Borrowed Money of the Sylarus Parties, but excludes the amount of the MCP/HSBC Loans outstanding at such time, to the extent that at such time, MCP Asia is not in default thereunder or under the MCP/HSBC Derivative Instruments and that the MCP/HSBC Investment Loan Structure is respected;

"Tranche A" means the portion of the Revolving Facility as set forth in subsection 2.1.2;

"Tranche B" means the portion of the Revolving Facility as set forth in subsection 2.1.2;

"Type" means, with respect to any Advance, its nature as a Cdn Prime Rate Loan, US Base Rate Loan, Libor Loan, EuroLibor Loan or an issue of BAs or LCs;

"UK Swingline Commitment" means, on any date, the lesser of (i) the Commitment of the Other Swingline Lender on such date, and (ii) Cdn\$ [REDACTED] [dollar amount];

"UK Swingline Facility" means the swingline facility which the Other Swingline Lender has agreed to make available to the Borrower pursuant to subsection 2.9;

"UK Swingline Loan" means, at any time, the aggregate of the principal amount of Advances of the Other Swingline Lender then outstanding under the UK Swingline Facility;

"UK Swingline Redistribution" means a redistribution among the Lenders of the amounts outstanding under the Loans and the UK Swingline Loan, the whole as contemplated in Section 24.4;

"US Base Rate" means, for any Lender on any day, a rate per annum equal to the greater of (y) the Administrative Agent's US Base Rate for such day; and (z) the Federal Funds Effective Rate on such day plus [REDACTED] [percentage];

"US Base Rate Basis" means the calculation of interest on the US Base Rate Loans, or any portion thereof, or on any amount with respect to which this Agreement or any other document contemplated hereunder stipulates that it shall bear interest at a rate established, calculated and payable in accordance with the provisions of Sections 5.4 and 5.5;

"US Base Rate Loan", with respect to any Lender, means, as at any time, that portion of the US Dollar Loan of such Lender with respect to which the Borrower has elected or, under the terms of this Agreement, is required to pay interest on a US Base Rate Basis, and **"US Base Rate Loans"** means the aggregate of all US Base Rate Loans of all Lenders;

"US Dollar Account" means the US Dollar account established on behalf of the Borrower by the Administrative Agent at the Account Branch pursuant to Section 24.5;

"US Dollar LC Liability", with respect to any Lender, means, as at any time, the Rateable Share of such Lender in the face amount of the LCs denominated in US Dollars issued under the Revolving Facility, and **"US Dollar LC Liabilities"** refers collectively to the US Dollar LC Liabilities of all Lenders;

"US Dollar Loan", with respect to any Lender, means, as at any time, the aggregate of the principal amount of Advances of such Lender then outstanding in US Dollars under the Revolving Facility, including the US Dollar LC Liability of such Lender;

"US Dollars" or **"US\$"** means the lawful currency of the United States of America;

"US Intercompany Lease" means the commercial property lease entered into between Metalspecialties Realty, Inc., as lessor, and MCP Metalspecialties, Inc., as lessee, in connection

with the real property situated at 515 Commerce Drive, Fairfield, CT 06825, as amended from time to time;

"US Lender" means KBC Bank N.V., New York Branch and any other Lender that is making a Loan from an office or a branch located in the United States of America;

"Voting Capital Stock" means Capital Stock of a Person which carries voting rights or the right to Control such Person generally, provided that Capital Stock which carries the right to vote or Control conditionally upon the happening of an event shall not be considered Voting Capital Stock until the occurrence of such event and then only during the continuance of such event.

"VTB Debt" means the Indebtedness owed to Florinvest S.A., Heresford Ltd., Metals Corp. scrl, S.R.I.W. S.A. and Jean-Pierre Raskin pursuant to the five (5) promissory notes issued by the Borrower under the MCP Acquisition Documents, such five (5) notes having an aggregate principal amount of approximately [REDACTED] [dollar amount] Euros, payable as to approximately [REDACTED] [dollar amount] Euros on April 9, 2012, approximately [REDACTED] [dollar amount] Euros on April 9, 2013 and the balance on April 9, 2014, subject to post-closing adjustments;

"Wisconsin Debt" means the secured interest bearing Indebtedness of 5N Plus Corp. under the US\$ [REDACTED] [dollar amount] state energy program agreement entered with the Wisconsin Department of Commerce on March 3, 2011;

2. **Additional References**

To the extent the context so admits, any reference in this Agreement, or in any agreement ancillary thereto, to:

- 2.1 **"arm's length"** shall be construed in the same manner it is used in the *Income Tax Act* (Canada);
- 2.2 **"fair market value"** shall be construed as the price, expressed in terms of money and money's worth, available in an open and unrestricted market between informed and prudent parties, each acting at arm's length, where neither party is under any compulsion to act;
- 2.3 **"include"**, **"includes"** and **"including"** shall be construed to be followed by the statement "without limitation" and none of such terms shall be construed to limit any word or statement which it follows to the specific or similar items or matters immediately following it;
- 2.4 **"losses and expenses"** shall be construed as losses, costs, expenses, damages, penalties, causes of action, actions, judgments, suits, proceedings, claims, claims over, demands and liabilities, including any applicable court costs and reasonable legal fees and disbursements on a solicitor and client basis, and **"loss and expense"** shall be construed in like manner;

- 2.5 **"rights"** shall be construed as rights, powers, authorities, discretions, privileges, immunities and remedies (actual or contingent, direct or indirect, matured or not, now existing or arising hereafter), whether arising by contract or statute, at law, in equity or otherwise, and **"right"** shall be construed in like manner;
- 2.6 **"obligations"** shall be construed as indebtedness, obligations, responsibilities, duties and liabilities (actual or contingent, direct or indirect, matured or not, now existing or arising hereafter), whether arising by contract or statute, at law, in equity or otherwise, and **"obliged"**, **"obligation"** and **"obligated"** shall be construed in like manner;
- 2.7 **"successor"** of a body corporate shall be construed so as to include (i) any amalgamated or other corporation of which such body corporate or any of its successors is one of the amalgamating or merging corporations, (ii) any corporation resulting from any court approved arrangement of which such body corporate or any of its successors is party, (iii) any corporation resulting from the continuance of such body corporate or any successor of it under the laws of another jurisdiction of incorporation and (iv) any successor (determined as aforesaid or in any similar or comparable procedure under the laws of any other jurisdiction) of any corporation referred to in clause (i), (ii) or (iii); and
- 2.8 where under the terms hereof, a definition relating to amounts outstanding under the Loans consists of a collective reference to amounts which are denominated in Canadian Dollars, US Dollars or Euros, as the case may be, unless otherwise indicated, such definition shall be read as referring to that amount expressed in its Equivalent in Canadian Dollars for any portion thereof denominated in US Dollars or Euros, as the case may be.

3. **References to Agreements**

Each reference in this Agreement to any agreement (including this Agreement and any other defined term that is an agreement) shall be construed so as to include such agreement (including any attached schedules) and each amendment, supplement, amendment and restatement, novation and other modification made to it at or before the time in question. The terms **"this Agreement"**, **"this Credit Agreement"**, **"hereof"**, **"hereunder"** and similar expressions refer to this agreement and not to any particular Article, Section, subsection, paragraph, subparagraph, clause or other portion of this agreement.

4. **Reference to Statutes**

Each reference in this Agreement to any code, statute, regulation, official interpretation, directive or other legislative enactment of any Canadian or foreign jurisdiction (including any political subdivision thereof) shall be construed so as to include such code, statute, regulation, official interpretation, directive or enactment and each amendment, reenactment, reissuance or replacement thereof made at or before the time in question.

SCHEDULE "C"

DEFINITION OF RELEVANT MARGIN AND STAND-BY FEE

Level	When R is	Applicable Margin is						The Stand-By Fee shall be
		Section 5.3 (Prime Rate Loans)	Section 5.4 (US Base Rate Loans)	Section 7.3 (Libor Loans)	Section 8.3 (Euro Libor Loans)	Section 9.3.1 (LC Fee ¹)	Section 6.4 (Stamping Fee)	
I	$R \leq 1.00$	████	████	████	████	████	████	████
II	$1.00 < R \leq 1.50$	████	████	████	████	████	████	████
III	$1.50 < R \leq 2.00$	████	████	████	████	████	████	████
IV	$2.00 < R \leq 2.50$	████	████	████	████	████	████	████
V	$2.50 < R \leq 3.00$	████	████	████	████	████	████	████
VI	$R > 3.00$	████	████	████	████	████	████	████

[percentage]

Where "R" means the ratio of Senior Debt to EBITDA, such expressions having the same meaning as that ascribed thereto in Schedule "B" of the Credit Agreement.

For the purposes of the calculations required to be made under this Schedule, the ratio of Senior Debt to EBITDA shall be determined quarterly, on a consolidated basis, on the day (the "**Reset Date**") which is three (3) Business Days after the Administrative Agent receives the Compliance Certificate contemplated in Section 17.2 or 17.3, as the case may be, with respect to the fiscal quarter or fiscal year, as the case may be, most recently ended. The first Reset Date shall occur on the day which is three (3) Business Days after the Administrative Agent receives the Compliance Certificate for the fiscal year ending on May 31, 2011.

Any adjustment to the Relevant Margin and the Stand-By Fee shall only take place on a Reset Date.

¹ Under the provisions of Section 9.4, an additional LC Fronting Fee of █████ [percentage] is payable to the LC Issuing Lender for its own account and exclusive benefit, it being understood that no such LC Fronting Fees shall be charged if there is only one (1) Lender. In connection with documentary LCs, additional administrative fees are payable to the LC Issuing Lender in accordance with its fee schedule at the relevant time.

If the Borrower fails to submit to the Administrative Agent the Compliance Certificate referred to in Section 17.2 or 17.3, as the case may be, by the time required under such Section 17.2 or 17.3, as the case may be, then the Relevant Margin and the Stand-By Fee shall be those applicable at Level VI, throughout the period from the last day by which the Borrower should have provided such Compliance Certificate until the date which is three (3) Business Days following the date on which the Administrative Agent receives such Compliance Certificate.

For the period from the Effective Date until the first Reset Date, the Relevant Margin and the Stand-By Fee shall be established on the basis of the Compliance Certificate delivered pursuant to Subsection 14.1.11.