SECOND AMENDING AGREEMENT

THIS AGREEMENT is made as of August 24, 2022

BETWEEN:

PHOENIX TECHNOLOGY SERVICES INC., a corporation existing under the laws of the Province of Alberta (hereinafter sometimes referred to as the "**Canadian Borrower**"),

- and –

PHOENIX TECHNOLOGY SERVICES USA INC., a corporation existing under the laws of the State of Delaware (collectively with the Canadian Borrower, the "**Borrowers**"),

- and -

HSBC BANK CANADA, HSBC BANK USA, NATIONAL ASSOCIATION, THE BANK OF NOVA SCOTIA AND ATB FINANCIAL and such other persons that become party to the Credit Agreement as lenders (hereinafter referred to collectively as the **"Lenders"** and individually as a **"Lender"**),

- and -

HSBC BANK CANADA, a Canadian chartered bank, as agent of the Lenders (hereinafter referred to as the **"Agent"**),

WHEREAS the parties hereto have agreed to amend and supplement certain provisions of the Credit Agreement as hereinafter set forth;

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

1. Interpretation

1.1 In this Agreement and the recitals hereto, unless something in the subject matter or context is inconsistent therewith:

"Agreement" means this second amending agreement, as amended, modified, supplemented or restated from time to time; and

"Credit Agreement" means the second amended and restated credit agreement originally made as of September 6, 2012, amended and restated as of December 12, 2014 and further amended and restated as of July 29, 2019 between the Borrowers, the Lenders and the Agent, as amended by the first amending agreement made as of April 12, 2021.

1.2 Capitalized terms used herein without express definition shall have the same meanings herein as are ascribed thereto in the Credit Agreement.

1.3 The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, references herein to "Sections" are to Sections of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Section or other portion hereof and include any agreements supplemental hereto.

1.4 This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

2. Amendments and Supplements

2.1 ***Amendments to Credit Agreement.*** Subject to the satisfaction of the conditions precedent provided for herein, the Credit Agreement is hereby amended by (a) deleting the stricken text (indicated textually in the same manner as the following example: **~~stricken text~~**) and inserting the bold double underlined text (indicated textually in the same manner in the following example: **underlined text**) as set forth in the marked version of the amended Credit Agreement attached hereto as Annex A and (b) deleting each reference to "Libor" in Schedule B and Schedules D through G, inclusive, to the Credit Agreement and, in each case, substituting a reference to "SOFR" therefor.

3. Fees

3.1 ***Canadian Extension Fee.*** The Canadian Borrower hereby agrees to pay to the Agent, for each Canadian Lender, a fee in Canadian Dollars equal to [redacted] of the aggregate Commitments of each Canadian Lender after giving effect to the provisions hereof.

3.2 ***U.S. Extension Fee.*** The U.S. Borrower hereby agree to pay to U.S. Operating Lender a fee in United States Dollars equal to [redacted] of the aggregate Commitments of the U.S. Operating Lender after giving effect to the provisions hereof.

4. Representations and Warranties

Each Borrower hereby represents and warrants to the Agent and to each Lender, and each Borrower acknowledges and confirms that the Agent and each Lender are relying upon such representations and warranties, as follows:

(a) Capacity, Power and Authority

(i) It is duly incorporated and is validly subsisting under the laws of its jurisdiction of incorporation and has all the requisite corporate capacity, power and authority to carry on its business as presently conducted and to own its property; and

(ii) It has the requisite corporate capacity, power and authority to execute and deliver this Agreement.

(b) Authorization; Enforceability

It has taken or caused to be taken all necessary action to authorize, and has duly executed and delivered, this Agreement, and this Agreement is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, winding up, insolvency, moratorium or other laws of general application affecting the enforcement of creditors' rights generally and to the equitable and statutory powers of the courts having jurisdiction with respect thereto.

(c) Compliance With Other Instruments

The execution, delivery and performance by it of this Agreement and the consummation of the transactions contemplated herein do not conflict with, result in any breach or violation of, or constitute a default under the terms, conditions or provisions of the charter or constating documents or by-laws (of which there have been no changes or amendments to since previously delivered to the Lenders) of, or any unanimous shareholder agreement relating to, it or of any law, regulation, judgment, decree or order binding on or applicable to such Borrower or to which its property is subject or of any material agreement, lease, licence, permit or other instrument to which it is a party or is otherwise bound or by which it benefits or to which its property is subject and do not require the consent or approval of any Governmental Authority or any other party of which the failure to have received or obtained would have or would reasonably be expected to have a Material Adverse Effect.

(d) No Default

No Default or Event of Default has occurred or is continuing.

(e) Credit Agreement Representations and Warranties

Each of the representations and warranties of such Borrower set forth in Article 9 of the Credit Agreement is true and accurate in all respects as of the date hereof.

(f) No Material Adverse Effect

No event has occurred since December 31, 2021 that would reasonably be expected to have a Material Adverse Effect.

The representations and warranties set out herein shall survive the execution and delivery of this Agreement and the making of each Drawdown under the Credit Agreement, notwithstanding any investigations or examinations which may be made by or on behalf of the Agent, the Lenders or Lenders' Counsel. Such representations and warranties shall survive until the Credit Agreement has been terminated.

5. Conditions Precedent

The amendments and supplements to the Credit Agreement contained in Section 2 of this Agreement shall be effective upon, and shall be subject to, the satisfaction of the following conditions precedent:

(a) the Borrowers shall have paid to the Agent, for the benefit of the Lenders, the fees required to be paid pursuant to Section 3 hereof and any other fees agreed to in writing between either of the Borrowers and the Agent, the Lead Arranger or the Lenders;

(b) that the Loan Parties (other than the Borrowers) domiciled in Canada, the United States of America or Luxembourg and Phoenix Technology Services International Ltd shall have executed and delivered the acknowledgement attached hereto as Schedule A;

(c) PHX Energy shall have delivered to the Agent (i) four year *pro forma* consolidated financial projections of PHX Energy, including the projected income statement, balance sheet and cash flow and (ii) all information necessary for the calculation of the financial covenants for each applicable Fiscal Quarter End contained therein, each in form and substance satisfactory to the Agent, acting reasonably; and

(d) the Agent and the Lenders shall have received all such other documentation and information reasonably requested from the Loan Parties and their Subsidiaries including all documentation and other information reasonably requested by any Lender or the Agent, in order to comply with any applicable Anti-Money Laundering Laws.

The foregoing conditions precedent are inserted for the sole benefit of the Lenders and the Agent and may be waived in writing by the Lenders, in whole or in part (with or without terms and conditions).

6. Confirmation of Credit Agreement and other Documents

The Credit Agreement and the other Documents to which each Borrower is a party and all covenants, terms and provisions thereof, except as expressly amended and supplemented by this Agreement, shall be and continue to be in full force and effect and the Credit Agreement, as amended and supplemented by this Agreement, and each of the other Documents to which each such Borrower is a party is hereby ratified and confirmed and shall, from and after the date hereof, continue in full force and effect as herein amended and supplemented, with such amendments and supplements effective from and as of the satisfaction of the conditions precedent set forth in Section 5 hereof).

7. Further Assurances

The Borrowers, the Lenders and the Agent shall promptly cure any default by them in the execution and delivery of this Agreement, the other Documents or any of the agreements provided for hereunder to which it is a party. The Borrowers, at their own expense, shall promptly execute and deliver to the Agent, upon request by the Agent, all such other and further deeds, agreements, opinions, certificates, instruments, affidavits, registration materials and other documents reasonably necessary for the Borrowers' compliance with, or accomplishment of the covenants and agreements of the Borrowers hereunder or more fully to state the obligations of the Borrowers as set out herein or to make any registration, recording, file any notice or obtain any consent, all as may be reasonably necessary or appropriate in connection therewith. The Agent and the Lenders hereby agree to take all steps and actions and execute and deliver all agreements, instruments and other documents as may be required by the Agent and the Lenders to give effect to the foregoing.

8. Enurement

This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns in accordance with the Credit Agreement.

9. Counterparts; Electronic Execution

This Agreement and the other Documents may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement or any other Document to produce or account for more than one such counterpart. Delivery by facsimile or other electronic transmission of an executed counterpart of a signature page to this Agreement and each other Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Document. The words "execution", "execute", "signed", "signature", and words of like import in or related to any document to be signed in connection with this Agreement or any other Document shall be deemed to include electronic signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, as provided in Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada), the *Electronic Commerce Act, 2000* (Ontario), *the Electronic Transactions Act* (British Columbia), the *Electronic Transactions Act* (Alberta), or any other similar laws based on the Uniform Electronic Commerce Act of the Uniform Law Conference of Canada. The Agent may, in its discretion, require that any such documents and signatures executed electronically or delivered by facsimile or other electronic transmission be confirmed by a manually-signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any document or signature executed electronically or delivered by facsimile or other electronic transmission.

10. Albanian Confirmation

For the purposes of the Security governed under the laws of Albania, this Agreement does not replace, renew, compensate, annul or otherwise novate the obligations secured under such Security.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date and year first above written.

PHOENIX TECHNOLOGY SERVICES INC.

By: *"Signed"*
Name:
Title:

By: ______________________
Name:
Title:

PHOENIX TECHNOLOGY SERVICES USA INC.

By: *"Signed"*
Name:
Title:

By: ______________________
Name:
Title:

<u>LENDERS</u>:

HSBC BANK CANADA

By: *"Signed"*
Name:
Title:

By: *"Signed"*
Name:
Title:

HSBC BANK USA, NATIONAL ASSOCIATION

By: *"Signed"*
Name:
Title:

By: ____________________
Name:
Title:

THE BANK OF NOVA SCOTIA

By: *"Signed"*
Name:
Title:

By: *"Signed"*
Name:
Title:

ATB FINANCIAL

By: *"Signed"*
Name:
Title:

By: *"Signed"*
Name:
Title:

<u>AGENT</u>:

HSBC BANK CANADA,
in its capacity as the Agent

By: *"Signed"*
Name:
Title:

By: *"Signed"*
Name:
Title:

SCHEDULE A

ACKNOWLEDGEMENT

For valuable consideration, the receipt of which is hereby acknowledged, each of:

1. PHX Energy Services Corp., as guarantor of the obligations of the Borrowers pursuant to the amended and restated guarantee made as of December 12, 2014 granted by PHX Energy Services Corp. in favour of the Beneficiaries (as defined therein);

2. Phoenix Technology Services LP, as guarantor of the obligations of the Borrowers pursuant to the amended and restated guarantee made as of December 12, 2014 granted by Phoenix Technology Services LP in favour of the Beneficiaries (as defined therein);

3. Phoenix Technology Services Luxembourg Sàrl, as guarantor of the obligations of the Borrowers pursuant to the amended and restated guarantee made as of December 12, 2014 granted by Phoenix Technology Services Luxembourg Sàrl in favour of the Beneficiaries (as defined therein);

4. Phoenix Technology Management Inc., as guarantor of the obligations of the Borrowers pursuant to the guarantee made as of January 22, 2015 granted by Phoenix Technology Management Inc. in favour of the Beneficiaries (as defined therein); and

5. Phoenix Technology Services International Ltd, as guarantor of the obligations of the Borrowers pursuant to the guarantee made as of March 12, 2015 granted by Phoenix Technology Services International Ltd in favour of the Beneficiaries (as defined therein),

hereby acknowledge the amendments and supplements to the Credit Agreement contained in the Second Amending Agreement to which this Acknowledgement is attached and forms a part and confirms that its guarantee described above and the Security entered into in connection therewith are and shall remain in full force and effect in all respects notwithstanding such amendments and supplements and shall continue to exist and apply to all of the Obligations (as defined in each such guarantee and Security, as applicable), including, without limitation, the obligations, indebtedness and liabilities (present and future, absolute or contingent, matured or not) of the Borrowers to the Lenders under, pursuant or relating to the Credit Agreement, as amended by the Second Amending Agreement. This Acknowledgement is in addition to and shall not limit, derogate from or otherwise affect the provisions of such guarantee or Security, as applicable.

IN WITNESS WHEREOF the parties hereto have executed this Acknowledgement as of the date and year first above written.

PHX ENERGY SERVICES CORP.

By: *"Signed"*
Name:
Title:

By: ______________________________
Name:
Title:

PHOENIX TECHNOLOGY SERVICES LP, by its general partner, PHOENIX TECHNOLOGY MANAGEMENT INC.

By: *"Signed"*
Name:
Title:

By: ______________________________
Name:
Title:

PHOENIX TECHNOLOGY SERVICES LUXEMBOURG SÀRL

By: *"Signed"*
Name:
Title:

By: ______________________________
Name:
Title:

PHOENIX TECHNOLOGY MANAGEMENT INC.

By: *"Signed"*
Name:
Title:

By: ______________________
Name:
Title:

PHOENIX TECHNOLOGY SERVICES INTERNATIONAL LTD

By: *"Signed"*
Name:
Title:

By: ______________________
Name:
Title:

ANNEX A

AMENDED CREDIT AGREEMENT

CDN.$65,000,000 AND U.S.$15,000,000 CREDIT FACILITIES

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

BETWEEN

PHOENIX TECHNOLOGY SERVICES INC. AND
PHOENIX TECHNOLOGY SERVICES USA INC.
as Borrowers

AND

HSBC BANK CANADA,
HSBC BANK USA, NATIONAL ASSOCIATION,
THE BANK OF NOVA SCOTIA,
ATB FINANCIAL
AND SUCH OTHER PERSONS AS BECOME PARTIES HERETO AS LENDERS
as Lenders

AND

HSBC BANK CANADA
as Agent of the Lenders

SECOND AMENDED AND RESTATED CREDIT AGREEMENT ORIGINALLY MADE AS OF SEPTEMBER 6, 2012, AMENDED AND RESTATED AS OF DECEMBER 12, 2014 AND FURTHER AMENDED AND RESTATED AS OF JULY 29, 2019

HSBC Bank Canada
as Lead Arranger

HSBC Bank Canada
as Administration Agent

HSBC Bank Canada
as Sole Lead Arranger and Bookrunner

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SECOND AMENDED AND RESTATED CREDIT AGREEMENT

THIS SECOND AMNEDED AND RESTATED CREDIT AGREEMENT was originally made as of as of September 6, 2012, was amended and restated on December 12, 2014 and is now further amended and restated on July 29, 2019.

B E T W E E N:

PHOENIX TECHNOLOGY SERVICES INC., a corporation existing under the laws of the Province of Alberta (hereinafter sometimes referred to as the "**Canadian Borrower**"),

OF THE FIRST PART,

– and –

PHOENIX TECHNOLOGY SERVICES USA INC., a corporation existing under the laws of the State of Delaware (hereinafter sometimes referred to as the "**U.S. Borrower**"),

OF THE SECOND PART,

– and –

HSBC BANK CANADA, HSBC BANK USA, NATIONAL ASSOCIATION, THE BANK OF NOVA SCOTIA AND ATB FINANCIAL, together with such other persons as become parties hereto as lenders, (hereinafter sometimes collectively referred to as the "**Lenders**" and sometimes individually referred to as a "**Lender**"),

OF THE THIRD PART,

– and –

HSBC BANK CANADA, a Canadian chartered bank, as agent of the Lenders hereunder (hereinafter referred to as the "**Agent**"),

OF THE FOURTH PART.

WHEREAS the Borrowers, HSBC Bank Canada and HSBC Bank USA, National Association executed and delivered the amended and restated credit agreement made as of September 6, 2012 (the "**Original Credit Agreement**");

AND WHEREAS the Borrowers, HSBC Bank Canada and certain other Lenders amended and restated the Original Credit Agreement into an amended and restated credit agreement made as December 12, 2014 (the "**Existing Credit Agreement**");

AND WHEREAS the parties hereto have agreed to further amend and restate the Existing Credit Agreement on the terms and conditions hereinafter set forth;

AND WHEREAS the Lenders have agreed to provide the Credit Facilities to the Borrowers on the terms and conditions herein set forth;

AND WHEREAS the Lenders wish the Agent to act on their behalf with regard to certain matters associated with the Credit Facilities;

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

ARTICLE 1 - INTERPRETATION

1.1 Definitions

(1) In this Agreement, unless something in the subject matter or context is inconsistent therewith:

"**Acceleration Notice**" means a written notice delivered by the Agent to the Borrowers pursuant to Section 12.2 declaring all Obligations of the Borrowers outstanding hereunder to be due and payable.

"**Acceptable Insured Receivables**" means, with respect to the Loan Parties, the Accounts Receivable which are located in Canada or the United States of America and are not outstanding more than 180 days after the invoice date of the relevant invoice, purchase order or other similar written statement and which are insured for payment by Export Development Canada (or such other insurer acceptable to the Agent, acting reasonably); provided that the Borrowers have provided the Agent the insurance policy covering such Accounts Receivables and (i) such insurance policy is acceptable to the Agent, acting reasonably, and (ii) the Loan Parties are in compliance with all the terms and provisions of such insurance policy.

"**Account Debtor**" means a person who is obligated to pay or perform on or under any Account Receivable.

"**Account Receivable**" means any right of a Loan Party to payment for goods sold or leased or for services rendered in the ordinary course of business and which are located in Canada or the United States of America.

"**Additional Compensation**" has the meaning set out in Section 13.3(1).

"**Adjusted Term SOFR**" means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

"**Adjustment Time**" means the time of occurrence of the last event necessary (being either the delivery of a Demand for Payment or the occurrence of a Termination Event) to ensure that all Obligations, Bank Product Obligations and the Financial Instrument Obligations under any Lender Financial Instruments are thereafter due and payable.

"**Advance**" means an advance of funds made by the Lenders or by any one or more of them to a Borrower (including by way of overdraft under the Operating Facility), but does not include any Conversion or Rollover.

"**Affected Financial Institution**" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"**Affected Loan**" has the meaning set out in Section 13.4.

"**Affiliate**" means any person which, directly or indirectly, controls, is controlled by or is under common control with another person; and, for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" or "under common control with") means the power to direct or cause the direction of the management and policies of any person, whether through the ownership of shares or by contract or otherwise.

"**Agency Fee Agreement**" means the fee letter dated ~~July 23~~August 16, ~~2019~~2022 from HSBC Bank Canada to the Borrowers and accepted and agreed to by the Borrowers, respecting, among other things, the payment of certain fees and other amounts to the Agent for its own account.

"**Agent's Accounts**" means the following accounts maintained by the Agent to which payments and transfers under this Agreement are to be effected:

(a) for Canadian Dollars:

HSBC Bank Canada
SWIFT: HKBCCATT
Cdn.$ Account No.: [redacted]
Favour: HSBC Bank Canada
Name: TT TRANSFER SUSPENSE
Address: 16 York Street, Suite 500, Toronto, ON M5J 0E6
Ref: Phoenix Technology Services Inc.
Attn: Agency Services;

(b) for United States Dollars:

Correspondent: ~~HSBC Bank USA, New York~~
SWIFT: CITIUS33
~~Favour: HSBC Bank USA~~
ABA: ~~021000089~~021000089

Beneficiary: HSBC Bank Canada
SWIFT: HKBCCATT
U.S.$ Account No.: [redacted]

~~Favour: HSBC Bank Canada~~
Name: TT TRANSFER SUSPENSE
Address: 16 York Street, Suite 500, Toronto, ON M5J 0E6
Ref: Phoenix Technology Services Inc. or Phoenix Technology Services USA Inc.
Attn: Agency Services,

or such other account or accounts as the Agent may from time to time designate by notice to the applicable Borrower and the Lenders.

"**Agreement**" means this second amended and restated credit agreement, as the same may be further amended, modified, supplemented or restated from time to time in accordance with the provisions hereof.

"**Anti-Money Laundering Laws**" means the *USA Patriot Act*; the *Trading with the Enemy Act*, and each of the foreign assets control regulations of the United States Treasury Department and any other enabling legislation or executive order relating thereto; the U.S. Money Laundering *Control Act of 1986* and the regulations and rules promulgated thereunder, as amended from time to time and any other federal or state laws relating to "know your customer" rules and regulations; the Beneficial Ownership Regulation; the *U.S. Bank Secrecy Act* and the regulations and rules promulgated thereunder, as amended from time to time; and corresponding laws of (a) the European Union designed to combat money laundering and terrorist financing and (b) jurisdictions in which the Borrowers operate or in which the proceeds of the Loans will be used or from which repayments of the Obligations will be derived including the Part II.1 of the *Criminal Code* (Canada), *The Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the *United Nations Act*, the *Special Economic Measures Act* and the *Freezing of Assets of Corrupt Foreign Officials Act* and the regulations promulgated thereunder, in each case, to the extent applicable to a Loan Party or any Subsidiary.

"**Applicable Laws**" or "**applicable law**" means, in relation to any person, transaction or event:

(a) all applicable provisions of laws, statutes, rules and regulations from time to time in effect of any Governmental Authority; and

(b) all Governmental Authorizations to which the person is a party or by which it or its property is bound or having application to the transaction or event.

"**Applicable Pricing Rate**", as regards to any Loan, or the standby fees payable in accordance with Section 5.7, means, when the Debt to EBITDA Ratio (calculated as at the most recent Fiscal Quarter End) is one of the following, the percentage rate per annum set forth opposite such ratio in the column applicable to the type of Loan in question or such standby fee:

Debt to EBITDA	**Margin on Canadian Prime Rate Loans, U.S. Base Rate Loans**	**Margin on ~~LIBOR~~SOFR Loans, Acceptance Fees for Bankers' Acceptances and**	**Standby Fee on each Credit Facility**

Ratio	and U.S. Prime Rate Loans	Issuance Fees for Letters of Credit	
less than 1.0:1.0	[redacted]	[redacted]	[redacted]
greater than or equal to 1.0:1.0 and less than 1.5:1.0	[redacted]	[redacted]	[redacted]
greater than or equal to 1.5:1.0 and less than 2.0:1.0	[redacted]	[redacted]	[redacted]
greater than or equal to 2.0:1.0 and less than 2.5:1.0	[redacted]	[redacted]	[redacted]
greater than or equal to 2.5:1.0	[redacted]	[redacted]	[redacted]

provided that:

(a) from and after the date of delivery to the Agent, receipt by the Canadian Borrower of a notice of a Borrowing Base Shortfall, the above rates per annum applicable to Loans shall each increase by [redacted] per annum if and for so long as the Borrowing Base Shortfall subsists;

(b) upon the occurrence of an Event of Default, the above rates per annum applicable to Loans shall each increase by [redacted] per annum if and for so long as the Event of Default subsists;

(c) the above rates per annum applicable to ~~Libor~~SOFR Loans are expressed on the basis of a year of 360 days;

(d) the above rates per annum applicable to all other Loans are expressed on the basis of a year of 365 days;

(e) issuance fees for Letters of Credit which are not "direct credit substitutes" (as determined by the Agent, acting reasonably) within the meaning of the Capital Adequacy Requirements shall be 66⅔% of the rate specified in the grid above (or 66⅔% of the rate specified in the grid above as increased pursuant to subsections (a) or (b) above, as applicable); and

(f) changes in the Applicable Pricing Rate shall be effective in accordance with Section 8.7.

"**Approved Securities**" means obligations maturing within one year from their date of purchase or other acquisition by a Loan Party and its Subsidiaries and which are, directly or indirectly (including through a money market fund administered by the Agent):

(a) issued by the Government of Canada or the United States of America or an instrumentality or agency thereof and guaranteed fully as to principal, premium, if any, and interest by the Government of Canada or the United States of America;

(b) issued by a province of Canada or a state of the United States of America, or an instrumentality or agency thereof, which has a long term debt rating of at least A by S&P, A2 by Moody's, or A by DBRS; or

(c) term deposits, guaranteed investment certificates, certificates of deposit, bankers' acceptances or bearer deposit notes, in each case, of any Canadian chartered bank or other Canadian financial institution or any bank or other financial institution incorporated under the laws of the United States of America or any state thereof which has a long term debt rating of at least A+ by S&P, A1 by Moody's, or A (high) by DBRS.

"**Assigned Interests**" has the meaning set out in Section ~~2.20(6~~2.19(6)(a).

"**Assignment Agreement**" means an assignment agreement substantially in the form of Schedule B annexed hereto, with such modifications thereto as may be required from time to time by the Agent, acting reasonably.

"**Attributable Debt**" means, in respect of any lease (excluding any lease characterized as an operating lease under generally accepted accounting principles entered into in the ordinary course of business) entered into by a person or a Subsidiary thereof as lessee, the present value (discounted at the rate of interest implicit in such transaction, determined in accordance with generally accepted accounting principles) of the lease payments of the lessee, including all rent and payments to be made by the lessee in connection with the return of the leased property, during the remaining term of the lease (including any period for which such lease has been extended or may, at the option of the lessor, be extended) but excluding for certainty, (a) amounts required to be paid on account of insurance, taxes, assessments, utility, operating and labour costs and similar charges and (b) amounts payable by a lessee in connection with the exercise of any end of term purchase option, early buy out option or any similar amounts payable at the election of the lessee.

"**Available Tenor**" means, as of any date of determination and with respect to the then -current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or ~~payment period for interest calculated with reference to such Benchmark, as applicable,~~component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such

Benchmark that is then -removed from the definition of "Interest Period" pursuant to Section ~~13.7(4~~13.2(d).

"**BA Discount Rate**" means:

(a) in relation to a Bankers' Acceptance accepted by a Schedule I Lender, the CDOR Rate;

(b) in relation to a Bankers' Acceptance accepted by a Schedule II Lender or Schedule III Lender, the lesser of:

(i) the Discount Rate then applicable to bankers' acceptances accepted by such Schedule II Lender or Schedule III Lender; and

(ii) the CDOR Rate plus 0.10% per annum,

provided that if both such rates are equal, then the "BA Discount Rate" applicable thereto shall be the rate specified in (i) above; and

(c) in relation to a BA Equivalent Advance:

(i) made by a Schedule II Lender or Schedule III Lender, the rate determined in accordance with subparagraph (b) of this definition; and

(ii) made by any other Lender, the CDOR Rate.

"**BA Equivalent Advance**" means, in relation to a Drawdown of, Conversion into or Rollover of Bankers' Acceptances, an advance in Canadian Dollars made by a Non Acceptance Lender as part of such Loan.

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable~~ EEA~~ Resolution Authority in respect of any liability of an ~~EEA~~Affected Financial Institution.

"**Bail-In Legislation**" means with respect to :

(a) any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule; and

(b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their respective Affiliates (other than through liquidation, administration or other insolvency proceedings).

"**Bankers' Acceptance**" means a draft in Canadian Dollars drawn by the Canadian Borrower, accepted by a Lender and issued for value pursuant to this Agreement.

"**Banking Day**" means, (a) in respect of a ~~Libor~~SOFR Loan, a ~~day on which banks are open for business in Calgary, Alberta, Toronto, Ontario, New York, New York and London, England, and,~~U.S. Government Securities Business Day, (b) in respect of the U.S. Operating Facility, a day on which banks are open for business in Calgary, Alberta, Toronto, Ontario and New York, New York and~~,~~ (c) for all other purposes, shall mean a day on which banks are open for business in Calgary, Alberta and Toronto, Ontario, but does not in any event include a Saturday or a Sunday.

"**Bank Product Obligations**" means all obligations of the Canadian Borrower, the U.S. Borrower and the other Subsidiaries arising under or in connection with Bank Products.

"**Bank Products**" means any facilities or services related to cash management, including treasury, depository, overdraft, credit or debit card, purchase card, electronic funds transfer, cash pooling and other cash management arrangements and commercial credit card and merchant card services provided to any Loan Party by any Lender or its Affiliates.

"**Bank Product Providers**" means any Affiliate of a Lender which provides a Bank Product.

"**Bankruptcy Code**" means title 11 of the United States Code, in effect from time to time.

"**Basel III**" means the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking system", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision on 16 December 2010, each as amended, supplemented or restated from time to time.

"**Benchmark**" means, initially, the ~~Libor~~Term SOFR Reference Rate; provided, that~~,~~ if a Benchmark Transition Event ~~or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have~~has occurred with respect to the ~~Libor~~Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section ~~13.7(1)~~13.2.

"**Benchmark Replacement**" means, ~~for~~with respect to any ~~Available Tenor, the first alternative set forth in the order below that can be determined by the Agent for the applicable Benchmark Replacement Date provided that, in the case of subparagraph (a) such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time~~Benchmark Transition Event, either of the following to ~~time as~~the extent selected by the Agent in its ~~reasonable~~unilateral discretion~~. If the Benchmark Replacement as determined pursuant to subparagraph (a), (b) or (c) would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Documents~~:

~~(a) the sum of: (i) Term SOFR and (ii) the related Benchmark Replacement Adjustment;~~

(a) ~~(b)~~ the sum of: (i) Daily Simple SOFR and (ii) the related Benchmark Replacement Adjustment; or

(b) ~~(c)~~ the sum of: (i) the alternate benchmark rate that has been selected by the Agent and the Canadian Borrower ~~as the replacement for the then-current Benchmark for the applicable Corresponding Tenor~~ giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement ~~for~~to the then-current Benchmark for United ~~Stated~~States Dollar denominated syndicated credit facilities ~~at such time~~ and (ii) the related Benchmark Replacement Adjustment,

provided that, if the Benchmark Replacement as determined pursuant to subparagraphs (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Documents.

"**Benchmark Replacement Adjustment**" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, ~~for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:~~

~~(a) for purposes of subparagraphs (a) and (b) of the definition of "Benchmark Replacement", the first alternative set forth in the order below that can be determined by the Agent:(i)~~ the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) ~~as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;~~

~~(ii) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and~~

~~(b) for purposes of subparagraph (c) of the definition of "Benchmark Replacement," the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero)~~ that has been selected by the Agent and the Canadian Borrower ~~for the applicable Corresponding Tenor~~ giving due consideration to (~~i~~a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body ~~on the applicable Benchmark Replacement Date~~ or (~~ii~~b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for United States Dollar denominated syndicated credit facilities~~,~~

~~provided that, in the case of subparagraph (a) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Agent in its reasonable discretion.~~

~~“**Benchmark Replacement Conforming Changes**” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “U.S. Base Rate,” the definition of “Banking Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of Drawdown Notices or Repayment Notices, Conversion Notices or Rollover Notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Documents)~~ at such time.

“**Benchmark Replacement Date**” means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of subparagraph (a) or (b) of the definition of “Benchmark Transition Event",~~”~~ the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of subparagraph (c) of the definition of ~~“~~"Benchmark Transition Event",~~”~~ the first date ~~of the public~~on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication ~~of information~~ referenced ~~therein; or~~ in such subparagraph (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

~~(c) in the case of an Early Opt-in Election, the sixth (6th) Banking Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Banking Day after the date~~

~~notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Majority of the Lenders.~~

For the avoidance of doubt, ~~(A) if the event giving rise to the~~ the "Benchmark Replacement Date ~~occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (B) the "Benchmark Replacement Date"~~" will be deemed to have occurred in the case of subparagraph (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof) ~~if:~~

~~(I) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);~~

~~(II) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or~~

~~(III) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative~~.

"**Benchmark Transition Event**" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are ~~no longer~~not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"**Benchmark Unavailability Period**" means the period (if any) (a) beginning at the time that a Benchmark Replacement Date~~ pursuant to subparagraphs (a) or (b) of that definition~~ has occurred if, at such time, no Benchmark Replacement has replaced the then -current Benchmark for all purposes hereunder and under any Document in accordance with Section ~~13.7~~13.2 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any other Document in accordance with Section ~~13.7~~13.2.

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

"**Beneficial Ownership Regulation**" means 31 C.F.R. § 1010.230.

"**Borrowers**" means any one or more of the Canadian Borrower and the U.S. Borrower as applicable and as the context requires and, in the context of provisions hereunder relating to:

(a) the Syndicated Facility and Loans thereunder, means the Canadian Borrower and/or the U.S. Borrower, as applicable;

(b) the Operating Facility and Loans thereunder, means the Canadian Borrower and

(c) the U.S. Operating Facility and Loans thereunder, means the U.S. Borrower.

"**Borrowing Base**" means, without duplication, the amount in Canadian Dollars equal to the aggregate of:

(a) 75% of all Eligible Accounts Receivable owing by Account Debtors (i) rated BB+ or lower by S&P or the equivalent by a similar rating agency, or (ii) not rated by S&P or any similar rating agency;

(b) 85% of all Eligible Accounts Receivable owing by Account Debtors rated BBB- or higher by S&P or the equivalent by a similar rating agency;

(c) 90% of Acceptable Insured Receivables; plus

(d) 50% of the net book value of the Loan Parties' capital assets excluding capital assets (1) under construction or (2) which are included in joint ventures and further provided that such capital assets are located in Canada and the United States of America and over which, except as otherwise provided in Section 11.2 or as agreed to by the Lenders, the Agent and the Lenders have a first ranking perfected Security Interest; and

(e) the applicable Inventory Margin,

less:

(i) an amount equal to all accrued but unpaid statutory source deductions of the Loan Parties;

(ii) an amount equal to all unpaid wages, vacation pay and other compensation for services rendered by employees of the Loan Parties; and

(iii) any other claims ranking in priority to the Security.

"**Borrowing Base Certificate**" means a report and certificate of the Canadian Borrower substantially in the form annexed hereto as Schedule I which, inter alia, provides:

(a) a calculation of the net book value of the capital assets of the Loan Parties located in Canada or the United States of America;

(b) a summary of all Accounts Receivable and accounts payable of the Loan Parties located in Canada or the United States of America as of such Month End (including particulars of all Account Debtors and the age of such Accounts Receivable);

(c) a summary of all outstanding Inventory of the Loan Parties located in Canada or the United States of America (including the locations of such Inventory);

(d) evidence satisfactory to the Agent, acting reasonably, that all Acceptable Insured Receivables listed in the Borrowing Base Certificate are permitted pursuant to the definition of Acceptable Insured Receivables;

(e) a summary of all accrued but unpaid statutory source deductions, all unpaid wages, vacation pay and other compensation for services rendered by employees of the Loan Parties and any other claims ranking in priority to the Security; and

(f) the Canadian Borrower's calculation of the Borrowing Base as at the applicable Month End (including particulars of the basis on which the Canadian Borrower has made such calculation) together with a certificate of the Canadian Borrower certifying such calculation and the Borrowing Base; provided that it is acknowledged and agreed that the Lenders may re-determine the Borrowing Base in accordance with Section ~~2.24~~2.23.

"**Borrowing Base Notice**" has the meaning set out in Section ~~2.24~~2.23.

"**Borrowing Base Shortfall**" has the meaning set out in Section ~~2.24~~2.23.

"**Canadian Borrower**" means Phoenix Technology Services Inc. and its successors and permitted assigns.

"**Canadian Dollars**" and "Cdn.$" mean the lawful money of Canada.

"**Canadian Lenders**" means, collectively, the Operating Lender and the Syndicated Facility Lenders.

"**Canadian Prime Rate**" means, for any day, the greater of:

(a) the rate of interest per annum established from time to time by the Agent as the reference rate of interest for the determination of interest rates that the Agent will charge to customers in Canada of varying degrees of creditworthiness for Canadian Dollar demand loans in Canada; and

(b) the rate of interest per annum equal to the average annual yield rate for one month Canadian Dollar bankers' acceptances (expressed for such purpose as a yearly rate per annum in accordance with Section 5.5) which rate is shown on the display referred to as the "CDOR Page" (or any display substituted therefor) of Reuters Limited (or any successor thereto or Affiliate thereof) at 10:00 a.m. (Toronto time) on such day or, if such day is not a Banking Day, on the immediately preceding Banking Day, plus 1.00% per annum,

provided that if both such rates are equal or if such one month bankers' acceptance rate is unavailable for any reason on any date of determination, then the "Canadian Prime Rate" shall be the rate specified in (a) above.

"**Canadian Prime Rate Loan**" means an Advance in, or Conversion into, Canadian Dollars made by the Canadian Lenders (or any one of them) to the Canadian Borrower with respect to which the Canadian Borrower has specified or a provision hereof requires that interest is to be calculated by reference to the Canadian Prime Rate.

"**Capital Adequacy Requirements**" means Guideline A, effective November 2018/January 2019, entitled "Capital Adequacy Requirement (CAR) – Simpler Approaches" and Guideline A-I, dated April 2014, entitled "Capital Adequacy Requirements (CAR)" each issued by the Office of the Superintendent of Financial Institutions Canada and all other guidelines or requirements relating to capital adequacy issued by the Office of the Superintendent of Financial Institutions Canada or any other Governmental Authority regulating or having jurisdiction with respect to any Lender, as amended, modified, supplemented, reissued or replaced from time to time.

"**Capital Expenditures**" means, for any period, any expenditure made by any Person for the purchase, lease, license, acquisition, erection, development, improvement or construction of capital assets, including any such expenditure financed by way of a capital lease or any other expenditure required to be capitalized, all as determined on a consolidated basis in accordance with GAAP.

"**CDOR Benchmark Replacement**" means the sum of (a) the alternate benchmark rate that has been selected by the Agent giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such rate by a relevant governmental body (or committee convened by such body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the CDOR Rate, and (b) the CDOR Benchmark Replacement Adjustment; provided that, if the CDOR Benchmark Replacement as so determined would be less than the Floor, the CDOR Benchmark Replacement will be deemed to be the Floor for purposes of this Agreement.

"**CDOR Benchmark Replacement Adjustment**" means, with respect to the alternate benchmark rate for the relevant tenor, the spread adjustment, or method for determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Agent for the purpose of adjusting the alternate benchmark rate to make it comparable to the CDOR Rate giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for determining such spread adjustment, for the placement of the CDOR Rate with the alternative benchmark rate by a relevant governmental body (or committee convened by such body) or (ii) any evolving or then-prevailing market convention for determining a spread adjustment for the replacement of the CDOR Rate with the alternative benchmark rate.

"**CDOR Benchmark Transition Event**" means the earliest to occur of:

(a) an official public statement by or on behalf of the administrator of the CDOR Rate which states that the CDOR Rate has ceased or will cease to be published permanently or indefinitely;

(b) a public statement by the regulatory supervisor for the administrator of the CDOR Rate announcing that the CDOR Rate is or will no longer be representative; and

(c) adequate or reasonable means do not exist for ascertaining the CDOR Rate including, without limitation, because the relevant source used to determine such rate is no longer available or published on a current basis and such circumstances are unlikely to be temporary.

"**CDOR Benchmark Transition**" has the meaning ascribed to such term in Section 13.8.

"**CDOR Benchmark Transition Effective Date**" means the Business Day and time notified by the Agent to the Canadian Borrower as the date and time at which the amendments effected pursuant to Section 13.8 become effective.

"**CDOR Discontinuance**" has the meaning ascribed to such term in Section ~~13.8~~13.7.

"**CDOR Rate**" means, on any date which Bankers' Acceptances are to be issued pursuant hereto, the per annum rate of interest which is the rate determined as being the arithmetic average of the annual yield rates applicable to Canadian Dollar bankers' acceptances having identical issue and comparable maturity dates as the Bankers' Acceptances proposed to be issued by the Canadian Borrower displayed and identified as such on the display referred to as the "CDOR Page" (or any display substituted therefor) of ~~Reuters Limited~~Refinitiv (or any successor thereto or Affiliate thereof) as at approximately 10:00 a.m. (Toronto time) on such day, or if such day is not a Banking Day, then on the immediately preceding Banking Day (as adjusted by the Agent in good faith after 10:00 a.m. (Toronto time) to reflect any error in a posted rate or in the posted average annual rate); provided, however, if such a rate does not appear on such CDOR Page, then the CDOR Rate, on any day, shall be the Discount Rate quoted by the Agent (determined as of 10:00 a.m. (Toronto time) on such day) which would be applicable in respect of an issue of bankers' acceptances in a comparable amount and with comparable maturity dates to the Bankers' Acceptances proposed to be issued by the Canadian Borrower on such day, or if such day is not a Banking Day, then on the immediately preceding Banking Day; provided that, if the rate determined above shall ever be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"**CDOR Successor Rate**" has the meaning ascribed to such term in Section ~~13.8~~13.7.

"**Change of Control**" means and shall be deemed to have occurred if and when:

(a) any person or persons "acting jointly or in concert" (within the meaning ascribed to such phrase in the Multi-Lateral Instrument 62-104 - Take-Over Bids and Issuer Bids) shall beneficially own, directly or indirectly, Voting Shares in the capital of PHX Energy which have or represent more than 50% of all of the votes entitled to be cast by shareholders for an election of the board of directors of PHX Energy;

(b) a Borrower ceases to be a Wholly Owned Subsidiary of PHX Energy;

(c) other than in the case of a Permitted Replacement, individuals who were elected as members of the board of directors of PHX Energy by the most recent resolutions of the shareholders of PHX Energy shall no longer constitute a majority of the board of directors of PHX Energy at any time prior to the next following resolutions of the shareholders of PHX Energy relating to the election of the same; or

(d) other than in the case of a Permitted Replacement, individuals who were members of the board of directors of PHX Energy immediately prior to resolutions of the shareholders of PHX Energy relating to the election of directors shall not constitute a majority of the board of directors following such election.

"**clearing house**" has the meaning set out in Section 6.4.

"**Collateral Investment**" has the meaning set out in Section ~~2.17~~2.16.

"**Commitment**" means a Syndicated Facility Commitment, an Operating Facility Commitment or a U.S. Operating Facility Commitment.

"**Compliance Certificate**" means a certificate of the Canadian Borrower signed on its behalf by any one of the president, chief financial officer, vice president finance or treasurer, substantially in the form annexed hereto as Schedule C, to be given to the Agent and the Lenders by the Canadian Borrower pursuant hereto.

"**Conforming Changes**" means, with respect to either the use of administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "U.S. Base Rate", the definition of "Banking Day", the definition of "Interest Period", the definition of "U.S. Government Securities Business Day", the timing and frequency of determining rates and making payments of interest, timing of Drawdown Notices, Repayment Notices, Conversion Notices or Rollover Notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Documents).

"**Consolidated Net Tangible Assets**" means, as at any date of determination, all consolidated assets of PHX Energy as shown in a consolidated balance sheet of PHX Energy for such date, less the aggregate of the following amounts reflected upon such balance sheet:

(a) all goodwill, deferred assets, patents, trademarks, copyrights and other similar intangible assets;

(b) investments in entities or non wholly-owned Subsidiaries involved in joint ventures; and

(c) assets held for sale, disposition or to be discontinued and classified in such manner,

all as determined in accordance with GAAP.

"**Conversion**" means a conversion or deemed conversion of a Loan under a given Credit Facility into another type of Loan under the same Credit Facility pursuant to the provisions hereof, provided that, subject to Section ~~2.8~~2.7 and to Article 6 with respect to Bankers' Acceptances, the conversion of a Loan denominated in one currency to a Loan denominated in another currency shall be effected by repayment of the Loan or portion thereof being converted in the currency in which it was denominated and readvance to the applicable Borrower of the Loan into which such conversion was made.

"**Conversion Date**" means the date specified by the applicable Borrower as being the date on which such Borrower has elected to convert, or this Agreement requires the conversion of, one type of Loan under a given Credit Facility into another type of Loan under the same Credit Facility and which shall be a Banking Day.

"**Conversion Notice**" means a notice substantially in the form annexed hereto as Schedule D to be given to the Agent by the applicable Borrower pursuant hereto.

"**Corresponding Tenor**" means, with respect to any Available Tenor, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

"**Credit Facilities**" means, collectively, the Syndicated Facility, the Operating Facility and the U.S. Operating Facility, and "Credit Facility" means any one of such credit facilities.

"**Currency Excess**" has the meaning set out in Section ~~2.18~~2.17.

"**Currency Excess Deficiency**" has the meaning set out in Section ~~2.18~~2.17.

"**Currency Hedging Agreement**" means any currency swap agreement, cross currency agreement, forward agreement, floor, cap or collar agreement, futures or options, insurance or other similar agreement or arrangement, or any combination thereof, entered into by a Loan Party where the subject matter of the same is currency exchange rates or the price, value or amount payable thereunder is dependent or based upon currency exchange rates or fluctuations in currency exchange rates as in effect from time to time.

"**Daily Simple SOFR**" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for business loans, provided that, if the Agent decides that any such convention is not administratively feasible for the Agent, then the Agent may establish another convention in its reasonable discretion.

"**DBNA**" has the meaning set out in Section 6.4.

"**DBRS**" means DBRS Limited and any successors thereto.

"**Debt**" means, at any time, on a consolidated basis, all indebtedness of a person which is considered to constitute indebtedness for borrowed money in accordance with generally accepted accounting principles including, without limitation, indebtedness for borrowed money, short-term and long-term interest bearing liabilities, capital leases, the face amount of letters of credit, the face amount of letters of guarantee, indebtedness secured by purchase money obligations and the redemption price of any securities issued by a person having attributes substantially similar to debt (such as securities which are redeemable at the option of the holder).

"**Debt to EBITDA Ratio**" means, as applicable and the context requires as at each Fiscal Quarter End, the ratio of (i) Debt as at such Fiscal Quarter End to (ii) EBITDA for the 12 calendar months ending at such Fiscal Quarter End.

"**Default**" means any event or condition which, with the giving of notice, lapse of time or upon a declaration or determination being made (or any combination thereof), would constitute an Event of Default.

"**Defaulting Lender**" means any Lender:

(a) that has failed to fund any payment or its portion of any Loan required to be made by it hereunder or to purchase or fund any participation required to be purchased or funded by it hereunder and under the other Documents;

(b) that has notified the Canadian Borrower, the Agent or any Lender (verbally or in writing) that it does not intend to or is unable to comply with any of its funding obligations under this Agreement or has made a public statement to that effect or to the effect that it does not intend to or is unable to fund advances generally under credit arrangements to which it is a party;

(c) that has failed, within 3 Banking Days after request by the Agent to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans;

(d) that has otherwise failed to pay over to the Agent or any other Lender any other amount required to be paid by it hereunder within 3 Banking Days of the date when due, unless the subject of a good faith dispute;

(e) in respect of which a Lender Insolvency Event or a Lender Distress Event has occurred in respect of such Lender or its Lender Parent;

(f) that has, or that has a Lender Parent that has, become the subject of a Bail-In Action; or

(g) that is generally in default of its obligations under other existing credit and loan documentation under which it has commitments to extend credit.

"**Defaulting Lender's Assigned Interests**" has the meaning set out in Section 16.2(7).

"**Demand for Payment**" means an Acceleration Notice or a Financial Instrument Demand for Payment.

"**Departing Agent**" has the meaning set out in Section 11.8.

"**Designated Material Subsidiary**" means a Subsidiary which is designated as a Material Subsidiary pursuant to Section 11.1 and which would not otherwise fall within part (a) or (b) of the definition of "Material Subsidiary".

"**Discount Proceeds**" means the net cash proceeds to the Canadian Borrower from the sale of a Bankers' Acceptance pursuant hereto or, in the case of BA Equivalent Advances, the amount of a BA Equivalent Advance at the BA Discount Rate, in any case, before deduction or payment of the fees to be paid to the Lenders under Section 6.2.

"**Discount Rate**" means, with respect to the issuance of a bankers' acceptance, the rate of interest per annum, calculated on the basis of a year of 365 days, (rounded upwards, if necessary, to the nearest whole multiple of 1/100th of one percent) which is equal to the discount exacted by a purchaser taking initial delivery of such bankers' acceptance, calculated as a rate per annum and as if the issuer thereof received the discount proceeds in respect of such bankers' acceptance on its date of issuance and had repaid the respective face amount of such bankers' acceptance on the maturity date thereof.

"**Distributable Cash Flow**" means, in respect of any Fiscal Year of PHX Energy, without duplication, EBITDA for such Fiscal Year less the aggregate for such Fiscal Year of:

(a) Maintenance Capital Expenditure (net of reimbursement or insurance proceeds);

(b) all debt service payments and scheduled principal repayment of Debt including, without limitation, all cash paid Interest Expense, all scheduled principal repayments of the Credit Facilities; and

(c) cash paid Income Tax Expense.

"**Distribution**" means:

(a) the declaration, payment or setting aside for payment of any dividend or other distribution on or in respect of any Ownership Interest in PHX Energy (including any return of capital) but excluding any dividend or distribution payable in securities of PHX Energy;

(b) the redemption, retraction, purchase, retirement or other acquisition, in whole or in part, of any Ownership Interest in PHX Energy or any securities, instruments or contractual rights capable of being converted into, exchanged or exercised for shares in the capital thereof, including, without limitation, options, warrants, conversion or exchange privileges and similar rights;

(c) the making of any loan or advance or any other provision of credit to any shareholder of PHX Energy; or

(d) the payment of any principal, interest, fees or other amounts on or in respect of any loans, advances or other Debt owing at any time by PHX Energy to any shareholder of PHX Energy, Affiliates of PHX Energy or shareholders of Affiliates of PHX Energy, other than to a Loan Party.

"**Documents**" means this Agreement, the Security, the Agency Fee Agreement and all certificates, notices, instruments and other documents delivered or to be delivered by a Loan Party to the Agent or the Lenders, or both, in relation to the Credit Facilities pursuant hereto or thereto and, when used in relation to any person, the term "Documents" shall mean and refer to the Documents executed and delivered by such person.

"**Drafts**" means drafts, bills of exchange, receipts, acceptances, demands and other requests for payment drawn or issued under a Letter of Credit.

"**Drawdown**" means:

(a) an Advance of a Canadian Prime Rate Loan, U.S. Base Rate Loan, U.S. Prime Rate Loan or ~~Libor~~SOFR Loan;

(b) the issue of Bankers' Acceptances (or the making of a BA Equivalent Advance in lieu thereof) other than as a result of Conversions or Rollovers; or

(c) the issue of Letters of Credit.

"**Drawdown Date**" means the date on which a Drawdown is made by a Borrower pursuant to the provisions hereof and which shall be a Banking Day.

"**Drawdown Notice**" means a notice substantially in the form annexed hereto as Schedule E to be given to the Agent by the applicable Borrower pursuant hereto.

~~"**Early Opt-In Election**" means, if the then-current Benchmark is the Libor Rate, the occurrence of:~~

~~(a) a notification by the Agent to (or the request by the Canadian Borrower to the Agent to notify) each of the other parties hereto that at least five currently outstanding United States Dollar denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and~~

~~(b) the joint election by the Agent and the Canadian Borrower to trigger a fallback from the Libor Rate and the provision by the Agent of written notice of such election to the Lenders.~~

"**EBITDA**" means, for any period, with reference to any rolling four quarter period, an amount equal to the Net Income of PHX Energy determined on a consolidated basis for such period, plus:

(a) without duplication, the following (to the extent the amounts in clauses (i) through (ix) were deducted in calculating Net Income for such period as per GAAP):

(i) Interest Expense;

(ii) Income Tax Expense;

(iii) Non-cash items, including depletion, depreciation, amortization and future taxes;

(iv) costs and expenses incurred by the Borrowers in entering into of this Agreement;

(v) accrual of stock based compensation expense to the extent not paid in cash or if satisfied by the issue of new equity;

(vi) non-cash currency translation losses or mark-to-market losses on any Lender Financial Instruments or any other derivatives;

(vii) other non-cash items including goodwill impairment (other than any such non-cash item to the extent it represents an accrual of or reserve for cash expenditures in any future period);

(viii) equity loss in the financial results of any entity involved in a joint venture; and

(ix) any dividends or distributions actually received from entities involved in a joint venture;

(b) minus, without duplication, the following to the extent included in calculating consolidated Net Income as per GAAP for such period:

(i) income tax credits;

(ii) the non-cash currency translation gains or mark-to-market gains on any Lender Financial Instruments or any other derivatives;

(iii) non-cash charges previously added back to Net Income in determining EBITDA to the extent such non- cash charges have become cash expenditures during such period;

(iv) any other non-cash, non-recurring items increasing such Net Income (other than any such non-cash items to the extent that it will result in the receipt of cash payments in any future period); and

(v) equity income in the financial results of entities involved in joint ventures,

With respect to acquisitions permitted pursuant to Section 10.2(m), EBITDA shall be normalized, as if such acquisition was made at the beginning of the financial reporting period (and evidenced by receipt of supporting financial statements pertaining to the acquisition, acceptable to Lenders). Similarly, with respect to sale of any fixed assets or a Subsidiary, EBITDA shall be normalized and EBITDA shall exclude EBITDA from such fixed asset or Subsidiary, as if such fixed asset or Subsidiary did not exist since the beginning of the financial reporting period for such calculation.

For certainty, for the purposes of calculating EBITDA (a) Net Income shall include any gains or losses resulting from drilling equipment lost downhole in the ordinary course of business~~,~~ and (b) foreign exchange losses incurred in connection with, or related to, the sale of operations of the Borrowers and their Subsidiaries in Russia shall be excluded from the calculation of EBITDA up to a maximum amount of Cdn.$10,000,000~~ and (c) amounts in connection with stock repurchases permitted pursuant hereto that are subsequently used in connection with stock-based compensation shall be excluded from the calculation of EBITDA~~.

“**EEA Financial Institution**” means:

(a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority;

(b) any entity established in an EEA Member Country which is a parent of an institution described in subparagraph (a) of this definition; or

(c) any institution established in an EEA Member Country which is a subsidiary of an institution described in subparagraph (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein and Norway~~ and, following the withdrawal of the United Kingdom from the European Union, shall be deemed to include the United Kingdom~~.

"**EEA Resolution Authority**" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Accounts Receivable**" means an Account Receivable which:

(a) if it arises from the provision of services, such services have been performed for the Account Debtor under such Account Receivable and if it arises from the sale or lease of goods, title to such goods has passed to the Account Debtor under such Account Receivable or such goods have been shipped to the Account Debtor;

(b) is a valid and legally enforceable obligation of the Account Debtor and is not subject to any offset, counter-claim or other defence which has been asserted on the part of such Account Debtor or to any other claim on the part of such Account Debtor denying liability thereunder in full or in part;

(c) is due from an Account Debtor located in Canada or the United States of America or from an Account Debtor located outside of Canada or the United States of America which has been approved in writing by the Lenders;

(d) to the extent possible under Applicable Law, without the necessity of informing all Account Debtors, is subject to a properly perfected security interest in favour of the Agent and the Lenders and not subject to any other Security Interest whatsoever other than statutory liens and trusts arising by operation of law (and which, for certainty, have not been consensually created) which secure amounts which are neither due nor delinquent;

(e) is evidenced by an invoice, purchase or service order or other similar written statement and has payment terms in accordance with the usual practice of the industry rendered to the appropriate Account Debtor, and is not evidenced by any instrument or chattel paper unless all necessary steps have been taken to perfect the security interest contained in such instrument or chattel paper;

(f) (i) with respect to an Account Debtor rated BB+ or lower by S&P or the equivalent by a similar rating agency, or not rated by S&P or any similar rating agency, is not outstanding more than 90 days after the invoice date of the relevant invoice, purchase order or other similar written statement and (ii) with respect to Account Debtors rated BBB- or higher by S&P or the equivalent by a similar rating agency, is not outstanding more than 120 days after the invoice date of the relevant invoice, purchase order or other similar written statement;

(g) is not a doubtful account, in the judgment of the Agent, acting reasonably;

(h) is not owing from an Account Debtor which is Insolvent;

(i) is owing from an Account Debtor which is not an Affiliate of PHX Energy or a Subsidiary and not on a non-arm's length basis to PHX Energy or a Subsidiary;

(j) is not owing from an Account Debtor that is an agency, department or instrumentality of the United States or any state thereof unless PHX Energy or its relevant Subsidiary shall have satisfied the requirements of the *Assignment of Claims Act of 1940*, and any similar state legislation and the Agent is satisfied as to the absence of setoffs, counterclaims and other defenses on the part of such account debtor; and

(k) is not, to the Loan Parties' and their Subsidiaries' actual knowledge, owing from a Sanctioned Person.

provided that, an Account Receivable which is at any time an Eligible Account Receivable, but which subsequently fails to meet any of the foregoing requirements, shall forthwith cease to be an Eligible Account Receivable.

"**Environmental Claims**" means any and all administrative, regulatory or judicial actions, suits, demands, claims, liens, notices of non-compliance or violation, investigations, inspections, inquiries or proceedings relating in any way to any Environmental Laws or to any permit issued under any such Environmental Laws including, without limitation:

(a) any claim by a Governmental Authority for enforcement, clean up, removal, response, remedial or other actions or damages pursuant to any Environmental Laws; and

(b) any claim by a person seeking damages, contribution, indemnification, cost recovery, compensation or injunctive or other relief resulting from or relating to Hazardous Materials, including any Release thereof, or arising from alleged injury or threat of injury to human health or safety (arising from environmental matters) or the environment.

"**Environmental Laws**" means all Applicable Laws with respect to the environment or environmental or public health and safety matters contained in statutes, regulations, rules, ordinances, orders, judgments, approvals, notices, permits or policies, guidelines or directives having the force of law.

"**Equivalent Amount**" means, on any date, the equivalent amount in Canadian Dollars or United States Dollars, as the case may be, after giving effect to a conversion of a specified amount of United States Dollars to Canadian Dollars or of Canadian Dollars to United States Dollars, as the case may be, at the rate of exchange for Canadian interbank transactions established by the Bank of Canada and quoted at approximately the end of business (Toronto time) for the day in question or, if such determination is required to made prior to such time, as quoted at approximately the end of business (Toronto time) on the Banking Day immediately preceding the date of determination, or, if such rate is for any reason unavailable, at the spot rate quoted for wholesale transactions by the Agent at approximately noon (Toronto time) on that date in accordance with its normal practice.

"**ERISA**" means the *Employee Retirement Income Security Act of 1974* (United States), as amended from time to time.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) that together with any Loan Party is treated as a single employer under Section 414(b) or (c) of the U.S. Code (or Section 414(m) or (o) of the U.S. Code for purposes of provisions relating to Section 412 of the U.S. Code or Section 302 of ERISA)

"**ERISA Event**" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal (as such terms are defined in Part I of Subtitle E of Title IV or ERISA) by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or receipt by any Loan Party or any ERISA Affiliate of any notice concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent (within the meaning of Section 4245 of ERISA) or in endangered or critical status (within the meaning of Section 432 of the U.S. Code or Section 305 of ERISA); (d) the filing pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA of a Pension Plan, or the commencement of proceedings by the PBGC to terminate a Pension Plan; (e) the occurrence of an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon a Loan Party or any ERISA Affiliate, including but not limited to the imposition of any lien in favor of the PBGC or any Pension Plan; (g) any failure by any Pension Plan to satisfy the minimum funding standards (within the meaning of Sections 412 or 430 of the U.S. Code or Section 302 of ERISA) applicable to such Pension Plan, whether or not waived; (h) the filing pursuant to Section 412(c) of the U.S. Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan; (i) the failure to make by its due date a required installment under Section 430(j) of the U.S. Code with respect to any Pension Plan; (j) the failure by any Loan Party or any ERISA Affiliate to make any required contribution to a Multiemployer Plan; (k) a determination that any Pension Plan is, or is expected to be, in "at risk" status (within the meaning of Section 430 of the U.S. Code or Section 303 of ERISA) or; (l) the existence with respect to any Pension Plan of a material non-exempt "prohibited transaction" (within the meaning of Section 406 of ERISA or Section 4975(c) of the U.S. Code).

"**Erroneous Payment**" has the meaning set out in Section 15.15(1).

"**Erroneous Payment Deficiency Assignment**" has the meaning set out in Section 15.15(4).

"**Erroneous Payment Return Deficiency**" has the meaning set out in Section 15.15(4).

"**Erroneous Payment Subrogation Rights**" has the meaning set out in Section 15.15(5).

"**EU Bail-In Legislation Schedule**" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Event of Default**" has the meaning set out in Section 12.1.

"**Existing Credit Agreement**" has the meaning set out in the recitals hereto.

"**Extending Lender**" has the meaning set out in Section ~~2.20(4~~2.19(4)(b).

"**Extension Terms**" has the meaning set out in Section ~~2.20(4~~2.19(4)(b).

"**FATCA**" means (a) Sections 1471 through 1474 of the U.S. Code, as of the date of this Agreement (or any amended or successor version), any current or future regulations or official interpretations thereof, and any agreements entered into pursuant to the foregoing; and (b) any fiscal or regulatory legislation, rules or official practices adopted by any non-U.S. Governmental Authority pursuant to an intergovernmental agreement between such non-U.S. jurisdiction and the United States.

"**Federal Funds Rate**" means, for any day, the rate of interest per annum equal to (a) the weighted average (rounded upwards, if necessary, to the next 1/100th of one percent per annum) of the annual rates of interest on overnight Federal funds transactions with members of the Federal Reserve Board of the United States of America (or any successor thereof) arranged by Federal funds brokers on such day, as published on the next succeeding Banking Day by the Federal Reserve Bank of New York (or any successor thereto) or, (b) if such day is not a Banking Day, such weighted average for the immediately preceding Banking Day for which the same is published or, (c) if such rate is not so published for any day that is a Banking Day, the average (rounded upwards, if necessary, to the next 1/100th of one percent per annum) of the quotations for such day on such transactions received by the Agent from three Federal funds brokers of recognized standing selected by the Agent.

"**Federal Reserve Board**" or "**Federal**" means the Board of Governors of the Federal Reserve System of the United States of America or any successor thereof.

"**Financial Assistance**" means, with respect to any person and without duplication, any loan, Guarantee, indemnity, assurance, acceptance, extension of credit, loan purchase, share purchase, equity or capital contribution, investment or other form of direct or indirect financial assistance or support of any other person or any obligation (contingent or otherwise) primarily for the purpose of enabling another person to incur or pay any Debt or to comply with agreements relating thereto or otherwise to assure or protect creditors of the other person against loss in respect of Debt of the other person and includes any Guarantee of or indemnity in respect of the Debt of the other person and any absolute or contingent obligation to (directly or indirectly):

(a) advance or supply funds for the payment or purchase of any Debt of any other person;

(b) purchase, sell or lease (as lessee or lessor) any property, assets, goods, services, materials or supplies primarily for the purpose of enabling any person to make payment of Debt or to assure the holder thereof against loss;

(c) guarantee, indemnify, hold harmless or otherwise become liable to any creditor of any other person from or against any losses, liabilities or damages in respect of Debt;

(d) make a payment to another for goods, property or services regardless of the non-delivery or non-furnishing thereof to PHX Energy or any of its Subsidiaries (as applicable); or

(e) make an advance, loan or other extension of credit to or to make any subscription for equity, equity or capital contribution, or investment in or to maintain the capital, working capital, solvency or general financial condition of another person.

The amount of any Financial Assistance is the amount of any loan or direct or indirect financial assistance or support, without duplication, given, or all Debt of the obligor to which the Financial Assistance relates, unless the Financial Assistance is limited to a determinable amount, in which case the amount of the Financial Assistance is the determinable amount.

“**Financial Instrument**” means any Interest Hedging Agreement or Currency Hedging Agreement.

“**Financial Instrument Demand for Payment**” means a demand made by a Lender or its Hedging Affiliate pursuant to a Lender Financial Instrument demanding payment of the Financial Instrument Obligations which are then due and payable relating thereto and shall include, without limitation, any notice under any agreement evidencing a Lender Financial Instrument which, when delivered, would require an early termination thereof and a payment by a Loan Party in settlement of obligations thereunder as a result of such early termination.

“**Financial Instrument Obligations**” means obligations arising under Financial Instruments entered into by a Loan Party to the extent of the net amount due or accruing due by a Loan Party thereunder.

“**Fiscal Quarter**” means the first three calendar months of a Fiscal Year, the fourth through sixth calendar months, inclusive, of a Fiscal Year, the seventh through ninth calendar months, inclusive, of a Fiscal Year, or the tenth through twelfth calendar months, inclusive, of a Fiscal Year.

"**Fiscal Quarter End**" means the last day of a Fiscal Quarter.

"**Fiscal Year**" means the 4 Fiscal Quarters ending on December 31 of each calendar year.

"**Floor**" means the ~~benchmark~~ rate ~~floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect~~per annum of interest equal to ~~the Libor Rate~~0%.

"**Former Lender**" has the meaning set out in Section 11.10.

"**GAAP**" means generally accepted accounting principles in Canada, which shall be deemed to be reference to the recommendations at the relevant time of the Canadian Institute of Chartered Accountants (or any successor institute thereto) applicable on a consolidated basis (unless otherwise specifically provided or contemplated herein) as at the date on which any determination or calculation is made or required to be made in accordance with such principles.

"**Governmental Authority**" means any federal, provincial, state, regional, municipal or local government or any department, agency, board, tribunal or authority thereof or other political subdivision thereof and any entity or person exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government or the operation thereof.

"**Governmental Authorization**" means an authorization, order, permit, approval, grant, license, consent, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree or demand or the like issued or granted by law or by rule or regulation of any Governmental Authority.

"**Guarantee**" means any guarantee, undertaking to assume, endorse, contingently agree to purchase or to provide funds for the payment of, or otherwise become liable in respect of, any obligation of any person; provided that the amount of each Guarantee shall be deemed to be the amount of the obligation guaranteed thereby, unless the Guarantee is limited to a determinable amount in which case the amount of such Guarantee shall be deemed to be the lesser of such determinable amount or the amount of such obligation.

"**Hazardous Materials**" means any substance or mixture of substances which, if released into the environment, would likely cause, immediately or at some future time, harm or degradation to the environment or to human health or safety and includes any substance defined as or determined to be a pollutant, contaminant, waste, hazardous waste, hazardous chemical, hazardous substance, toxic substance or dangerous good under any Environmental Law.

"**Hedging Affiliate**" means any Affiliate of a Lender which enters into a Financial Instrument.

"**Income Tax Expense**" means, with respect to PHX Energy, for any period, the aggregate, without duplication and on a consolidated basis, of all Taxes on the income of PHX Energy for such period, determined in accordance with GAAP.

"**Indemnified Parties**" means, collectively, the Agent and the Lenders, including a receiver, receiver manager or similar person appointed under applicable law, and their respective shareholders, Affiliates, officers, directors, employees and agents and "Indemnified Party" means any one of the foregoing.

"**Indemnified Third Party**" has the meaning set out in Section 14.3.

"**Information**" has the meaning set out in Section 16.1.

"**Insolvent**", in respect of any person, means:

(a) such person is unable to generally pay its debts as such debts become due;

(b) a decree or order of a court of competent jurisdiction is entered adjudging such person a bankrupt under the *Bankruptcy and Insolvency Act* (Canada) or the Bankruptcy Code, proceedings are commenced in a court of competent jurisdiction in respect of such person under the *Winding up and Restructuring Act* (Canada), or any proceeding is commenced with respect to such person under the *Companies' Creditors Arrangement Act* (Canada) or the Bankruptcy Code;

(c) any case, proceeding or other action shall be instituted in any court of competent jurisdiction against such person, seeking in respect of it an adjudication in bankruptcy, reorganization, dissolution, winding up, liquidation, a composition, proposal or arrangement with creditors, a readjustment of debts, the appointment of trustee in bankruptcy, receiver, receiver and manager, interim receiver, custodian, sequestrator or other person with similar powers with respect to such person or of all or any substantial part of its assets, or any other like relief in respect of such person under any bankruptcy or insolvency law and:

   (i) such case, proceeding or other action results in an entry of an order for such relief or any such adjudication or appointment, or

   (ii) such case, proceeding or other action shall continue undismissed, or unstayed and in effect, for any period of 10 Banking Days; or

(d) such person makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act* (Canada), the *Winding up and Restructuring Act* (Canada), the Bankruptcy Code or any other bankruptcy, insolvency or analogous law, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee in bankruptcy, receiver, receiver and manager, interim receiver, custodian, sequestrator or other person with similar powers of itself or of all or any substantial portion of its assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition, administration or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such assignment, proposal, relief, petition, proposal, appointment or proceeding.

"**Intellectual Property**" means, collectively, patents, patents pending, copyrights, proprietary processes or programs, industrial designs, trademarks, trademark applications, trade names and other intellectual property of every nature and kind.

"**Interest Coverage Ratio**" means, as at a Fiscal Quarter End, the ratio of (a) EBITDA for the 12 months ending at such Fiscal Quarter End to (b) Interest Expense during the same period.

"**Interest Expense**" means, for any period, without duplication, interest expense of PHX Energy determined on a consolidated basis in accordance with generally accepted accounting principles as the same would be set forth or reflected in a consolidated statement of income of PHX Energy and, in any event and without limitation, shall include:

(a) all interest accrued or payable in respect of such period, including capitalized interest;

(b) all fees (including standby, commitment and stamping fees and fees payable in respect of letters of credit and letters of guarantee supporting obligations which constitute Debt) accrued or payable in respect of such period and which relate to any indebtedness or credit agreement, prorated (as required) over such period;

(c) any difference between the face amount and the Discount Proceeds of any bankers' acceptances, commercial paper and other obligations issued at a discount, prorated (as required) over such period; and

(d) all net amounts charged or credited to interest expense under any Interest Hedging Agreements in respect of such period.

"**Interest Hedging Agreement**" means any interest swap agreement, forward rate agreement, floor, cap or collar agreement, futures or options, insurance or other similar agreement or arrangement, or any combination thereof, entered into by a Loan Party where the subject matter of the same is interest rates or the price, value or amount payable thereunder is dependent or based upon the interest rates or fluctuations in interest rates in effect from time to time (but, for certainty, shall exclude conventional floating rate debt).

"**Interest Payment Date**" means:

(a) with respect to each Canadian Prime Rate Loan, U.S. Base Rate Loan and U.S. Prime Rate Loan, the first Banking Day of each calendar month; and

(b) with respect to each ~~Libor~~SOFR Loan, the last day of each ~~applicable~~ Interest Period therefor and, ~~if~~in the case of any Interest Period ~~is longer~~of more than ~~3~~three months~~,~~' duration, quarterly on each day prior to the last ~~Banking Day~~day of ~~each 3 month period during~~such Interest Period that occurs at three month intervals after the first day of such Interest Period; provided that (i) if any such date would be a day other than a Banking Day, such date shall be extended to the next succeeding Banking Day unless such next succeeding Banking Day would fall in the next calendar month, in which case such date shall be the next preceding Banking Day and (ii) the Interest Payment Date with respect to any SOFR Loan that occurs on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in any applicable calendar month) shall be the last Banking Day of any such succeeding applicable calendar month,

provided that, in any case, the applicable Maturity Date or, if applicable, any earlier date on which a Credit Facility is fully cancelled or permanently reduced in full, shall be an Interest Payment Date with respect to all Loans then outstanding under such Credit Facility.

"**Interest Period**" means:

(a) with respect to each Canadian Prime Rate Loan, U.S. Base Rate Loan and U.S. Prime Rate Loan, the period commencing on the applicable Drawdown Date or Conversion Date, as the case may be, and terminating on the date selected by the applicable Borrower hereunder for the Conversion of such Loan into another type of Loan or for the repayment of such Loan;

(b) with respect to each Bankers' Acceptance, the period selected by the Canadian Borrower hereunder and being of 1, 2 or 3 months' duration, subject to market availability, (or, subject to the agreement of the Lenders, a longer or shorter period) commencing on the Drawdown Date, Rollover Date or Conversion Date of such Loan;

(c) with respect to each SOFR Loan, the period commencing on the Drawdown Date, Rollover Date or Conversion Date in respect of a SOFR Loan and ending in the case of Term SOFR, the period commencing on the date of such Drawdown, Rollover or Conversion and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter, as specified in the applicable Drawdown Notice, Rollover Notice or Conversion Notice, provided that:

(i) no Interest Period shall extend beyond the expiry of the applicable Maturity Date;

(ii) whenever the last day of any Interest Period would otherwise be a day that is not a Banking Day, the last day of such Interest Period shall be extended to the next succeeding Banking Day, provided that, if such extension would cause the last day of an Interest Period for a SOFR Loan to occur in the following calendar month, the last day of such Interest Period shall be the immediately preceding Banking Day;

(iii) for purposes of determining an Interest Period for a SOFR Loan, a month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month; provided, that if there is no numerically corresponding day in the month in which such an Interest Period is to end or if such an Interest Period begins on the last Banking Day of a calendar month, then such Interest Period shall end on the last Banking Day of the calendar month in which such Interest Period is to end; and

(iv) ~~(c) with respect to each Libor Loan, the period selected by the applicable Borrower and being of 1, 2, 3 or 6 months' duration (or, subject to the agreement of the Lenders, a longer or shorter period) commencing on the applicable Drawdown Date, Rollover Date or Conversion Date, as the case may be; and~~no tenor that has been removed from this definition pursuant to Section 13.2 below shall be available for specification in such Drawdown Notice, Rollover Notice or Conversion Notice; and

(v) ~~(d)~~ with respect to each Letter of Credit, the period commencing on the date of issuance of such Letter of Credit and terminating on the last day the Letter of Credit is outstanding,

provided that in any case: (i) the last day of each Interest Period shall be also the first day of the next Interest Period whether with respect to the same or another Loan; (ii) the last day of each Interest Period shall be a Banking Day and if the last day of an Interest Period selected by the applicable Borrower is not a Banking Day the applicable Borrower shall be deemed to have selected an Interest Period the last day of which is the Banking Day next following the last day of the Interest Period selected unless such next following Banking Day falls in the next calendar month in which event the applicable Borrower shall be deemed to have selected an Interest Period the last day of which is the Banking Day next preceding the last day of the Interest Period selected by the applicable Borrower; and (iii) the last day of all Interest Periods for Loans outstanding under a given Credit Facility shall expire on or prior to the Maturity Date applicable thereto, subject, however, in the case of Letters of Credit issued under the Operating Facility to the provisions of Section 7.2.

"**Inventory**" means goods:

(a) that are held by a person for sale or lease, or that have been leased by that person;

(b) that are to be furnished by a person or have been furnished by that person under a contract of service; or

(c) that are materials used or consumed in a business.

"**Inventory Margin**" means the least of:

(a) an amount in Canadian Dollars equal to 50% of the lower of cost or market value (as determined in accordance with generally accepted accounting principles) of the Inventory of the Loan Parties located in Canada and the United States of America (but for certainty, excluding Inventory held outside of Canada and the United States of America) other than (i) any packaging materials comprising Inventory, (ii) consigned Inventory, except for consigned Inventory that is subject to a confirmation (such confirmation to be in form and substance acceptable to the Lenders) from each distributor of such Inventory of the priority of the Security over such Inventory, (iii) Inventory not perfected in accordance with Section 11.2 and (iv) Inventory subject to prior claims or Security Interests (other than Permitted Encumbrances), provided that, the Inventory Margin shall not include any Inventory comprised of work in progress;

(b) Cdn.$~~10,000,000~~20,000,000; and

(c) 15% of the total Borrowing Base then in effect.

"**Investment**" means (a) any purchase or other acquisition of shares or other securities (other than Approved Securities) of any person, (b) any form of Financial Assistance to or for the benefit of any person, or (c) any capital contribution to any other person.

"**ISDA Definitions**" means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

"**ISP 98**" has the meaning set out in Section 7.7.

"**Judgment Conversion Date**" has the meaning set out in Section 14.4.

"**Judgment Currency**" has the meaning set out in Section 14.4.

"**Lead Arranger**" means HSBC Bank Canada.

"**Lender BA Suspension Notice**" has the meaning set out in Section 13.2.

"**Lender Distress Event**" means, in respect of a given Lender, such Lender or its Lender Parent is subject to a forced liquidation, merger, sale or other change of control supported in whole or in part by guarantees or other support (including, without limitation, the nationalization or assumption of ownership or operating control by the Government of the United States of

America, Canada or any other Governmental Authority) or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Lender or Lender Parent or their respective assets to be, insolvent, bankrupt or deficient in meeting any capital adequacy or liquidity standard of any such Governmental Authority.

"**Lender Financial Instrument**" means a Financial Instrument entered into between a Lender or a Hedging Affiliate and a Loan Party.

"**Lender Financial Instrument Obligations**" means, collectively, all of the obligations, indebtedness and liabilities (present or future, absolute or contingent, mature or not) of a Loan Party under, pursuant or relating to any and all Lender Financial Instruments.

"**Lender Insolvency Event**" means, in respect of a given Lender, such Lender or its Lender Parent:

(a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);

(b) becomes insolvent, is deemed insolvent by applicable law or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

(c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;

(d) (i) institutes, or has instituted against it by a regulator, supervisor or any similar Governmental Authority with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, (A) a proceeding pursuant to which such Governmental Authority takes control of such Lender's or Lender Parent's assets, (B) a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy, insolvency or winding-up law or other similar law affecting creditors' rights, or (C) a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar Governmental Authority; or (ii) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy, insolvency or winding-up law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (i) above and either (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof;

(e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

(f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or a substantial portion of all of its assets;

(g) has a secured party take possession of all or a substantial portion of all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case, within 15 days thereafter;

(h) causes or is subject to any event with respect to it which, under the applicable law of any jurisdiction, has an analogous effect to any of the events specified in subparagraphs (a) to (g) above, inclusive; or

(i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing.

"**Lender Parent**" means any person that directly or indirectly controls a Lender and, for the purposes of this definition, "control" shall have the same meaning as set forth in the definition of "Affiliate" contained herein.

"**Lenders**" means those financial institutions named on Schedule A attached hereto, together with such other persons as become parties hereto and, in the context of provisions hereunder relating to:

(a) the Syndicated Facility and Loans thereunder, means the Syndicated Facility Lenders;

(b) the Operating Facility and Loans thereunder, means the Operating Lender; and

(c) the U.S. Operating Facility and Loans thereunder, means the U.S. Operating Lender.

"**Lenders' Counsel**" means the firm of Borden Ladner Gervais LLP or such other firm of legal counsel as the Agent may from time to time designate.

"**Letter of Credit**" or "**LC**" means a letter of credit in form satisfactory to and issued by the Operating Lender, acting at the request of and in accordance with the instructions of the Canadian Borrower, to make payment in accordance with the terms and conditions thereof of an amount to or to the order of a third party.

~~"**Libor Loan**" means an Advance in, or Conversion into, United States Dollars made by the applicable Lenders (or any of them) to the applicable Borrower with respect to which the applicable Borrower has specified that interest is to be calculated by reference to the Libor Rate, and each Rollover in respect thereof.~~

~~"**Libor Rate**" means, for each Interest Period applicable to a Libor Loan, the rate of interest per annum (rounded upward to the nearest whole multiple of 1/100th of 1.00%), expressed on the basis of a year of 360 days, determined by the Agent or the Operating Lender, as applicable, at approximately 11:00 a.m. (London, England time) on the second Banking Day prior to the first day of such Interest Period by reference to the rate set by ICE Benchmark Administration for deposits in United States Dollars (as set forth by any service selected by the Agent or the Operating Lender, as applicable, that has been nominated by ICE Benchmark Administration as an authorized information vendor for the purpose of displaying such rates) for a period equal to the Interest Period in question; provided, however, that, to the extent that such rate is not ascertainable pursuant to the foregoing provisions of this definition, the "Libor Rate" shall be the rate per annum determined by the Agent or the Operating Lender, as applicable, to be the average of the rates per annum at which deposits of United States Dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Agent or the Operating Lender, as applicable (or an Affiliate thereof, if the Agent or the Operating Lender, as applicable, does not offer such deposits) at approximately 11:00 a.m. (London, England time) on the second Banking Day prior to the first day of such Interest Period; provided further that, with respect to Libor Loans made by the U.S. Operating Lender, the Libor Rate shall be the quotient of (a) the rate determined as set forth above divided by (b) a percentage equal to (i) 100% minus (ii) the stated maximum annual rate (expressed as a percent and carried out to the third decimal) as prescribed by the Federal Reserve Board of all reserve requirements (without duplication and including, without limitation, any marginal, emergency, supplemental, special or other reserve requirements) issued from time to time and applicable to assets or liabilities consisting of "Eurocurrency Liabilities" as specified in Regulation D (or any successor regulation) applicable on the first day of such Interest Period to any member bank or the Federal Reserve Board in respect of Eurocurrency funding or liabilities; provided that the Libor Rate for each outstanding Libor Loan shall be adjusted automatically as of the effective date of any change in clause (ii) above; provided that, if the rate determined above shall ever be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.~~

~~"**Libor Successor Rate**" has the meaning set out in Section 13.1(2).~~

"**Loan**" means a Canadian Prime Rate Loan, U.S. Base Rate Loan, U.S. Prime Rate Loan, ~~Libor~~SOFR Loan, Bankers' Acceptance or BA Equivalent Advance or Letter of Credit outstanding hereunder.

"**Loan Parties**" means, collectively, the Borrowers, PHX Energy, Phoenix Technology Services International Ltd. and the Material Subsidiaries governed by the laws of Canada, the United States of America, Ireland or Luxembourg (or a province, territory or state thereof) and "Loan Party" means any one of them.

"**Maintenance Capital Expenditure**" means capital expenditures required to be incurred by PHX Energy and its Subsidiaries in any period in order to maintain the ability of PHX Energy and its Subsidiaries to continue to carry on the business in the manner and to the extent being carried on by them at such time and that does not result in incremental capacity or incremental revenue and is consistent with their projected annual capital expenditure budget.

"**Majority of the Lenders**" means:

(a) if there is only 1 or 2 Lenders, all of the Lenders;

(b) if the Commitments of HSBC Bank Canada and HSBC Bank USA, National Association are, in aggregate, more than 66⅔% of the Commitments of all Lenders hereunder, 3 Lenders; and

(c) at any other time:

(i) during the continuance of a Default or an Event of Default, two or more Lenders the Rateable Portions of all Outstanding Principal of which are, in the aggregate, at least 66⅔% of all Outstanding Principal; and

(ii) at any other time, two or more Lenders the Commitments of which are, in the aggregate, at least 66⅔% of the Commitments of all Lenders hereunder.

"**Material Adverse Effect**" means a material adverse effect on:

(a) the financial condition of PHX Energy and its Subsidiaries on a consolidated basis and taken as a whole;

(b) the ability of PHX Energy and its Subsidiaries, taken as a whole, to observe or perform its obligations under the Documents to which it is a party or the validity or enforceability of such Documents or any material provision thereof;

(c) the property, business, operations, liabilities or capitalization of PHX Energy and its Subsidiaries on a consolidated basis and taken as a whole; or

(d) the Security, the priority thereof or any right or remedy of the Agent and the Lenders thereunder.

"**Material Subsidiary**" means any Subsidiary of PHX Energy which:

(a) has assets equal to or greater than 5.0% of the Consolidated Net Tangible Assets of PHX Energy;

(b) has EBITDA equal to or greater than 5.0% of PHX Energy's consolidated EBITDA;

(c) owns or holds, directly or indirectly (whether through the ownership of or investments in other Subsidiaries of PHX Energy or otherwise), any ownership interest in any assets or properties which are included for the purposes of the determination of the Borrowing Base; or

(d) is designated as a Designated Material Subsidiary pursuant to Section 11.1,

provided that each of the Canadian Borrower and the U.S. Borrower shall be deemed to be a Material Subsidiary for all purposes of the Credit Agreement while each is a Borrower hereunder.

"**Maturity Date**" means, (a) in respect of the Syndicated Facility and the Obligations owing under or pursuant to the Syndicated Facility, the Syndicated Facility Maturity Date, (b) in respect of the Operating Facility and the Obligations owing under or pursuant to the Operating Facility, the Operating Facility Maturity Date and (c) in respect of the U.S. Operating Facility and the Obligations owing under or pursuant to the U.S. Operating Facility, the U.S. Operating Facility Maturity Date.

"**Month End**" means the last day of each calendar month.

"**Moody's**" means Moody's Investors Service, Inc. and any successors thereto.

"**Multiemployer Plan**" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which a Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"**Multiple Employer Plan**" means an employee benefit plan which has two or more contributing sponsors (including a Loan Party or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"**Net Income**" means, in respect of any financial period for which it is being determined, the net income of PHX Energy determined on a consolidated basis in accordance with generally accepted accounting principles, for such period.

"**Non Acceptance Lender**" means (a) a Canadian Lender which ceases to accept bankers' acceptances in the ordinary course of its business or (b) in respect of Canadian Lenders other than Schedule I Lenders, a Canadian Lender who, by notice in writing to the Agent and the Canadian Borrower, elects thereafter to make BA Equivalent Advances in lieu of accepting Bankers' Acceptances.

"**Non-Extending Lender**" has the meaning set out in Section ~~2.20~~2.19.

"**Obligations**" means, at any time and from time to time, all of the obligations, indebtedness and liabilities (present or future, absolute or contingent, matured or not) of the Loan Parties to the Lenders or the Agent under, pursuant or relating to the Documents or the Credit Facilities and whether the same are from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and including, without limitation, all principal, interest, fees, legal and other costs, charges and expenses, and other amounts payable by the Borrowers under this Agreement including, without limitation, interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Loan Parties, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding.

"**OFAC**" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"**Offer of Operating Facility Extension**" has the meaning set out in Section ~~2.21~~2.20.

"**Offer of Syndicated Facility Extension**" has the meaning set out in Section ~~2.20~~2.19.

"**Offer of U.S. Operating Facility Extension**" has the meaning set out in Section ~~2.22~~2.21.

"**Officer's Certificate**" means a certificate or notice (other than a Compliance Certificate) signed by any one of the president, chief financial officer, a vice president, treasurer, assistant treasurer, controller, corporate secretary or assistant secretary of a Loan Party, as the case may be, (including, in the case of a partnership a certificate or notice signed by such an officer of a general partner or managing partner of such partnership); provided, however, that Drawdown Notices, Conversion Notices, Rollover Notices and Repayment Notices shall be executed on behalf of the applicable Borrower by any one of the foregoing persons or such other persons as may from time to time be designated by written notice from the applicable Borrower to the Agent.

"**Operating Facility**" means the credit facility in the maximum principal amount of the Operating Facility Commitment (or the Equivalent Amount thereof) to be made available to the Canadian Borrower by the Operating Lender in accordance with the provisions hereof, subject to any reduction in accordance with the provisions hereof.

"**Operating Facility Commitment**" means the commitment by the Operating Lender under the Operating Facility to provide up to the amount of Canadian Dollars (or the Equivalent Amount thereof) set forth opposite its name in Schedule A annexed hereto, subject to any reduction in accordance with the terms hereof.

"**Operating Facility Maturity Date**" means December 12, ~~2023~~2025, or such later date to which the same may be extended in accordance with Section ~~2.21~~2.20.

"**Operating Lender**" means HSBC Bank Canada or any other Lender which hereafter has an Operating Facility Commitment.

"**Order**" has the meaning set out in Section 7.7.

"**Original Credit Agreement**" has the meaning set out in the recitals hereto.

"**Outstanding BAs Collateral**" has the meaning set out in Section ~~2.17~~2.16.

"**Outstanding Principal**" means, at any time, the aggregate of (i) the principal amount of all outstanding Canadian Prime Rate Loans, (ii) the Equivalent Amount in Canadian Dollars of the principal of all outstanding U.S. Base Rate Loans, U.S. Prime Rate Loans and ~~Libor~~SOFR Loans, (iii) the amounts payable at maturity of all outstanding Bankers' Acceptances and BA Equivalent Advances and (iv) the maximum amount available to be drawn under all outstanding Letters of Credit denominated in Canadian Dollars.

"**Overdraft Loans**" has the meaning set out in Section 2.2.

"**Ownership Interest**" means:

(a) in respect of a body corporate, any shares in the capital of such body corporate;

(b) in respect of a partnership, any partnership units or interests in such partnership and includes any other income, capital, beneficial or ownership interest (however designated) in such partnership; and

(c) in respect of any other person, any income, capital, beneficial or ownership interest (however designated) in such person (including, for certainty, any trust units in the case of a trust),

in each case, whether any of the foregoing are voting or non voting and including any securities, instruments or contractual rights capable of being converted into, exchanged or exercised for any of the foregoing (including options, warrants, conversion or exchange privileges and similar rights).

"**Patriot Act**" has the meaning set out in Section 16.17.

"**PBGC**" means the U.S. Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"**Pension Act**" means the *Pension Protection Act* of 2006.

"**Pension Funding Rules**" means the rules of the U.S. Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and minimum funding with respect to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the *Pension Act*, Section 412 of the U.S. Code and Section 302 of ERISA, each as in effect prior to the *Pension Act* and, thereafter, Section 412, 430, 431, 432 and 436 of the U.S. Code and Sections 302, 303, 304 and 305 of ERISA.

"**Pension Plan**" means any employee pension benefit plan (as defined in Section 3(2) of ERISA and including any Multiple Employer Plan or any Multiemployer Plan) that is sponsored, maintained or is contributed to by any Loan Party or any ERISA Affiliate, or with respect to which a Loan Party or ERISA Affiliate has any obligation or liability, contingent or otherwise, and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 and 430 of the U.S. Code or Section 302 of ERISA.

"**Periodic Term SOFR Determination Day**" has the meaning specified in the definition of "Term SOFR".

"**Permitted Acquisition**" means the following:

(a) the purchase of all or substantially all of the assets or Ownership Interest of another entity or entities provided that: (i) such acquisition complies with Section ~~2.23~~2.22, (ii) such entity or entities are in the same or similar business of the Loan Parties, (iii) such entity or entities are located in an Organization for Economic Cooperation and Development country, (iv) no Default or Event of Default has occurred or would reasonably be expected to result therefrom, (v) in the aggregate in any Fiscal Year, all acquisitions are not in excess of 10% of the Consolidated Net Tangible Assets of PHX Energy, (vi) such acquisition complies with Section 10.1(r), (vii) the assets and property of the target shall be free and clear of all Security Interests except for Permitted Encumbrances and evidence of the foregoing satisfactory to the Agent and the Lenders, each acting reasonably, shall have been received by the Agent and the Lenders; (viii) both before and after such acquisition, each Borrower is in compliance with the financial covenants set forth in Section 10.3 and the representations and warranties of each Borrower set forth in Section 9.1 shall be true and correct, (ix) no Borrowing Base Shortfall shall exist or exist as a result of such acquisition and (x) the Canadian Borrower shall cause the Security to be delivered in accordance with Section 11.1(3), if required;

(b) an acquisition financed 100% by an equity issuance; or

(c) an acquisition consented to by the Majority of the Lenders.

"**Permitted Contest**" means action taken by or on behalf of PHX Energy or a Subsidiary in good faith by appropriate proceedings diligently pursued to contest a Tax, claim or Security Interest, provided that:

(a) the person to which the Tax, claim or Security Interest being contested is relevant (and, in the case of a Subsidiary of the Canadian Borrower, the Canadian Borrower on a consolidated basis) has established reasonable reserves therefor if and to the extent required by generally accepted accounting principles;

(b) proceeding with such contest does not have, and would not reasonably be expected to have, a Material Adverse Effect; and

(c) proceeding with such contest will not create a material risk of sale, forfeiture or loss of, or interference with the use or operation of, a material part of the Consolidated Net Tangible Assets of PHX Energy and its Subsidiaries.

"**Permitted Debt**" means the following:

(a) the Obligations;

(b) to the extent it constitutes Debt, Financial Instrument Obligations under and pursuant to Permitted Hedging;

(c) any Debt owing by (i) a Loan Party (other than Phoenix Technology Services International Ltd.) to another Loan Party (other than Phoenix Technology Services International Ltd.) or (ii) a Loan Party (other Phoenix Technology Services International Ltd.) to any Permitted Investment Subsidiary but only to the extent it constitutes a Permitted Investment;

(d) to the extent it constitutes Debt, obligations in connection with premises leases;

(e) to the extent it constitutes Debt, obligations arising in connection with operating leases entered into in the ordinary course of business (which, for certainty, shall not include any operating leases entered into in connection with any Sale Leaseback);

(f) Purchase Money Obligations and Attributable Debt of the Loan Parties arising in connection with capital leases (other than premises leases) and Sale Leasebacks, provided that the amount of such obligations do not in the aggregate at any time, exceed in aggregate Cdn.$15,000,000 (or the Equivalent Amount thereof in United States Dollars or the equivalent thereof in any other currency);

(g) Debt arising pursuant to the indemnification, purchase price adjustment or similar provisions of agreements entered into by a Loan Party in connection with acquisitions, Investments, Financial Assistance or dispositions permitted hereunder, or pursuant to letters of credit, surety bonds or performance bonds provided to secure the performance of a Loan Party pursuant to such agreements;

(h) Debt secured by the Permitted Encumbrances provided for in subparagraph (v) of the definition thereof;

(i) Debt which is not otherwise Permitted Debt; provided that the principal amount of such obligations do not, in the aggregate, at any time, exceed Cdn.$10,000,000 (or the Equivalent Amount thereof in United States Dollars or the equivalent amount in any other currency); and

(j) obligations arising under or in connection with Bank Products not to exceed Cdn.$20,000,000.

"**Permitted Disposition**" means, in respect of PHX Energy or any of its Subsidiaries, any of the following:

(a) a sale or disposition of inventory in the ordinary course of business;

(b) a disposition constituting a Permitted Investment;

(c) a sale or disposition in the ordinary course of business and in accordance with sound industry practice of tangible personal property that is obsolete, no longer useful for its intended purpose or being replaced in the ordinary course of business;

(d) sales or dispositions by a Subsidiary to a Loan Party or another Subsidiary or by PHX Energy to a Subsidiary, provided that in each case such disposition complies with Section 10.1(r);

(e) a sale or disposition by any of them of its interest in machinery, equipment or other tangible personal property for which Purchase Money Obligations were incurred and which obligations are fully repaid concurrently with such sale or dispositions; and

(f) a sale or disposition where the fair market value of the asset sold or disposed of, together with the fair market value of all other assets sold or disposed of in the previous 12 months is not in excess of an amount equal to 10% of the net book value of the Consolidated Net Tangible Assets of PHX Energy.

"**Permitted Encumbrances**" means as at any particular time any of the following encumbrances on the property or any part of the property of PHX Energy or any of its Subsidiaries:

(a) liens for taxes, assessments or governmental charges not at the time due or delinquent or, if due or delinquent, the validity of which is being contested at the time by a Permitted Contest;

(b) deemed liens and trusts arising by operation of law in connection with workers' compensation, employment insurance and other social security legislation, in each case, which secure obligations not at the time due or delinquent or, if due or delinquent, the validity of which is being contested at the time by a Permitted Contest;

(c) liens under or pursuant to any judgment rendered, or claim filed, against PHX Energy or a Subsidiary, which PHX Energy or such Subsidiary (as applicable) shall be contesting at the time by a Permitted Contest;

(d) undetermined or inchoate liens and charges incidental to construction or current operations which have not at such time been filed pursuant to law against PHX Energy or a Subsidiary or which relate to obligations not due or delinquent or, if due or delinquent, the validity of which is being contested at the time by a Permitted Contest;

(e) easements, rights of way, servitudes or other similar rights in land (including, without in any way limiting the generality of the foregoing, rights of way and servitudes for railways, sewers, drains, gas and oil and other pipelines, gas and water mains, electric light and power and telecommunication, telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved or taken by other persons which individually or in the aggregate do not materially detract from the value of the land concerned or materially impair its use in the operation of the business of PHX Energy and its Subsidiaries, taken as a whole;

(f) any builder's, mechanic's, garageman's, labourer's or materialman's lien or other similar lien arising in the ordinary course of business or out of the construction or improvement of any land or arising out of the furnishing of materials or supplies, provided that such lien secures monies not at the time overdue, or, if due or delinquent, the validity of which is being contested at the time by a Permitted Contest;

(g) encumbrances incidental to the conduct of business or the ownership of property and assets not incurred in connection with the borrowing of money or obtaining credit and which do not, in the aggregate, detract in any material way from the value or usefulness of the property and assets of PHX Energy and its Subsidiaries;

(h) any claim or encumbrance from time to time consented to by the Majority of the Lenders;

(i) in respect of any land, any defects or irregularities in the title to such land which are of a minor nature and which, in the aggregate, will not materially impair the use of such land for the purposes for which such land is held;

(j) security given by PHX Energy or a Subsidiary to a public utility or any municipality or governmental or other public authority when required by such utility or municipality or other authority in connection with the operations of PHX Energy or a Subsidiary (as applicable), all in the ordinary course of its business which individually or in the aggregate do not materially detract from the value of the asset concerned or materially impair its use in the operation of the business of PHX Energy and its Subsidiaries, taken as a whole;

(k) the reservation in any original grants from the Crown of any land or interests therein and statutory exceptions and reservations to title;

(l) Security Interests in favour of the Lenders or the Agent on behalf of the Lenders;

(m) the Security;

(n) any operating lease entered into in the ordinary course of business (which, for certainty, shall not include any operating leases entered into in connection with any Sale Leaseback);

(o) any premises lease entered into in the ordinary course of business;

(p) pledges of cash or Approved Securities and bankers' liens, rights of set off and other similar liens existing solely with respect to cash and Approved Securities on deposit in one or more accounts maintained by PHX Energy or any of its Subsidiaries, in each case, granted in the ordinary course of business in favour of the Lender or Lenders with which such accounts are maintained, securing amounts owing to such Lender with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements;

(q) capital leases provided that the Attributable Debt thereto is Permitted Debt;

(r) Security Interests securing a Purchase Money Obligation, provided that such Security Interests shall attach only to the property acquired in connection with which such Purchase Money Obligation was incurred (and proceeds thereof) and provided further that such Purchase Money Obligation is Permitted Debt;

(s) landlords' liens or any other rights of distress reserved in or exercisable under any lease of real property for rent and for compliance with the terms of such lease; provided that such lien does not attach generally to all or substantially all of the undertaking, assets and property of PHX Energy and its Subsidiaries, taken as a whole;

(t) deposits to secure performance of (i) bids, tenders, contracts (other than contracts for the payment of money) or (ii) leases of real property entered into in the ordinary course of business, in each case, to which PHX Energy or a Subsidiary is a party;

(u) Security Interests resulting from the deposit of cash or Approved Securities as security when PHX Energy or a Subsidiary is required to do so by a Governmental Authority or by normal business practice in connection with contracts, licenses or tenders or similar matters in the ordinary course of business and for the purpose of carrying on the same, or to secure workers' compensation, surety or appeal bonds or to secure costs of litigation when required by Applicable Law;

(v) Security Interests which are not otherwise Permitted Encumbrances; provided that (i) the aggregate amount of obligations secured thereby does not at any time exceed Cdn.$5,000,000 (or the Equivalent Amount thereof in United States Dollars) and (ii) such Security Interests do not attach generally to all or substantially all of the undertaking, assets and property of PHX Energy or a Subsidiary (such as a Security Interest in the nature of a floating charge on all or substantially all of the undertaking, assets and property of a person);

(w) Security Interests on real property and fixtures in connection with the financing of real property; provided that the aggregate amount of obligations secured thereby does not at any time exceed Cdn.$2,500,000 (or the Equivalent Amount thereof in United States Dollars);

(x) any extension, renewal or replacement (or successive extensions, renewals or replacements), as a whole or in part, of any Security Interest referred to in the preceding subparagraphs (a) to (w) inclusive of this definition, so long as any such extension, renewal or replacement of such Security Interest is limited to all or any part of the same property that secured the Security Interest extended, renewed or replaced (plus improvements on such property) and the indebtedness or obligation secured thereby is not increased; and

(y) Security Interests in connection with performance bonds, surety bonds and similar instruments entered into in the ordinary course of business,

provided that nothing in this definition shall in and of itself cause the Obligations hereunder to be subordinated in priority of payment to any such Permitted Encumbrance or cause any Security Interests in favour of the Lenders or the Agent on behalf of the Lenders to rank subordinate to any such Permitted Encumbrance.

"**Permitted Hedging**" means Financial Instruments entered into by the Loan Parties:

(a) which are entered into in the ordinary course of business with the Lenders or their Hedging Affiliates and for hedging purposes and not for speculative purposes (determined, where relevant, by reference to generally accepted accounting principles); for certainty, Interest Hedging Agreements having as a subject matter principal amounts (either individually or in the aggregate, but determined on a net basis taking into account transactions or agreements entered into to reverse the position or limit the exposure under an existing Interest Hedging Agreement) greater than the aggregate liability of the Loan Parties for borrowed money shall be deemed to be for speculative purposes;

(b) (i) which, in the case of a Currency Hedging Agreement has a term of 1 years or less and (ii) which, in the case of an Interest Hedging Agreement has a term not exceeding the earliest Maturity Date (unless cash collateralized or backstopped by a letter of credit which contains terms and conditions acceptable to the Agent);

(c) the notional amount of all Financial Instruments shall not exceed 66.67% of the aggregate outstanding amount of the Syndicated Facility and the U.S. Operating Facility; and

(d) for all purposes relating hereto and to the other Documents, (i) the term of any Financial Instrument shall commence on the date that the Financial Instrument in question is entered into notwithstanding the fact that the effective date of such Financial Instrument, or other date from which payments or deliveries are to be made or determined thereunder, is subsequent to the date such Financial Instrument is entered into and (ii) without limiting the foregoing, and in addition thereto, the term of a swap transaction or other transaction entered into pursuant to or governed by a Master Agreement published by the International Swaps and Derivatives Association, Inc. (including by International Swap Dealers Association, Inc.) or any successor thereto shall commence on the trade date thereof.

"**Permitted Investment**" means any loan or investment (including for certainty any loans or investments made prior to the date hereof) made to a Permitted Investment Subsidiary or other Affiliate of PHX Energy provided that: (a) such loans or investments do not in aggregate exceed $60,000,000, with any investment made after the date of this Agreement over $15,000,000 to be approved by the Majority of the Lenders; and (b) at the time of such loan or investment, no Default or Event of Default has occurred and is continuing and the making of such loan or investment will not result in a Default or Event of Default.

"**Permitted Investment Subsidiary**" means a Subsidiary of PHX Energy (other than a Subsidiary Guarantor except for Phoenix Technology Services International Ltd.) in or to which a Loan Party has made a Permitted Investment.

"**Permitted Replacement**" means the replacement of those directors who have died or have been found to be of unsound mind by a court of competent jurisdiction.

"**PHX Energy**" means PHX Energy Services Corp.

"**Power of Attorney**" means a power of attorney provided by the Canadian Borrower to the Canadian Lenders with respect to Bankers' Acceptances in accordance with and pursuant to Section 6.4 hereof.

"**Purchase Money Obligation**" means any monetary obligation created or assumed as part of the purchase price of real or tangible personal property (including a lease of such property), whether or not secured, any extensions, renewals or refundings of any such obligation, provided that the principal amount of such obligation outstanding on the date of such extension, renewal or refunding is not increased and further provided that any security given in respect of such obligation shall not extend to any property other than the property acquired in connection with which such obligation was created or assumed and fixed improvements, if any, erected or constructed thereon and the proceeds thereof.

"**Rateable" and "Rateably**" means, at any date of determination, the proportion that the amount of the Obligations, the Bank Product Obligations and Financial Instrument Obligations under Lender Financial Instruments of any Lender, Hedging Affiliates thereof and Bank Product Providers thereof bears to the aggregate of the Obligations, Bank Product Obligations and Financial Instrument Obligations under Lender Financial Instruments of all Lenders, Bank Product Providers and Hedging Affiliates, as determined at the Adjustment Time.

"**Rateable Portion**", as regards any Lender, with regard to any amount of money, means (subject to Section 6.5 in respect of the rounding of allocations of Bankers' Acceptances):

(a) in respect of the Syndicated Facility and Drawdowns, Conversions, Rollovers and Loans and other amounts payable thereunder, the product obtained by multiplying that amount by the quotient obtained by dividing (i) that Lender's Syndicated Facility Commitment by (ii) the aggregate of all of the Lenders' Syndicated Facility Commitments;

(b) in respect of the Operating Facility and Drawdowns, Conversions, Rollovers and Loans and other amounts payable thereunder, the product obtained by multiplying that amount by the quotient obtained by dividing (i) that Lender's Operating Facility Commitment by (ii) the aggregate of all of the Lenders' Operating Facility Commitments; and

(c) in respect of the U.S. Operating Facility and Drawdowns, Conversions, Rollovers and Loans and other amounts payable thereunder, the product obtained by multiplying that amount by the quotient obtained by dividing (i) that Lender's U.S. Operating Facility Commitment by (ii) the aggregate of all of the Lenders' U.S. Operating Facility Commitments.

"**Realization Proceeds**" has the meaning set out in Section 12.7.

~~"**Reference Time**" means, with respect to any setting of the then-current Benchmark means (a) if such Benchmark is the Libor Rate, 11:00 a.m. (London, England time) on the day that is two London Banking Days preceding the date of such setting and (b) if such Benchmark is not the Libor Rate, the time determined by the Agent in its reasonable discretion.~~

"**Related Party**" means any person which is any one or more of the following:

(a) an Affiliate of PHX Energy, the Canadian Borrower or any Subsidiary thereof;

(b) a unitholder, shareholder or partner of PHX Energy, the Canadian Borrower or any Subsidiary which, together with all Affiliates of such person, owns or controls, directly or indirectly, more than 10% of the units, shares, capital or other ownership interests (however designated) of such Borrower or any Subsidiary, or an Affiliate of any such unitholder, shareholder or partner;

(c) an officer, director or trustee of any of the foregoing; and

(d) a person which is not at arm's length from PHX Energy, the Canadian Borrower and their Subsidiaries.

"**Release**" means any release, spill, emission, leak, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the environment including, without limitation, the movement of Hazardous Materials through ambient air, soil, surface water, ground water, wetlands, land or sub surface strata.

"**Relevant Governmental Body**" means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

"**Repayment Notice**" means a notice substantially in the form annexed hereto as Schedule F to be given to the Agent by the applicable Borrower pursuant hereto.

"**Reportable Event**" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period referred to in Section 4043(a) of ERISA has been waived.

"**Required Permits**" means all Governmental Authorizations which are necessary at any given time for the Loan Parties to own and operate its property, assets, rights and interests or to carry on its business and affairs.

"**Resolution Authority**" means, with respect to an EEA Financial Institution, an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"**Rollover**" means:

(a) with respect to any ~~Libor~~SOFR Loan, the continuation of all or a portion of such Loan (subject to the provisions hereof) for an additional Interest Period subsequent to the initial or any subsequent Interest Period applicable thereto;

(b) with respect to Bankers' Acceptances, the issuance of new Bankers' Acceptances or the making of new BA Equivalent Advances (subject to the provisions hereof) in respect of all or any portion of Bankers' Acceptances (or BA Equivalent Advances made in lieu thereof) maturing at the end of the Interest Period applicable thereto, all in accordance with Article 6 hereof; and

(c) with respect to Letters of Credit, the extension or replacement of an existing Letter of Credit, provided the beneficiary thereof (including any successors or permitted assigns thereof) remains the same, the maximum amount available to be drawn thereunder is not increased, the currency in which the same is denominated remains the same and the terms upon which the same may be drawn remain the same;

in each case, under the same Credit Facility under which the maturing Loan was made.

"**Rollover Date**" means the date of commencement of a new Interest Period applicable to a Loan and which shall be a Banking Day.

"**Rollover Notice**" means a notice substantially in the form annexed hereto as Schedule G to be given to the Agent by the applicable Borrower pursuant hereto.

"**S&P**" means the Standard & Poor's Rating Group (a division of The McGraw Hill Companies, Inc.) and any successors thereto.

"**Sanctions Laws**" means any sanction laws and regulations issued by the United States of America, Canada, the European Union or the United Nations and includes, without limitation, the laws, regulations, and rules promulgated or administered by OFAC to implement US sanctions programs, including any enabling legislation or Executive Order related thereto, as amended from time to time.

"**Sanctioned Person**" means any of the following currently or in the future: (i) an entity or individual named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC currently available at http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx or on the "Designated Persons" lists maintained by Canada under the *Special Economic Measures Act*, the *United Nations Act*, the Criminal Code (Canada), the *Freezing of Assets of Corrupt Foreign Officials Act*, the *Proceeds of Crime Act*, the *Terrorism Financing Act* and the regulations promulgated thereunder; or (ii) anyone more than 50 percent (50%) owned, in the aggregate, by an entity or entities or individuals, described in clause (i) above.

"**Sale Leaseback**" means an arrangement, transaction or series of arrangements or transactions under which title to any real property, tangible personal property or fixture is transferred by a Loan Party (a "transferor") to another person which leases or otherwise grants the right to use such property to the transferor (or nominee of the transferor) and, whether or not in connection therewith, the transferor also acquires a right or is subject to an obligation to acquire such property or a material portion thereof, and regardless of the accounting treatment of such arrangement, transaction or series of arrangements or transactions.

"**Schedule I Lender**" means a Lender which is a Canadian chartered bank listed on Schedule I to the *Bank Act* (Canada).

"**Schedule II Lender**" means a Lender which is a Canadian chartered bank listed on Schedule II to the *Bank Act* (Canada).

"**Schedule III Lender**" means a Lender which is an authorized foreign bank listed on Schedule III to the *Bank Act* (Canada).

"**Scheduled Unavailability Date**" has the meaning set out in Section 13.1(2)(b).

"**Security**" means, collectively, the guarantees, debentures, debenture pledge agreements, pledge agreements, assignments, indemnities, general security agreements and other security agreements executed and delivered, or required to be executed and delivered, by the Loan Parties domiciled in Canada, the United States, Luxembourg or Ireland and Phoenix Technology Services International Ltd. under and pursuant to this Agreement and shall include, (i) in respect of the Canadian Borrower, a guarantee and a general security agreement substantially in the forms of Schedules H-1 and H-2, respectively, annexed hereto, (ii) in respect of the U.S. Borrower, a guarantee and a general security agreement substantially in the forms of Schedules H-3 and H-4, respectively, annexed hereto, (iii) in respect of PHX Energy and each other Canadian domiciled Material Subsidiary, a guarantee and a general security agreement substantially in the forms of Schedules H-5 and H-6, respectively, annexed hereto, (iv) in respect of each United States of America domiciled Material Subsidiary, a guarantee and a general security agreement substantially in the forms of Schedules H-7 and H-8, respectively, annexed hereto, (v) in respect of each Irish domiciled Material Subsidiary, a guarantee and floating charge over deposit account substantially in the forms of Schedules H-5 and H-9, respectively, annexed hereto, (vi) in respect of each Luxembourg domiciled Material Subsidiary, a guarantee, a pledge over shares agreement and a pledge over banks account agreement substantially in the forms of Schedules H-5, H-10 and H-11, and (vii) in respect of Phoenix Technology Services International Ltd., a guarantee in the form of Schedules H-5 annexed hereto and a security agreement governed by the laws of Albania (or such other jurisdiction as is acceptable to the Agent, acting reasonably, covering substantially all of the assets of such Subsidiary), in each case with such modifications and insertions as may be required by the Agent, acting reasonably.

"**Security Interest**" means mortgages, charges, pledges, hypothecs, assignments by way of security, conditional sales or other title retentions, security created under the *Bank Act* (Canada), liens, encumbrances, security interests or other interests in property, howsoever created or arising, whether fixed or floating, perfected or not, which secure payment or performance of an obligation and, including, in any event:

(a) deposits or transfers of cash, marketable securities or other financial assets under any agreement or arrangement whereby such cash, securities or assets may be withdrawn, returned or transferred only upon fulfilment of any condition as to the discharge of any other indebtedness or other obligation to any creditor;

(b) (i) rights of set off or (ii) any other right of or arrangement of any kind with any creditor, which in any case are made, created or entered into, as the case may be, for the purpose of or having the effect (directly or indirectly) of (A) securing Debt, (B) preferring some holders of Debt over other holders of Debt or (C) having the claims of any creditor be satisfied prior to the claims of other creditors with or from the proceeds of any properties, assets or revenues of any kind now owned or later acquired (other than, with respect to (C) only, rights of set off granted or arising in the ordinary course of business);

(c) the rights of lessors under capital leases, operating leases and any other lease financing; and

(d) absolute assignments of accounts receivable.

"**SOFR**" means, with respect to any Banking Day, a rate per annum equal to the secured overnight financing rate for such Banking Day published by the SOFR Administrator on the SOFR Administrator's Website at approximately 8:00 a.m. (New York City time) on the immediately succeeding Banking Day.

"**SOFR Administrator**" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"**SOFR Administrator's Website**" means the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"**Subordinated Debt**" means unsecured Debt which is on terms and conditions (including terms and conditions with respect to cross default, acceleration, events of default and maturity date) satisfactory to the Agent and the Lenders, each in its sole discretion, and which is fully subordinated to the Obligations and Lender Financial Instrument Obligations by way of a subordination and other agreements satisfactory to the Agent and the Lenders, each in its sole discretion.

"**Subsidiary**" means, with respect to any person ("X"):

(a) any corporation of which at least a majority of the outstanding shares having by the terms thereof ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time shares of any other class or classes of such corporation might have voting power by reason of the happening of any contingency, unless the contingency has occurred and then only for as long as it continues) is at the time directly, indirectly or beneficially owned or controlled by X or one or more of its Subsidiaries, or X and one or more of its Subsidiaries;

(b) any partnership of which, at the time, X, or one or more of its Subsidiaries, or X and one or more of its Subsidiaries: (i) directly, indirectly or beneficially own or control more than 50% of the income, capital, beneficial or ownership interests (however designated) thereof; and (ii) is a general partner, in the case of limited partnerships, or is a partner or has authority to bind the partnership, in all other cases; or

(c) any other person of which at least a majority of the income, capital, beneficial or ownership interests (however designated) are at the time directly, indirectly or beneficially owned or controlled by X, or one or more of its Subsidiaries, or X and one or more of its Subsidiaries,

provided that, unless otherwise expressly provided or the context otherwise requires, references herein to "Subsidiary" or "Subsidiaries" shall be and shall be deemed to be references to Subsidiaries of PHX Energy.

"**Subsidiary Guarantors**" means, collectively, the Material Subsidiaries that have provided a Guarantee and Security in accordance with Section 10.1(r) and Section 11.1 and "Subsidiary Guarantor" means any one of them.

"**Successor Agent**" has the meaning set out in Section 15.9.

"**Syndicated Facility**" means the credit facility in the maximum aggregate principal amount of the Syndicated Facility Commitment of each Lender or the Equivalent Amount in United States Dollars to be made available to the Borrowers by the Syndicated Facility Lenders in accordance with the provisions hereof, subject to any increase in accordance with Section ~~2.26~~2.25 and any reduction in accordance with the provisions hereof.

"**Syndicated Facility Commitment**" means the commitment by each Syndicated Facility Lender under the Syndicated Facility to provide up to the amount of Canadian Dollars set forth opposite its name in Schedule A annexed hereto, subject to any reduction in accordance with the provisions hereof.

"**Syndicated Facility Lender**" means each Lender identified as such on Schedule A annexed hereto.

"**Syndicated Facility Maturity Date**" means December 12, ~~2023~~2025, or such later date to which the same may be extended in accordance with Section ~~2.20~~2.19.

"**Takeover**" has the meaning set out in Section ~~2.23~~2.22.

"**Target**" has the meaning set out in Section ~~2.23~~2.22.

"**Taxes**" means all taxes, levies, imposts, stamp taxes, duties, fees, deductions, withholdings, charges, compulsory loans or restrictions or conditions resulting in a charge which are imposed, levied, collected, withheld or assessed by any country or political subdivision or taxing authority thereof now or at any time in the future, together with interest thereon and penalties, charges or other amounts with respect thereto, if any, and "Tax" and "Taxation" shall be construed accordingly.

"**Term SOFR**" means, for ~~the applicable Corresponding Tenor as of the applicable Reference Time, the~~any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "**Periodic Term SOFR Determination Day**") that is two (2) U.S. Government Securities Business Days prior to (a) in the case of SOFR Loans, the first day of such applicable Interest Period, or (b) with respect to U.S. Base Rate, such day of determination of the U.S. Base Rate, in each case, as such rate is published by the Term SOFR Administrator; provided, however, that, if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day, the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day, provided, that if Term SOFR determined as provided above shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

"**Term SOFR Adjustment**" means a rate per annum equal to [redacted] for one-month, [redacted] for three-months, and [redacted] for six-months.

"**Term SOFR Administrator**" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Agent in its reasonable discretion).

"**Term SOFR Reference Rate**" means the per annum forward-looking term rate based on SOFR ~~that has been selected or recommended by the Relevant Governmental Body~~.

"**Termination Event**" means an automatic early termination of obligations relating to a Lender Financial Instrument under any agreement relating thereto without any notice being required from a Lender.

"**UK Financial Institution**" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain Affiliates of such credit institutions or investment firms.

"**UK Resolution Authority**" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"**Unadjusted Benchmark Replacement**" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"**United States Dollars**" and "U.S.$" means the lawful money of the United States of America.

"**U.S. Base Rate**" means, for any day, the greatest of:

(a) the rate of interest per annum established from time to time by the Agent as the reference rate of interest for the determination of interest rates that the Agent will charge to customers of varying degrees of creditworthiness in Canada for United States Dollar demand loans in Canada;

(b) the rate of interest per annum for such day or, if such day is not a Banking Day, on the immediately preceding Banking Day, equal to the sum of the Federal Funds Rate (expressed for such purpose as a yearly rate per annum in accordance with Section 5.2), plus 0.75% per annum; and

(c) the ~~Libor Rate~~sum of (i) Term SOFR for a ~~period of 1~~ one-month ~~on such day (or in respect of any day that is not a Banking Day, such Libor Rate~~tenor in effect on ~~the immediately preceding Banking Day)~~such day plus (ii) 1.00% per annum,

provided that if ~~all such rates are equal or if such Federal Funds Rate and such Libor Rate are unavailable for any reason on the date of determination, then the "U.S. Base Rate" shall be the rate specified in (a) above~~the U.S. Base Rate is being used as an alternative rate of interest pursuant to Sections 13.1 and 13.2(e), then the U.S. Base Rate shall be the greater of subparagraphs (a) and (b) above and shall be determined without reference to subparagraph (c) above, provided that if U.S. Base Rate as determined above shall ever be less than the Floor, then U.S. Base Rate shall be deemed to be the Floor.

"**U.S. Base Rate Loan**" means an Advance in, or Conversion into, United States Dollars made by the Canadian Lenders (or any one of them) to a Borrower with respect to which such Canadian Borrower has specified or a provision hereof requires that interest is to be calculated by reference to the U.S. Base Rate.

"**U.S. Borrower**" means Phoenix Technology Services USA Inc. and its successors and permitted assigns.

"**U.S. Code**" means the U.S. Internal Revenue Code of 1986, as amended from time to time.

"**U.S. Government Securities Business Day**" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"**U.S. Operating Facility**" means the credit facility in the maximum principal amount of the U.S. Operating Facility Commitment to be made available to the U.S. Borrower by the U.S. Operating Lender in accordance with the provisions hereof, subject to any reduction in accordance with the provisions hereof.

"**U.S. Operating Facility Commitment**" means the commitment by the U.S. Operating Lender under the U.S. Operating Facility to provide up to the amount of United States Dollars set forth opposite its name in Schedule A annexed hereto, subject to any reduction in accordance with the provisions hereof.

"**U.S. Operating Facility Maturity Date**" means December 12, ~~2023~~2025, or such later date to which the same may be extended in accordance with Section ~~2.22~~2.21.

"**U.S. Operating Lender**" means HSBC Bank USA, National Association or any other Lender which hereafter has a U.S. Operating Facility Commitment.

"**U.S. Prime Rate**" means, for any day, the greatest of:

(a) the rate of interest per annum established from time to time by the U.S. Operating Lender as the reference rate of interest for the determination of interest rates that the U.S. Operating Lender will charge to customers of varying degrees of creditworthiness in the United States of America for United States Dollar demand loans in the United States of America and designated by the U.S. Operating Lender as its U.S. prime rate; and

(b) the rate of interest per annum for such day or, if such day is not a Banking Day, on the immediately preceding Banking Day, equal to the sum of the Federal Funds Rate (expressed for such purpose as a rate per annum, on the basis of a year of 365 days, in accordance with Section 5.4), plus 0.75% per annum; and

(c) the ~~Libor Rate~~sum of (i) Term SOFR for a ~~period of 1~~ one-month ~~on such day (or in respect of any day that is not a Banking Day, such Libor Rate~~tenor in effect on ~~the immediately preceding Banking Day)~~such day plus (ii) 1.00% per annum,

provided that if ~~all such rates are equal or if such Federal Funds Rate is unavailable for any reason on the date of determination~~U.S. Prime Rate as determined above shall ever be less than the Floor, then ~~the "~~U.S. Prime Rate~~"~~ shall be deemed to be the ~~rate specified in (a) above~~Floor.

"**U.S. Prime Rate Loan**" means an Advance in, or Conversion into, United States Dollars made by the U.S. Operating Lender to the U.S. Borrower with respect to which the U.S. Borrower has specified or a provision hereof requires that interest is to be calculated by reference to the U.S. Prime Rate.

"**Voting Shares**" means capital stock of any class of any corporation which carries voting rights to elect the board of directors thereof under any circumstances, provided that, for purposes hereof, shares which carry the right to so vote conditionally upon the happening of an event shall not be considered Voting Shares until the occurrence of such event.

"**Wholly Owned Subsidiary**" means, with respect to any person ("X"):

(a) a corporation, all of the issued and outstanding shares in the capital of which are beneficially held by:

(i) X;

(ii) X and one or more corporations, all of the issued and outstanding shares in the capital of which are held by X; or

(iii) two or more corporations, all of the issued and outstanding shares in the capital of which are held by X;

(b) a corporation which is a Wholly-Owned Subsidiary of a corporation that is a Wholly-Owned Subsidiary of X; or

(c) a partnership, all of the partners of which are X and/or Wholly-Owned Subsidiaries of X,

provided that unless otherwise expressly provided or the context otherwise requires, references herein to "Wholly-Owned Subsidiary" or "Wholly-Owned Subsidiaries" shall be and shall be deemed to be references to Wholly-Owned Subsidiaries of a Borrower.

"**Withdrawal Liability**" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"**Write-Down and Conversion Powers**" means :

(a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule; and

(b) with respect to the United Kingdom, any powers of the applicable UK Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or a part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2 Headings; Articles and Sections

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

1.3 Number; persons; including; successors

Words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and vice versa, words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa and words and terms denoting inclusiveness (such as “include” or “includes” or “including”), whether or not so stated, are not limited by their context or by the words or phrases which precede or succeed them. References herein to any person shall, unless the context otherwise requires, include such person’s successors and permitted assigns.

1.4 Accounting Principles

Wherever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be to the recommendations at the relevant time of the Canadian Institute of Chartered Accountants, or any successor institute, applicable on a consolidated basis (unless otherwise specifically provided or contemplated herein to be applicable on an unconsolidated basis) as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles. Where the character or amount of any asset or liability or item of revenue or expense or amount of equity is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Agreement or any other Document, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as otherwise agreed in writing by the parties, be made in accordance with generally accepted accounting principles applied on a consistent basis. In the event that any "Accounting Change" (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then the Canadian Borrower and the Lenders agree to enter into negotiations in order to amend such provisions of this Agreement so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluation PHX Energy's and the Borrowers’ financial condition shall be substantially the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrowers and the Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting changes had not occurred. "**Accounting Changes**" refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Canadian Institute of Charted Accountants, and in all events including changes to the International Financial Reporting Standards to the extent required by the Canadian Accounting Standards Board.

In addition to the foregoing, the parties hereto agree and confirm that, for all purposes hereof, including, without limitation, in connection with the calculation of “Interest Expense”, “Debt” and “EBITDA”, the classification and effect of leases shall be made with regard to generally accepted accounting principles in effect on December 31, 2018.

1.5 References to Agreements and Enactments

Reference herein to any agreement, instrument, licence or other document shall be deemed to include reference to such agreement, instrument, licence or other document as the same may from time to time be amended, modified, supplemented or restated in accordance with the provisions of this Agreement if and to the extent such provisions are applicable; and reference herein to any enactment shall be deemed to include reference to such enactment as re-enacted, amended or extended from time to time and to any successor enactment.

1.6 Per Annum Calculations

Unless otherwise stated, wherever in this Agreement reference is made to a rate "per annum" or a similar expression is used, such rate is expressed on the basis of, and shall be calculated on the basis of a year of 365 days.

1.7 Schedules

The following are the Schedules annexed hereto and incorporated by reference and deemed to be part hereof:

Schedule A	-	Lenders and Commitments
Schedule B	-	Assignment Agreement
Schedule C	-	Compliance Certificate
Schedule D	-	Conversion Notice
Schedule E	-	Drawdown Notice
Schedule F	-	Repayment Notice
Schedule G	-	Rollover Notice
Schedules H-1 to H-11	-	Security
Schedule I	-	Borrowing Base Certificate.

1.8 Amendment and Restatement of the Existing Credit Agreement

(1) On the date on which all of the conditions set forth in Section 3.2 have been satisfied (or waived in writing by the Agent):

(a) the Existing Credit Agreement shall be and is hereby amended and restated in the form of this Agreement;

(b) all Loans, including, for certainty, Bankers' Acceptances and Letters of Credit (as such terms are defined in the Existing Credit Agreement) and other amounts outstanding under the Existing Credit Agreement on the date hereof shall continue to be outstanding under this Agreement and shall be deemed to be Loans and other Obligations owing by the Borrowers to the Agent and the Lenders, as applicable, under this Agreement;

(c) subject to Sections 1.8(d) and 1.8(e), the Lenders hereby agree to take all steps and actions and execute and deliver all agreements, instruments and other documents as may be required by the Agent or any of the Lenders (including the assignment of interests in, or the purchase of participations in, such outstanding Loans) to give effect to the foregoing and to ensure that the aggregate Obligations owing to each Lender under the Credit Facilities are outstanding in proportion to each Lender's Rateable Portion of all outstanding Obligations under the Credit Facilities after giving effect to the foregoing;

(d) the parties hereby acknowledge that, on the date hereof, Bankers' Acceptances having terms to maturity ending on or after the date hereof may be outstanding under the Syndicated Facility (collectively, the "**Outstanding BA's**"). Notwithstanding any provision of this Agreement, each Syndicated Facility Lender's right, title, benefit and interest with respect to any Outstanding BA's will be calculated with respect to its Rateable Portion in such Outstanding BAs prior to giving effect to the change in Commitments under the Syndicated Facility being effected pursuant hereto; and

(e) From time to time, as the Outstanding BAs mature and Rollovers and Conversions are made by the applicable Borrower in respect thereof, the Syndicated Facility Lenders shall participate in the Loans effecting such Rollovers and Conversions to the full extent of its Syndicated Facility Commitment after giving effect to the change in Commitments under the Syndicated Facility being effected pursuant hereto.

(2) Notwithstanding the foregoing or any other term hereof, all of the covenants, representations and warranties on the part of the Borrowers under the Existing Credit Agreement and all of the claims and causes of action arising against either of the Borrowers in connection therewith, in respect of all matters, events, circumstances and obligations arising or existing prior to the date hereof shall continue, survive and shall not be merged in the execution of this Agreement or any other Documents or any advance or provision of any Loan hereunder.

References herein to the "date hereof" or similar expressions shall be and shall be deemed to be to the date of the execution and delivery hereof, being July 29, 2019.

1.9 Rates

The Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Benchmark, any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Benchmark or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Agent may select information sources or services in its reasonable discretion to ascertain the Benchmark or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE 2 THE CREDIT FACILITIES

2.1 The Credit Facilities

Subject to the terms and conditions hereof, each of the Lenders under a Credit Facility shall make available to the applicable Borrower or Borrowers such Lender's Rateable Portion of such Credit Facility. Subject to Section ~~2.18~~2.17, the Outstanding Principal under a given Credit Facility shall not exceed the maximum principal amount of such Credit Facility.

2.2 Types of Availments; Overdraft Loans

(1) The Canadian Borrower may, in Canadian Dollars, make Drawdowns, Conversions and Rollovers under the Syndicated Facility of Canadian Prime Rate Loans and Bankers' Acceptances and may, in United States Dollars, make Drawdowns, Conversions and Rollovers under the Syndicated Facility of U.S. Base Rate Loans and ~~Libor~~SOFR Loans. The Canadian Borrower shall have the option, subject to the terms and conditions hereof, to determine which types of Loans shall be drawn down and in which combinations or proportions.

(2) The U.S. Borrower may, in United States Dollars, make Drawdowns, Conversions and Rollovers under the Syndicated Facility of U.S. Base Rate Loans and ~~Libor~~SOFR Loans. The U.S. Borrower shall have the option, subject to the terms and conditions hereof, to determine which types of Loans shall be drawn down and in which combinations or proportions.

(3) The Canadian Borrower may make Drawdowns and Rollovers under the Operating Facility of Canadian Prime Rate Loans and may, in United States Dollars, make Drawdowns, Conversions and Rollovers under the Operating Facility of U.S. Base Rate Loans. In addition, the Canadian Borrower may make Drawdowns and Rollovers under the Operating Facility of Letters of Credit denominated in Canadian Dollars; provided that the Outstanding Principal of Letters of Credit outstanding under the Operating Facility shall not exceed Cdn.$5,000,000. The Canadian Borrower shall have the option, subject to the terms and conditions hereof, to determine which types of Loans shall be drawn down and in which combinations or proportions.

(4) In addition to the foregoing, overdrafts arising from clearance of cheques or drafts drawn on the Canadian Dollar accounts and the U.S. Dollar accounts of the Canadian Borrower maintained with the Operating Lender and designated by the Operating Lender for such purpose, shall be deemed to be outstanding as

Canadian Prime Rate Loans and U.S. Base Rate Loans, as applicable under the Operating Facility (each, an "**Overdraft Loan**"), and all references to Canadian Prime Rate Loans and U.S. Base Rate Loans shall include Overdraft Loans. For certainty, notwithstanding Section ~~2.7~~2.6 or ~~2.15~~2.14, no Drawdown Notice or Repayment Notice need be delivered by the Canadian Borrower in respect of Overdraft Loans.

(5) The U.S. Borrower may, in United States Dollars, make Drawdowns, Conversions and Rollovers under the U.S. Operating Facility of U.S. Prime Rate Loans and ~~Libor~~SOFR Loans. The U.S. Borrower shall have the option, subject to the terms and conditions hereof, to determine which types of Loans shall be drawn down and in which combinations or proportions.

2.3 Purpose

(1) The Syndicated Facility is being made available for general corporate purposes of the Borrowers;

(2) The Operating Facility is being made available for the general corporate purposes of the Canadian Borrower; and

(3) The U.S. Operating Facility is being made available for the general corporate purposes of the U.S. Borrower.

2.4 Availability and Nature of the Credit Facilities

(1) Subject to the terms and conditions hereof, the applicable Borrower may make Drawdowns under an applicable Credit Facility prior to the applicable Maturity Date.

(2) Prior to the Syndicated Facility Maturity Date, the Syndicated Facility shall be a revolving credit facility: that is, the Borrowers may increase or decrease Loans under the Syndicated Facility by making Drawdowns, repayments and further Drawdowns.

(3) Prior to the Operating Facility Maturity Date, the Operating Facility shall be a revolving credit facility: that is, the Canadian Borrower may increase or decrease Loans under the Operating Facility by making Drawdowns, repayments and further Drawdowns.

(4) Prior to the U.S. Operating Facility Maturity Date, the U.S. Operating Facility shall be a revolving credit facility: that is, the U.S. Borrower may increase or decrease Loans under the U.S. Operating Facility by making Drawdowns, repayments and further Drawdowns.

(5) For certainty, in no event shall a Lender be required to fund, participate in, or otherwise provide any portion of a Loan which has a maturity or expiry date, or which has an Interest Period which will expire, after the Maturity Date applicable

to such Credit Facility. In no event shall a Borrower request, or be entitled to obtain, a Loan which has a maturity or expiry date, or which has an Interest Period which will expire, after the Maturity Date for such Credit Facility.

2.5 Minimum Drawdowns

(1) Each Drawdown under the Credit Facilities of the following types of Loans shall be in the following amounts indicated:

(a) Bankers' Acceptances in minimum aggregate amounts of Cdn.$500,000 at maturity and Drawdowns in excess thereof in integral multiples of Cdn.$100,000;

(b) ~~Libor~~SOFR Loans in minimum principal amounts of U.S.$500,000 and Drawdowns in excess thereof in integral multiples of U.S.$100,000;

(c) Canadian Prime Rate Loans in minimum principal amounts of Cdn.$100,000 and Drawdowns in excess thereof in integral multiples of Cdn.$100,000;

(d) U.S. Base Rate Loans in minimum principal amounts of U.S.$100,000 and Drawdowns in excess thereof in integral multiples of U.S.$100,000; and

(e) U.S. Prime Rate Loans in minimum principal amounts of U.S.$100,000 and Drawdowns in excess thereof in integral multiples of U.S.$100,000.

~~**2.6 Libor Loan Availability**~~

~~Drawdowns of, Conversions into and Rollovers of requested Libor Loans are subject to Section 13.1.~~

2.6 ~~2.7~~ Notice Periods for Drawdowns, Conversions and Rollovers

(1) Subject to the provisions hereof, the applicable Borrower may request a Drawdown, Conversion or Rollover under the Syndicated Facility by delivering a Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be (executed in accordance with the definition of Officer's Certificate), with respect to a specified type of Loan to the Agent not later than:

(a) 10:00 a.m. (Calgary time) three Banking Days prior to the proposed Drawdown Date, Conversion Date or Rollover Date, as the case may be, for the Drawdown of, Conversion into or the Rollover of ~~Libor~~SOFR Loans;

(b) 10:00 a.m. (Calgary time) two Banking Days prior to the proposed Drawdown Date, Conversion Date or Rollover Date, as the case may be, for the Drawdown of, Conversion into or Rollover of Bankers' Acceptances; and

(c) 10:00 a.m. (Calgary time) one Banking Day prior to the proposed Drawdown Date or Conversion Date, as the case may be, for Drawdowns of or Conversions into Canadian Prime Rate Loans and/or U.S. Base Rate Loans.

(2) Subject to the provisions hereof, the Canadian Borrower may request a Drawdown, Conversion or Rollover under the Operating Facility by delivering a Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be (executed in accordance with the definition of Officer's Certificate), with respect to a specified type of Loan to the Agent not later than:

(a) 10:00 a.m. (Calgary time) two Banking Days prior to the proposed Drawdown Date, Conversion Date or Rollover Date, as the case may be, for the Drawdown of, Conversion into or Rollover of Bankers' Acceptances;

(b) 10:00 a.m. (Calgary time) on the proposed Drawdown Date or Conversion Date, as the case may be, for Drawdowns of or Conversions into Canadian Prime Rate Loans; and

(c) 10:00 a.m. (Calgary time) two Banking Days prior to the proposed Drawdown Date or Rollover Date, as the case may be, for the Drawdown or Rollover of Letters of Credit under the Operating Facility.

(3) Subject to the provisions hereof, the U.S. Borrower may request a Drawdown, Conversion or Rollover under the U.S. Operating Facility by delivering a Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be (executed in accordance with the definition of Officer's Certificate), with respect to a specified type of Loan to the Agent not later than:

(a) 10:00 a.m. (Calgary time) three Banking Days prior to the proposed Drawdown Date, Conversion Date or Rollover Date, as the case may be, for the Drawdown of, Conversion into or the Rollover of ~~Libor~~SOFR Loans; and

(b) 10:00 a.m. (Calgary time) on the proposed Drawdown Date or Conversion Date, as the case may be, for Drawdowns of or Conversions into U.S. Prime Rate Loans.

2.7 ~~2.8~~ Conversion Option

Subject to the provisions of this Agreement and except for Letters of Credit, a Borrower may convert the whole or any part of any type of Loan under a Credit Facility into any other type of permitted Loan under the same Credit Facility by giving the Agent a Conversion Notice in accordance herewith; provided that:

(a) Conversions of ~~Libor~~SOFR Loans and Bankers' Acceptances may only be made on the last day of the Interest Period applicable thereto;

(b) a Borrower may not convert a portion only or the whole of an outstanding Loan unless both the unconverted portion and converted portion of such Loan are equal to or exceed, in the relevant currency of each such portion, the minimum amounts required for Drawdowns of Loans of the same type as that portion (as set forth in Section 2.5);

(c) in respect of Conversions of a Loan denominated in one currency to a Loan denominated in another currency, the applicable Borrower shall at the time of the Conversion repay the Loan or portion thereof being converted in the currency in which it was denominated; and

(d) a Conversion shall not result in an increase in Outstanding Principal; increases in Outstanding Principal may only be effected by Drawdowns.

2.8 ~~2.9 Libor~~SOFR Loan Rollovers; Selection of ~~Libor~~SOFR Interest Periods

At or before 10:00 a.m. (Calgary time) three Banking Days prior to the expiration of each Interest Period of each ~~Libor~~SOFR Loan, the applicable Borrower shall, unless it has delivered a Conversion Notice pursuant to Section ~~2.8~~2.7 and/or a Repayment Notice pursuant to Section ~~2.15~~2.14 (together with a Rollover Notice if a portion only is to be converted or repaid; provided that a portion of a ~~Libor~~SOFR Loan may be ~~continued~~converted or rolled over only if the portion which is to remain outstanding is equal to or exceeds the minimum amount required hereunder for Drawdowns of ~~Libor~~SOFR Loans) with respect to the aggregate amount of such Loan, deliver a Rollover Notice to the Agent selecting the next Interest Period applicable to the ~~Libor~~SOFR Loan, which new Interest Period shall commence on and include the last day of such prior Interest Period. If the applicable Borrower fails to deliver a Rollover Notice to the Agent as provided in this Section, such Borrower shall be deemed to have given a Conversion Notice to the Agent electing to convert the entire amount of the maturing ~~Libor~~SOFR Loan into a U.S. Base Rate Loan in the case of a ~~Libor~~SOFR Loan under the Syndicated Facility and the entire amount of the maturing ~~Libor~~SOFR Loan into a U.S. Prime Rate Loan in the case of a ~~Libor~~SOFR Loan under the U.S. Operating Facility.

2.9 ~~2.10~~ Rollovers and Conversions not Repayments

Any amount converted shall be a Loan of the type converted to upon such Conversion taking place, and any amount rolled over shall continue to be the same type of Loan under the same Credit Facility as before the Rollover, but such Conversion or Rollover (to the extent of the amount converted or rolled over) shall not of itself constitute a repayment or a fresh utilization of any part of the amount available under the relevant Credit Facility.

2.10 ~~2.11~~ **Agent's Obligations with Respect to Canadian Prime Rate Loans, U.S. Base Rate Loans, U.S. Prime Rate Loans and ~~Libor~~SOFR Loans**

Upon receipt by the Agent of a Drawdown Notice, Rollover Notice or Conversion Notice with respect to a Canadian Prime Rate Loan, U.S. Base Rate Loan, U.S. Prime Rate Loan or ~~Libor~~SOFR Loan, the Agent shall forthwith notify the relevant Lenders of the requested type of Loan, the proposed Drawdown Date, Rollover Date or Conversion Date, each Lender's Rateable Portion of such Loan and, if applicable, the account of the applicable Borrower with the Agent to which each Lender's Rateable Portion is to be credited, or as otherwise instructed by the Agent, to which each Lender's Rateable Portion is to be credited.

2.11 ~~2.12~~ **Lenders' and Agent's Obligations with Respect to Canadian Prime Rate Loans, U.S. Base Rate Loans, U.S. Prime Rate Loans and ~~Libor~~SOFR Loans**

The applicable Lender shall, for same day value prior to 10:00 a.m. (Calgary time) on the Drawdown Date specified by a Borrower in a Drawdown Notice with respect to a Loan, credit the Agent's Account specified in the Agent's notice given under Section ~~2.11~~2.10 with such Lender's Rateable Portion of the requested Loan and for same day value on the same date the Agent shall pay to the applicable Borrower the full amount of the amounts so credited in accordance with any payment instructions set forth in the applicable Drawdown Notice.

2.12 ~~2.13~~ **Irrevocability**

A Drawdown Notice, Rollover Notice, Conversion Notice or Repayment Notice given by a Borrower hereunder shall be irrevocable and, subject to any options the Lenders may have hereunder in regard thereto and such Borrower's rights hereunder in regard thereto, shall oblige such Borrower to take the action contemplated on the date specified therein.

2.13 ~~2.14~~ **Optional Cancellation or Reduction of Credit Facilities**

The Canadian Borrower (on behalf of itself and on behalf of the U.S. Borrower) may, at any time, upon giving at least 5 Banking Days prior written notice to the Agent, cancel in full or, from time to time, permanently reduce in part the unutilized portion of a Credit Facility and the Commitments thereunder and, for certainty, may permanently cancel the U.S. Operating Facility; provided, however, that any such reduction shall be in a minimum amount of $2,000,000 (in the applicable currency) and reductions in excess thereof shall be in integral multiples of $100,000 (in the applicable currency). If a Credit Facility is so reduced, the Commitments thereunder shall be reduced pro rata in the same proportion that the amount of the reduction the Credit Facility bears to the amount of such Credit Facility in effect immediately prior to such reduction.

2.14 ~~2.15~~ **Optional Repayment of Credit Facilities**

A Borrower may at any time and from time to time repay, without penalty, to the Agent for the account of the applicable Lenders or, in the case of Letters of Credit the Canadian Borrower may return the same to the Agent for cancellation or provide for the funding thereof, the whole or any part of any Loan owing by it together with accrued interest thereon to the date of such repayment provided that:

(a) other than in the case of Overdraft Loans, the applicable Borrower shall give a Repayment Notice (executed in accordance with the definition of Officer's Certificate) to the Agent prior to the date of the proposed repayment not later than the time by which prior notice would be required to be given under Section ~~2.7~~2.6 for a Drawdown of the type of Loan proposed to be repaid;

(b) repayments pursuant to this Section may only be made on a Banking Day;

(c) subject to the following provisions and Section ~~2.17~~2.16, each such repayment may only be made on the last day of the applicable Interest Period with regard to a ~~Libor~~SOFR Loan that is being repaid;

(d) a Bankers' Acceptance may only be repaid on its maturity unless collateralized in accordance with Section ~~2.17(3~~2.16(3);

(e) obligations in respect of unexpired Letters of Credit may only be satisfied by the return thereof to the Agent for cancellation or providing funding therefor in accordance with Section ~~2.17(2~~2.16(2); and

(f) with respect to ~~Libor~~SOFR Loans and Bankers' Acceptances, each such repayment shall be in a minimum amount of the lesser of: (i) the minimum amount required pursuant to Section 2.5 for Drawdowns of the type of Loan proposed to be repaid and (ii) the Outstanding Principal of all Loans outstanding under the applicable Credit Facility immediately prior to such repayment; any repayment in excess of such amount shall be in integral multiples of the amounts required pursuant to Section 2.5 for multiples in excess of the minimum amounts for Drawdowns.

2.15 ~~2.16~~ Mandatory Repayment and Reduction of Credit Facilities

(1) Subject to Section 12.2 and Article 8, each Borrower shall repay or pay, as the case may be, to the Agent, on behalf of each Lender, all Loans and other Obligations owing by such Borrower to such Lender outstanding under each applicable Credit Facility on or before the Maturity Date applicable thereto.

(2) In addition to and without limiting the provisions of ~~Sections 2.16(1~~Section 2.15(1), the Borrowers shall or shall cause each of the following to be paid to the Agent, on behalf of the Lenders:

(a) if there is a Borrowing Base Shortfall, in accordance with Section ~~2.24(3~~2.23(3), Loans under the Credit Facilities to the extent necessary to reduce the Outstanding Principal of Loans under the Credit Facilities by not less than the amount of the Borrowing Base Shortfall; and

(b) promptly after the receipt thereof by a Loan Party, 100% of the net proceeds of any issue of debt securities by such Loan Party (excluding any Permitted Debt).

(3) Any optional repayment pursuant to Section ~~2.15~~2.14 or mandatory prepayment pursuant to Sections ~~2.16(2~~2.15(2)(a) and ~~2.16(2~~2.15(2)(b) shall be applied *pro rata* (i) firstly, to the Outstanding Principal amount due under the Syndicated Facility, (ii) secondly, to the Outstanding Principal amount due under the Operating Facility, and (iii) thirdly, to the Outstanding Principal amount due under the U.S. Operating Facility. A mandatory prepayment pursuant to Section ~~2.16(2~~2.15(2)(b) shall constitute a permanent reduction of the applicable Credit Facilities.

2.16 ~~2.17~~ Additional Repayment Terms

(1) If a Borrower shall (a) repay or prepay any ~~Libor~~SOFR Loan ~~is repaid~~ on any day other than the last day of the ~~applicable~~ Interest Period for such SOFR Loan (whether an optional prepayment or a mandatory prepayment), ~~the~~(b) fail to borrow any SOFR Loan in accordance with a Drawdown Notice delivered to the Agent (whether as a result of the failure to satisfy any applicable conditions or otherwise), (c) fail to convert any Loan into a SOFR Loan in accordance with a Conversion Notice delivered to the Agent (whether as a result of the failure to satisfy any applicable conditions or otherwise), (d) fail to make any prepayment in accordance with any notice of prepayment delivered to the Agent, (e) fail to pay when due the principal amount of or interest on any SOFR Loan, or (f) convert a SOFR Loan on a day other than on the last day of an Interest Period, then such Borrower shall with regard to any SOFR Loan, within three Banking ~~Days~~Day after ~~notice is given~~demand by the Agent or any Lender, pay ~~to the Agent for the account of the relevant Lenders all~~any reasonable costs, expenses, losses, ~~premiums~~liabilities and ~~expenses incurred by such Lenders by reason of~~fees charged by the ~~liquidation~~Agent or ~~re-deployment of deposits or other funds, or for any other reason whatsoever, resulting in each case from the repayment of such Loan or any part thereof on other than~~such Lender as a result of such failure, together with accrued interest on such SOFR Loan which is repaid or converted prior to the last day of the ~~applicable~~ Interest Period for such SOFR Loan. Any ~~such~~ Lender, upon becoming entitled to be paid such costs, losses, premiums and expenses, shall deliver to the applicable Borrower and the Agent a certificate of such Lender certifying as to such amounts and, in the absence of manifest error, such certificate shall be conclusive and binding for all purposes.

(2) With respect to the funding of the repayment of unexpired Letters of Credit pursuant to Section ~~2.15~~2.14(e) or otherwise hereunder, it is agreed that the Canadian Borrower shall provide for the funding in full of the repayment of unexpired Letters of Credit by paying to and depositing with the Agent cash collateral for each such unexpired Letter of Credit equal to the maximum amount thereof, plus the fees payable pursuant to Section 7.6(1) through to the expiry of such Letter of Credit, in each case, in the respective currency which the relevant

Letter of Credit is denominated; such cash collateral deposited by the Canadian Borrower shall be held by the Agent in an interest bearing cash collateral account with interest to be credited to the Canadian Borrower at rates prevailing at the time of deposit for similar accounts with the Agent. Such cash collateral accounts shall be assigned to the Agent and the Operating Lender as security for the obligations of the Canadian Borrower in relation to such Letters of Credit and the Security Interest of the Agent and the Operating Lender thereby created in such cash collateral shall rank in priority to all other Security Interests and adverse claims against such cash collateral. Such cash collateral shall be applied to satisfy the obligations of the Canadian Borrower for such Letters of Credit as payments are made thereunder and the Agent is hereby irrevocably directed by the Canadian Borrower to so apply any such cash collateral. Amounts held in such cash collateral accounts may not be withdrawn by the Canadian Borrower without the consent of the Operating Lender; however, interest on such deposited amounts shall be for the account of the Canadian Borrower and may be withdrawn by the Canadian Borrower so long as no Default or Event of Default is then continuing. If after expiry of the Letters of Credit for which such funds are held and application by the Agent of the amounts in such cash collateral accounts to satisfy the obligations of the Canadian Borrower hereunder with respect to the Letters of Credit being repaid, any excess remains, such excess shall be promptly paid by the Agent to the Canadian Borrower so long as no Default or Event of Default is then continuing.

In lieu of providing cash collateral as aforesaid, the Canadian Borrower may provide to the Agent irrevocable standby letter or letters of credit in an aggregate amount equal to the aggregate maximum amount of all unexpired Letters of Credit being repaid and for a term which expires not sooner than 10 Banking Days after the expiry of the Letters of Credit in respect of which such letter(s) of credit are provided; such letters of credit shall be denominated and payable in the currency of the relevant unexpired Letters of Credit and shall be issued by a financial institution and on terms and conditions acceptable to the Operating Lender, in its sole discretion. The Operating Lender is hereby irrevocably authorized and directed to draw upon such letters of credit and apply the proceeds of the same to satisfy the obligations of the Canadian Borrower for such unexpired Letters of Credit as payments are made by the Operating Lender thereunder.

(3) With respect to the repayment of unmatured Bankers' Acceptances pursuant to Section ~~2.15~~2.14(d) or otherwise hereunder, it is agreed that the Canadian Borrower shall provide for the funding in full of the unmatured Bankers' Acceptances to be repaid by paying to and depositing with the Agent cash collateral for each such unmatured Bankers' Acceptances equal to the face amount payable at maturity thereof; such cash collateral deposited by the Canadian Borrower shall be invested by the Agent in Approved Securities as may be directed in writing by the Canadian Borrower from time to time (the "**Collateral Investments**"), provided that the Canadian Borrower shall direct said investments so that they mature in amounts sufficient to permit payment of the Obligations for maturing Bankers' Acceptances on the maturity dates thereof, with interest thereon to be credited to the Canadian Borrower. In the event that

the Agent is not provided with instructions from the Canadian Borrower to make Collateral Investments as provided herein, the Agent shall hold such cash collateral in an interest bearing cash collateral account at rates prevailing at the time of deposit for similar accounts with the Agent. The (a) cash collateral, (b) cash collateral accounts, (c) Collateral Investments, (d) any accounts receivable, claims, instruments or securities evidencing or relating to the foregoing, and (e) any proceeds of any of the foregoing (collectively the "**Outstanding BAs Collateral**") shall be assigned to the Agent as security for the obligations of the Canadian Borrower in relation to such Bankers' Acceptances and the Security Interest of the Agent and, in the case of the Operating Facility, and the Operating Lender, thereby created in such Outstanding BAs Collateral shall rank in priority to all other Security Interests and adverse claims against such Outstanding BAs Collateral. Such Outstanding BAs Collateral shall be applied to satisfy the obligations of the Canadian Borrower for such Bankers' Acceptances as they mature and the Agent is hereby irrevocably directed by the Canadian Borrower to apply any such Outstanding BAs Collateral to such maturing Bankers' Acceptances. The Outstanding BAs Collateral created herein shall not be released to the Canadian Borrower without the consent of the Canadian Lenders; however, interest on such deposited amounts shall be for the account of the Canadian Borrower and may be withdrawn by the Canadian Borrower so long as no Default or Event of Default is then continuing. If, after maturity of the Bankers' Acceptances for which such Outstanding BAs Collateral is held and application by the Agent of the Outstanding BAs Collateral to satisfy the obligations of the Canadian Borrower hereunder with respect to the Bankers' Acceptances being repaid, any interest or other proceeds of the Outstanding BAs Collateral remains, such interest or other proceeds shall be promptly paid and transferred by the Agent to the Canadian Borrower so long as no Default or Event of Default is then continuing.

2.17 ~~2.18~~ Currency Excess

(1) If the Agent shall determine that the aggregate Outstanding Principal of the outstanding Loans under a given Credit Facility exceeds the maximum amount of such Credit Facility (the amount of such excess is herein called the "**Currency Excess**"), then, upon written request by the Agent (which request shall detail the applicable Currency Excess), the applicable Borrower or Borrowers shall repay an amount of Canadian Prime Rate Loans, U.S. Base Rate Loans or U.S. Prime Rate Loans, as applicable, under such Credit Facility within (i) if the Currency Excess exceeds Cdn.$1,000,000, 5 Banking Days, and (ii) in all other cases, 20 Banking Days after receipt of such request, such that, except as otherwise contemplated in Section ~~2.18(2~~2.17(2), the Equivalent Amount in Canadian Dollars of such repayments is, in the aggregate, at least equal to the Currency Excess.

(2) If, in respect of any Currency Excess, the repayments made by the applicable Borrower have not completely removed such Currency Excess (the remainder thereof being herein called the "**Currency Excess Deficiency**"), the applicable Borrower or Borrowers shall within the aforementioned 5 or 20 Banking Days, as

the case may be, after receipt of the aforementioned request of the Agent, place an amount equal to the Currency Excess Deficiency on deposit with the Agent in an interest bearing account with interest at rates prevailing at the time of deposit for the account of the applicable Borrower or Borrowers, to be assigned to the Agent on behalf of the applicable Lenders by instrument satisfactory to the Agent and, if applicable, to be applied to maturing Bankers' Acceptances or ~~Libor~~SOFR Loans (converted if necessary at the exchange rate for determining the Equivalent Amount on the date of such application). The Agent is hereby irrevocably directed by the applicable Borrower or Borrowers to apply any such sums on deposit to maturing Loans as provided in the preceding sentence. In lieu of providing funds for the Currency Excess Deficiency, as provided in the preceding provisions of this Section, the applicable Borrower or Borrowers may within the said period of 5 or 20 Banking Days, as the case may be, provide to the Agent an irrevocable standby letter of credit in an amount equal to the Currency Excess Deficiency and for a term which expires not sooner than 10 Banking Days after the date of maturity or expiry, as the case may be, of the relevant Bankers' Acceptances, ~~Libor~~SOFR Loans or Letters of Credit, as the case may be; such letter of credit for the Currency Excess Deficiency shall be issued by a financial institution, and shall be on terms and conditions, acceptable to the Agent in its sole discretion. The Agent is hereby authorized and directed to draw upon such letter of credit and apply the proceeds of the same to Bankers' Acceptances or ~~Libor~~SOFR Loans as they mature. Upon the Currency Excess Deficiency being eliminated as aforesaid or by virtue of subsequent changes in the exchange rate for determining the Equivalent Amount, then, provided no Default or Event of Default is then continuing, such funds on deposit, together with interest thereon, or such letters of credit shall be returned to the applicable Borrower or Borrowers, in the case of funds on deposit, or shall be cancelled or reduced in amount, in the case of letters of credit.

2.18 **~~2.19~~ Hedging with Lenders and Hedging Affiliates; Bank Product Providers**

(1) If a Lender or Hedging Affiliate enters into a Financial Instrument with a Loan Party which such Lender or Hedging Affiliate (as the case may be) believes, acting reasonably, in good faith and without any actual notice or knowledge to the contrary, is Permitted Hedging, then each such Lender Financial Instrument and the Lender Financial Instrument Obligations under such Financial Instrument shall be secured by the Security equally and rateably with the Obligations and Bank Product Obligations, regardless of whether the Borrowers have complied herewith (but, for certainty, without in any manner lessening or relieving the Borrowers from their obligation to comply therewith).

(2) If a Lender or Bank Product Provider enters into a Bank Product with a Loan Party, then each such Bank Product and the related Bank Product Obligations shall be secured by the Security equally and rateably with the Obligations and Lender Financial Instrument Obligations, regardless of whether the Borrowers

have complied herewith (but, for certainty, without in any manner lessening or relieving the Borrowers from their obligation to comply therewith).

2.19 ~~2.20~~ Extension of Syndicated Facility Maturity Date

(1) In this Section:

"**Request for an Offer of Syndicated Facility Extension**" means a written request by the Canadian Borrower (on behalf of itself and the U.S. Borrower) for the Syndicated Facility Lenders to issue an offer to the Borrowers extending the Syndicated Facility Maturity Date to a date up to four years after the anniversary date hereof;

"**Offer of Syndicated Facility Extension**" means a written offer by the Agent, on behalf of the Syndicated Facility Lenders, to the Canadian Borrower (on behalf of itself and the U.S. Borrower) to extend the Syndicated Facility Maturity Date to a date up to four years after the anniversary date hereof, and setting forth the terms and conditions on which such extension is offered by such Syndicated Facility Lenders and may be accepted by the Canadian Borrower (on behalf of itself and the U.S. Borrower).

(2) The Canadian Borrower may, at its option and from time to time, by delivering to the Agent an executed Request for an Offer of Syndicated Facility Extension, request the Syndicated Facility Lenders to issue an Offer of Syndicated Facility Extension; provided that such request may not be made more than 90 days or less than 60 days before the anniversary date hereof in any given year.

(3) Upon receipt from the Canadian Borrower of an executed Request for an Offer of Syndicated Facility Extension, the Agent shall forthwith deliver to each Syndicated Facility Lender a copy of such request, and each Syndicated Facility Lender shall, no later than 30 days after receipt of such request, advise the Agent in writing whether such Syndicated Facility Lender will offer to extend the Syndicated Facility Maturity Date and, if so, upon what terms and conditions; provided that, if any Syndicated Facility Lender shall fail to so advise the Agent within such period, then such Syndicated Facility Lender shall be deemed to have denied the request of the Canadian Borrower. Subject to paragraphs (6) and (7) of this Section ~~2.20~~2.19, the Agent shall only deliver an Offer of Syndicated Facility Extension upon the agreement of all of the Syndicated Facility Lenders, including as to the new terms and conditions, if any, pertaining thereto. The determination of each Syndicated Facility Lender whether or not to extend the Syndicated Facility Maturity Date shall be made by each individual Syndicated Facility Lender in its sole discretion.

(4) Not later than 30 days after receipt of such request, the Agent shall either:

(a) deliver to the Canadian Borrower (with a copy to each Syndicated Facility Lender) an Offer of Syndicated Facility Extension executed by the Agent on behalf of the Syndicated Facility Lenders and specifying the new terms and conditions, if any, upon which the extension of the Syndicated Facility Maturity Date is offered; or

(b) notify the Canadian Borrower that the request for the issuance of an Offer of Syndicated Facility Extension has been denied. If the request has been denied, but the Lenders having Syndicated Facility Commitments which, in aggregate, represent more than 66⅔% of all outstanding Syndicated Facility Commitments (each, an "**Extending Lender**") are in agreement as to the terms and conditions (which may be the existing terms and conditions) upon which they would be prepared to issue an Offer of Syndicated Facility Extension (the "**Extension Terms**"), then the Agent shall also advise the Canadian Borrower of (i) the Extension Terms, (ii) which Syndicated Facility Lenders are not in agreement as aforesaid (each, a "**Non-Extending Lender**"), and (iii) each Non-Extending Lender's Rateable Portion of the Obligations outstanding under the Syndicated Facility as at such date.

The failure of the Agent within the period referenced in Section ~~2.20(4~~2.19(4) to deliver an Offer of Syndicated Facility Extension, as provided above, shall be deemed to be notification by the Agent to the Canadian Borrower that the Syndicated Facility Lenders have denied the Canadian Borrower's request.

(5) If the Agent has delivered to the Canadian Borrower an Offer of Syndicated Facility Extension, such offer shall be open for acceptance by the Canadian Borrower until the Banking Day immediately preceding the current Syndicated Facility Maturity Date. Upon written notice by the Canadian Borrower (on behalf of itself and the U.S. Borrower) to the Agent accepting an outstanding Offer of Syndicated Facility Extension and agreeing to the terms and conditions specified therein: (a) the Syndicated Facility Maturity Date shall be extended up to four years after the anniversary date hereof in such calendar year (as specified in the Offer of Syndicated Facility Extension) after acceptance of such offer, and (b) the terms and conditions specified in such offer shall be immediately effective.

(6) If a request from the Canadian Borrower for an Offer of Syndicated Facility Extension has been denied pursuant to Section ~~2.20 (4~~2.19(4), but Lenders having Syndicated Facility Commitments which, in aggregate, represent 66⅔% or more of all outstanding Syndicated Facility Commitments have indicated to the Agent their willingness to issue an Offer of Syndicated Facility Extension on the Extension Terms, then, by no later than the Banking Day immediately preceding the current Syndicated Facility Maturity Date and provided that the Canadian Borrower (on behalf of itself and the U.S. Borrower) has agreed with the Agent to accept an Offer of Syndicated Facility Extension on the Extension Terms:

(a) the Canadian Borrower (on behalf of itself and the U.S. Borrower) may require any Non-Extending Lender to assign its Syndicated Facility Commitment, its Rateable Portion of all Loans and other Obligations outstanding under the Syndicated Facility and all of its rights, benefits and interests under the Documents relating thereto (collectively, the "**Assigned Interests**") to (i) any Extending Lenders which have agreed to increase their Syndicated Facility Commitments and purchase Assigned Interests, and (ii) to the extent the Assigned Interests are not transferred to Extending Lenders, financial institutions selected by the Canadian Borrower and acceptable to the Agent, acting reasonably. Such assignments shall be effective upon execution of assignment documentation satisfactory to the relevant Non-Extending Lender, the assignee, the Canadian Borrower and the Agent (each acting reasonably), upon payment to the relevant Non-Extending Lender (in immediately available funds) by the relevant assignee of an amount equal to its Rateable Portion of all Obligations being assigned and all accrued but unpaid interest and fees hereunder in respect of those portions of the Loans and Commitments being assigned, upon payment by the relevant assignee to the Agent (for the Agent's own account) of the recording fee contemplated in Section 16.6, and upon provision satisfactory to the Non-Extending Lender (acting reasonably) being made for (1) payment at maturity of outstanding Bankers' Acceptances accepted by it and (2) any costs, losses, premiums or expenses incurred by such Non-Extending Lender by reason of the liquidation or re deployment of deposits or other funds in respect of ~~Libor~~SOFR Loans outstanding hereunder. Upon such assignment and transfer, the Non-Extending Lender shall have no further right, interest, benefit or obligation in respect of the Syndicated Facility and the assignee thereof shall succeed to the position of such Syndicated Facility Lender as if the same was an original party hereto in the place and stead of such Non-Extending Lender and shall be deemed to be an Extending Lender on the Extension Terms; for such purpose, to the extent that the assignee is not already a party hereto, the assignee shall execute and deliver an Assignment Agreement and such other documentation as may be reasonably required by the Agent and the Canadian Borrower to confirm its agreement to be bound by the provisions hereof and to give effect to the foregoing; and

(b) to the extent that any Non-Extending Lender has not assigned its rights and interests to an Extending Lender or other financial institution as provided in subparagraph (a) above, the Borrowers may, notwithstanding any other provision hereof, repay the Non-Extending Lender's Rateable Portion of all Loans outstanding under the Syndicated Facility, together with all accrued but unpaid interest and fees thereon with respect to its Syndicated Facility Commitments, without making corresponding repayment to the Extending Lenders upon which the Canadian Borrower (on behalf of itself and the U.S. Borrower) may cancel such Non-Extending Lender's Syndicated Facility Commitment. Upon completion of the foregoing, such Non-Extending Lender shall have no further right, interest, benefit or obligation in respect of the Syndicated Facility and the Syndicated Facility shall be reduced by the amount of such Syndicated Facility Lender's cancelled Syndicated Facility Commitment.

(7) If all of the Syndicated Facility Commitments of and all Obligations outstanding under the Syndicated Facility to each Non-Extending Lender have been assigned, fully paid or cancelled, as the case may be, in accordance with the foregoing provisions of Section ~~2.20(6~~2.19(6) by no later than the Banking Day immediately preceding the then current Syndicated Facility Maturity Date, then the Agent shall be deemed to have issued an Offer of Syndicated Facility Extension to the Canadian Borrower (on behalf of itself and the U.S. Borrower) which the Canadian Borrower accepted upon completion of the foregoing in accordance with Section ~~2.20(6~~2.19(6) and the Syndicated Facility Maturity Date shall be extended to the date up to four years after the anniversary date hereof (as specified in the Extension Terms) after the date of such completion on and subject to the Extension Terms; if not, then the Syndicated Facility Maturity Date shall be extended in accordance with this Section ~~2.20~~2.19 for each of the Extending Lenders, but shall not be extended for each Non-Extending Lender and the Commitment and outstanding Loans of such Non-Extending Lenders shall be subject to the repayment and cancellation provisions applicable to the Syndicated Credit Facility after the Maturity Date applicable to such Non-Extending Lender.

(8) This Section shall apply from time to time to facilitate successive extensions and requests for extension of the Syndicated Facility Maturity Date. The Canadian Borrower shall not be entitled to request any action or give any notice under this Section at any time when a Default or an Event of Default shall have occurred and be continuing.

2.20 ~~2.21~~ Extension of Operating Facility Maturity Date

(1) In this Section:

"**Request for an Offer of Operating Facility Extension**" means a written request by the Canadian Borrower for the Operating Lender to issue an offer to the Canadian Borrower extending the Operating Facility Maturity Date to a date up to four years after the anniversary date hereof; and

"**Offer of Operating Facility Extension**" means a written offer by the Agent, on behalf of the Operating Lender, to the Canadian Borrower to extend the Operating Facility Maturity Date to a date up to four years after the anniversary date hereof, and setting forth the terms and conditions on which such extension is offered by the Operating Lender and may be accepted by the Canadian Borrower.

(2) The Canadian Borrower may, at its option and from time to time, by delivering to the Agent and the Operating Lender an executed Request for an Offer of Operating Facility Extension, request the Operating Lender to issue an Offer of Operating Facility Extension; provided that such request may not be made more

than 90 days or less than 60 days before the anniversary date hereof in any given year.

(3) Upon receipt from the Canadian Borrower of an executed Request for an Offer of Operating Facility Extension, the Operating Lender shall, not later than 30 days before the anniversary date hereof in any given year, advise the Canadian Borrower and the Agent in writing whether the Operating Lender will offer to extend the Operating Facility Maturity Date and, if so, upon what terms and conditions; provided that, if the Operating Lender shall fail to so advise the Canadian Borrower and the Agent within such period, then the Operating Lender shall be deemed to have denied the request of the Canadian Borrower. If the Operating Lender has advised that it will offer to extend the Operating Facility Maturity Date, then the Agent shall deliver to the Canadian Borrower an Offer of Operating Facility Extension executed by the Agent on behalf of the Operating Lender and specify the new terms and conditions, if any, upon which the extension of the Operating Facility Maturity Date is offered. The Agent shall only deliver an Offer of Operating Facility Extension upon the agreement of the Operating Lender, including as to the new terms and conditions, if any, pertaining thereto. The determination of the Operating Lender whether or not to extend the Operating Facility Maturity Date shall be made by the Operating Lender in its sole discretion.

(4) If the Agent has delivered to the Canadian Borrower an Offer of Operating Facility Extension, such offer shall be open for acceptance by the Canadian Borrower until the Banking Day immediately preceding the current Operating Facility Maturity Date. Upon written notice by the Canadian Borrower to the Agent accepting an outstanding Offer of Operating Facility Extension and agreeing to the terms and conditions specified therein: (a) the Operating Facility Maturity Date shall be extended to the date up to four years after the anniversary date hereof (as specified in the Offer of Operating Facility Extension) after acceptance of such offer, and (b) the terms and conditions specified in such offer shall be immediately effective.

(5) This Section shall apply from time to time to facilitate successive extensions and requests for extension of the Operating Facility Maturity Date. The Canadian Borrower shall not be entitled to request any action or give any notice under this Section at any time when a Default or an Event of Default shall have occurred and be continuing.

2.21 ~~2.22~~ Extension of U.S. Operating Facility Maturity Date

(1) In this Section:

"**Request for an Offer of U.S. Operating Facility Extension**" means a written request by the U.S. Borrower for the U.S. Operating Lender to issue an offer to the U.S. Borrower extending the U.S. Operating Facility Maturity Date to a date up to four years after the anniversary date hereof; and

"**Offer of U.S. Operating Facility Extension**" means a written offer by the Agent, on behalf of the U.S. Operating Lender, to the U.S. Borrower to extend the U.S. Operating Facility Maturity Date to a date up to four years after the anniversary date hereof, and setting forth the terms and conditions on which such extension is offered by the U.S. Operating Lender and may be accepted by the U.S. Borrower.

(2) The U.S. Borrower may, at its option and from time to time, by delivering to the Agent and the U.S. Operating Lender an executed Request for an Offer of U.S. Operating Facility Extension, request the U.S. Operating Lender to issue an Offer of U.S. Operating Facility Extension; provided that such request may not be made more than 90 days or less than 60 days before the anniversary date hereof in any given year.

(3) Upon receipt from the U.S. Borrower of an executed Request for an Offer of U.S. Operating Facility Extension, the U.S. Operating Lender shall, not later than 30 days before the anniversary date hereof in any given year, advise the U.S. Borrower and the Agent in writing whether the U.S. Operating Lender will offer to extend the U.S. Operating Facility Maturity Date and, if so, upon what terms and conditions; provided that, if the U.S. Operating Lender shall fail to so advise the U.S. Borrower and the Agent within such period, then the U.S. Operating Lender shall be deemed to have denied the request of the U.S. Borrower. If the U.S. Operating Lender has advised that it will offer to extend the U.S. Operating Facility Maturity Date, then the Agent shall deliver to the U.S. Borrower an Offer of U.S. Operating Facility Extension executed by the Agent on behalf of the U.S. Operating Lender and specify the new terms and conditions, if any, upon which the extension of the U.S. Operating Facility Maturity Date is offered. The Agent shall only deliver an Offer of U.S. Operating Facility Extension upon the agreement of the U.S. Operating Lender, including as to the new terms and conditions, if any, pertaining thereto. The determination of the U.S. Operating Lender whether or not to extend the U.S. Operating Facility Maturity Date shall be made by the U.S. Operating Lender in its sole discretion.

(4) If the Agent has delivered to the U.S. Borrower an Offer of U.S. Operating Facility Extension, such offer shall be open for acceptance by the U.S. Borrower until the Banking Day immediately preceding the current U.S. Operating Facility Maturity Date. Upon written notice by the U.S. Borrower to the Agent accepting an outstanding Offer of U.S. Operating Facility Extension and agreeing to the terms and conditions specified therein: (a) the U.S. Operating Facility Maturity Date shall be extended to the date up to four years after the anniversary date hereof (as specified in the Offer of U.S. Operating Facility Extension) after acceptance of such offer, and (b) the terms and conditions specified in such offer shall be immediately effective.

(5) This Section shall apply from time to time to facilitate successive extensions and requests for extension of the U.S. Operating Facility Maturity Date. The U.S. Borrower shall not be entitled to request any action or give any notice under this Section at any time when a Default or an Event of Default shall have occurred and be continuing.

2.22 ~~2.23~~ **Hostile Acquisitions**

(1) In the event a Borrower wishes to utilize proceeds of one or more Loans under any Credit Facility to, or to provide funds to PHX Energy or any Subsidiary, Affiliate or other person to, finance an offer to acquire (which shall include an offer to purchase securities, solicitation of an offer to sell securities, an acceptance of an offer to sell securities, whether or not the offer to sell was solicited, or any combination of the foregoing) outstanding securities of any person (the "**Target**") which constitutes a "take-over bid" pursuant to applicable corporate or securities legislation (in any case, a "**Takeover**"), then either:

(a) prior to or concurrently with delivery to the Agent of any Drawdown Notice pursuant to Section ~~2.7~~2.6 requesting one or more Loans under the Credit Facilities, the proceeds of which are to be used to finance such Takeover, the applicable Borrower shall provide to the Agent evidence satisfactory to the Agent (acting reasonably), that the board of directors or like body of the Target, or the holders of all of the securities of the Target, has or have approved, accepted, or recommended to security holders acceptance of, the Takeover; or

(b) the following steps shall be followed:

(i) at least five (5) Banking Days prior to the delivery to the Agent of any Drawdown Notice pursuant to Section ~~2.7~~2.6 requesting one or more Loans intended to be used to finance such Takeover, the applicable Borrower shall advise the Agent, who shall promptly advise an appropriate officer of each applicable Lender of the particulars of such Takeover;

(ii) within three (3) Banking Days of being so advised, each such Lender shall notify the Agent of such Lender's determination as to whether it is willing to finance such Takeover; provided that, in the event such Lender does not so notify the Agent within such three (3) Banking Day period, such Lender shall be deemed to have notified the Agent that it is not willing to finance such Takeover; and

(iii) the Agent shall promptly notify the applicable Borrower of each such Lender's determination,

and in the event that any Lender has notified or is deemed to have notified the Agent that it is not willing to finance such Takeover (each, a "**Declining Lender**"), then the Declining Lenders shall have no obligation to provide Loans to finance such Takeover, notwithstanding any other provision of this Agreement to the contrary; provided, however, that, in the case of the Syndicated Facility, each other Syndicated Facility Lender (each, a "**Financing Lender**") which has advised the Agent it is willing to finance such Takeover shall have an obligation, up to the amount of its Commitment under the relevant Credit Facility, to provide Loans to finance such Takeover, and the Loans to finance such Takeover shall be provided by each Financing Lender in accordance with the ratio, determined prior to the provision of any Loans to finance such Takeover, that the Commitment of such Financing Lender under the Syndicated Facility bears to the aggregate the Commitments of all the Financing Lenders under the Syndicated Facility.

(2) If Loans under a Credit Facility are used to finance a Takeover and there are Declining Lenders, subsequent Loans under such Credit Facility shall be funded firstly by Declining Lenders having Commitments under such Credit Facility, and subsequent repayments under such Credit Facility shall be applied firstly to Financing Lenders, in each case, until such time as the proportion that the amount of each such Lender's Outstanding Principal under such Credit Facility bears to the total Outstanding Principal under such Credit Facility is equal to such proportion which would have been in effect but for the application of this Section ~~2.23~~2.22.

2.23 **~~2.24~~ Borrowing Base Limit; Determinations of Borrowing Base**

(1) The Canadian Borrower and the U.S. Borrower shall not, at any time, have or allow the Outstanding Principal of all Loans under the Credit Facilities to exceed the Borrowing Base then in effect.

(2) The Borrowing Base shall be determined and re determined as follows:

(a) subject to the other provisions of this Section ~~2.24~~2.23, the Borrowing Base shall be the amount certified as such in the most recent Borrowing Base Certificate delivered by the Canadian Borrower to the Agent;

(b) within 5 days after receipt by the Lenders of each Borrowing Base Certificate required to be delivered hereunder, each Lender shall advise the Agent if it agrees with the certification of the Borrowing Base provided in the Borrowing Base Certificate (such determination to be made in each Lender's sole discretion); provided that, if a Lender shall not so advise the Agent, then such Lender shall be deemed to have agreed with the certification of the Canadian Borrower in the Borrowing Base Certificate;

(c) if all of the Lenders do not agree to the amount of the Borrowing Base as certified in the Borrowing Base Certificate, the Lenders may re determine the Borrowing Base (in their sole discretion) and the Agent shall deliver to the Canadian Borrower written notice of the re determination of the Borrowing Base (each such notice, a "**Borrowing Base Notice**") (with a copy thereof to each Lender) specifying such re determined Borrowing Base;

(d) if all of the Lenders cannot agree on the re determination of the Borrowing Base within 10 days after receipt of the Borrowing Base Certificate, then the Borrowing Base shall be deemed to have been determined by the Lenders as the lowest Borrowing Base amount proposed by a Lender or Lenders to the Agent and the other Lenders and promptly after the expiry of such 10 day period the Agent shall deliver a Borrowing Base Notice to the Canadian Borrower (with a copy thereof to each Lender) specifying such Borrowing Base; and

(e) for certainty, the re determined Borrowing Base shall be effective immediately upon receipt by the Canadian Borrower of a Borrowing Base Notice delivered pursuant to Section ~~2.24(2~~2.23(2)(c) or ~~2.24(2~~2.23(2)(d), as applicable.

(3) If, after a Borrowing Base determination or re determination, the aggregate Outstanding Principal of all Loans under the Credit Facilities exceeds the Borrowing Base then in effect (a "**Borrowing Base Shortfall**"), one or both of the Borrowers will within 15 days repay Loans under the Credit Facilities to the extent necessary to reduce the Outstanding Principal of Loans under the Credit Facilities by not less than the amount of the Borrowing Base Shortfall.

2.24 ~~2.25~~ Replacement of Lenders

(1) The Canadian Borrower (on behalf of itself and the U.S. Borrower) shall have the right, at its option, to (i) replace Lenders under the applicable Credit Facilities (by causing them to assign their rights and interests under such Credit Facilities to additional financial institutions which have agreed to become Lenders or by increasing the Commitments of existing Lenders under such Credit Facilities with, in the latter case, the consent of such increasing Lenders, or any combination thereof), (ii) repay the Obligations outstanding to certain Lenders under the applicable Credit Facilities and cancelling their Commitments (without corresponding repayment to other Lenders), or (iii) any combination of the foregoing, with respect to the following Lenders:

(a) Lenders which have claimed Additional Compensation in accordance with the provisions hereof (each, a "**Lender Claiming Additional Compensation**"); and

(b) Lenders which have not agreed to a consent under, waiver of or proposed amendment to the provisions of the Documents (each, a "**Dissenting Lender**") requested by any Borrower; provided that the Borrowers shall not be entitled to replace or repay Dissenting Lenders unless, after doing so, the requested consent, waiver or amendment would be approved in accordance with this Agreement;

provided that a Borrower shall not be entitled to replace or repay a Dissenting Lender unless it is concurrently repaying or replacing all Dissenting Lenders in connection with the relevant extension, consent, waiver or amendment and further provided that increases in the Commitments of existing Lenders and the addition of new financial institutions as Lenders shall require the consent of the Agent (such consent not to be unreasonably withheld).

(2) In order to give effect to the provisions of Section ~~2.25(1~~2.24(1) (but subject to such provisions), a Borrower may, from time to time:

(a) require any Lender Claiming Additional Compensation or Dissenting Lender to assign all of its rights, benefits and interests under the Documents, its Commitments and its Rateable Portion of all Loans and other Obligations (collectively, the "**Assigned Interests**") to (a) any other Lenders which have agreed to increase their Commitments and purchase the Assigned Interests, and/or (b) to third party financial institutions selected by such Borrower. Such Borrower shall provide the Agent with 10 Banking Days' prior written notice of its desire to proceed under this Section. The assignment of the Assigned Interests shall be effective upon: (a) execution and delivery of assignment documentation satisfactory to the relevant Lender Claiming Additional Compensation or Dissenting Lender, as the case may be, the assignee, such Borrower and the Agent (each acting reasonably); (b) upon payment to the relevant Dissenting Lender or Lender Claiming Additional Compensation, as the case may be, by the relevant assignee of an amount equal to such Lender's Rateable Portion of all Loans being assigned and all accrued but unpaid interest and fees hereunder in respect of those portions of the Loans and Commitments being assigned; (c) upon payment by the relevant assignee to the Agent (for the Agent's own account) of the transfer fee contemplated in Section 16.6; and (d) upon provision satisfactory to the Dissenting Lender or Lender Claiming Additional Compensation, as the case may be, (acting reasonably) being made for payment at maturity of outstanding Bankers' Acceptances accepted by it. Upon such assignment and transfer, the assigning Dissenting Lender or Lender Claiming Additional Compensation, as the case may be, shall have no further right, interest, benefit or obligation in respect of the Assigned Interests (except as provided in Section 7.7(3)) and the assignee thereof shall succeed to the position of such Lender as if the same was an original party hereto in the place and stead of such Dissenting Lender or Lender Claiming Additional Compensation, as the case may be, and such assignee shall be deemed to be a Lender for all purposes of this Agreement and shall execute and deliver an Assignment Agreement and such other documentation as may be reasonably required by the Agent and such Borrower to confirm its agreement to be bound by the provisions hereof as a Lender and to give effect to the foregoing; and

(b) to the extent that a Borrower has not caused any Dissenting Lender or Lender Claiming Additional Compensation, as the case may be, to assign its rights, benefits and interests to another Lender or other financial institution as provided in paragraph (a) above, repay to such Dissenting Lender or Lender Claiming Additional Compensation, as the case may be, at any time while such Lender continues to be a Dissenting Lender or Lender Claiming Additional Compensation, all such Lender's Rateable Portion of all Loans outstanding under the Credit Facilities, together with all accrued but unpaid interest and fees thereon and with respect to its Commitments, without making corresponding repayment to the other Lenders. Upon such repayment and provision satisfactory to the relevant Dissenting Lender or Lender Claiming Additional Compensation, as the case may be, (acting reasonably) being made for (i) payment at maturity of all outstanding Bankers' Acceptances accepted by such Lender and (ii) indemnity in respect of the outstanding Letters of Credit, if applicable, such Dissenting Lender or Lender Claiming Additional Compensation, as the case may be, shall have no further right, interest, benefit or obligation in respect of the Credit Facilities (except as provided in Section 7.7(3)) and each Credit Facility shall be reduced by the amount of such Lender's cancelled Commitment thereunder.

2.25 ~~2.26~~ **Permitted Increase in Syndicated Facility**

The Canadian Borrower (on behalf of itself and the U.S. Borrower) may, at any time and from time to time, increase the maximum amount of the Syndicated Facility by adding additional financial institutions as Syndicated Facility Lenders or by increasing the Syndicated Facility Commitments of existing Syndicated Facility Lenders with (in the latter case) the consent of such existing Syndicated Facility Lenders, or any combination thereof. The right to increase the maximum principal amount of the Syndicated Facility as aforesaid shall be subject to the following (for each such increase):

(a) no Default or Event of Default shall have occurred and be continuing and the Canadian Borrower shall have delivered to the Agent a certificate of an officer of the Canadian Borrower confirming the same and confirming (i) its corporate authorization to make such increase, (ii) the truth and accuracy in all respects of its representations and warranties contained in Section 9.1 hereof as of such date, other than any such representations and warranties which expressly speak as of an earlier date and (iii) that no consents, approvals or authorizations are required for such increase (except as have been unconditionally obtained and are in full force and effect, unamended), each as at the effective date of such increase;

(b) the Borrowers shall have delivered to the Agent opinions of their legal counsel in form and substance as may be required by the Agent, acting reasonably (and such opinion shall, *inter alia*, opine as to the corporate authorization of the Borrowers to effect such increase);

(c) the minimum amount of an increase pursuant to this Section shall be Cdn.$5,000,000 and the aggregate of all increases pursuant to this Section shall not exceed Cdn.$35,000,000 (or the Equivalent Amount thereof) and any such purported increase over such amount shall be null and void;

(d) the Agent shall have consented to any additional financial institution becoming a Syndicated Facility Lender, such consent not to be unreasonably withheld; and

(e) the Borrowers and each increasing existing Syndicated Facility Lender or financial institution being added, as the case may be, shall execute and deliver such documentation as is required by the Agent, acting reasonably, to effect the increase in question (including the partial assignment of Loans or purchase of participations from Syndicated Facility Lenders to the extent necessary to ensure that, after giving effect to such increase, each Syndicated Facility Lender holds its Rateable Portion of each outstanding Loan under the Syndicated Facility) and, if applicable, to add any such new financial institution as a Lender under the Documents.

2.26 ~~2.27~~ Permitted Increase in U.S. Operating Facility

The U.S. Borrower may increase the maximum amount of the U.S. Operating Facility by increasing the U.S. Operating Facility Commitment of the existing U.S. Operating Lender with the consent of the existing U.S. Operating Lender and the Agent. The right to increase the maximum principal amount of the U.S. Operating Facility as aforesaid shall be subject to the following (for each such increase):

(a) no Default or Event of Default shall have occurred and be continuing and the Canadian Borrower shall have delivered to the Agent a certificate of an officer of the Canadian Borrower confirming the same and confirming the truth and accuracy in all respects of the representations and warranties contained in Section 9.1 hereof as of such date, other than any such representations and warranties which expressly speak as of an earlier date;

(b) the U.S. Borrower shall have delivered to the Agent a certificate of an officer of the U.S. Borrower confirming (i) its corporate authorization to make such increase and (ii) that no consents, approvals or authorizations are required for such increase (except as have been unconditionally obtained and are in full force and effect, unamended), each as at the effective date of such increase;

(c) the U.S. Borrower and the Canadian Borrower shall each have delivered to the Agent an opinion of its legal counsel in form and substance as may be required by the Agent, acting reasonably (and such opinions shall, *inter alia*, opine as to the corporate authorization of the U.S. Borrower to effect such increase and provide an enforceability opinion on the amending agreement effecting such increase);

(d) the minimum amount of an increase pursuant to this Section shall be U.S.$5,000,000 and, after giving effect to such increase, the maximum principal amount of the U.S. Operating Facility shall not exceed U.S.$5,000,000 and any such purported increase over such amount shall be null and void; and

(e) the U.S. Borrower and the existing U.S. Operating Lender shall execute and deliver such documentation as is required by the Agent, acting reasonably, to effect the increase in question."

ARTICLE 3 CONDITIONS PRECEDENT TO DRAWDOWNS

3.1 Conditions for Drawdowns

On or before each Drawdown hereunder the following conditions shall be satisfied:

(a) Except in the case of Overdraft Loans, the Agent shall have received a proper and timely Drawdown Notice from the applicable Borrower requesting the Drawdown;

(b) the representations and warranties set forth in Section 9.1 shall be true and accurate in all respects on and as of the date of the requested Drawdown;

(c) no Default or Event of Default shall have occurred and be continuing on and as of the date of the requested Drawdown nor shall the Drawdown result in the occurrence of a Default or Event of Default;

(d) after giving effect to the proposed Drawdown, the Outstanding Principal of all Loans outstanding under the relevant Credit Facility shall not exceed the maximum amount of such Credit Facility; and

(e) a Borrowing Base Shortfall shall not exist and, after giving effect to the proposed Drawdown, the Outstanding Principal of all Loans shall not exceed the Borrowing Base then in effect.

3.2 Additional Conditions for Amendment and Restatement

This Agreement shall be effective upon, and the Existing Credit Agreement shall be amended and restated as herein provided upon, the following conditions being satisfied:

(a) all fees and expenses previously agreed to in writing between the Canadian Borrower or the Borrowers and each of the Lead Arranger, the Agent and the Lenders, including those payable under the Agency Fee Agreement, shall be paid by the Canadian Borrower to the Lead Arranger, the Agent or the Lenders, as applicable;

(b) the Agent and the Borrowers shall have executed and delivered the Agency Fee Agreement and all fees which are then due and payable thereunder to the Agent for its own account shall have been paid to the Agent by the Borrowers;

(c) Each Loan Party which is executing and delivering Documents shall have delivered to the Agent a current certificate of status, compliance or good standing, as the case may be, in respect of its jurisdiction of incorporation and certified copies of its constating documents and bylaws and the resolutions authorizing the new Documents to which it is a party and the transactions hereunder and an Officer's Certificate as to the incumbency of the officers of each Loan Party signing the Documents to which it is a party;

(d) Each Loan Party which is not a corporation and which is executing and delivering Documents shall have delivered to the Agent certificates as to the matters set forth in Section 3.2(d) with respect to the general partner thereof or other separate legal person executing and delivering the new Documents on its behalf, and, in addition, shall have delivered to the Agent certified copies of the partnership agreement, declaration of trust or other agreements or instruments creating or governing the same;

(e) the Security and other Documents (or confirmations in respect thereof) shall have been fully executed and delivered, each in form and substance satisfactory to the Lenders (acting reasonably), and all registrations, filings and recordings required hereby or otherwise necessary or desirable (as determined by the Lenders' Counsel, acting reasonably) in connection with the Security shall have been made and completed;

(f) the Agent and the Lenders shall have received legal opinions from each of (i) legal counsel to the Loan Parties domiciled in Canada or the United States of America and (ii) Lenders', each in form and substance as may be required by the Lenders in their sole discretion;

(g) PHX Energy shall have delivered to the Agent (i) a Compliance Certificate to the Agent demonstrating pro forma compliance with the financial covenants set forth in Section 10.3 and (ii) a Borrowing Base Certificate, and the matters certified therein shall be true and accurate;

(h) PHX Energy shall have delivered to the Agent (i) three year *pro forma* consolidated financial projections of PHX Energy, including the projected income statement, balance sheet and cash flow and (ii) all information necessary for the calculation of the financial covenants for each applicable Fiscal Quarter End contained therein, each in form and substance satisfactory to the Agent, acting reasonably;

(i) no Default or Event of Default shall have occurred and be continuing and the Canadian Borrower shall have delivered to the Agent an Officer's Certificate confirming the same;

(j) the assets and property of the Loan Parties and their Subsidiaries shall be free and clear of all Security Interests except for Permitted Encumbrances and evidence of the foregoing satisfactory to the Agent and the Lenders, each acting reasonably, shall have been received by the Agent and the Lenders;

(k) no Material Adverse Effect shall have occurred since December 31, 2018 and the Canadian Borrower shall have delivered to the Agent an Officer's Certificate confirming the same;

(l) PHX Energy shall have delivered to the Agent an Officer's Certificate detailing the legal structure and ownership of PHX Energy and its Subsidiaries, which certificate shall be in form and substance satisfactory to the Agent and Lenders' counsel, acting reasonably;

(m) the Loan Parties shall have delivered to the Agent certificate of insurance naming the Agent as an additional insured and as the first loss payee, as applicable;

(n) each of the representations and warranties contained in Article 9 shall be true and accurate in all respects and the Canadian Borrower shall have delivered to the Agent an Officer's Certificate confirming the same;

(o) any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party; and

(p) the Agent and the Lenders shall have received all such other documentation and information reasonably requested from the Loan Parties and their Subsidiaries including all documentation and other information reasonably requested by any Lender or the Agent, in order to comply with any applicable Anti-Money Laundering Laws.

3.3 Waiver

The conditions set forth in Sections 3.1 and 3.2 are inserted for the sole benefit of the Lenders and the Agent and may be waived by the Lenders, in whole or in part (with or without terms or conditions) without prejudicing the right of the Lenders or Agent at any time to assert such waived conditions in respect of any subsequent Drawdown.

ARTICLE 4 EVIDENCE OF DRAWDOWNS

4.1 Account of Record

The Agent (and, with respect to (a) the Operating Facility, the Agent on behalf of the Operating Lender and (b) the U.S. Operating Facility, the Agent on behalf of the U.S. Operating Lender) shall open and maintain books of account evidencing all Loans and all other amounts owing by the Borrowers to the Lenders hereunder. The Agent shall enter in the foregoing accounts details of all amounts from time to time owing, paid or repaid by the Borrowers hereunder. The information entered in the foregoing accounts shall, absent manifest error, constitute prima facie evidence of the obligations of the Borrowers to the Lenders hereunder with respect to all Loans and all other amounts owing by the Borrowers to the Lenders hereunder. After a request by the applicable Borrower, the Agent shall promptly advise the applicable Borrower of such entries made in such books of account.

ARTICLE 5 PAYMENTS OF INTEREST AND FEES

5.1 Interest on Canadian Prime Rate Loans

The Canadian Borrower shall pay interest on each Canadian Prime Rate Loan owing by it during each Interest Period applicable thereto in Canadian Dollars at a rate per annum equal to the Canadian Prime Rate in effect from time to time during such Interest Period plus the Applicable Pricing Rate. Each determination by the Agent of the Canadian Prime Rate applicable from time to time during an Interest Period shall, in the absence of manifest error, be prima facie evidence thereof. Such interest shall accrue daily and shall be payable in arrears on each Interest Payment Date for such Loan for the period from and including the Drawdown Date or the preceding Conversion Date or Interest Payment Date, as the case may be, for such Loan to and including the day preceding such Interest Payment Date and shall be calculated on the principal amount of the Canadian Prime Rate Loan outstanding during such period and on the basis of the actual number of days elapsed in a year of 365 days. Changes in the Canadian Prime Rate shall cause an immediate adjustment of the interest rate applicable to such Loans without the necessity of any notice to the Canadian Borrower.

5.2 Interest on U.S. Base Rate Loans

Each Borrower, as applicable, shall pay interest on each U.S. Base Rate Loan owing by it during each Interest Period applicable thereto in United States Dollars at a rate per annum equal to the U.S. Base Rate in effect from time to time during such Interest Period plus the Applicable Pricing Rate. Each determination by the Agent of the U.S. Base Rate applicable from time to time during an Interest Period shall, in the absence of manifest error, be prima facie evidence thereof. Such interest shall accrue daily and shall be payable in arrears on each Interest Payment Date for such Loan for the period from and including the Drawdown Date or the preceding Conversion Date or Interest Payment Date, as the case may be, for such Loan to and including the day preceding such Interest Payment Date and shall be calculated on the principal amount of the U.S. Base Rate Loan outstanding during such period and on the basis of the actual number of days elapsed in a year of 365 days. Changes in the U.S. Base Rate shall cause an immediate adjustment of the interest rate applicable to such Loans without the necessity of any notice to the either Borrower.

5.3 Interest on ~~Libor~~SOFR Loans

(a) Each ~~Borrower, as applicable,~~SOFR Loan made or maintained by a Lender shall ~~pay~~bear interest ~~on each Libor Loan owing by it~~ during each Interest Period ~~applicable thereto in United States Dollars at a rate per annum, calculated~~it is outstanding (computed on the basis of a ~~360 day~~ year~~,~~ of 360 days and actual days elapsed) on the unpaid principal amount thereof from the date of Drawdown, Conversion or Rollover, as applicable, until maturity (whether by acceleration or otherwise) at a rate per annum equal to the ~~Libor Rate with respect to such Interest Period plus~~sum of the Applicable Pricing Rate~~. Each determination by the Agent of the Libor Rate~~ plus the Adjusted Term SOFR applicable to ~~an~~such Interest Period~~ shall, in the absence of manifest error, be prima facie evidence thereof. Such interest shall accrue daily and shall be~~, payable ~~in arrears~~by the Borrowers on each Interest Payment Date ~~for such Loan for the period from and including the Drawdown Date or the preceding Rollover Date, Conversion Date or Interest Payment Date, as the case may be, for such Loan~~and at maturity (whether by acceleration or otherwise).

(b) The Agent shall determine each interest rate applicable to SOFR Loans and ~~including the day preceding such Interest Payment Date and shall be calculated on the principal amount~~its determination thereof shall be conclusive and binding except in the case of manifest error. In connection with the use or administration of Term SOFR, the ~~Libor Loan outstanding during such period~~Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Document. The Agent will promptly notify the Borrowers and ~~on~~ the ~~basis of the actual number of days elapsed divided by 360~~Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

5.4 Interest on U.S. Prime Rate Loans

The U.S. Borrower shall pay interest on each U.S. Prime Rate Loan owing by it during each Interest Period applicable thereto in United States Dollars at a rate per annum equal to the U.S. Prime Rate in effect from time to time during such Interest Period plus the Applicable Pricing Rate. Each determination by the Agent of the U.S. Prime Rate applicable from time to time during an Interest Period shall, in the absence of manifest error, be prima facie evidence thereof. Such interest shall accrue daily and shall be payable in arrears on each Interest Payment Date for such Loan for the period from and including the Drawdown Date or the preceding Conversion Date or Interest Payment Date, as the case may be, for such Loan to and including the day preceding such Interest Payment Date and shall be calculated on the principal amount of the U.S. Prime Rate Loan outstanding during such period and on the basis of the actual number of days elapsed in a year of 365 days. Changes in the U.S. Prime Rate shall cause an immediate adjustment of the interest rate applicable to such Loans without the necessity of any notice to the U.S. Borrower.

5.5 *Interest Act* (Canada); Conversion of 360 Day Rates

(1) Except as provided for in Section 5.5(2), whenever a rate of interest or other rate per annum hereunder is expressed or calculated on the basis of a year (the "**deemed year**") which contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest shall be expressed as a yearly rate for purposes of the *Interest Act* (Canada) by multiplying such rate of interest by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed year.

(2) Whenever a rate of interest or other rate per annum hereunder is expressed or calculated on the basis of a year of 360 days, such rate of interest or other rate shall be expressed as a rate per annum, calculated on the basis of a 365 day year, by multiplying such rate of interest or other rate by 365 and dividing it by 360.

5.6 Nominal Rates; No Deemed Reinvestment

The principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement; all interest payments to be made hereunder shall be paid without allowance or deduction for deemed reinvestment or otherwise, before and after maturity, default and judgment. The rates of interest specified in this Agreement are intended to be nominal rates and not effective rates. Interest calculated hereunder shall be calculated using the nominal rate method and not the effective rate method of calculation.

5.7 Standby Fees

(1) The applicable Borrower shall pay to the Agent for the account of the relevant Lenders a standby fee in Canadian Dollars, in respect of each of the Syndicated Facility and the Operating Facility, and in United States Dollars, in respect of the U.S. Operating Facility, calculated at a rate per annum equal to the Applicable Pricing Rate on the amount, if any, by which the amount of the Outstanding Principal under such Credit Facility for each day in the period of determination is

less than the maximum amount for each such day of such Credit Facility. Fees determined in accordance with this Section shall accrue daily from and after the date hereof and be payable by the applicable Borrower quarterly in arrears and on cancellation in full of such Credit Facility and on the applicable Maturity Date.

(2) As of: (i) the first Banking Day of January, April, July and October in each year, (ii) the date of any cancellation in full of a Credit Facility and (iii) the applicable Maturity Date, the Agent shall determine the standby fees under this Section in respect of such Credit Facility for the period from and including the date hereof or the date of the immediately preceding determination, as the case may be, to but excluding that date of determination and shall deliver to the applicable Borrower a written request for payment of the standby fees so determined, as detailed therein. The applicable Borrower shall pay to the Agent for the account of the applicable Lenders the standby fees referred to above within 5 Banking Days after receipt of each such written request and hereby authorizes and directs the Agent to debit the applicable accounts of the applicable Borrower in respect of payment of such standby fees.

5.8 Agent's Fees

From and after the date hereof, the Canadian Borrower shall pay to the Agent, for its own account, until the Credit Facilities have been fully cancelled and all Obligations hereunder have been paid in full, the non-refundable agency fees in the amounts specified in the Agency Fee Agreement.

5.9 Interest on Overdue Amounts

Notwithstanding any other provision hereof, in the event that any amount due hereunder (including, without limitation, any interest payment) is not paid when due (whether by acceleration or otherwise), the applicable Borrower shall pay interest on such unpaid amount (including, without limitation, interest on interest), if and to the fullest extent permitted by applicable law, from the date that such amount is due until the date that such amount is paid in full (but excluding the date of such payment if the payment is received for value at the required place of payment on the date of such payment), and such interest shall accrue daily, be calculated and compounded monthly and be payable on demand, after as well as before maturity, default and judgment, at a rate per annum that is equal to (i) in respect of amounts due in Canadian Dollars, the rate of interest then payable on Canadian Prime Rate Loans plus [redacted] per annum or (ii) in respect of amounts due in United States Dollars the rate of interest then payable on U.S. Base Rate Loans, in respect of the Syndicated Facility, and U.S. Prime Rate Loans, in respect of the U.S. Operating Facility, plus [redacted] per annum.

5.10 Waiver

To the extent permitted by applicable law, the covenant of each Borrower to pay interest at the rates provided herein shall not merge in any judgment relating to any obligation of a Borrower to the Lenders or the Agent and any provision of the *Interest Act* (Canada), *Judgment*

Interest Act (Alberta) or any other applicable law which restricts any rate of interest set forth herein shall be inapplicable to this Agreement and is hereby waived by the Borrowers.

5.11 Maximum Rate Permitted by Law

No interest or fee to be paid hereunder shall be paid at a rate exceeding the maximum rate permitted by applicable law. In the event that such interest or fee exceeds such maximum rate, such interest or fees shall be reduced or refunded, as the case may be, so as to be payable at the highest rate recoverable under applicable law.

ARTICLE 6 BANKERS' ACCEPTANCES

6.1 Bankers' Acceptances

The Canadian Borrower may give the Agent notice that Bankers' Acceptances will be required under the Syndicated Facility pursuant to a Drawdown, Rollover or Conversion. References to "Lenders" in this Article are deemed to be the references to the Syndicated Facility Lenders or, to the extent the Credit Agreement is amended to provide for the issuance of Bankers' Acceptances under the Operating Facility, the Operating Lender, as applicable, and as the context requires.

6.2 Fees

Upon the acceptance by a Lender of a Bankers' Acceptance, the Canadian Borrower shall pay to the Agent for the account of such Lender a fee in Canadian Dollars equal to the Applicable Pricing Rate calculated on the principal amount at maturity of such Bankers' Acceptance and for the period of time from and including the date of acceptance to but excluding the maturity date of such Bankers' Acceptance and calculated on the basis of the number of days elapsed in a year of 365 days.

6.3 Form and Execution of Bankers' Acceptances

The following provisions shall apply to each Bankers' Acceptance hereunder:

(a) the face amount at maturity of each draft drawn by the Canadian Borrower to be accepted as a Bankers' Acceptance shall be Cdn.$100,000 and integral multiples thereof;

(b) the term to maturity of each draft drawn by the Canadian Borrower to be accepted as a Bankers' Acceptance shall, subject to market availability as determined by the Lenders, be 1, 2, 3 or 6 months (or such other longer or shorter term as agreed by the Lenders), as selected by the Canadian Borrower in the relevant Drawdown, Rollover or Conversion Notice, and each Bankers' Acceptance shall be payable and mature on the last day of the Interest Period selected by the Canadian Borrower for such Bankers' Acceptance (which, for certainty, pursuant to the definition of "Interest

Period" shall be on or prior to the Maturity Date of the Credit Facility under which the Bankers' Acceptances are proposed to be issued);

(c) each draft drawn by the Canadian Borrower and presented for acceptance by a Lender shall be drawn on the standard form of such Lender in effect at the time; provided, however, that the Agent may require the Lenders to use a generic form of Bankers' Acceptance, in a form satisfactory to each Lender, acting reasonably, provided by the Agent for such purpose in place of the Lenders' own forms;

(d) subject to Section 6.3(e) below, Bankers' Acceptances shall be signed by duly authorized officers of the Canadian Borrower or, in the alternative, the signatures of such officers may be mechanically reproduced in facsimile thereon and Bankers' Acceptances bearing such facsimile signatures shall be binding on the Canadian Borrower as if they had been manually executed and delivered by such officers on behalf of the Canadian Borrower; notwithstanding that any person whose manual or facsimile signature appears on any Bankers' Acceptance may no longer be an authorized signatory for the Canadian Borrower on the date of issuance of a Bankers' Acceptance, such signature shall nevertheless be valid and sufficient for all purposes as if such authority had remained in force at the time of such issuance and any such Bankers' Acceptance shall be binding on the Canadian Borrower; and

(e) in lieu of signing Bankers' Acceptances in accordance with Section 6.3(d) above, the Canadian Borrower may provide a Power of Attorney to a Lender; for so long as a Power of Attorney is in force with respect to a given Lender, such Lender shall execute and deliver Bankers' Acceptances on behalf of the Canadian Borrower in accordance with the provisions thereof and, for certainty, all references herein to drafts drawn by the Canadian Borrower, Bankers' Acceptances executed by the Canadian Borrower or similar expressions shall be deemed to include Bankers' Acceptances executed in accordance with a Power of Attorney, unless the context otherwise requires.

6.4 Power of Attorney; Provision of Bankers' Acceptances to Lenders

(1) Unless revoked with respect to a given Lender in accordance herewith, the Canadian Borrower hereby appoints each Lender, acting by any authorized signatory of the Lender in question, the attorney of the Canadian Borrower:

(a) to sign for and on behalf and in the name of the Canadian Borrower as drawer, drafts in such Lender's standard form which are depository bills as defined in the *Depository Bills and Notes Act* (Canada) (the "**DBNA**"), payable to a "clearing house" (as defined in the DBNA) (the "**clearing house**");

(b) for drafts which are not depository bills, to sign for and on behalf and in the name of the Canadian Borrower as drawer and to endorse on its behalf, Bankers' Acceptances drawn on the Lender payable to the order of the undersigned or payable to the order of such Lender;

(c) to fill in the amount, date and maturity date of such Bankers' Acceptances; and

(d) to deposit and/or deliver such Bankers' Acceptances which have been accepted by such Lender,

provided that such acts in each case are to be undertaken by the Lender in question strictly in accordance with instructions given to such Lender by the Canadian Borrower as provided in this Section. For certainty, signatures of any authorized signatory of a Lender may be mechanically reproduced in facsimile on Bankers' Acceptances in accordance herewith and such facsimile signatures shall be binding and effective as if they had been manually executed by such authorized signatory of such Lender.

Instructions from the Canadian Borrower to a Lender relating to the execution, completion, endorsement, deposit and/or delivery by such Lender on behalf of the Canadian Borrower of Bankers' Acceptances which the Canadian Borrower wishes to submit to such Lender for acceptance by such Lender shall be communicated by the Canadian Borrower in writing to the Agent by delivery to the Agent of Drawdown Notices, Conversion Notices and Rollover Notices, as the case may be, in accordance with this Agreement which, in turn, shall be communicated by the Agent, on behalf of the Canadian Borrower, to such Lender.

The communication in writing by the Canadian Borrower, or on behalf of the Canadian Borrower by the Agent, to a Lender of the instructions set out in the Drawdown Notices, Conversion Notices and Rollover Notices referred to above shall constitute (a) the authorization and instruction of the Canadian Borrower to such Lender to sign for and on behalf and in the name of the Canadian Borrower as drawer the requested Bankers' Acceptances and to complete and/or endorse Bankers' Acceptances in accordance with such information as set out above and (b) the request of the Canadian Borrower to such Lender to accept such Bankers' Acceptances and deposit the same with the clearing house or deliver the same, as the case may be, in each case in accordance with this Agreement and such instructions. The Canadian Borrower acknowledges that a Lender shall not be obligated to accept any such Bankers' Acceptances except in accordance with the provisions of this Agreement.

A Lender shall be and it is hereby authorized to act on behalf of the Canadian Borrower upon and in compliance with instructions communicated to such Lender as provided herein if such Lender reasonably believes such instructions to be genuine. If a Lender accepts Bankers' Acceptances pursuant to any such instructions, such Lender shall confirm particulars of such instructions and advise the Agent that it has complied therewith by notice in writing addressed to the Agent and served personally or sent by telecopier in accordance with the provisions hereof. A Lender's actions in compliance with such instructions, confirmed and advised to the Agent by such notice, shall be conclusively deemed to have been in accordance with the instructions of the Canadian Borrower.

This Power of Attorney may be revoked by the Canadian Borrower with respect to any particular Lender at any time upon not less than 5 Banking Days' prior written notice served upon the Lender in question and the Agent, provided that no such revocation shall reduce, limit or otherwise affect the obligations of the Canadian Borrower in respect of any Bankers' Acceptance executed, completed, endorsed, deposited and/or delivered in accordance herewith prior to the time at which such revocation becomes effective.

(2) Unless the Canadian Borrower has provided Powers of Attorney to the Lenders, to facilitate Drawdowns, Rollovers or Conversions of Bankers' Acceptances, the Canadian Borrower shall, upon execution of this Agreement and thereafter from time to time as required by the Lenders, provide to the Agent for delivery to each Lender drafts drawn in blank by the Canadian Borrower (pre endorsed and otherwise in fully negotiable form, if applicable) in quantities sufficient for each Lender to fulfil its obligations hereunder. Any such pre signed drafts which are delivered by the Canadian Borrower to the Agent or a Lender shall be held in safekeeping by the Agent or such Lender, as the case may be, with the same degree of care as if they were the Agent's or such Lender's property, and shall only be dealt with by the Lenders and the Agent in accordance herewith. No Lender shall be responsible or liable for its failure to make its share of any Drawdown, Rollover or Conversion of Bankers' Acceptances required hereunder if the cause of such failure is, in whole or in part, due to the failure of the Canadian Borrower to provide such pre signed drafts to the Agent (for delivery to such Lender) on a timely basis.

(3) By 10:00 a.m. (Calgary time) on the applicable Drawdown Date, Conversion Date or Rollover Date, the Canadian Borrower shall (a) either deliver to each Lender in Toronto, or, if previously delivered, be deemed to have authorized each Lender to complete and accept, or (b) where the Canadian Borrower has previously executed and delivered a Power of Attorney to a Lender, be deemed to have authorized each such Lender to sign on behalf of the Canadian Borrower, complete and accept, drafts drawn by the Canadian Borrower on such Lender in a principal amount at maturity equal to such Lender's share of the Bankers' Acceptances specified by the Canadian Borrower in the relevant Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be, as notified to the Lenders by the Agent.

6.5 Mechanics of Issuance

(1) Upon receipt by the Agent of a Drawdown Notice, Conversion Notice or Rollover Notice from the Canadian Borrower requesting the issuance of Bankers' Acceptances, the Agent shall promptly notify the applicable Lenders thereof and advise each such Lender of the aggregate face amount of Bankers' Acceptances to be accepted by such Lender, the date of issue, the Interest Period for such Loan and, whether such Bankers' Acceptances are to be self-marketed by the Canadian

Borrower or purchased by such Lender for its own account; the apportionment among the Syndicated Facility Lenders of the face amounts of Bankers' Acceptances to be accepted by each Syndicated Facility Lender shall be determined by the Agent by reference and in proportion to the respective Commitments of each Syndicated Facility Lender, provided that, when such apportionment cannot be evenly made, the Agent shall round allocations amongst such Syndicated Facility Lenders consistent with the Agent's normal money market practices.

(2) Unless the Canadian Borrower has elected pursuant to Section 6.5(3) to have each Lender purchase for its own account the Bankers' Acceptances to be accepted by it in respect of any Drawdown, Rollover or Conversion, on each Drawdown Date, Rollover Date or Conversion Date involving the issuance of Bankers' Acceptances:

(a) the Canadian Borrower shall obtain quotations from prospective purchasers regarding the sale of the Bankers' Acceptances and shall accept such offers in its sole discretion;

(b) by no later than 9:00 a.m. (Calgary time) on such date, the Canadian Borrower shall provide the Agent with details regarding the sale of the Bankers' Acceptances described in (a) above whereupon the Agent shall promptly notify the applicable Lenders of the identity of the purchasers of such Bankers' Acceptances, the amounts being purchased by such purchasers, the Discount Proceeds and the acceptance fees applicable to such issue of Bankers' Acceptances (including each Syndicated Facility Lender's share thereof);

(c) each Lender shall complete and accept in accordance with the Drawdown Notice, Conversion Notice or Rollover Notice delivered by the Canadian Borrower and advised by the Agent in connection with such issue, its share of the Bankers' Acceptances to be issued on such date; and

(d) in the case of a Drawdown, each Lender shall, on receipt of the Discount Proceeds, remit the Discount Proceeds (net of the acceptance fee payable to such Lender pursuant to Section 6.2) to the Agent for the account of the Canadian Borrower; the Agent shall make such funds available to the Canadian Borrower for same day value on such date.

(3) The Canadian Borrower may, with respect to the issuance of Bankers' Acceptances hereunder from time to time, elect in the Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be, delivered in respect of such issuance to have the Lenders purchase such Bankers' Acceptances for their own account. On each such Drawdown Date, Rollover Date or Conversion Date involving the issuance of Bankers' Acceptances being so purchased by the Lenders:

(a) before 9:00 a.m. (Calgary time) on such date, the Agent shall determine the CDOR Rate and shall obtain quotations from each Schedule II Lender or Schedule III Lender of the Discount Rate then applicable to bankers' acceptances accepted by such Schedule II Lender or Schedule III Lender in respect of an issue of bankers' acceptances in a comparable amount and with comparable maturity to the Bankers' Acceptances proposed to be issued on such date;

(b) on or about 9:00 a.m. (Calgary time) on such date the Agent shall determine the BA Discount Rate applicable to each Lender and shall advise each Lender of the BA Discount Rate applicable to it;

(c) each Lender shall complete and accept, in accordance with the Drawdown Notice, Conversion Notice or Rollover Notice delivered by the Canadian Borrower and advised by the Agent, in connection with such issue, its share of the Bankers' Acceptances to be issued on such date and shall purchase such Bankers' Acceptances for its own account at a purchase price which reflects the BA Discount Rate applicable to such issue; and

(d) in the case of a Drawdown, each Lender shall, for same day value on the Drawdown Date, remit the Discount Proceeds or advance the BA Equivalent Advance, as the case may be, payable by such Lender (net of the acceptance fee payable to such Lender pursuant to Section 6.2) to the Agent for the account of the Canadian Borrower; the Agent shall make such funds available to the Canadian Borrower for same day value on such date.

(4) Each Lender may at any time and from time to time hold, sell, rediscount or otherwise dispose of any or all Bankers' Acceptances accepted and purchased by it for its own account.

6.6 Rollover, Conversion or Payment on Maturity

In anticipation of the maturity of Bankers' Acceptances, the Canadian Borrower shall, subject to and in accordance with the requirements hereof, do one or a combination of the following with respect to the aggregate face amount at maturity of all such Bankers' Acceptances:

(a) (i) deliver to the Agent a Rollover Notice that the Canadian Borrower intends to draw and present for acceptance on the maturity date new Bankers' Acceptances (issued under the same Credit Facility as the maturing Bankers' Acceptances) in an aggregate face amount up to the aggregate amount of the maturing Bankers' Acceptances and (ii) on the maturity date pay to the Agent for the account of the applicable Lenders an additional amount equal to the difference between the aggregate face amount of the maturing Bankers' Acceptances and the Discount Proceeds of such new Bankers' Acceptances;

(b) (i) deliver to the Agent a Conversion Notice requesting a Conversion of the maturing Bankers' Acceptances to another type of Loan under the same Credit Facility as the maturing Bankers' Acceptances and (ii) on the maturity date pay to the Agent for the account of the applicable Lenders, an amount equal to the difference, if any, between the aggregate face amount of the maturing Bankers' Acceptances and the amount of the Loans into which Conversion is requested; or

(c) on the maturity date of the maturing Bankers' Acceptances, pay to the Agent for the account of the applicable Lenders, an amount equal to the aggregate face amount of such Bankers' Acceptances.

If the Canadian Borrower fails to so notify the Agent or make such payments on maturity, the Agent shall effect a Conversion into a Canadian Prime Rate Loan under the same Credit Facility as the maturing Bankers' Acceptances of the entire amount of such maturing Bankers' Acceptances as if a Conversion Notice had been given by the Canadian Borrower to the Agent to that effect.

6.7 Restriction on Rollovers and Conversions

Subject to the other provisions hereof, Conversions and Rollovers of Bankers' Acceptances may only occur on the maturity date thereof.

6.8 Rollovers

Without duplication of the obligations of the Canadian Borrower under Section 6.6(a), in order to satisfy the continuing liability of the Canadian Borrower to a Lender for the face amount of maturing Bankers' Acceptances accepted by such Lender, such Lender shall receive and retain for its own account the Discount Proceeds of new Bankers' Acceptances issued on a Rollover, and the Canadian Borrower shall on the maturity date of the Bankers' Acceptances being rolled over pay to the Agent for the account of such Lender an amount equal to the difference between the face amount of the maturing Bankers' Acceptances and the Discount Proceeds from the new Bankers' Acceptances, together with the acceptance fees to which such Lenders are entitled pursuant to Section 6.2.

6.9 Conversion into Bankers' Acceptances

Without duplication of the obligations of the Canadian Borrower under Section 6.6(b), in respect of Conversions into Bankers' Acceptances, in order to satisfy the continuing liability of the Canadian Borrower to a Lender for the amount of the converted Loan, such Lender shall receive and retain for its own account the Discount Proceeds of the Bankers' Acceptances issued upon such Conversion, and the Canadian Borrower shall on the Conversion Date pay to the Agent for the account of such Lender an amount equal to the difference between the principal amount of the converted Loan and the aggregate Discount Proceeds from the Bankers' Acceptances issued on such Conversion, together with the acceptance fees to which such Lender is entitled pursuant to Section 6.2.

<u>6.10</u> <u>Conversion from Bankers' Acceptances</u>

In order to satisfy the continuing liability of the Canadian Borrower to a Lender for an amount equal to the aggregate face amount of the maturing Bankers' Acceptances converted to another type of Loan, the Agent shall record the obligation of the Canadian Borrower to such Lender as a Loan of the type into which such continuing liability has been converted.

<u>6.11</u> <u>BA Equivalent Advances</u>

Notwithstanding the foregoing provisions of this Article, a Non Acceptance Lender shall, in lieu of accepting Bankers' Acceptances, make a BA Equivalent Advance. The amount of each BA Equivalent Advance shall be equal to the Discount Proceeds which would be realized from a hypothetical sale of those Bankers' Acceptances which, but for this Section, such Lender would otherwise be required to accept as part of such a Drawdown, Conversion or Rollover of Bankers' Acceptances. To determine the amount of such Discount Proceeds, the hypothetical sale shall be deemed to take place at the BA Discount Rate for such Loan. Any BA Equivalent Advance shall be made on the relevant Drawdown Date, Rollover Date or Conversion Date as the case may be and shall remain outstanding for the term of the relevant Bankers' Acceptances. Concurrent with the making of a BA Equivalent Advance, a Non Acceptance Lender shall be entitled to deduct therefrom an amount equal to the acceptance fee which, but for this Section, such Lender would otherwise be entitled to receive as part of such Loan. Subject to Section 6.6, upon the maturity date for such Bankers' Acceptances, the Canadian Borrower shall pay to each Non Acceptance Lender an amount equal to the face amount at maturity of the Bankers' Acceptances which, but for this Section, such Lender would otherwise be required to accept as part of such a Drawdown, Conversion or Rollover of Bankers' Acceptances.

All references herein to "Loans" and "Bankers' Acceptances" shall, unless otherwise expressly provided herein or unless the context otherwise requires, be deemed to include BA Equivalent Advances made by a Non Acceptance Lender as part of a Drawdown, Conversion or Rollover of Bankers' Acceptances.

<u>6.12</u> <u>Termination of Bankers' Acceptances</u>

If at any time a Lender ceases to accept bankers' acceptances in the ordinary course of its business, such Lender shall be deemed to be a Non Acceptance Lender and shall make BA Equivalent Advances in lieu of accepting Bankers' Acceptances under this Agreement.

<u>6.13</u> <u>Canadian Borrower Acknowledgements</u>

In the event that the Canadian Borrower is marketing its own Bankers' Acceptances in accordance with Section 6.5(2), the Canadian Borrower hereby agrees that it shall make its own arrangements for the marketing and sale of the Bankers' Acceptances to be issued hereunder and that the Lenders shall have no obligation nor be responsible in that regard. The Canadian Borrower further acknowledges and agrees that the availability of purchasers for

Bankers' Acceptances requested to be issued hereunder, as well as all risks relating to the purchasers thereof, are its own risk.

ARTICLE 7 LETTERS OF CREDIT

7.1 Availability

Subject to the provisions hereof, the Canadian Borrower may require that Letters of Credit be issued under the Operating Facility in accordance with the Drawdown Notices and Rollover Notices of the Canadian Borrower; provided that the aggregate Outstanding Principal represented by all outstanding Letters of Credit under the Operating Facility shall not exceed Cdn.$5,000,000. The issuance of Letters of Credit shall constitute Drawdowns or Rollovers (as applicable) hereunder and shall reduce the availability of the Operating Facility and the maximum amount available by the aggregate Outstanding Principal of Letters of Credit.

7.2 Currency, Type, Form and Expiry

Letters of Credit issued pursuant hereto shall be denominated in Canadian Dollars and amounts payable thereunder shall be paid in the currency in which the Letter of Credit is denominated. A Letter of Credit issued hereunder shall be issued by the Operating Lender. Letters of Credit shall be in a form satisfactory to the Operating Lender, acting reasonably, and shall have an expiration date not in excess of one year from the date of issue and, in any event, not later than the then current Operating Facility Maturity Date. On the Operating Facility Maturity Date, the Canadian Borrower shall provide or cause to be provided to the Agent cash collateral or letters of credit (or any combination thereof) in accordance with the provisions of Section ~~2.17(2~~2.16(2) in an amount equal to or greater than the aggregate undrawn amount of all unexpired Letters of Credit outstanding under the Operating Facility; such cash collateral and letters of credit shall be held by the Agent and be applied in accordance with said Section ~~2.17(2~~2.16(2) in satisfaction of and security for the Obligations of the Canadian Borrower for such unexpired Letters of Credit.

7.3 No Conversion

Except as provided in Section 7.5, the Canadian Borrower may not effect a Conversion of a Letter of Credit.

7.4 Records

The Agent shall maintain records showing the undrawn and unexpired amount of each Letter of Credit outstanding hereunder and showing for each Letter of Credit issued hereunder:

(a) the dates of issuance and expiration thereof;

(b) the amount thereof; and

(c) the date and amount of all payments made thereunder.

The Agent shall make copies of such records available to the Canadian Borrower upon its request.

7.5 Reimbursement or Conversion on Presentation;

On presentation of a Letter of Credit and payment thereunder by the Operating Lender, the Canadian Borrower shall forthwith pay to and reimburse the Operating Lender for all amounts paid pursuant to such Letter of Credit; failing such payment, the Canadian Borrower shall be deemed to have effected a Conversion of such Letter of Credit into a Canadian Prime Rate Loan under the Operating Facility and to the extent of the payment by the Operating Lender thereunder.

7.6 Fees and Expenses

(1) The Canadian Borrower shall pay to the Agent in respect of Letters of Credit issued hereunder, for the benefit of the Operating Lender, an issuance fee in advance on the date each such Letter of Credit is issued calculated at a rate per annum equal to the Applicable Pricing Rate and on the amount of each such Letter of Credit for the number of days which such Letter of Credit will be outstanding in the year of 365 days in which the Letter of Credit is issued; provided that the minimum issuance fee for each such Letter of Credit shall be [redacted]. To the extent any Letters of Credit for which issuance fees have been paid in advance are presented, cancelled, terminated or reduced prior to their original expiry date, the Agent shall reimburse the Canadian Borrower for the amount of any applicable overpayment of any such issuance fees in connection with any such presentment, cancellation, termination or reduction.

(2) In addition, with respect to all Letters of Credit, the Canadian Borrower shall from time to time pay to the Agent, for the benefit of the Operating Lender , the Operating Lender's usual and customary fees and charges (at the then prevailing rates) for the amendment, delivery and administration of letters of credit such as the Letters of Credit and shall pay and reimburse the Agent, for the benefit of the Operating Lender, for any out of pocket costs and expenses incurred in connection with any Letter of Credit, including in connection with any payment thereunder.

7.7 Additional Provisions

(1) Indemnity and No Lender Liability

The Canadian Borrower shall indemnify and save harmless the Operating Lender against all claims, losses, costs, expenses or damages to the Operating Lender arising out of or in connection with any Letter of Credit, the issuance thereof, any payment thereunder or any action taken by the Operating Lender or any other person in connection therewith, including all costs relating to any legal process or proceeding instituted by any party restraining or seeking to restrain the issuer of a Letter of Credit or the Operating Lender from accepting or paying any Draft or any amount under any such Letter of Credit, except as a result of the Operating Lender's gross negligence or wilful misconduct. The Canadian Borrower also agrees that the Operating Lender shall have no liability to it for any reason in respect of or in connection with any Letter of

Credit, the issuance thereof, any payment thereunder or any other action taken by the Operating Lender or any other person in connection therewith, except as a result of the Operating Lender's gross negligence or wilful misconduct.

(2) No Obligation to Inquire

The Canadian Borrower hereby acknowledges and confirms to the Operating Lender that the Operating Lender shall not be obliged to make any inquiry or investigation as to the right of any beneficiary to make any claim or Draft or request any payment under a Letter of Credit and payment pursuant to a Letter of Credit shall not be withheld by reason of any matters in dispute between the beneficiary thereof and the Canadian Borrower. The sole obligation of the Operating Lender with respect to Letters of Credit is to cause to be paid a Draft drawn or purporting to be drawn in accordance with the terms of the applicable Letter of Credit and for such purpose the Operating Lender is only obliged to determine that the Draft purports to comply with the terms and conditions of the relevant Letter of Credit.

The Operating Lender shall not have any responsibility or liability for or any duty to inquire into the form, sufficiency (other than to the extent provided in the preceding paragraph), authorization, execution, signature, endorsement, correctness (other than to the extent provided in the preceding paragraph), genuineness or legal effect of any Draft, certificate or other document presented to it pursuant to a Letter of Credit and the Canadian Borrower unconditionally assumes all risks with respect to the same. The Canadian Borrower agrees that it assumes all risks of the acts or omissions of the beneficiary of any Letter of Credit with respect to the use by such beneficiary of the relevant Letter of Credit. The Canadian Borrower further agrees that the Operating Lender and any of its officers, directors or correspondents will not assume liability for, or be responsible for:

(a) the validity, correctness, genuineness or legal effect of any document or instrument relating to any Letter of Credit, even if such document or instrument should in fact prove to be in any respect invalid, insufficient, inaccurate, fraudulent or forged;

(b) the failure of any document or instrument to bear any reference or adequate reference to any Letter of Credit;

(c) any failure to note the amount of any Draft on any Letter of Credit or on any related document or instrument; any failure of the beneficiary of any Letter of Credit to meet the obligations of such beneficiary to the Canadian Borrower or any other person;

(d) any errors, inaccuracies, omissions, interruptions or delays in transmission or delivery of any messages, directions or correspondence by mail, facsimile or otherwise, whether or not they are in cipher;

(e) any inaccuracies in the translation of any messages, directions or correspondence or for errors in the interpretation of any technical terms; or

(f) any failure by the Operating Lender to make payment under any Letter of Credit as a result of any law, control or restriction rightfully or wrongfully exercised or imposed by any domestic or foreign court or government or Governmental Authority or as a result of any other cause beyond the control of the Operating Lender or its officers, directors or correspondents.

(3) Obligations Unconditional

The obligations of the Canadian Borrower hereunder with respect to all Letters of Credit shall be absolute, unconditional and irrevocable and shall not be reduced by any event, circumstance or occurrence, including any lack of validity or enforceability of a Letter of Credit, or any Draft paid or acted upon by the Operating Lender or any of its correspondents being fraudulent, forged, invalid or insufficient in any respect (except with respect to its gross negligence or wilful misconduct or payment under a Letter of Credit other than in substantial compliance herewith), or any set off, defenses, rights or claims which the Canadian Borrower may have against any beneficiary or transferee of any Letter of Credit. The obligations of the Canadian Borrower hereunder shall remain in full force and effect and shall apply to any alteration to or extension of the expiration date of any Letter of Credit or any Letter of Credit issued to replace, extend or alter any Letter of Credit.

(4) Other Actions

Any action, inaction or omission taken or suffered by the Operating Lender or by any of its correspondents under or in connection with a Letter of Credit or any Draft made thereunder, if in good faith and in conformity with foreign or domestic laws, regulation or customs applicable thereto shall be binding upon the Canadian Borrower and shall not place the Operating Lender or any of its correspondents under any resulting liability to the Canadian Borrower. Without limiting the generality of the foregoing, the Operating Lender and its correspondents may receive, accept or pay as complying with the terms of a Letter of Credit, any Draft thereunder, otherwise in order which may be signed by, or issued to, the administrator or any executor of, or the trustee in bankruptcy of, or the receiver for any property of, or any person or entity acting as a representative or in the place of, such beneficiary or its successors and assigns. The Canadian Borrower covenants that it will not take any steps, issue any instructions to the Operating Lender or any of its correspondents or institute any proceedings intended to derogate from the right or ability of the Operating Lender or its correspondents to honour and pay any Letter of Credit or any Drafts.

(5) Payment of Contingent Liabilities

The Canadian Borrower shall pay to the Operating Lender an amount equal to the maximum amount available to be drawn under any unexpired Letter of Credit which becomes the subject of any order, judgment, injunction or other such determination by a Governmental Authority (an "**Order**"), or any petition, proceeding or other application for any Order by the Canadian Borrower or any other party, restricting payment under and in accordance with such Letter of Credit or extending the Operating Lender's liability under such Letter of Credit beyond the expiration date stated therein; payment in respect of each such Letter of Credit shall be due forthwith upon demand in the currency in which such Letter of Credit is denominated.

Any amount paid to the Operating Lender pursuant to the preceding paragraph shall be held by the Operating Lender in interest bearing cash collateral accounts (with interest payable for the account of the Canadian Borrower at the rates and in accordance with the then prevailing practices of the Operating Lender for accounts of such type) as continuing security for the Obligations and shall, prior to an Event of Default be applied by the Operating Lender against the Obligations for, or (at the option of the Operating Lender) be applied in payment of, such Letter of Credit if payment is required thereunder; after an Event of Default the Operating Lender may apply such amounts, firstly, against any Obligations in respect of the relevant Letter of Credit, and, after satisfaction of such Obligations or expiry of such Letter of Credit, against any other Obligations as it sees fit.

The Operating Lender shall release to the Canadian Borrower any amount remaining in the cash collateral accounts after applying the amounts necessary to discharge the Obligations relating to such Letter of Credit, upon the later of:

(a) the date on which any final and non-appealable order, judgment or other determination has been rendered or issued either terminating any applicable Order or permanently enjoining the Operating Lender from paying under such Letter of Credit;

(b) the earlier of:

(i) the date on which either the original counterpart of such Letter of Credit is returned to the Operating Lender for cancellation or the Operating Lender is released by the beneficiary thereof from any other obligation in respect of such Letter of Credit; and

(ii) the expiry of such Letter of Credit; and

(c) if an Event of Default has occurred, the payment and satisfaction of all Obligations and the cancellation or termination of the Credit Facilities.

(6) No Consequential Damages

Notwithstanding any other provision of the Documents to the contrary, the Operating Lender shall not be liable to the Canadian Borrower for any consequential, indirect, punitive or exemplary damages with respect to action taken or omitted to be taken by it under or in respect of any Letter of Credit.

(7) ISP 98

The International Standby Practices most recently published by the International Chamber of Commerce ("**ISP 98**") shall in all respects apply to each Letter of Credit unless expressly provided to the contrary therein and shall be deemed for such purpose to be a part of this Agreement as if fully incorporated herein. In the event of any conflict or inconsistency between ISP and the governing law of this Agreement, ISP 98 shall, to the extent permitted by applicable law, prevail to the extent necessary to remove the conflict or inconsistency.

7.8 Certain Notices to the Agent with Respect to Letters of Credit

(1) The Operating Lender shall forthwith advise the Agent of any payment under, or cancellation of (whether full or partial), any Letter of Credit issued by such Operating Lender pursuant hereto.

(2) For certainty, all Rollover Notices requesting a Rollover of a Letter of Credit shall be delivered to the Agent (rather than directly to the Operating Lender) and, in addition to the other provisions hereof applicable to such a Rollover, no Rollover of a Letter of Credit shall be made unless a Rollover Notice is given to the Agent in accordance with Section ~~2.7(2~~2.6(2)(c).

ARTICLE 8 PLACE AND APPLICATION OF PAYMENTS

8.1 Place of Payment of Principal, Interest and Fees; Payments to Agent

All payments of principal, interest, fees and other amounts to be made by either Borrower to the Agent and the Lenders pursuant to this Agreement shall be made to the Agent (for, as applicable, the account of the applicable Lenders or its own account) or the Lenders, as applicable, without set off or counterclaim in the currency in which the Loan is outstanding for value on the day such amount is due, and if such day is not a Banking Day on the Banking Day next following, by deposit or transfer thereof to the Agent's Accounts or a Lender's account, as applicable, or at such other place as the applicable Borrower and the Agent or a Lender may from time to time agree. Notwithstanding anything to the contrary expressed or implied in this Agreement, the receipt by the Agent or a Lender in accordance with this Agreement of any payment made by the applicable Borrower for the account of any of the applicable Lenders shall, insofar as such Borrower's obligations to the relevant Lenders are concerned, be deemed also to be receipt by such Lenders and the applicable Borrower shall have no liability in respect of any failure or delay on the part of the Agent or such Lender in disbursing or accounting to the relevant Lenders in regard thereto.

8.2 Designated Accounts of the Lenders

All payments of principal, interest, fees or other amounts to be made by the Agent or the Borrowers to the Lenders pursuant to this Agreement shall be made for value on the day required hereunder, provided the applicable Lender receives funds from the applicable Borrower for value on such day, and if such funds are not so received from such Borrower or if such day is not a Banking Day, on the Banking Day next following, by deposit or transfer thereof at the time specified herein to the account of each Lender designated by such Lender to the Agent or the Borrowers for such purpose or to such other place or account as the Lenders may from time to time notify the Agent.

8.3 Funds

Each amount advanced, disbursed or paid hereunder shall be advanced, disbursed or paid, as the case may be, in such form of funds as may from time to time be customarily used in Calgary, Alberta, Toronto, Ontario and New York, New York in the settlement of banking transactions similar to the banking transactions required to give effect to the provisions of this Agreement on the day such advance, disbursement or payment is to be made (for certainty, each such amount advanced, disbursed or paid, as the case may be, in immediately available funds to the extent possible in the relevant jurisdiction).

8.4 Application of Payments

Except as otherwise agreed in writing by the Lenders, if any Event of Default shall occur and be continuing, all payments made by a Borrower to the Agent and the Lenders shall be applied in the following order:

(a) to amounts due hereunder as fees other than acceptance fees for Bankers' Acceptances or issuance fees for Letters of Credit;

(b) to amounts due hereunder as costs and expenses;

(c) to amounts due hereunder as default interest;

(d) to amounts due hereunder as interest or acceptance fees for Bankers' Acceptances or issuance fees for Letters of Credit; and

(e) to amounts due hereunder as principal (including reimbursement obligations in respect of Bankers' Acceptances and Letters of Credit).

Subject to the order of payment set forth above and for greater certainty, all payments made or received during the continuance of an Event of Default shall be applied pro rata to the reduction of the aggregate outstanding Obligations owing by such Borrower under the applicable Credit Facility.

8.5 Payments Clear of Taxes

(1) Any and all payments by the Borrowers and the other Loan Parties to the Agent or the Lenders hereunder and under the other Documents shall be made free and clear of, and without deduction or withholding for or on account of, any and all present or future Taxes and all liabilities with respect thereto imposed, levied, collected, withheld or assessed by any Governmental Authority or under the laws of any international tax authority imposed on the Agent or the Lenders, or by or on behalf of the foregoing (and, for greater certainty, nothing in this Section 8.5(1) shall make a Borrower liable for any taxes imposed on or measured by the recipient's overall net income or capital). In addition, each Borrower agrees to pay any present or future stamp, transfer, registration, excise, issue, documentary or other taxes, charges or similar levies which arise from any payment made under this Agreement or the Loans or in respect of the execution, delivery or

registration or the compliance with this Agreement or the other Documents contemplated hereunder other than taxes imposed on or measured by the recipient's overall net income or capital. Each Borrower shall indemnify and hold harmless the Agent and the Lenders for the full amount of all of the foregoing Taxes or other amounts paid or payable by the Agent or the Lenders and any liability (including penalties, interest, additions to tax and reasonable out of pocket expenses) resulting therefrom or with respect thereto which arise from any payment made under or pursuant to this Agreement or the Loans or in respect of the execution, delivery or registration of, or compliance with, this Agreement or the other Documents other than taxes imposed on or measured by the recipient's overall capital or net income or capital.

(2) If the applicable Borrower or any other Loan Party shall be required by law to deduct or withhold any amount from any payment or other amount required to be paid to the Agent or the Lenders hereunder or under any other Document, or if any liability therefor shall be imposed or shall arise from or in respect of any sum payable hereunder or under any other Document, then the sum payable to the Agent or the Lenders hereunder shall be increased as may be necessary so that after making all required deductions, withholdings, and additional income tax payments attributable thereto (including deductions, withholdings or income tax payable for additional sums payable under this provision) the Agent or the Lenders, as the case may be, receive an amount equal to the amount they would have received had no such deductions or withholdings been made or if such additional taxes had not been imposed; in addition, the applicable Borrower shall pay the full amount deducted or withheld for such liabilities to the relevant taxation authority or other authority in accordance with applicable law, such payment to be made (if the liability is imposed on such Borrower) for its own account or (if the liability is imposed on the Agent or the Lenders) on behalf of and in the name of the Agent or the Lenders, as the case may be. If the liability is imposed on the Agent or the Lenders, the applicable Borrower shall deliver to the Agent or the Lenders evidence satisfactory to the Agent or the Lenders, acting reasonably, of the payment to the relevant taxation authority or other authority of the full amount deducted or withheld.

(3) The Agent and the applicable Lenders shall use reasonable efforts to contest (to the extent contestation is reasonable) such imposition or assertion of such Taxes and shall reimburse to the applicable Borrower the amount of any reduction of Taxes, to the extent of amounts that have been paid by such Borrower in respect of such Taxes in accordance with this Agreement, as a result of such contestation and, provided that, the Agent and such Lender, as applicable, shall not have any obligation to expend its own funds, suffer any economic hardship or take any action detrimental to its interests (as determined by the Agent and such Lenders in their sole discretion, acting reasonably) in connection therewith unless it shall have received from such Borrower payment therefor or an indemnity with respect thereto, satisfactory to it.

(4) If a payment made to a Lender under any Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the U.S. Code, as applicable), such Lender shall deliver to the applicable Loan Party and the Agent at the time or times prescribed by Applicable Law and at such time or times requested by the applicable Loan Party or the Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the U.S. Code) and such additional documentation requested by the applicable Borrower or the Agent as may be necessary for the applicable Borrower and the Agent (and the Operating Lender or the U.S. Operating Lender, if applicable) to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

8.6 Set Off

(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 which remains unremedied (whether or not the Loans have been accelerated hereunder), the Agent and each applicable Lender shall have the right (and are hereby authorized by the Borrowers) at any time and from time to time to combine all or any of a Borrower's accounts with the Agent or such Lender, as the case may be, and to set off and to appropriate and to apply any and all deposits (general or special, term or demand) including, but not limited to, indebtedness evidenced by certificates of deposit whether matured or unmatured, and any other indebtedness at any time held by a Borrower or owing by such Lender or the Agent, as the case may be, to or for the credit or account of such Borrower against and towards the satisfaction of any Obligations owing by such Borrower, and may do so notwithstanding that the balances of such accounts and the liabilities are expressed in different currencies, and each the Agent and each such Lender are hereby authorized to effect any necessary currency conversions at the rate of exchange announced by the Bank of Canada at approximately the end of business (Toronto time) on the Banking Day before the day of conversion.

(2) The Agent or the applicable Lender, as the case may be, shall notify such Borrower of any such set off from the applicable Borrower's accounts within a reasonable period of time thereafter, although the Agent or the Lender, as the case may be, shall not be liable to either Borrower for its failure to so notify.

8.7 Margin Changes; Adjustments for Margin Changes

(1) Changes in Applicable Pricing Rate shall be effective:

(a) from and as of the first Banking Day following the date on which the Canadian Borrower delivers a Compliance Certificate in accordance with Section 10.1(e) evidencing a change in the Debt to EBITDA Ratio which results in a change in the Applicable Pricing Rate in accordance with the provisions of such definition; and

(b) without the necessity of notice to either Borrower.

(2) For any Loans outstanding as of the effective date of a change in an Applicable Pricing Rate:

(a) in the case of increases in such rates per annum, the Borrowers shall pay to the Agent for the account of the applicable Lenders such additional interest or fees, as the case may be, as may be required to give effect to the relevant increases in the interest or fees payable on or in respect of such Loans from and as of the effective date of the relevant increase in rates; and

(b) in the case of decreases in such rates per annum, the applicable Borrower shall receive a credit against subsequent interest payable on Loans or fees payable pursuant to Section 5.7 or Section 6.2, as the case may be, to the extent necessary to give effect to the relevant decreases in the interest or fees payable on or in respect of such Loans from and as of the effective date of the relevant decrease in rates.

(3) The additional payments required by Section 8.7(2)(a) shall be made on the first Banking Day of the calendar month immediately following the calendar month in which the changes in Applicable Pricing Rate are effective. The adjustments required by Section 8.7(2)(b) shall be accounted for in successive interest and fee payments by the applicable Borrower until the amount of the credit therein contemplated has been fully applied; provided that, upon satisfaction in full of all Obligations and cancellation of all Credit Facilities in accordance herewith, the Lenders shall pay to the applicable Borrower an amount equal to any such credit which remains outstanding.

(4) Notwithstanding the foregoing provisions of this Section 8.7, if the Canadian Borrower has failed to deliver a Compliance Certificate for the immediately preceding Fiscal Quarter in accordance with the provisions hereof, then the Debt to EBITDA Ratio shall be deemed to be greater than 2.50:1.0 for the purposes of determining the Applicable Pricing Rate until the Canadian Borrower has remedied such failure and delivered such Compliance Certificate (and, from and after such delivery, the Applicable Pricing Rate shall be based upon the Debt to EBITDA Ratio set forth in such Compliance Certificate for the remainder of the period until the next such Compliance Certificate is required to be delivered hereunder). With respect to Bankers' Acceptances outstanding on the effective date of any such change in Applicable Pricing Rate, changes in the Applicable Pricing Rate shall become applicable thereto upon the earlier of (a) 90 days after the effective date of the change in Applicable Pricing Rate and (b) the next Rollover or Conversion thereof after such change.

ARTICLE 9 REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties

(1) The Canadian Borrower represents and warrants as follows to the Agent and to each of the Lenders and acknowledges and confirms that the Agent and each of the Lenders is relying upon such representations and warranties:

(a) Existence and Good Standing

Each Loan Party and Subsidiary is a corporation validly existing and in good standing under the laws of its jurisdiction of incorporation or is a partnership or trust validly existing under the laws of its jurisdiction of organization; each is duly registered in all other jurisdictions where the nature of its property or character of its business requires registration, except for jurisdictions where the failure to be so registered or qualified would not have a Material Adverse Effect, and has all necessary power, capacity and authority to own its properties and carry on its business as presently carried on or as contemplated by the Documents.

(b) Authority

Each Loan Party has full power, legal right and authority to enter into the Documents to which it is a party and do all such acts and things as are required by such Documents to be done, observed or performed, in accordance with the terms thereof.

(c) Valid Authorization and Execution

Each Loan Party has taken all necessary corporate, partnership, trust and other action (as applicable) of its directors, shareholders, partners, trustees and other persons (as applicable) to authorize the execution, delivery and performance of the Documents to which it is a party and to observe and perform the provisions thereof in accordance with the terms therein contained.

(d) Validity of Agreement – Non Conflict

None of the authorization, execution or delivery of this Agreement or the other Documents or performance of any obligation pursuant hereto or thereto requires or will require, pursuant to applicable law now in effect, any approval or consent of any Governmental Authority having jurisdiction (except such as has already been obtained and are in full force and effect) nor is in conflict with or, contravention of (i) any Loan Party's articles, by laws or other constating documents or any resolutions of directors or shareholders or the provisions of its partnership agreement or declaration of trust or trust indenture (as applicable) or (ii) the provisions of any other indenture, instrument, undertaking or other agreement to which any Loan Party is a party or by which they or their properties or assets are bound, the contravention of which would have or would reasonably be expected to have a Material Adverse Effect. The Documents when executed and delivered will constitute valid and legally binding obligations of each Loan Party which is a party thereto enforceable against each such party in accordance with their respective terms, subject to applicable bankruptcy, insolvency and other laws of general application limiting the enforceability of creditors' rights and to the fact that equitable remedies are only available in the discretion of the court.

(e) Ownership of Property

Each Loan Party and Subsidiary has good and marketable title to its property, assets and undertaking, subject to Permitted Encumbrances and to minor defects of title which, individually and in the aggregate, do not materially affect their respective rights of ownership therein or the value thereof or their right or ability to utilize the same in conduct of their business and affairs.

(f) Debt

No Loan Party or Subsidiary has created, incurred, assumed, suffered to exist, or entered into any contract, instrument or undertaking pursuant to which, such Loan Party or Subsidiary is now or may hereafter become liable for any Debt except for Permitted Debt.

(g) Encumbrances

No Loan Party or Subsidiary has created, incurred, assumed, suffered to exist, or entered into any contract, instrument or undertaking pursuant to which, any person may have or be entitled to any Security Interest on or in respect of its property and assets or any part thereof except for Permitted Encumbrances.

(h) No Material Adverse Effect

No Material Adverse Effect has occurred.

(i) No Omissions

Each Loan Party and each of their Subsidiaries has made available to the Agent and the Lenders all material information necessary to make any representations, warranties and statements contained in this Agreement not misleading in any material respect in light of the circumstances in which they are given.

(j) Non Default

No Default or Event of Default has occurred or is continuing or would occur following any Drawdown hereunder.

(k) Financial Condition

(i) The audited and unaudited consolidated financial statements of PHX Energy delivered to the Lenders and the Agent pursuant hereto present fairly, in all material respects, the consolidated financial condition of PHX Energy as at the respective dates thereof and the results of the consolidated operations thereof for the Fiscal Quarter or Fiscal Year (as applicable) then ending, all in accordance with generally accepted accounting principles consistently applied.

(ii) Except as has been disclosed to the Lenders by written notice in accordance with the provisions of this Agreement, no filing is imminent of a report of a material change as required to be filed by PHX Energy with any securities commission or exchange or with any Governmental Authority having jurisdiction over the issuance and sale of securities of PHX Energy and which material change would have or would reasonably be expected to have a Material Adverse Effect.

(l) Information Provided

All information, materials and documents, including all throughput and cash flow projections, economic models, engineering data, capital and operating budgets and other information and data:

(i) prepared and provided to the Agent by any Loan Party or any of their Subsidiaries in respect of the transactions contemplated by this Agreement, or as required by the terms of this Agreement, were, in the case of financial projections and other forward looking financial information, prepared in good faith based upon reasonable assumptions at the date of preparation, and, in all other cases, true, complete and correct in all material respects as of the respective dates thereof; and

(ii) to the extent prepared by persons other than the Loan Parties, or any of their Subsidiaries, and provided to the Agent by or on behalf of the Loan Parties or any of their Subsidiaries in respect of the transactions contemplated by this Agreement, or as required by the terms of this Agreement, were, to the best of the knowledge of the Canadian Borrower, after due inquiry, in the case of financial projections and other forward looking financial information, prepared in good faith based upon reasonable assumptions at the date of preparation and, in all other cases, true, complete and correct in all material respects as of the respective dates thereof.

(m) Absence of Litigation

There are no actions, suits or proceedings pending or, to the knowledge of the Canadian Borrower, threatened against or affecting the Loan Parties or any Subsidiaries, their property or any of their undertakings and assets at law, in equity or before any arbitrator or before or by any Governmental Authority having jurisdiction in the premises in respect of which there is a reasonable possibility of a determination adverse to the Loan Parties or Subsidiaries and which, if determined adversely, would have or would reasonably be expected to have a Material Adverse Effect other than as publicly disclosed.

(n) Compliance with Applicable Laws, Court Orders and Agreements

Each Loan Party and Subsidiary and their respective property, businesses and operations are in compliance with all Applicable Laws (including, without limitation, all applicable Environmental Laws), all applicable directives, judgments, decrees, injunctions and orders rendered by any Governmental Authority or court of competent jurisdiction, their articles, by laws and other constating and organizational documents, all agreements or instruments to which any of them is a party or by which any of their property or assets are bound, and any employee benefit plans, except to the extent that failure to so comply would not have and would not reasonably be expected to have a Material Adverse Effect.

(o) Required Permits in Effect

All Required Permits for the Loan Parties and the Subsidiaries are in full force and effect, except to the extent that the failure to have or maintain the same in full force and effect would not, when taken in the aggregate, have or reasonably be expected to have a Material Adverse Effect.

(p) Remittances Up to Date

All of the material remittances required to be made by the Loan Parties and the Subsidiaries to Governmental Authorities have been made and are currently up to date and there are no outstanding arrears, other than those which are being contested by a Permitted Contest.

(q) Environmental

(i) To the best of the knowledge and belief of the Canadian Borrower, after due inquiry, (A) the Loan Parties and each of their Subsidiaries and their respective properties, assets and undertakings taken as a whole comply in all respects with all

Environmental Laws except to the extent that failure to so comply would not have and would not reasonably be expected to have a Material Adverse Effect, and (B) the businesses, activities and operations of same and the use of their respective properties, assets and undertakings and the processes and undertakings performed thereon comply in all respects with all Environmental Laws except to the extent that failure to so comply would not have and would not reasonably be expected to have a Material Adverse Effect; further, the Canadian Borrower does not know, and has no reasonable grounds to know, of any facts which result in or constitute or are likely to give rise to non-compliance by a Loan Party and any of their respective Subsidiaries with any Environmental Laws, which facts or non-compliance have or would reasonably be expected to have a Material Adverse Effect.

(ii) The Loan Parties and their respective Subsidiaries have not received written notice and, except as previously disclosed to the Agent in writing, have no knowledge after due inquiry, of any facts which could give rise to any notice of non-compliance by the Loan Parties and any of their respective Subsidiaries with any Environmental Laws, which non-compliance has or would reasonably be expected to have a Material Adverse Effect and none of the Loan Parties and any of their respective Subsidiaries has received any notice that the Loan Parties or any of their respective Subsidiaries is a potentially responsible party for a federal, provincial, regional, municipal or local clean up or corrective action in connection with their respective properties, assets and undertakings where such clean up or corrective action has or would reasonably be expected to have a Material Adverse Effect.

(r) Taxes

Each Loan Party and Subsidiary has duly filed on a timely basis all tax returns required to be filed and have paid all Taxes which are due and payable other than such Taxes which the failure to pay, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect, and have paid all material assessments and reassessments, and all other material governmental charges, governmental royalties, penalties, interest and fines claimed against them, other than those which are being contested by them by Permitted Contest; they have made adequate provision for, and all required instalment payments have been made in respect of, Taxes payable for the current period for which returns are not yet required to be filed except to the extent that failure to do so has not had and would not reasonably be expected to have a Material Adverse Effect; there are no agreements, waivers or other arrangements providing for an extension of time with respect to the filing of any tax return by them or the payment of any Taxes, other than those which are the subject of a Permitted Contest; there are no actions or proceedings being taken by any taxation authority in any jurisdictions where any Loan Party carries on business to enforce the payment of any Taxes by them other than those which are being contested by them by Permitted Contest.

(s) Subsidiaries

(i) As at the date hereof, the only Material Subsidiaries of PHX Energy which are Loan Parties within the meaning of this Agreement are the Borrowers, Phoenix Technology Management Inc., Phoenix Technology Services LP, ~~Phoenix Technology Holdings Luxembourg Ltd.,~~ Phoenix Technology Services Luxembourg Sàrl~~, Phoenix TSI Limited~~ and Phoenix Technology Services International Ltd.

(ii) As at the date hereof, the only other Subsidiaries of PHX Energy are Phoenix TSA S.A. (Argentina), Phoenix Technology Holdings Russia Ltd. (Cyprus), Phoenix TSM (Mexico), Phoenix TSR LLC (Russia), Beyond Energy Russia LLC (Russia), Phoenix Technology Services International Ltd. (Colombia), Phoenix TSP SAC (Peru), Stream Services Mexico SA de CV (Mexico), Stream EDR Services Inc. (Texas), Qualitas Oilfield Services Inc. (Texas), Qualitas Oilfield Services Ltd. (Alberta) and Stream Services International Inc. (Alberta).

(t) Intellectual Property

Each Loan Party and their respective Subsidiaries have or have the legal right to use all Intellectual Property necessary for the operation and conduct of their business, affairs, operations and processes, except to the extent that the failure to have the same would not have or reasonably be expected to have a Material Adverse Effect and, to the best of their knowledge and belief, no person has asserted any claim or taken any step or proceedings to prohibit or limit the use of such Intellectual Property by any Loan Party and their respective Subsidiaries, in respect of which claim, step or proceedings there is a reasonable likelihood of a determination adverse to any Loan Party or any of their Subsidiaries and which, if determined adversely, would have or would reasonably be expected to have a Material Adverse Effect.

(u) Insurance

Each Loan Party and Subsidiary maintains, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses and against such casualties and contingencies and in such types and amounts as are in accordance with customary business practices for corporations of similar size and type of business and operations to the extent required pursuant to Section 10.1(p) hereof.

(v) ERISA

(i) no ERISA Event has occurred, and no Loan Party, Subsidiary nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan;

(ii) each Loan Party, Subsidiary and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained;

(iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the U.S. Code) is 60% or higher and no Loan Party, Subsidiary nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date;

(iv) no Loan Party, Subsidiary nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid;

(v) no Loan Party, Subsidiary nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA;

(vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan, in each case when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect; and

(vii) the Loan Parties do not maintain or contribute to any Pension Plans other than a 401(k) employee matching program pursuant to the Code.

(w) Compliance with Regulations T, U, and X

No Loan Party or Subsidiary is engaged principally in or has as one of its important activities the business of extending credit for the purpose of purchasing or carrying any "margin security" or "margin stock" as defined in Regulations T, U, and X (12 C.F.R. Parts 221 and 224) of the Federal Reserve System (herein called "**Margin Stock**"). No Loan Party or Subsidiary has taken or will take any action which might cause this Agreement to violate Regulation T, U, or X, or any other regulation of the Federal Reserve System with respect to Margin Stock, in each case as now in effect or as the same may hereafter be in effect. Neither the making of the Loans nor the use of proceeds thereof will violate the provisions of Regulation T, U, or X of the Federal Reserve System.

(x) Sanctions Laws and Anti-Money Laundering Laws

(i) Neither the Loan Parties nor any of their Subsidiaries is in breach of or is the subject of any action or, to its knowledge, any investigation under any Anti-Money Laundering Laws. The Loan Parties and their Subsidiaries have taken reasonable measures to ensure compliance in all material respects with Anti-Money Laundering Laws.

(ii) Neither the Loan Parties nor any of their Subsidiaries nor (a) any director, officer, employee of the Loan Parties or any of their Subsidiaries or, to the actual knowledge of a Borrower, any agent of any of the Loan Parties or Subsidiaries is a Sanctioned Person, (b) to the actual knowledge of a Borrower, has any business affiliation or commercial dealings with a Sanctioned Person to the extent such business affiliation or commercial dealings breaches Sanctions Laws or (c) is in breach of or, the subject of, any action or, to its actual knowledge, investigation under, any Sanctions Laws.

(iii) No proceeds from any Loan have been used, directly or, to its actual knowledge indirectly, to lend, contribute, provide, or have otherwise been made available to fund, any activity or business with or related to any Sanctioned Person in breach of Sanctions Laws, or in any other manner that will result in any violation or breach by the Loan Parties or any of their Subsidiaries of Sanctions Laws.

(y) Solvency

Each Loan Party and Subsidiary is solvent and the Loan Parties and the other Subsidiaries, on a consolidated basis, are able to realize upon their assets and pay their debts and other liabilities, contingent obligations and other commitments, on a consolidated basis, as they mature in the normal course of business.

(z) Subsidiary Distributions

There are no restrictions in the constating documents of a Loan Party or, to its knowledge, in any Applicable Law on Distributions from any Subsidiary to the Loan Parties.

(aa) Patriot Act

No Loan Party or Subsidiary is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the *Enemy Act* of the United States of America (50 U.S.C. App. §§ 1 et seq.), as amended or any enabling legislation or executive order relating thereto. No Loan Party or Subsidiary is in violation of (a) the *Trading with the Enemy Act*, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the *Patriot Act*. No Loan Party (i) is a Sanctioned Person or (ii) to its knowledge, engages in any dealings or transactions, or is otherwise associated, with any Sanctioned Person.

(bb) Labour Unions

Neither the Loan Parties or the Subsidiaries have any labour unions in place.

(cc) Fiscal Year

The Fiscal Year end of PHX Energy is December 31.

(2) In addition to and without limiting, derogating from or otherwise affecting the representations and warranties of the Canadian Borrower contained in Section 9.1(1), the U.S. Borrower, with respect to itself only, represents and warrants to the Agent, the Lenders and to the U.S. Operating Lender (and acknowledges and confirms that the Agent, the Lenders and the U.S. Operating Lender are relying upon such representations and warranties) that each of the representations and warranties of the Canadian Borrower contained in Section 9.1(1) is true, correct and complete in all respects with respect to the U.S. Borrower, all as if made and repeated at length in this Section 9.1(2) by the U.S. Borrower, *mutatis mutandis*.

9.2 Deemed Repetition

On the date of delivery by a Borrower of a Drawdown Notice to the Agent and again on the date of any Drawdown made by such Borrower pursuant thereto:

(a) except those representations and warranties which are stated to be made as at a specific date or which a Borrower has notified applicable Lenders in writing cannot be repeated for such Drawdown and in respect of which such Lenders have waived in writing (with or without terms or conditions) the application of the condition precedent in Section 3.1(b) for such Drawdown, each of the representations and warranties contained in Section 9.1 shall be deemed to be repeated; and

(b) the Borrowers shall be deemed to have represented to the Agent and the Lenders that, except as has otherwise been notified to the Agent in writing and have been waived in accordance herewith, no Default or Event of Default has occurred and is continuing nor will a Default or Event of Default occur as a result of the aforementioned Drawdown.

9.3 Other Documents

All representations, warranties and statements of a Material Subsidiary or PHX Energy contained in any other Document delivered pursuant hereto or thereto shall be deemed to constitute representations and warranties made by the Borrowers to the Agent and the Lenders under Section 9.1 of this Agreement.

9.4 Effective Time of Repetition

All representations and warranties, when repeated or deemed to be repeated hereunder, shall be construed with reference to the facts and circumstances existing at the time of repetition, unless they are stated herein to be made as at the date hereof or as at another date.

9.5 Nature of Representations and Warranties

The representations and warranties set out in this Agreement or deemed to be made pursuant hereto shall survive the execution and delivery of this Agreement and the making of each Drawdown, notwithstanding any investigations or examinations which may be made by the Agent, the Lenders or Lenders' Counsel. Such representations and warranties shall survive until this Agreement has been terminated, provided that the representations and warranties relating to environmental matters shall survive the termination of this Agreement.

ARTICLE 10 GENERAL COVENANTS

10.1 Affirmative Covenants of the Canadian Borrower

So long as any Obligation is outstanding or any Credit Facility is available hereunder, the Canadian Borrower covenants and agrees with each of the Lenders and the Agent that, unless (subject to Section 16.10) a Majority of the Lenders otherwise consent in writing:

(a) Punctual Payment and Performance

It shall, and shall cause the U.S. Borrower, to duly and punctually pay the principal of all Loans, all interest thereon and all fees and other amounts required to be paid by it or the U.S. Borrower hereunder in the manner specified hereunder and the Canadian Borrower and the U.S. Borrower shall perform and observe all of its respective obligations under this Agreement and under any other Document to which either of them is a party and shall cause each other Loan Party to perform and observe all of its obligations under any Documents to which it is a party.

(b) Books and Records

It shall, and shall cause each other Loan Party and each Subsidiary to, keep proper books of record and account in which complete and correct entries will be made of its transactions in accordance with generally accepted accounting principles.

(c) Maintenance and Operation

It shall do or cause to be done, and will cause each other Loan Party and each Subsidiary to do or cause to be done, all things necessary or required to have all its properties, assets and operations owned, operated and maintained in accordance with diligent and prudent industry practice and Applicable Laws except to the extent that the failure to do or cause to be done the same would not have and would not reasonably be expected to have a Material Adverse Effect.

(d) Maintain Existence; Compliance with Legislation Generally; Required Permits

Except as otherwise permitted by Section 10.2(c) and 10.2(i), the Canadian Borrower shall, and shall cause each other Loan Party and each Subsidiary to, to preserve and maintain its corporate, partnership or trust existence (as the case may be) as a corporation, partnership or trust existing under the laws of its applicable jurisdiction of organization. The Canadian Borrower shall do or cause to be done, and shall cause each other Loan Party and each Subsidiary to do or cause to be done, all acts necessary or desirable to comply with all Applicable Laws, except (other than in the case of laws relating to corruption and bribery) where such failure to comply does not and would not reasonably be expected to have a Material Adverse Effect, and to preserve and keep in full force and effect all Required Permits and all other franchises, licences, rights, privileges, permits and Governmental Authorizations necessary to enable it, the Loan Parties and Subsidiaries to operate and conduct their respective businesses in accordance with prudent industry practice, except to the extent that the failure to have any of the same does not and would not reasonably be expected to have a Material Adverse Effect.

(e) Budgets, Financial Statements and Other Information

The Canadian Borrower shall deliver, or cause to be delivered, to the Agent with sufficient copies for each of the Lenders:

(i) Annual Capital and Operating Budgets – as soon as available and, in any event, within 90 days after the end of each of PHX Energy's Fiscal Years, a copy of PHX Energy's annual consolidated capital budget and operating budget for the next Fiscal Year approved by the board of directors of PHX Energy and consisting of pro forma balance sheets, statements of income, statements of cash flows and statements of shareholders equity, each such operating budget to be broken down on a quarterly basis;

(ii) Annual Financials - as soon as available and, in any event, within 90 days after the end of each of its Fiscal Years, copies of PHX Energy's audited annual financial statements on a consolidated basis consisting of a balance sheet, statement of income, statement of cash flows and statement of shareholders' equity for each such Fiscal Year, together with the notes thereto, all prepared in accordance with generally accepted accounting principles consistently applied, together with a report and unqualified opinion of PHX Energy's auditors thereon;

(iii) Quarterly Financials - as soon as available and, in any event within 45 days after the end of each of its first, second and third Fiscal Quarters in each Fiscal Year, copies of PHX Energy's unaudited quarterly financial statements on a consolidated basis, in each case consisting of a balance sheet, statement of income, statement of cash flows and statement of shareholders' equity for each such period all in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous Fiscal Year, all prepared in accordance with generally accepted accounting principles consistently applied;

(iv) Borrowing Base Certificate – on or before the last day of each calendar month, a Borrowing Base Certificate for (and as of the end of) the immediately preceding calendar month;

(v) Compliance Certificate - concurrently with furnishing the financial statements pursuant to Sections 10.1(e)(ii) and (iii), a Compliance Certificate signed by any one of the president, chief financial officer, vice president finance or treasurer of the Canadian Borrower and stating that, inter alia, the representations and warranties in Section 9.1 are true and accurate in all respects (or, if applicable, specifying those that are not), that no Default or Event of Default has occurred and is continuing (or, if applicable, specifying those defaults or events notified in accordance with Section 10.1(h) below and demonstrating compliance with all covenants contained herein, including the financial covenants contained in Section 10.3);

(vi) Financial Instruments – unless detailed in the financial statements furnished pursuant to Sections 10.1(e)(ii) and (iii), concurrently with furnishing such financial statements, a report on the status of all outstanding Financial Instruments, such report to be in a form and containing such information as may be required by the Lenders, acting reasonably;

(vii) Capital Asset Appraisal – at the request of the Agent, an appraisal of the capital assets included in the Borrowing Base shall be delivered to the Agent within 45 days of such request to be in a form and containing such information as may be required by the Lenders, acting reasonably;

(viii) Organizational Chart – at the request of the Agent, an updated organizational chart shall be delivered to the Agent promptly upon such request;

(ix) Patriot Act / Beneficial Ownership – promptly following any request therefor, information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable Anti-Money Laundering Laws (including, without limitation, "know your customer" rules and regulations, the Patriot Act and the Beneficial Ownership regulation); and

(x) Other - at the request of the Agent, such other information, reports, engineering data, certificates, projections of income and cash flow or other matters affecting the business, affairs, financial condition, property or assets of PHX Energy and its Subsidiaries or the business, affairs, financial condition, property or assets of any of them as the Agent may reasonably request.

(f) Rights of Inspection

At any reasonable time and from time to time upon reasonable prior notice, the Canadian Borrower shall permit, and shall cause each Loan Party and each Subsidiary to permit, the Agent and any Lender or any representative thereof (at the expense of the Canadian Borrower during the continuance of a Default or Event of Default and, otherwise, at the expense of the Agent or such Lender, as applicable) to (i) examine and make copies of and abstracts from its records and books of account, (ii) visit and inspect its premises and properties (in each case at the risk of the Canadian Borrower, except for the gross negligence or wilful misconduct of the inspecting party or the failure of any such inspecting party to comply with Applicable Law and the Canadian Borrower's, each Loan Party's or any Subsidiary's health and safety requirements, as advised to such inspecting party), and (iii) discuss its affairs, operations, finances and accounts with any of its officers or directors.

(g) Notice of Material Litigation

The Canadian Borrower shall promptly give written notice to the Agent of any litigation, proceeding or dispute affecting any Loan Party or any Subsidiary in respect of a demand or claim (except as already publically disclosed) in respect of which there is a reasonable possibility of an adverse determination and which if adversely determined would reasonably be expected to have a Material Adverse Effect, and shall from time to time furnish to the Agent all reasonable information requested by the Agent concerning the status of any such litigation, proceeding or dispute.

(h) Notice of Default or Event of Default

The Canadian Borrower shall deliver to the Agent, as soon as reasonably practicable, and in any event no later than 3 Banking Days after becoming aware of a Default or the occurrence of an Event of Default, an Officer's Certificate describing in detail such Default or such Event of Default and specifying the steps, if any, being taken to cure or remedy the same.

(i) Notice of Material Adverse Effect

The Canadian Borrower shall, as soon as reasonably practicable, promptly notify the Agent of any event, circumstance or condition that has had or is reasonably likely to have a Material Adverse Effect.

(j) Notice of New Material Subsidiaries

The Canadian Borrower shall promptly give written notice to the Agent of the acquisition, creation or existence of each new Material Subsidiary after the date hereof.

(k) Securities Disclosure

The Canadian Borrower shall promptly furnish to the Agent copies of all reports, material change reports, notices and other non-confidential information that any Loan Party or Subsidiary is required by Applicable Law to file with any securities commission or stock exchange, furnish to its shareholders or publicly disclose (whether by way by advertisement or otherwise), except for insider reports and other filings which are of an administrative nature and do not contain any material information with respect to the business, affairs or financial condition of the Loan Parties and each of their Subsidiaries. The Canadian Borrower shall be deemed to have satisfied its obligations under this Section 10.1(k) if and to the extent the registration materials, material change reports, circulars, reports, notices and other information, as the case may be, shall have been filed with the Canadian Securities Administrators (and are accessible to the Lender) in the SEDAR filing system at www.sedar.com, and the Canadian Borrower shall have notified the Agent of such filing.

(l) Payment of Royalties, Taxes, Withholdings, etc.

The Canadian Borrower shall, and shall cause the other Loan Parties and Subsidiaries to, from time to time pay or cause to be paid all material royalties, rents, Taxes, rates, levies or assessments, ordinary or extraordinary, governmental fees or dues, and to make and remit all withholdings, lawfully levied, assessed or imposed upon the Loan Parties or Subsidiaries or any of the assets of the Loan Parties or Subsidiaries, as and when the same become due and payable, except when and so long as the validity of any such royalties, rents, Taxes, rates, levies, assessments, fees, dues or withholdings is being contested by the Loan Parties by a Permitted Contest.

(m) Payment of Preferred Claims

The Canadian Borrower shall, and shall cause the other Loan Parties and Subsidiaries to, from time to time pay when due or cause to be paid when due all amounts related to wages, workers' compensation obligations, government royalties or pension fund obligations and any other amount which may result in a lien, charge, Security Interest or similar encumbrance (other than a Permitted Encumbrance) against the assets of the Loan Parties or Subsidiaries arising under statute or regulation, except when and so long as the validity of any such amounts or other obligations is being contested by the Loan Parties or Subsidiaries by a Permitted Contest.

(n) Environmental Covenants

(i) Without limiting the generality of Section 10.1(d) above, the Canadian Borrower shall, and shall cause each other Loan Party and each Subsidiary to, conduct their business and operations so as to comply at all times with all Environmental Laws if the consequence of a failure to comply, either alone or in conjunction with any other such non compliances, would have or would reasonably be expected to have a Material Adverse Effect.

(ii) If the Loan Parties, or each of their Subsidiaries shall:

(A) receive or give any notice that a violation of any Environmental Law has or may have been committed or is about to be committed by the same, and if such violation has or would reasonably be expected to have a Material Adverse Effect;

(B) receive any notice that a complaint, proceeding or order has been filed or is about to be filed against the same alleging a violation of any Environmental Law, and if such violation would reasonably be expected to have a Material Adverse Effect or a liability to the Loan Parties and their Subsidiaries in excess of Cdn.$5,000,000; or

(C) receive any notice requiring the Loan Parties or any Subsidiary, as the case may be, to take any action in connection with the release of Hazardous Materials into the environment or alleging that the Loan Parties or any Subsidiary may be liable or responsible for costs associated with a response to or to clean up a Release of Hazardous Materials into the environment or any damages caused thereby in excess of Cdn.$5,000,000, or if such action or liability has or would reasonably be expected to have a Material Adverse Effect,

the Canadian Borrower shall promptly provide the Agent with a copy of such notice and shall, or shall cause each other Loan Party or such Subsidiary to, furnish to the Agent from time to time all reasonable information requested by the Agent relating to the same.

(o) Use of Loans

The Canadian Borrower shall, and shall cause the U.S. Borrower to, use all Loans and the proceeds thereof solely for the purposes set forth in Section 2.3 hereof.

(p) Required Insurance

The Canadian Borrower shall, and shall cause the other Loan Parties and Subsidiaries and each of their Subsidiaries to, maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and business and against such casualties and contingencies and in such types and such amounts as shall be in accordance with customary business practices for corporations of similar size and type of business and operations as the Loan Parties, and each of their Subsidiaries, to the extent such insurance is available on reasonable commercial terms.

(q) Location of Accounts

With the exception of accounts at Wells Fargo Bank used by certain Subsidiary Guarantors located in the United States of America and accounts at Raiffeisen Bank used by Phoenix Technology Services

International Ltd., the Canadian Borrower shall, and shall cause the other Loan Parties, to conduct its day to day banking and shall deposit to deposit accounts maintained at the Agent and a Lender, as applicable, substantially all revenue earned and received by the Loan Parties from or in respect of its assets and property.

(r) Ownership of Assets

The Canadian Borrower shall ensure that it, Phoenix Technology Services International Ltd. and the other Loan Parties located in Canada, the United States of America, Ireland or Luxembourg and who have provided security hereunder (i) legally, beneficially and directly own not less than 85% of the Consolidated Net Tangible Assets of PHX Energy as at each Fiscal Quarter End, and (ii) have combined EBITDA attributable to them equal to or greater than 85% of the consolidated EBITDA over the previous 12 months, as calculated at each Fiscal Quarter End, in each case based on the most recent financial statements of PHX Energy.

(s) Ranking of Obligations

The Canadian Borrower shall ensure that the Obligations rank senior to all Subordinated Debt of the Loan Parties.

(t) Sanctions Laws and Anti-Money Laundering Laws

Each Borrower shall ensure that it and its Subsidiaries shall comply with Anti-Money Laundering Laws. Each Borrower shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to ensure that no funds are knowingly used to pay the Obligations are derived from any unlawful activity, including but not limited to, activity in material violation of Anti-Money Laundering Laws or Sanctions Laws.

Each Borrower shall ensure that (i) it, and each of its Subsidiaries, shall comply with Sanctions Laws (ii) neither it nor its Subsidiaries shall become a Sanctioned Person and (iii) no proceeds from any Loan will be used, directly or, to its actual knowledge, indirectly, to lend, contribute, provide or otherwise be made available to fund, any activity or business with or related to any Sanctioned Person in violation of Sanctions Laws or in any other manner that will result in any violation or breach by such Borrower or its Subsidiaries of Sanctions Laws.

(u) Wholly-Owned Subsidiaries

Subject to Sections 10.2(c), 10.2(d) and 10.2(j), the Canadian Borrower shall ensure that all direct or indirect Subsidiaries (other than joint venture Subsidiaries) of a Borrower shall remain Wholly-Owned Subsidiaries of a Borrower.

(v) Notice of ERISA Event

The Canadian Borrower shall promptly, and in any event within five Banking Days after any Loan Party or any ERISA Affiliate knows or has reason to know that an ERISA Event has occurred, give written notice to the Agent of the occurrence of such ERISA Event, which notice shall include a statement of an authorized officer of a Loan Party or ERISA Affiliate describing such ERISA Event and the action, if any, that the Loan Party or ERISA Affiliate proposes to take with respect thereto.

10.2 Negative Covenants of the Canadian Borrower

So long as any Obligation is outstanding or any Credit Facility is available hereunder, the Canadian Borrower covenants and agrees with each of the Lenders and the Agent that, unless (subject to Section 16.10) a Majority of the Lenders otherwise consent in writing:

(a) Change of Business

The Canadian Borrower shall not, and shall not permit the other Loan Parties or Subsidiaries to, change in any material respect the nature of its business or operations from the types of businesses and operations carried on by the Loan Parties or Subsidiaries on the date hereof.

(b) Negative Pledge

The Canadian Borrower shall not, nor shall it permit the other Loan Parties or Subsidiaries to, create, issue, incur, assume or permit to exist any Security Interests on any of their property, undertakings or assets other than Permitted Encumbrances and minor Security Interests that arise in the ordinary course of business.

(c) No Dissolution

Except as otherwise permitted by Section 10.2(d) and Section 10.2(j), the Canadian Borrower shall not, nor shall it permit the other Loan Parties or Subsidiaries to, liquidate, dissolve or wind up or take any steps or proceedings in connection therewith except, in the case where the successor thereto or transferee thereof is a Loan Party or a Subsidiary.

(d) Limit on Sale of Assets

(i) except for Permitted Dispositions, the Canadian Borrower shall not, and shall not permit the other Loan Parties or Subsidiaries to, sell, transfer or otherwise dispose of any of their respective property or assets and (ii) upon the occurrence and during the continuance of an Event of Default, the Canadian Borrower shall not, and shall not permit the other Loan Parties or Subsidiaries to, sell, transfer or otherwise dispose of any of their respective property or assets the except for Permitted Dispositions pursuant to subparagraphs (a) through (e), inclusive, of the definition thereof.

(e) Limitation on Debt

The Canadian Borrower shall not have or incur, or permit the other Loan Parties or any Subsidiary to have or incur, any Debt other than Permitted Debt.

(f) Limitation on Loans and Investments

The Canadian Borrower shall not and shall not permit the other Loan Parties or Subsidiaries to make any loans to or investments in any person other than (i) to or in a Loan Party or (ii) to or in a Permitted Investment Subsidiary but only to the extent it constitutes a Permitted Investment or (iii) to a Subsidiary that is not a Loan Party provided that the loan or investment is made by a Subsidiary that is not a Loan Party (iv) the existing investment of the Canadian Borrower in DEEP Earth Energy Production Corp. for a minority equity interest therein.

(g) Limits on Distributions

The Canadian Borrower shall not and shall not permit any other Loan Party or a Subsidiary to make any Distributions:

(i) to a Subsidiary that is not a Loan Party unless such distribution is made by a Subsidiary that is not a Loan Party;

(ii) during the continuance of a Default or Event of Default or which would have or would reasonably be expected to result in a Default or Event of Default;

(iii) during the continuance of a Borrowing Base Shortfall or which would result in a Borrowing Base Shortfall or at any time after receipt of a Borrowing Base Notice which indicates any Borrowing Base Shortfall unless and until the Borrowers have repaid Loans to the extent necessary to completely eliminate the Borrowing Base Shortfall indicated in such notice; or

(iv) if, in aggregate in any Fiscal Year, such Distributions exceed 100% of the Distributable Cash Flow.

Notwithstanding the foregoing, or any other provision hereof, to the extent the Borrowers and PHX Energy fund stock repurchases in respect of Ownership Interests of PHX Energy in the calendar year ending December 31, 2021 that are being held for the benefit of participants in connection with the future settlement of stock-based compensation, such amounts shall be excluded from Distributions permitted under Section 10.2(g)(iv) up to a maximum aggregate amount of Cdn.$5,000,000.

(h) No Financial Instruments Other Than Permitted Hedging

The Canadian Borrower shall not and shall not permit the other Loan Parties or Subsidiaries to enter into, transact or have outstanding any Financial Instruments or Financial Instrument Obligations other than Permitted Hedging.

(i) Non Arm's Length Transactions

Except in respect of transactions between or among the Loan Parties (other than Phoenix Technology Services International Ltd.), the Canadian Borrower shall not, nor shall it permit any other Loan Party to, enter into any contract, agreement or transaction whatsoever, including for the sale, purchase, lease or other dealing in any property or the provision of any services (other than office and administration services provided in the ordinary course of business), with any Related Party except upon fair and reasonable terms, which terms are not less favourable to the Loan Parties than it would obtain in an arm's length transaction and, if applicable, for consideration which equals the fair market value of such property or other than at a fair market rental as regards leased property.

(j) No Merger, Amalgamation, etc.

The Canadian Borrower shall not, nor shall it permit the other Loan Parties or Subsidiaries to, enter into any transaction whereby all or substantially all of its undertaking, property and assets would become the property of any other person whether by way of reconstruction, reorganization, recapitalization, consolidation, amalgamation, merger, transfer, sale or otherwise except where the successor thereto or transferee thereof is a Loan Party or a Subsidiary and except as permitted under Sections 10.2(c) and 10.2(d).

(k) Borrowing Base

The Canadian Borrower shall not permit, at any time, the Outstanding Principal to exceed the Borrowing Base in effect.

(l) Limit on Financial Assistance

The Canadian Borrower shall not and shall not permit the other Loan Parties or Subsidiaries to provide any Financial Assistance in an amount in excess, in the aggregate, in any calendar year, of Cdn.$2,500,000 to or in favour of any person except:

(i) to a Subsidiary that is not a Loan Party provided that the Financial Assistance is made by a Subsidiary that is not a Loan Party;

(ii) in favour of a Permitted Investment Subsidiary to the extent it constitutes a Permitted Investment;

(iii) in favour of the Agent, the Lenders and their respective Hedging Affiliates and Bank Product Providers for or in respect of the Obligations, Lender Financial Instrument Obligations or Bank Product Obligations; and

(iv) for the benefit of a Loan Party, a Subsidiary or a Wholly Owned Subsidiary in connection with Permitted Debt.

(m) Limit on Acquisitions

The Canadian Borrower shall not, nor shall it permit the other Loan Parties or Subsidiaries to make any acquisitions other than Permitted Acquisitions.

(n) Anti-Cash Hoarding

The Borrowers shall not, nor shall they permit the other Loan Parties or any Subsidiary to, use the proceeds of any Drawdown or Advance to accumulate or maintain cash or cash equivalents in one or more accounts (including, for certainty, any depository, investment or securities account) maintained by a Borrower, any Loan Party or any of Subsidiaries except for cash or cash equivalents accumulated or maintained therein for a specified business purpose in the ordinary course of business (other than simply accumulating a cash reserve). For certainty (i) the Agent may refuse to make any requested Drawdown under the Syndicated Facility which all of the Lenders, acting reasonably, determine would result in a contravention of this Section 10.2(n) and (ii) the Operating Lender and the U.S. Operating Lender, as applicable, may refuse to make any requested Drawdown under the Operating Facility or the U.S. Operating Facility, as applicable, which the Operating Lender or the U.S. Operating Lender, as applicable, acting reasonably, determines would result in a contravention of this Section 10.2(n).

10.3 Financial Covenants

So long as any Obligation is outstanding or any Credit Facility is available hereunder, the Canadian Borrower covenants and agrees with each of the Lenders and the Agent that, unless (subject to Section 16.10) a Majority of the Lenders otherwise consent in writing:

(a) Maximum Debt to EBITDA Ratio

As at each Fiscal Quarter End, the Canadian Borrower shall not permit, and shall cause PHX Energy to not permit, the Debt to EBITDA Ratio to exceed 3.00:1.00, such ratio to be calculated on a rolling four-quarter basis.

(b) Minimum Interest Coverage Ratio

As at each Fiscal Quarter End, the Canadian Borrower shall not permit, and shall cause PHX Energy to not permit, the Interest Coverage Ratio to be less than 3.00:1.00, such ratio to be calculated on a rolling four-quarter basis.

10.4 Certain Covenants of the U.S. Borrower

The U.S. Borrower covenants and agrees with each of the Lenders, the U.S. Operating Lender and the Agent that, unless (subject to Section 16.10) a Majority of the Lenders otherwise consent in writing:

(a) it shall duly and punctually pay the principal of all Loans, all interest thereon and all fees and other amounts required to be paid by it hereunder in the manner specified hereunder and it shall maintain, perform and observe all of its obligations under this Agreement and under any other Document to which it is a party;

(b) it shall use all Loans and proceeds thereof solely for the purposes set forth in Section 2.3 hereof; and

(c) except as permitted under Section 10.2(c) or 10.2(j), it shall maintain its corporate existence and shall not liquidate, dissolve or wind-up or take any steps or proceedings in connection therewith unless all Obligations under the U.S. Operating Facility have been fully repaid or paid, as the case may be, and the U.S. Operating Facility has been cancelled in accordance herewith.

10.5 Agent May Perform Covenants

If a Borrower fails to perform any covenants on its part herein contained, subject to any consents or notice or cure periods required by Section 12.1, the Agent may give notice to such Borrower of such failure and if such covenant remains unperformed, the Agent may, in its discretion but need not, perform any such covenant capable of being performed by the Agent and if the covenant requires the payment or expenditure of money, the Agent may, upon having received approval of all applicable Lenders, make such payments or expenditure and all sums so expended shall be forthwith payable by the applicable Borrower to the Agent on behalf of the applicable Lenders and shall bear interest at the applicable interest rate provided in Section 5.9 for amounts due in Canadian Dollars or United States Dollars, as the case may be. No such performance, payment or expenditure by the Agent shall be deemed to relieve the applicable Borrower of any default hereunder or under the other Documents.

ARTICLE 11 SECURITY

11.1 Security on all Assets

(1) The Obligations, Lender Financial Instrument Obligations and the Bank Product Obligations shall be secured, equally and rateably, by first priority Security Interests on, to and against all present and future property, assets and undertaking of the Loan Parties located in Canada and the United States of America and on specified assets of the Loan Parties located in Ireland, Luxembourg and Albania.

(2) The Canadian Borrower shall (i) execute and deliver Security in the form of Schedules H-1 and H-2 annexed hereto, and (ii) shall cause (A) the U.S. Borrower to execute and deliver Security in the form of Schedules H-3 and H-4 annexed hereto, (B) PHX Energy and the Canadian domiciled Material Subsidiaries to execute and deliver Security in the forms of Schedules H-5 and H-6 annexed hereto, (C) the United States of America domiciled Material Subsidiaries to execute and deliver Security in the forms of Schedules H-7 and H-8 annexed hereto, (D) the Irish domiciled Material Subsidiaries to execute and deliver Security in the forms of Schedules H-5 and H-9 annexed hereto (E) the Luxembourg domiciled Material Subsidiaries to execute and deliver Security in the forms of Schedules H 5, H-10 and H-11 annexed hereto, and (F) Phoenix Technology Services International Ltd. to execute and deliver a guarantee substantially in the form of Schedule H-5 annexed hereto and a security agreement governed by the laws of Albania (or such other jurisdiction as is acceptable to the Agent, acting reasonably, covering substantially all of the assets of such Subsidiary), in each case with such modifications and insertions as may be required by the Agent, acting reasonably.

(3) The Canadian Borrower (i) shall, as soon as reasonably practicable, give written notice to the Agent of the acquisition, creation or existence of each Material Subsidiary created or acquired after the date hereof, together with such other information as the Agent may reasonably require, and (ii) shall promptly, and in any event within 30 Banking Days of such acquisition, creation or existence, cause each new Material Subsidiary to promptly execute and deliver to the Agent the Security contemplated hereby (together with a certified copy of its constating documents and a legal opinion in form and substance satisfactory to the Agent, acting reasonably).

(4) If at any time the Canadian Borrower shall not comply with Section 10.1(r), the Canadian Borrower shall promptly, and in any event within 10 Banking Days after any such occurrence, designate another Subsidiary which is not then a Material Subsidiary to be a Designated Material Subsidiary pursuant hereto to the extent required to comply with Section 10.1(r).

The Canadian Borrower shall from time to time, by notice in writing to the Agent (together with reasonable particulars which demonstrate compliance with the foregoing covenant), be entitled to designate that either:

(a) a Subsidiary of PHX Energy which is not a Material Subsidiary shall become a Designated Material Subsidiary; or

(b) a Designated Material Subsidiary shall cease to be a Material Subsidiary,

provided that the Canadian Borrower shall not be entitled to designate that a Designated Material Subsidiary shall cease to be a Material Subsidiary if:

(c) a Default or an Event of Default has occurred and is continuing (unless such Default or Event of Default will be remedied by such designation);

(d) a Default or an Event of Default would result from or exist immediately after such a designation; or

(e) such Designated Material Subsidiary falls within part (a) or (b) of the definition of "Material Subsidiary".

In order to give effect to the foregoing provisions of Section 11.1(3) and this Section 11.1(4), the Canadian Borrower shall cause any Material Subsidiary that becomes a Designated Material Subsidiary to promptly execute and deliver Security to the Agent (together with a certified copy of its constating documents and a legal opinion in form and substance satisfactory to the Agent, acting reasonably).

(5) In addition to the Security described in subsections (1) and (2) of this Section 11.1, the Canadian Borrower shall execute and deliver, or shall cause to be executed and delivered, all such guarantees and mortgages, debentures, pledge agreements, assignments and other security agreements as may be required by the Majority of the Lenders, acting reasonably (each in form and substance satisfactory to the Majority of the Lenders) in order to, or to more effectively, charge in favour of the Agent or grant Security Interests in favour of the Agent on and against all of the undertaking, assets and property (real or personal, tangible or intangible, present or future and of whatsoever nature and kind, excluding any Security Interest in respect of real property located in the United States of America) of the Loan Parties, as continuing collateral security for the payment and performance by the Borrowers of all Obligations, Lender Financial Instrument Obligations and Bank Product Obligations.

11.2 Registration

(1) The Canadian Borrower shall, at its expense, register, file or record the Security in all offices and in all jurisdictions where such registration, filing or recording is necessary or of advantage to the creation, perfection and preserving of the security applicable to it; provided that, in respect of the Loan Parties located in Canada, the Canadian Borrower shall not be obligated to register the Security at any land

registry offices unless and until the Agent, acting reasonably, requests such registrations in writing. The Canadian Borrower shall amend and renew such registrations, filings and recordings from time to time as and when required to keep them in full force and effect or to preserve the priority established by any prior registration, filing or recording thereof.

11.3 Forms

The forms of Security shall have been or shall be prepared based upon the laws of Alberta, the United States of America, Ireland, Luxembourg and Albania, as applicable, in effect at the date hereof. The Agent shall have the right to require that:

(a) any such Security be amended to reflect any changes in such laws, whether arising as a result of statutory amendments, court decisions or otherwise, in order to confer upon the Agent the Security Interests intended to be created thereby, and

(b) the Loan Parties execute and deliver to the Agent such other and further debentures, mortgages, trust deeds, assignments and security agreements as may be reasonably required to ensure the Agent holds, subject to Permitted Encumbrances, first priority Security Interests on and against all of the property and assets of the Loan Parties;

except that in no event shall the Agent require that the foregoing be effected if the result thereof would be to grant the Agent or the Lenders greater rights than is otherwise contemplated herein or therein.

11.4 Continuing Security

Each item or part of the Security shall for all purposes be treated as a separate and continuing collateral security and shall be deemed to have been given in addition to and not in place of any other item or part of the Security or any other security now held or hereafter acquired by the Agent or the Lenders. No item or part of the Security shall be merged or be deemed to have been merged in or by this Agreement or any documents, instruments or acknowledgements delivered hereunder, or any simple contract debt or any judgment, and any realization of or steps taken under or pursuant to any security, instrument or agreement shall be independent of and not create a merger with any other right available to the Lenders or the Agent under any security, instruments or agreements held by it or at law or in equity.

11.5 Dealing with Security

The Agent, with the consent of all of the Lenders, may grant extensions of time or other indulgences, take and give up securities (including the Security or any part or parts thereof), accept compositions, grant releases and discharges and otherwise deal with the Borrowers and other parties and with security (including without limitation, the Security and each part thereof) as the Agent may see fit, without prejudice to or in any way limiting the liability of the Borrowers under this Agreement or the other Documents or under any of the Security or any other collateral security.

11.6 Effectiveness

The Security and the security created by any other Document constituted or required to be created shall be effective, and the undertakings as to the Security herein or in any other Document shall be continuing, whether any Loans are then outstanding or any amounts thereby secured or any part thereof shall be owing before or after, or at the same time as, the creation of such Security Interests or before or after or upon the date of execution of any amendments to this Agreement.

11.7 Release and Discharge of Security

(1) The Loan Parties shall not be discharged from the Security or any part thereof, other than to the extent that such Security applies to a Permitted Disposition (in which case the Security shall cease to apply to the subject matter thereof for the benefit of the Agent and the Lenders) except by a written release and discharge signed by the Agent with the prior written consent of the Lenders. If all of the Obligations, Lender Financial Instrument Obligations and Bank Product Obligations have been repaid, paid, satisfied and discharged, as the case may be, in full and the Credit Facilities have been fully cancelled, then the Agent shall cause it and the Lenders' interest in the Security to be released and discharged at the expense of the Canadian Borrower. The Lenders hereby authorize the Agent, upon request of the Canadian Borrower, to, without further authorization from the Lenders, sign any and all releases, letters of no interest, or other documents or interests releasing the Security as it applies to a Permitted Disposition and any other disposition permitted by Section 10.2(d).

(2) The Lenders hereby authorize the Agent, upon the written request of the Canadian Borrower, to subordinate the Security Interests created by the Security with respect to any property or assets subject to a Permitted Encumbrance described in subparagraph (l) of the definition thereof or release such Security Interests from any property or assets subject to a Permitted Encumbrance described in subparagraph (l) of the definition thereof.

11.8 Transfer of Security

If HSBC Bank Canada, in its capacity as Agent, or any successor thereto, in its capacity as Agent ceases to be the Agent (the "**Departing Agent**"), the Departing Agent shall transfer and assign all of its right, title and interest in its capacity as Agent in and to the Security to the Successor Agent and the provisions of Section 11.2 shall apply, mutatis mutandis, with respect to such assignment and transfer.

11.9 Hedging Affiliates and Bank Product Providers

Each Lender hereby confirms to and agrees with the Agent and the other Lenders as follows:

(a) such Lender is, for the purpose of securing the Lender Financial Instrument Obligations owing to or in favour of its Hedging Affiliates and the Bank Product Obligations owing in favor of its Bank Product Providers pursuant to the Security, executing and delivering this Agreement both on its own behalf and as agent for and on behalf of such Hedging Affiliates and Bank Product Providers;

(b) the Agent shall be and is hereby authorized by each such Hedging Affiliate and Bank Product Provider (i) to hold the Security on behalf of such Hedging Affiliate and Bank Product Provider as security for the Lender Financial Instrument Obligations and Bank Product Obligations owing to or in favour of it in accordance with the provisions of the Documents and (ii) to act in accordance with the provisions of the Documents (including on the instructions or at the direction of the Majority of the Lenders) in all respects with respect to the Security; and

(c) the Lender Financial Instruments of any such Hedging Affiliate, the Lender Financial Instrument Obligations owing to or in favour of any such Hedging Affiliate, the documents governing any Bank Product or the Bank Product Obligations owing to or in favour of any such Bank Product Provider shall not be included or taken into account for the purposes of Section 16.10 or (for certainty) in any determination of the Majority of the Lenders or the Lenders which shall be determined solely based upon the Commitments of the Lenders hereunder or the Outstanding Principal owing to the Lenders, as applicable.

11.10 Security for Hedging with Former Lenders

If a Lender ceases to be a Lender under this Agreement (a "**Former Lender**"), all Lender Financial Instrument Obligations owing to such Former Lender and its Hedging Affiliates under Lender Financial Instruments entered into while such Former Lender was a Lender shall remain secured by the Security (equally and rateably) to the extent that such Lender Financial Instrument Obligations were secured by the Security prior to such Lender becoming a Former Lender and, subject to the following provisions of this Section 11.10 and unless the context otherwise requires, all references herein to "Lender Financial Instrument Obligations" shall include such obligations to a Former Lender and its Hedging Affiliates and all references herein to "Lender Financial Instruments" shall include such Financial Instruments with a Former Lender and its Hedging Affiliates. For certainty, any Financial Instrument Obligations under Financial Instruments entered into with a Former Lender or an Affiliate thereof after the Former Lender has ceased to be a Lender shall not be secured by the Security. Notwithstanding the foregoing, no Former Lender or any Affiliate thereof shall have any right to cause or require the enforcement of the Security or any right to participate in any decisions relating to the Security, including any decisions relating to the enforcement or manner of enforcement of the Security or decisions relating to any amendment to, waiver under, release of or other dealing with all or any part of the Security; for certainty, the sole right of a Former Lender and its Affiliates with respect to the Security is to share, on a pari passu basis, in any proceeds of realization and enforcement of the Security.

11.11 Additional Subsidiary Guarantors

The Canadian Borrower shall, upon the reasonable request of the Agent, cause a Subsidiary that is not a Material Subsidiary to execute and deliver to the Agent the Security contemplated hereby (together with a certified copy of its constating documents and a legal opinion in form and substance satisfactory to the Agent, acting reasonably).

ARTICLE 12 EVENTS OF DEFAULT AND ACCELERATION

12.1 Events of Default

The occurrence of any one or more of the following events (each such event being herein referred to as an "**Event of Default**") shall constitute a default under this Agreement:

(a) Principal Default: if either Borrower fails to pay the principal of any Loan hereunder when due and payable;

(b) Other Payment Default: if either Borrower fails to pay:

(i) any interest (including, if applicable, default interest) accrued on any Loan;

(ii) any acceptance fee with respect to a Bankers' Acceptance or issuance fee with respect to a Letter of Credit; or

(iii) any other amount not specifically referred to in paragraph (a) above or in this paragraph (b) payable by such Borrower hereunder;

in each case when due and payable, and such default is not remedied within 3 Banking Days after written notice thereof is given by the Agent to the Canadian Borrower specifying such default and requiring the applicable Borrower to remedy or cure the same;

(c) Certain Covenant Defaults: if the Canadian Borrower or the U.S. Borrower, as applicable, fails to observe or perform any covenant in Section 10.3 or Section 11.1;

(d) Breach of other Covenants: if a Loan Party fails to observe or perform any covenant or obligation herein or in any other Document required on its part to be observed or performed (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this Section) and, after notice has been given by the Agent to such Loan Party specifying such default and requiring such Loan Party to remedy or cure the same, such Loan Party shall fail to remedy such default within a period of 20 days after the giving of such notice;

(e) Incorrect Representations: if any representation or warranty made by a Loan Party or a Subsidiary herein or in any other Document shall prove to have been incorrect or misleading in any respect on and as of the date made and the facts or circumstances which make such representation or warranty incorrect or misleading are not remedied and the representation or warranty in question remains incorrect or misleading more than 20 days after the Agent notifies such Borrower of the same;

(f) Involuntary Insolvency: if a decree or order of a court of competent jurisdiction is entered adjudging a Loan Party or a Subsidiary bankrupt or insolvent under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada), the *Winding up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous laws or ordering the winding up or liquidation of its affairs, including, for certainty, the Bankruptcy Code and such case, proceeding or other action shall continue undismissed, or unstayed and in effect, for any period of 30 consecutive days unless such decree, order or proceeding would reasonably be expected to have a Material Adverse Effect and is reported to the Agent;

(g) Idem: if any case, proceeding or other action shall be instituted in any court of competent jurisdiction against a Loan Party, seeking in respect of it an adjudication in bankruptcy, reorganization, dissolution, winding up, liquidation, a composition, proposal or arrangement with creditors, a readjustment of debts, the appointment of trustee in bankruptcy, receiver, receiver and manager, interim receiver, custodian, sequestrator or other person with similar powers with respect to such Loan Party or of all or any substantial part of its assets, or any other like relief in respect of any Loan Party under any bankruptcy or insolvency law and:

(i) such case, proceeding or other action results in an entry of an order for such relief or any such adjudication or appointment, or

(ii) such case, proceeding or other action shall continue undismissed, or unstayed and in effect, for any period of 30 consecutive days;

(h) Voluntary Insolvency: if any Loan Party makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act* (Canada), the *Winding up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous law, including, without limitation, the Bankruptcy Code, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee in bankruptcy, receiver, receiver and manager, interim receiver, custodian, sequestrator or other person with similar powers of itself or of all or any substantial portion of its assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition, administration or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such assignment, proposal, relief, petition, proposal, appointment or proceeding and such case, proceeding or other action shall continue undismissed, or unstayed and in effect, for any period of 30 consecutive days;

(i) Dissolution: except as permitted by Sections 10.2(c) or 10.2(j), if proceedings are commenced for the dissolution, liquidation or winding up of a Loan Party unless such proceedings are being actively and diligently contested in good faith to the satisfaction of the Majority of the Lenders;

(j) Security Realization: if creditors of any Loan Party having a Security Interest against or in respect of the property and assets thereof, or any part thereof, realize upon or enforce any such security against such property and assets or any part thereof having an aggregate fair market value in excess of Cdn.$5,000,000 (or the Equivalent Amount thereof in United States Dollars or the equivalent amount in any other currency) and such realization or enforcement shall continue in effect and not be released, discharged or stayed within the lesser of 30 days and the period of time prescribed under Applicable Laws for the completion of the sale of or realization against the assets subject to such seizure or attachment;

(k) Seizure: if property and assets of any Loan Party or any part thereof having an aggregate fair market value in excess of Cdn.$5,000,000 (or the Equivalent Amount thereof in United States Dollars or the equivalent amount in any other currency) are seized or otherwise attached by anyone pursuant to any legal process or other means, including, without limitation, distress, execution or any other step or proceeding with similar effect and such attachment, step or other proceeding shall continue in effect and not be released, discharged or stayed within the lesser of 30 days and the period of time prescribed under Applicable Laws for the completion of the sale of or realization against the assets subject to such seizure or attachment;

(l) Judgment: if one or more final judgments, decrees or orders, after available appeals have been exhausted, shall be awarded against the Loan Parties for an aggregate amount in excess of Cdn.$5,000,000 (or the Equivalent Amount thereof in United States Dollars or the equivalent amount in any other currency) and the Loan Parties have not provided security for any of such judgments, decrees or orders within 30 days of such judgment, decree or order being awarded;

(m) Payment Cross Default: if any Loan Party (or any combination thereof) defaults in the payment when due (whether at maturity, upon acceleration, or otherwise) of Debt or Financial Instrument Obligations thereof in aggregate in excess of Cdn.$5,000,000 (or the Equivalent Amount thereof in United States Dollars or the equivalent amount in any other currency);

(n) Event Cross Default: if a default, event of default or other similar condition or event (however described) in respect of any Loan Party (or any combination thereof) occurs or exists under any indentures, credit agreements, agreements or other instruments evidencing or relating to Debt or Financial Instrument Obligations thereof (individually or collectively) in an aggregate amount in excess of Cdn.$5,000,000 (or the Equivalent Amount thereof in United States Dollars or the equivalent amount in any other currency) and such default, event or condition has resulted in such Debt or Financial Instrument Obligations becoming, or becoming capable at such time of being declared, due and payable thereunder before it would otherwise have been due and payable;

(o) Cease to Carry on Business: if any Loan Party ceases to carry on business, except as permitted by Section 10.2(c) or Section 10.2(j);

(p) Change of Control: if there is a Change of Control;

(q) Lender Financial Instruments: if a Financial Instrument Demand for Payment has been delivered to a Loan Party and such person fails to make payment thereunder within the lesser of (i) 3 Banking Days and (ii) the time otherwise required for payment thereunder, or if a Termination Event occurs, and, in any such case, such default has not been waived or cured;

(r) Loss and Priority of Security: except for Permitted Encumbrances, if any of the Security shall cease to be a valid first priority Security Interest against the property, assets and undertaking of any Loan Party as against third parties (and the same is not effectively rectified or replaced by such Loan Party, as applicable, within 10 days after notice thereof from the Agent);

(s) Invalidity: except as would not be an Event of Default pursuant to Section 12.1(r), if any of this Agreement or any Security or any material provision of any of the foregoing shall at any time for any reason cease to be in full force and effect, be declared to be void or voidable (and the same is not forthwith effectively rectified or replaced by a Loan Party) or shall be repudiated, or the validity or enforceability thereof shall at any time be contested by such Loan Party or such Loan Party shall deny that it has any or any further liability or obligation thereunder, or at any time it shall be unlawful or impossible for them to perform any of their respective Obligations;

(t) Material Adverse Effect: if any event or circumstance has occurred and is continuing which, in the opinion of the Majority of the Lenders (acting reasonably), has had or would reasonably be expected to have a Material Adverse Effect;

(u) Borrowing Base Shortfall: if a Borrowing Base Shortfall exists and is not remedied in accordance with Section ~~2.24(3~~2.23(3); or

(v) ERISA Event: if an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, has resulted in or would reasonably be expected to result in a Material Adverse Effect.

12.2 Acceleration

If any Event of Default shall occur and for so long as it is continuing:

(a) the entire principal amount of all Loans then outstanding from each Borrower and all accrued and unpaid interest thereon,

(b) an amount equal to the face amount at maturity of all Bankers' Acceptances issued by the Canadian Borrower which are unmatured,

(c) an amount equal to the maximum amount then available to be drawn under all unexpired Letters of Credit, and

(d) all other Obligations outstanding hereunder,

shall, at the option of the Agent in accordance with Section 15.10 or upon the request of a Majority of the Lenders, become immediately due and payable upon written notice to that effect from the Agent to the Borrowers, all without any other notice and without presentment, protest, demand, notice of dishonour or any other demand whatsoever (all of which are hereby expressly waived by the Borrowers). In such event and if either Borrower does not immediately pay all such amounts upon receipt of such notice, either the Lenders (in accordance with the proviso in Section 15.10(i)) or the Agent on their behalf may, in their discretion, exercise any right or recourse and/or proceed by any action, suit, remedy or proceeding against either Borrower authorized or permitted by law for the recovery of all the indebtedness and liabilities of the Borrowers to the Lenders and proceed to exercise any and all rights hereunder and under the other Documents and no such remedy for the enforcement of the rights of the Lenders shall be exclusive of or dependent on any other remedy but any one or more of such remedies may from time to time be exercised independently or in combination.

12.3 Conversion on Default

Upon the occurrence of an Event of Default in respect of either Borrower, the Agent on behalf of the Lenders may convert a ~~Libor~~SOFR Loan (i) owing by a Borrower under the Syndicated Facility, to a U.S. Base Rate Loan and (ii) owing by the U.S. Borrower under the U.S. Operating Facility, to a U.S. Rate Prime Loan. Interest shall accrue on each such U.S. Base Rate Loan or U.S. Prime Rate Loan, as applicable at the rate specified in Section 5.2 and Section 5.4, as applicable, with interest on all overdue interest at the same rate, such interest to be calculated daily and payable on demand.

12.4 Remedies Cumulative and Waivers

For greater certainty, it is expressly understood and agreed that the rights and remedies of the Lenders and the Agent hereunder or under any other Document are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or by equity; and any single or partial exercise by the Lenders or by the Agent of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Agreement or other Document shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which any one or more of the Lenders and the Agent may be lawfully entitled for such default or breach. Any waiver by, as applicable, the Majority of the Lenders, the Lenders or the Agent of the strict observance, performance or compliance with any term, covenant, condition or other matter contained herein and any indulgence granted, either expressly or by course of conduct, by, as applicable, the Majority of the Lenders, the Lenders or the Agent shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the Lenders or the Agent under this Agreement or any other Document as a result of any other default or breach hereunder or thereunder.

12.5 Termination of Lenders' Obligations

The occurrence of a Default or Event of Default shall relieve the Lenders of all obligations to provide any further Drawdowns, Rollovers or Conversions to any Borrower hereunder; provided that the foregoing shall not prevent the Lenders or the Agent from disbursing money or effecting any Conversion which, by the terms hereof, they are entitled to effect, or any Conversion or Rollover requested by a Borrower and acceptable to the applicable Lenders and the Agent.

12.6 Acceleration of All Lender Obligations

(1) If a Lender or a Hedging Affiliate has delivered a Financial Instrument Demand for Payment to a Loan Party, then it shall promptly notify the Agent and other Lenders thereof.

(2) If an Acceleration Notice has been delivered to a Borrower, then, to the extent that it is not already the case, all Financial Instrument Obligations under Lender Financial Instruments and all Bank Product Obligations shall be immediately due and payable and each Lender and the Agent shall (and shall be entitled to) promptly, and in any event within 3 Banking Days of receipt of notice of the foregoing, deliver such other Demands for Payment and notices as may be necessary to ensure that all Obligations, Financial Instrument Obligations under Lender Financial Instruments and Bank Product Obligations are thereafter due

and payable under this Agreement, the documentation relating to Bank Products and the Lender Financial Instruments, as applicable.

(3) Each agreement, indenture, instrument or other document evidencing or relating to a Bank Product or a Lender Financial Instrument shall, notwithstanding any provision thereof to the contrary, be deemed to be hereby amended to allow and permit the Lender which is a party thereto to comply with the provisions of this Section 12.6.

12.7 Application and Sharing of Payments Following Acceleration

Except as otherwise agreed to by all of the Lenders in their sole discretion, all monies and property received by the Lenders or the Agent for application in respect of the Obligations, the Bank Product Obligations and the Financial Instrument Obligations under Lender Financial Instruments subsequent to the Adjustment Time and all monies received as a result of a realization upon the Security (collectively, the "**Realization Proceeds**") shall be applied and distributed to the Lenders and the Agent in the order and manner set forth below:

(a) firstly, distributed proportionately to the Lenders and the Agent in accordance with amounts owing to each Lender and the Agent on account of the costs and expenses of enforcement and realization upon the Security; and

(b) secondly, distributed Rateably to the Lenders, the Bank Product Providers and Hedging Affiliates on account of the Obligations, the Bank Product Obligations and the Financial Instrument Obligations under Lender Financial Instruments;

and the balance of the Realization Proceeds (if any) shall be paid to the applicable Borrower or otherwise as may be required by applicable law; provided, however, that (i) the Agent shall make such adjustments as it determines is appropriate with respect to payments and collections received from the other Loan Parties (or proceeds received in respect of such other Loan Parties' collateral) to preserve, as nearly as possible, the allocation to the Obligations otherwise set forth above in this Section 12.7 (assuming that, solely for the purposes of such adjustments, the Obligations include Excluded Swap Obligations, and (ii) the Bank Product Obligations and the Lender Financial Instrument Obligations under Lender Financial Instruments may be excluded from the application described above if the Agent has not received written notice thereof, together with such supporting documentation as the Agent may request, from the applicable Bank Product Provider or Hedging Affiliate, as applicable. Each Bank Product Provider or Hedging Affiliate not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Agent pursuant to the terms of Article 15_for itself and its Affiliates as if a "Lender" party hereto.

12.8 Calculations as at the Adjustment Time

For the purposes of this Agreement, if:

(a) a Financial Instrument Demand for Repayment has been delivered; or

(b) a Termination Event has occurred under any agreement evidencing a Lender Financial Instrument;

then any amount which is payable by a Loan Party under such Lender Financial Instrument in settlement of obligations arising thereunder as a result of the early termination of the Lender Financial Instrument shall be deemed to have become payable at the time of delivery of such Financial Instrument Demand for Repayment or the time of occurrence of such Termination Event, as the case may be, notwithstanding that the amount payable by such Loan Party is to be subsequently calculated and notice thereof given to such Loan Party in accordance with such Lender Financial Instrument.

12.9 Sharing Repayments

To the extent necessary to ensure that, and to give effect to the agreement that, the Obligations and Lender Financial Instrument Obligations are secured equally and rateably, each Lender agrees that, subsequent to the Adjustment Time, it will at any time and from time to time upon the request of the Agent purchase undivided participations in the Obligations and Lender Financial Instrument Obligations and make any other adjustments which may be necessary or appropriate, in order that Obligations and Lender Financial Instrument Obligations which remain outstanding to each Lender and its Hedging Affiliates are thereafter outstanding, as adjusted pursuant to this Section, in accordance with the provisions of Section 12.7. Each Borrower agrees to do, or cause to be done (whether by it, PHX Energy or a Material Subsidiary), all things reasonably necessary or appropriate to give effect to any and all purchases and other adjustments by and between the Lenders pursuant to this Section.

12.10 Pro Rata Obligations

After all Obligations are declared by the Agent to be due and payable pursuant to Section 12.2, each Syndicated Facility Lender and the Operating Lender agrees that (a) it will at any time or from time to time thereafter at the request of the Agent as required by any other Syndicated Facility Lender or the Operating Lender, as the case may be, purchase at par on a non-recourse basis a participation in the Outstanding Principal owing to each of the other Lenders under the Syndicated Facility and the Operating Facility and make any other adjustments as are necessary or appropriate, in order that the Outstanding Principal owing to each of the Lenders under the Syndicated Facility and the Operating Facility, as adjusted pursuant to this Section 12.10, will be in the same proportion as each Lender's individual aggregate Commitments under the Syndicated Facility and the Operating Facility were to the overall aggregate Commitments of all Lenders under the Syndicated Facility and the Operating Facility immediately prior to the Event of Default resulting in such declaration and (b) the amount of any repayment made by or on behalf of the Borrowers, the Loan Parties and their Subsidiaries under the Documents or any proceeds received by the Agent or the Lenders in connection therewith will be applied by the Agent in a manner such that to the extent possible the amount of the Outstanding Principal owing to each Lender under the Syndicated Facility and the Operating Facility after giving effect to such application will be in the same proportion as each Lender's individual aggregate Commitments under the Syndicated Facility and the Operating Facility were to the overall aggregate Commitments of all Lenders under the Syndicated Facility and the Operating Facility immediately prior to the Event of Default resulting in such declaration.

ARTICLE 13 CHANGE OF CIRCUMSTANCES

13.1 ~~Market Disruption~~Inability to Determine Rates Respecting ~~LIBOR~~SOFR Loans

~~(1) In the event that at any time subsequent to the giving of a Drawdown Notice, Rollover Notice or Conversion Notice under a Credit Facility to the Agent by a Borrower with regard to any requested Libor Loan, but before 2:00 p.m. (Toronto time) on the third Banking Day prior to the date of the requested Drawdown, Rollover or Conversion, as the case may be, a Lender or Lenders, the Commitments of which are, in aggregate, at least 25% of the Commitments of all Lenders under such Credit Facility (acting reasonably) makes a determination, which shall be conclusive and binding upon such Borrower, that:~~

~~(a) by reason of circumstances affecting the London interbank market, adequate and fair means do not exist for ascertaining the rate of interest with respect to, or deposits are not available in sufficient amounts in the ordinary course of business at the rate determined hereunder to fund, a requested Libor Loan during the ensuing Interest Period selected;~~

~~(b) the making or continuing of the requested Libor Loan by such Lender or Lenders has been made impracticable by the occurrence of an event which materially adversely affects the London interbank market generally; or~~

~~(c) the Libor Rate shall no longer represent the effective cost to such Lender or Lenders of United States Dollar deposits in such market for the relevant Interest Period,~~

~~then such Lender or Lenders shall give notice thereof to the Agent and the Borrowers, in the case of the Syndicated Facility, and to the Agent and the U.S. Borrower, in the case of the U.S. Operating Facility, as soon as possible after such determination, but in any event before the aforementioned time, (and the Agent shall give notice thereof to the other applicable Lenders) and the applicable Borrower shall, within one Banking Day after receipt of such notice and in replacement of the Drawdown Notice, Rollover Notice or Conversion Notice, as the case may be, previously given by such Borrower, give the Agent a Drawdown Notice or a Conversion Notice, as the case may be, which specifies the Drawdown of any other Loan or the Conversion of the relevant Libor Loan on the last day of the applicable Interest Period into any other Loan which would not be affected by the notice from such Lender pursuant to this Section 13.1. In the event such Borrower fails to give, if applicable, a valid replacement Conversion Notice with respect to the maturing Libor Loans which were the subject of a Rollover Notice, such maturing Libor Loans shall be converted on the last day of the applicable Interest Period into, with respect to the Syndicated Facility, U.S. Base Rate Loans, and, with respect to the U.S. Operating Facility, U.S. Prime Rate Loans, as if a Conversion Notice had been given to the Agent by such Borrower pursuant to the provisions hereof. In the event such Borrower fails to give, if~~

~~applicable, a valid replacement Drawdown Notice with respect to a Drawdown originally requested by way of a Libor Loan, then such Borrower shall be deemed to have requested a Drawdown by way of, with respect to the Syndicated Facility, a U.S. Base Rate Loan, and, with respect to the U.S. Operating Facility, a U.S. Prime Rate Loan, in the amount specified in the original Drawdown Notice and, on the originally requested Drawdown Date, the applicable Lenders (subject to the other provisions hereof) shall make available the requested amount by way of a U.S. Base Rate Loan or U.S. Prime Rate Loan, as applicable.~~

Subject to Section 13.2, if, on or prior to the first day of any Interest Period for any SOFR Loan:

(a) ~~(2) Notwithstanding anything to the contrary in this Agreement or any other Document, if the Agent, the U.S. Operating Lender or the Operating Lender, as applicable,~~the Agent determines (which determination shall be conclusive and binding absent manifest error)~~, or if the a Borrower or the Majority of the Lenders notify the Agent (with, in the case of the Majority of the Lenders, a copy to the Canadian Borrower) or the U.S. Borrower notifies the U.S. Operating Lender, as applicable, that such Borrower or the Majority of the Lenders (as applicable) have~~ that "Adjusted Term SOFR" cannot be determined~~, that:~~ pursuant to the definition thereof; or

~~(a) adequate and reasonable means do not exist for ascertaining the Libor Rate for any requested Interest Period because the rate set by ICE Benchmark Administration is not available or published on a current basis and such circumstances are unlikely to be temporary;~~

~~(b) the ICE Benchmark Administration or a Governmental Authority having jurisdiction over the Agent, the Operating Lender or the U.S. Operating Lender, as applicable, has made a public statement identifying a specific date after which the Libor Rate shall no longer be made available or used for determining the interest rate of loans (such specific date, the "**Scheduled Unavailability Date**"); or~~

~~(c) the Libor Rate is no longer the market standard benchmark rate for United States Dollar denominated loans;~~

~~then, reasonably promptly after such determination by the Agent, the Operating Lender or the U.S. Operating Lender or receipt by the Agent of a notice from the a Borrower or the Majority of the Lenders, as applicable, or receipt by the U.S. Operating Lender of a notice from the U.S. Borrower, the Agent (on behalf of the Lenders), the Operating Lender, the U.S. Operating Lender and the Borrowers may negotiate an amendment to this Agreement to replace Libor Loans with loans using an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), (any such proposed rate, a "**Libor Successor Rate**"), together with any required conforming changes to this Agreement.~~

~~(3) If no Libor Successor Rate has been determined in accordance with Section 13.1(2) and:~~

~~(a) the circumstances under Section 13.1(2)(a) above exist;~~

(b) ~~the Scheduled Unavailability Date has occurred; or~~a Majority of the Lenders determine that for any reason in connection with any request for a SOFR Loan or a Conversion thereto or a Rollover thereof that Adjusted Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of funding such SOFR Loan, and a Majority of the Lenders have provided notice of such determination to the Agent,

~~(c) 60 days have passed since the determination by the Agent, the Operating Lender or the U.S. Operating Lender or receipt of notice by the Agent from the Borrowers or the Majority of the Lenders, as applicable, or receipt by the U.S. Operating Lender from the U.S. Borrower, as applicable, that the circumstance described under Section13.1(2)(c) above exist,~~

~~the Agent,~~

then the ~~Operating Lender or the U.S. Operating Lender, as applicable,~~Agent will promptly so notify the ~~applicable~~Canadian Borrower ~~(~~and~~, in respect of the Syndicated Facility, the applicable Lenders) and, thereafter, (i) the~~ each Lender. Upon notice thereof by the Agent to the Canadian Borrower, any obligation of the Lenders to ~~make or maintain Libor~~provide a Drawdown of, Conversion to or Rollover of SOFR Loans shall be suspended ~~and (ii~~(to the extent of the affected SOFR Loans and, in the case of a SOFR Loan, the affected Interest Periods) until the ~~Libor Rate component shall no longer be utilized in determining the U.S. Base Rate.~~ Agent, and, in respect of subparagraph (b) above, at the instruction of a Majority of the Lenders, revokes such notice. Upon receipt of such notice, ~~a~~(i) the applicable Borrower may revoke any pending request for ~~a~~an Drawdown of, Conversion ~~into~~to or Rollover of ~~Libor Loans or~~SOFR Loans (to the extent of the affected SOFR Loans or the affected Interest Periods) or, failing that, the applicable Borrower will be deemed to have converted any such request into a request for a Drawdown of or Conversion to U.S. Base Rate Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into U.S. Base Rate Loans immediately or, in the case of a SOFR Loan, at the end of the applicable Interest Period.

13.2 Benchmark Replacement

Notwithstanding anything to the contrary herein or in any other Document:

(a) Benchmark Replacement. If a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (i) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Document and (ii) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Document in respect of any Benchmark setting at or after 5:00 p.m. (New York time) on the fifth (5th) Banking Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Document so long as the Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising Majority of the Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a quarterly basis

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Document.

(c) Notice; Standards for Decisions and Determinations. The Agent will promptly notify the Canadian Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Agent will promptly notify the Canadian Borrower of (A) the removal or reinstatement of any tenor of a Benchmark pursuant to this Section 13.2, and (B) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 13.2, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Document, except, in each case, as expressly required pursuant to this Section 13.2.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion or (B) the administration of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period. Upon the Canadian Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the applicable Borrower may revoke any pending request for a Drawdown of, Conversion to or Rollover of SOFR Loans to be drawn down, converted or rolled over during any Benchmark Unavailability Period and, failing that, the applicable Borrower will be deemed to have converted any such ~~notice in to a~~request into a request for an Drawdown ~~Notice~~of, or Conversion ~~Notice or Rollover Notice~~to U.S. Base Rate Loans. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, ~~requesting~~will not be used in any determination of the U.S. Base Rate ~~Loans in the amount specified therein~~.

13.3 ~~13.2~~ Market Disruption Respecting Bankers' Acceptances

If:

(a) the Agent (acting reasonably) in the case of the Syndicated Facility or the Operating Lender (acting reasonably) in the case of the Operating Facility makes a determination, which determination shall be conclusive and binding upon the Canadian Borrower, and notifies the Canadian Borrower, that there no longer exists an active market for bankers' acceptances accepted by the Canadian Lenders; or

(b) the Agent is advised by a Syndicated Facility Lender or Syndicated Facility Lenders, the Commitments of which are, in aggregate, at least 25% of the Commitments of all Syndicated Facility Lenders, by written notice (each, a "**Lender BA Suspension Notice**") that such Syndicated Facility Lender or Syndicated Facility Lenders have determined (in their sole discretion, acting in good faith) that the BA Discount Rate will not or does not accurately reflect the cost of funds of such Lender or the discount rate which would be applicable to a sale of Bankers' Acceptances accepted by such Syndicated Facility Lender of Syndicated Facility Lenders in the market;

then:

(c) the right of the Canadian Borrower to request Bankers' Acceptances or BA Equivalent Advances from any Lender shall be suspended until the Agent determines that the circumstances causing such suspension no longer exist, and so notifies the Canadian Borrower and the Canadian Lenders;

(d) any outstanding Drawdown Notice requesting a Loan by way of Bankers' Acceptances or BA Equivalent Advances shall be deemed to be a Drawdown Notice requesting a Loan by way of Canadian Prime Rate Loans in the amount specified in the original Drawdown Notice;

(e) any outstanding Conversion Notice requesting a Conversion of a Loan by way of Bankers' Acceptances or BA Equivalent Advances shall be deemed to be a Conversion Notice requesting a Conversion of such Loan into a Loan by way of Canadian Prime Rate Loans; and

(f) any outstanding Rollover Notice requesting a Rollover of a Loan by way of Bankers' Acceptances or BA Equivalent Advances, shall be deemed to be a Conversion Notice requesting a Conversion of such Loans into a Loan by way of Canadian Prime Rate Loans.

The Agent shall promptly notify the Canadian Borrower and the Canadian Lenders of any suspension of the Canadian Borrower's right to request the Bankers' Acceptances or BA Equivalent Advances and of any termination of any such suspension. A Lender BA Suspension Notice shall be effective upon receipt of the same by the Agent if received prior to 2:00 p.m. (Toronto time) on a Banking Day and if not, then on the next following Banking Day, except in connection with an outstanding Drawdown Notice, Conversion Notice or Rollover Notice, in which case the applicable Lender BA Suspension Notice shall only be effective with respect to such outstanding Drawdown Notice, Conversion Notice or Rollover Notice if received by the Agent prior to 2:00 p.m. (Toronto time) two Banking Days prior to the proposed Drawdown Date, Conversion Date or Rollover Date (as applicable) applicable to such outstanding Drawdown Notice, Conversion Notice or Rollover Notice, as applicable.

13.4 ~~13.3~~ Change in Law

(1) If the adoption of any applicable law, regulation, treaty or official directive (whether or not having the force of law) or any change therein or in the interpretation or application thereof by any court or by any Governmental Authority or any other entity charged with the interpretation or administration thereof or compliance by a Lender with any request or direction (whether or not having the force of law) of any such authority or entity in each case after the date hereof:

(a) subjects such Lender to, or causes the withdrawal or termination of a previously granted exemption with respect to, any Taxes (other than Taxes on such Lender's overall income or capital), or changes the basis of taxation of payments due to such Lender, or increases any existing Taxes (other than Taxes on such Lender's overall income or capital) on payments of principal, interest or other amounts payable by a Borrower to such Lender under this Agreement;

(b) imposes, modifies or deems applicable any reserve, liquidity, special deposit, regulatory or similar requirement against assets or liabilities held by, or deposits in or for the account of, or loans by such Lender, or any acquisition of funds for loans or commitments to fund loans or obligations in respect of undrawn, committed lines of credit or in respect of Bankers' Acceptances accepted by such Lender;

(c) imposes on such Lender or requires there to be maintained by such Lender any capital adequacy or additional capital requirements (including, without limitation, a requirement which affects such Lender's allocation of capital resources to its obligations) in respect of any Loan or obligation of such Lender hereunder, or any other condition with respect to this Agreement; or

(d) directly or indirectly affects the cost to such Lender of making available, funding or maintaining any Loan or otherwise imposes on such Lender any other condition or requirement affecting this Agreement or any Loan or any obligation of such Lender hereunder;

and the result of (a), (b), (c) or (d) above, in the sole determination of such Lender acting in good faith, is:

(e) to increase the cost to such Lender of performing its obligations hereunder with respect to any Loan;

(f) to reduce any amount received or receivable by such Lender hereunder or its effective return hereunder or on its capital in respect of any Loan or any Credit Facility;

(g) to reduce the standby fees payable pursuant to Section 5.9; or

(h) to cause such Lender to make any payment with respect to or to forego any return on or calculated by reference to, any amount received or receivable by such Lender hereunder with respect to either Loan or any Credit Facility;

such Lender shall determine that amount of money which shall compensate the Lender for such increase in cost, payments to be made or reduction in income or return or interest foregone (herein referred to as "**Additional Compensation**"). Upon a Lender having determined that it is entitled to Additional Compensation in accordance with the provisions of this Section, such

Lender shall promptly so notify the Borrowers and the Agent. The relevant Lender shall provide the Borrowers and the Agent with a photocopy of the relevant law, rule, guideline, regulation, treaty or official directive (or, if it is impracticable to provide a photocopy, a written summary of the same) and a certificate of a duly authorized officer of such Lender setting forth the Additional Compensation and the basis of calculation therefor, which shall be conclusive evidence of such Additional Compensation in the absence of manifest error. The applicable Borrower shall pay to such Lender within 10 Banking Days of the giving of such notice such Lender's Additional Compensation. Each of the Lenders shall be entitled to be paid such Additional Compensation from time to time to the extent that the provisions of this Section are then applicable notwithstanding that any Lender has previously been paid any Additional Compensation.

(2) Notwithstanding anything herein to the contrary, (i) the *Dodd-Frank Wall Street Reform and Consumer Protection Act* and all regulations, requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all regulations, requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States, Canadian or other regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in law" for the purposes of this Section 13.3 regardless of the date enacted, adopted or issued.

(3) Each Lender agrees that it will not claim Additional Compensation from a Borrower under Section 13.3(1) if it is not generally claiming similar compensation from its other customers in similar circumstances or in respect of any period greater than 3 months prior to the delivery of notice in respect thereof by such Lender, unless, in the latter case, the adoption, change or other event or circumstance giving rise to the claim for Additional Compensation is retroactive or is retroactive in effect.

13.5 ~~13.4~~ **Prepayment of Portion**

In addition to the other rights and options of the Borrowers hereunder and notwithstanding any contrary provisions hereof, if a Lender gives the notice provided for in Section 13.3 with respect to any Loan (an "**Affected Loan**"), the applicable Borrower may, upon 2 Banking Days' notice to that effect given to such Lender and the Agent (which notice shall be irrevocable), either effect a Conversion in accordance with the provisions hereof (if such Conversion would reduce the applicable Additional Compensation) or prepay in full without penalty such Lender's Rateable Portion of the Affected Loan outstanding together with accrued and unpaid interest on the principal amount so prepaid up to the date of such prepayment, such Additional Compensation as may be applicable to the date of such payment and all costs, losses and expenses incurred by such Lender by reason of the liquidation or re deployment of deposits or other funds or for any other reason whatsoever resulting from the repayment of such Affected Loan or any part thereof on other than the last day of the applicable Interest Period, and upon such payment being made that Lender's obligations to make such Affected Loans to such Borrower under this Agreement shall terminate.

13.6 ~~13.5~~ Illegality

If a Lender determines, in good faith, that the adoption of any applicable law, regulation, treaty or official directive (whether or not having the force of law) or any change therein or in the interpretation or application thereof by any court or by any Governmental Authority or any other entity charged with the interpretation or administration thereof or compliance by a Lender with any request or direction (whether or not having the force of law) of any such authority or entity, now or hereafter makes it unlawful or impossible for any Lender to make, fund or maintain a Loan under any Credit Facility or to give effect to its obligations in respect of such a Loan, such Lender may, by written notice thereof to the applicable Borrower and to the Agent declare its obligations under this Agreement in respect of such Loan to be terminated whereupon the same shall forthwith terminate, and such Borrower shall, within the time required by such law (or at the end of such longer period as such Lender at its discretion has agreed), either effect a Conversion of such Loan in accordance with the provisions hereof (if such Conversion would resolve the unlawfulness or impossibility) or prepay the principal of such Loan together with accrued interest, such Additional Compensation as may be applicable with respect to such Loan to the date of such payment and all costs, losses and expenses incurred by the Lenders by reason of the liquidation or re deployment of deposits or other funds or for any other reason whatsoever resulting from the repayment of such Loan or any part thereof on other than the last day of the applicable Interest Period. If any such change shall only affect a portion of such Lender's obligations under this Agreement which is, in the opinion of such Lender and the Agent, severable from the remainder of this Agreement so that the remainder of this Agreement may be continued in full force and effect without otherwise affecting any of the obligations of the Agent, the other Lenders or the Borrowers hereunder, such Lender shall only declare its obligations under that portion so terminated.

~~13.6 Reserves on Libor Loans~~

~~Subject to Section 13.4, the U.S. Borrower shall pay to the U.S. Operating Lender, as long as such U.S. Operating Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including eurocurrency funds or deposits (currently known as "Eurocurrency Liabilities"), additional interest on the unpaid principal amount of each Libor Loan under the U.S. Operating Facility equal to the actual costs of such reserves allocated to such Loan by such U.S. Operating Lender (as determined by such U.S. Operating Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the U.S. Borrower shall have received at least 10 days' prior notice (with a copy to the Agent) of such additional interest from such U.S. Operating Lender.~~

~~13.7 LIBOR Discontinuance~~

~~(1) Notwithstanding anything to the contrary herein or in any other Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (a) if a Benchmark Replacement is determined in accordance with subparagraph (a) or (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date,~~

~~such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Document and (b) if a Benchmark Replacement is determined in accordance with clause (c) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Banking Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Document so long as the Agent has not received, by such time, written notice of objection to such Benchmark Replacement from the Majority of the Lenders.~~

~~(2) In connection with the implementation of a Benchmark Replacement, the Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Document.~~

~~(3) The Agent will promptly notify the Canadian Borrower and the Lenders of (a) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (b) the implementation of any Benchmark Replacement, (c) the effectiveness of any Benchmark Replacement Conforming Changes, (d) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (4) below and (e) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Agent or, if applicable, any Lender (or the Majority of the Lenders) pursuant to this Section 13.6 including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Document, except, in each case, as expressly required pursuant to this Section 13.7.~~

~~(4) Notwithstanding anything to the contrary herein or in any other Document, at any time (including in connection with the implementation of a Benchmark Replacement), (a) if the then-current Benchmark is a term rate (including Term SOFR or the Libor Rate) and either (i) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion or (ii) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Agent may modify the~~

~~definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (b) if a tenor that was removed pursuant to clause (a) above either (i) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (ii) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.~~

~~(5) Upon the Canadian Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, an applicable Borrower may revoke any Drawdown Notice for a Libor Loan of, Conversion to or Rollover of Libor Loans to be made, converted or rolled over during any Benchmark Unavailability Period and, failing that, the applicable Borrower will be deemed to have converted any such request into a request for an Drawdown of or Conversion to U.S. Base Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of U.S. Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the U.S. Base Rate.~~

~~(6) The parties hereto confirm, agree and acknowledge that the Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the administration of, submission of, calculation of or any other matter related to any Benchmark, any component definition thereof or rates referenced in the definition thereof or any alternative, comparable or successor rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, comparable or successor rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, such Benchmark or any other Benchmark or (b) the effect, implementation or composition of any Benchmark Replacement Conforming Changes.~~

13.7 ~~13.8~~ CDOR Discontinuance

(1) If at any time the Agent determines (which determination shall be conclusive absent manifest error) that (a) the circumstances set forth in Section ~~13.2~~13.3 have arisen and such circumstances are unlikely to be temporary or (b) the circumstances set forth in Section ~~13.2~~13.3 have not arisen but the supervisor for the administrator of the CDOR Rate or a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date after which the CDOR Rate shall no longer be used for determining interest rates for loans (in each case, a "**CDOR Discontinuance**"), then the Agent and the Canadian Borrower shall negotiate in good faith to establish an alternate rate of interest to the CDOR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for Bankers' Acceptances

made in Canada at such time. Upon an agreement being reached, such parties shall enter into an amendment to this Agreement to reflect such alternate rate of interest (a "**CDOR Successor Rate**") and such other related changes to this agreement as may be applicable. Notwithstanding anything to the contrary in Section ~~13.2~~13.3, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Agent shall not have received, within five (5) Banking Days of the date such amendment is provided to the Lenders, a written notice from any Lender stating that such Lender objects to such amendment. If such CDOR Successor Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

(2) If no CDOR Successor Rate has been determined and a CDOR Discontinuance has occurred, the Agent will promptly so notify the Canadian Borrower. Thereafter, the obligation of the Lenders to make or maintain Bankers' Acceptances, shall be suspended. Upon receipt of such notice, the applicable Borrower may revoke any pending request for a Drawdown of, Conversion to or Rollover of a Bankers' Acceptance or, failing that, will be deemed to have converted such request into a request for an advance of Canadian Prime Rate Loans in the amount specified therein.

13.8 CDOR Replacement

(1) Without limiting any other rights of any Lender set out in this Agreement, at any time following the occurrence of a CDOR Benchmark Transition Event, the Agent may amend this Agreement to replace the CDOR Rate with a CDOR Benchmark Replacement or other reference rate. Any such amendment will become effective on the CDOR Benchmark Transition Effective Date without any further action or consent of either Borrower or any other Loan Party provided that the Agent has not received written notice of objection to such amendment or its CDOR Benchmark Transition Effective Date from the Borrower by 5:00 p.m. (eastern time) on the fifth Banking Day after the Agent has provided such amendment to the Canadian Borrower.

(2) If the Agent receives written notice of objection in accordance with this Section 13.8, the Canadian Borrower and the Agent shall promptly enter into negotiations in good faith with a view to agreeing to the amendments to this Agreement to replace the CDOR Rate with a CDOR Benchmark Replacement or other rate acceptable to the parties hereto and to agreeing on the CDOR Benchmark Transition Effective Date for such amendments.

(3) In connection with the implementation of a CDOR Benchmark Replacement or other reference rate, the Agent will have the right to make any consequential changes that the Agent determines are appropriate to reflect the adoption, implementation and administration of such CDOR Benchmark Replacement or other reference rate from time to time, including any changes to include fallbacks in the event such rate is not available and provisions respecting the available tenor for advances using such rate. Any amendments implementing such changes will

become effective after the Agent has provided such amendment to the Canadian Borrower without any further action or consent of the Borrower or any other Loan Party.

(4) Any determination, decision or election that may be made by the Agent pursuant to this Section 13.8 will be conclusive and binding absent manifest error and may be made in the Agent's sole discretion.

(5) The Canadian Borrower shall, at the request of the Agent, take such action as is available to it for the purpose of authorizing or giving effect to the amendments effected or to be effected pursuant to this Section 13.8 and, if any Security or has been granted in respect of this Agreement, to ensure the continued perfection, protection or maintenance of any such Security.

(6) This Section 13.8 shall apply notwithstanding any other provision of this Agreement.

ARTICLE 14 COSTS, EXPENSES AND INDEMNIFICATION

14.1 Costs and Expenses

Each Borrower shall pay promptly upon notice from the Agent, all reasonable out of pocket costs and expenses of the Lenders and the Agent, including travel expenses of HSBC Bank Canada and expenses relating to Intralinks, in connection with the Documents and the establishment and initial syndication of the Credit Facilities, including in connection with preparation, printing, execution and delivery of this Agreement and the other Documents whether or not any Drawdown has been made hereunder, and also including, without limitation, the reasonable fees and out of pocket costs and expenses of Lenders' Counsel with respect thereto and with respect to advising the Agent and the Lenders as to their rights and responsibilities under this Agreement and the other Documents. Except for ordinary expenses of the Lenders and the Agent relating to the day to day administration of this Agreement, each Borrower further agrees to pay within 30 days of demand by the Agent all reasonable out of pocket costs and expenses in connection with the preparation or review of waivers, consents and amendments pertaining to this Agreement, and in connection with the establishment of the validity and enforceability of this Agreement and the preservation or enforcement of rights of the Lenders and the Agent under this Agreement and other Documents, including, without limitation, all reasonable out of pocket costs and expenses sustained by the Lenders and the Agent as a result of any failure by a Borrower to perform or observe any of its obligations hereunder or in connection with any action, suit or proceeding (whether or not an Indemnified Party is a party or subject thereto), together with interest thereon from and after such 30th day if such payment is not made by such time.

14.2 General Indemnity

In addition to any liability of either Borrower to any Lender or the Agent under any other provision hereof, each Borrower shall indemnify each Indemnified Party and hold each Indemnified Party harmless against any losses, claims, costs, damages or liabilities (including, without limitation, any expense or cost incurred in the liquidation and re deployment of funds acquired to fund or maintain any portion of a Loan and reasonable out of pocket expenses and reasonable legal fees on a solicitor and his own client basis) incurred by the same as a result of or in connection with the Credit Facilities or the Documents, including, without limitation, as a result of or in connection with:

(a) any cost or expense incurred by reason of the liquidation or re deployment in whole or in part of deposits or other funds required by any Lender to fund any Bankers' Acceptance or to fund or maintain any Loan as a result of the Borrowers' failure to complete a Drawdown or to make any payment, repayment or prepayment on the date required hereunder or specified by it in any notice given hereunder;

(b) subject to permitted or deemed Rollovers and Conversions, the Canadian Borrower's failure to provide for the payment to the Agent for the account of the applicable Lenders of the full principal amount of each Bankers' Acceptance on its maturity date;

(c) a Borrower's failure to pay any other amount, including without limitation any interest or fee, due hereunder on its due date after the expiration of any applicable grace or notice periods (subject, however, to the interest obligations of such Borrower hereunder for overdue amounts);

(d) a Borrower's repayment or prepayment of a ~~Libor~~SOFR Loan otherwise than on the last day of its Interest Period;

(e) the prepayment of any outstanding Bankers' Acceptance before the maturity date of such Bankers' Acceptance;

(f) a Borrower's failure to give any notice required to be given by it to the Agent or the Lenders hereunder;

(g) the failure of a Borrower to make any other payment due hereunder;

(h) any inaccuracy or incompleteness of a Borrower's representations and warranties contained in Article 9;

(i) any failure of a Borrower to observe or fulfil its obligations under Article 10;

(j) any failure of a Borrower to observe or fulfil any other Obligation not specifically referred to above; or

(k) the occurrence of any Default or Event of Default in respect of a Borrower, provided that this Section shall not apply to any losses, claims, costs, damages or liabilities that arise by reason of the gross negligence or wilful misconduct of the Indemnified Party claiming indemnity hereunder. The provisions of this Section shall survive repayment of the Obligations.

14.3 Environmental Indemnity

Each Borrower shall indemnify and hold harmless the Indemnified Parties forthwith on demand by the Agent from and against any and all claims, suits, actions, debts, damages, costs, losses, liabilities, penalties, obligations, judgments, charges, expenses and disbursements (including without limitation, all reasonable legal fees and disbursements on a solicitor and his own client basis) of any nature whatsoever, suffered or incurred by the Indemnified Parties or any of them in connection with any Credit Facility, whether as beneficiaries under the Documents, as successors in interest of the Loan Parties or any of the other Subsidiaries, or voluntary transfer in lieu of foreclosure, or otherwise howsoever, with respect to any Environmental Claims relating to the property of the Loan Parties or any of the other Subsidiaries arising under any Environmental Laws as a result of the past, present or future operations of the Loan Parties or any other Subsidiary (or any predecessor in interest) relating to the property of such Loan Parties or any such Subsidiaries, or the past, present or future condition of any part of the property of such Loan Parties or any such Subsidiaries owned, operated or leased by such Loan Parties or any of the Subsidiaries (or any such predecessor in interest), including any liabilities arising as a result of any indemnity covering Environmental Claims given to any person by the Lenders or the Agent or a receiver, receiver manager or similar person appointed hereunder or under applicable law (collectively, the "**Indemnified Third Party**"); but excluding any Environmental Claims or liabilities relating thereto to the extent that such Environmental Claims or liabilities arise by reason of the gross negligence or wilful misconduct of the Indemnified Party or the Indemnified Third Party claiming indemnity hereunder. The provisions of this Section shall survive the repayment of the Obligations.

For the purposes of providing the benefit of the indemnities contained in Sections 14.2 and 14.3 in favour of the Indemnified Parties and Indemnified Third Parties which are not a party hereto, the applicable Lender or the Agent, as the case may be, shall, in addition to contracting on its own behalf, be deemed to be contracting as agent and trustee for and on behalf of such persons.

14.4 Judgment Currency

(1) If for the purpose of obtaining or enforcing judgment against a Borrower in any court in any jurisdiction, it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section referred to as the "**Judgment Currency**") an amount due in Canadian Dollars or United States Dollars under this Agreement, the conversion shall be made at the rate of exchange prevailing on the Banking Day immediately preceding:

(a) the date of actual payment of the amount due, in the case of any proceeding in the courts of any jurisdiction that will give effect to such conversion being made on such date; or

(b) the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section being hereinafter in this Section referred to as the "**Judgment Conversion Date**").

(2) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 14.4(1)(b), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable Borrower shall pay such additional amount (if any) as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of Canadian Dollars or United States Dollars, as the case may be, which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date.

(3) Any amount due from a Borrower under the provisions of Section 14.4(2) shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Agreement.

(4) The term "**rate of exchange**" in this Section 14.4 means the rate of exchange for Canadian interbank transactions in Canadian Dollars or United States Dollars, as the case may be, in the Judgment Currency published by the Bank of Canada at approximately the end of business (Toronto time) on the Banking Day immediately preceding the day in question, or if such rate is not so published by the Bank of Canada, such term shall mean the Equivalent Amount of the Judgment Currency.

14.5 Limits on Liability of Indemnified Parties

No Indemnified Party shall have any liability to the Loan Parties or any other Subsidiary thereof or any person asserting claims on behalf of, or in right of, the Loan Parties or any Subsidiary thereof in connection with or as a result of the Credit Facilities, this Agreement or any other Documents or any transaction contemplated hereby or thereby, except to the extent that any losses, claims, damages, liabilities or expenses incurred by such Loan Party or such Subsidiary or other person are determined by a final non appealable judgment of a court of competent jurisdiction to have resulted solely by reason of the gross negligence or wilful misconduct of such Indemnified Party. In any event, and notwithstanding the foregoing or any other provision hereof or of the other Documents to the contrary, no Indemnified Party shall be liable for any special, indirect, consequential or punitive damages in connection with or as a result of the Credit Facilities, this Agreement or any other Document or any transaction contemplated hereby or thereby.

ARTICLE 15 THE AGENT AND ADMINISTRATION OF THE CREDIT FACILITIES

15.1 Authorization and Action

(1) Each Lender hereby irrevocably appoints and authorizes the Agent to be its agent in its name and on its behalf to exercise such rights or powers granted to the Agent on behalf of the Lenders under this Agreement to the extent specifically provided herein and on the terms hereof, together with such powers as are reasonably incidental thereto and the Agent hereby accepts such appointment and authorization. As to any matters not expressly provided for by this Agreement, the Agent shall not be required to exercise any discretion or take any action, but, subject to Section 16.10, shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Majority of the Lenders and such instructions shall be binding upon all Lenders; provided, however, that the Agent shall not be required to take any action which exposes the Agent to liability in such capacity or which could result in the Agent's incurring any costs and expenses, without provision being made for indemnity of the Agent by the Lenders against any loss, liability, cost or expense incurred, or to be incurred or which is contrary to this Agreement or applicable law.

(2) The Lenders agree that all decisions as to actions to be or not to be taken, as to consents or waivers to be given or not to be given, as to determinations to be made and otherwise in connection with this Agreement and the Documents, shall be made upon the decision of the Majority of the Lenders except in respect of a decision or determination where it is specifically provided in this Agreement that "all of the Lenders" or "the Lenders" or words to similar effect, or the Agent alone, is to be responsible for same. Each of the Lenders shall be bound by and agrees to abide by and adopt all decisions made as aforesaid and covenants in all communications with the Borrowers to act in concert and to join in the action, consent, waiver, determination or other matter decided as aforesaid.

(3) For certainty, the Agent is authorized to execute and deliver the Security.

15.2 Procedure for Making Loans

(1) The Agent shall make Loans available to the applicable Borrower as required hereunder by debiting the account of the Agent to which the Lenders' Rateable Portions of such Loans have been credited in accordance with Section ~~2.12~~2.11 (or causing such account to be debited) and, in the absence of other arrangements agreed to by the Agent and the applicable Borrower in writing, by crediting the account of the applicable Borrower or, at the expense of the applicable Borrower, transferring (or causing to be transferred) like funds in accordance with the instructions of the applicable Borrower as set forth in the Drawdown Notice, Rollover Notice or Conversion Notice, as the case may be, in respect of each Loan; provided that the obligation of the Agent hereunder to effect such a transfer shall be limited to taking such steps as are commercially reasonable to implement

such instructions, which steps once taken shall constitute conclusive and binding evidence that such funds were advanced hereunder in accordance with the provisions relating thereto and the Agent shall not be liable for any damages, claims or costs which may be suffered by the applicable Borrower and occasioned by the failure of such Loan to reach the designated destination.

(2) Unless the Agent has been notified by a Lender at least one Banking Day prior to the Drawdown Date, Rollover Date or Conversion Date, as the case may be, requested by the applicable Borrower that such Lender will not make available to the Agent its Rateable Portion of such Loan, the Agent may assume that such Lender has made or will make such portion of the Loan available to the Agent on the Drawdown Date, Rollover Date or Conversion Date, as the case may be, in accordance with the provisions hereof and the Agent may, but shall be in no way obligated to, in reliance upon such assumption, make available to the applicable Borrower on such date a corresponding amount. If and to the extent such Lender shall not have so made its Rateable Portion of a Loan available to the Agent, such Lender agrees to pay to the Agent forthwith on demand such Lender's Rateable Portion of the Loan and all reasonable costs and expenses incurred by the Agent in connection therewith together with interest thereon (at the rate payable hereunder by the applicable Borrower in respect of such Loan or, in the case of funds made available in anticipation of a Lender remitting proceeds of a Bankers' Acceptance, at the rate of interest per annum applicable to Canadian Prime Rate Loans) for each day from the date such amount is made available to the applicable Borrower until the date such amount is paid to the Agent; provided, however, that notwithstanding such obligation if such Lender fails to so pay, the applicable Borrower covenants and agrees that, without prejudice to any rights the applicable Borrower may have against such Lender, it shall repay such amount to the Agent forthwith after demand therefor by the Agent. The amount payable to the Agent pursuant hereto shall be set forth in a certificate delivered by the Agent to such Lender and the applicable Borrower (which certificate shall contain reasonable details of how the amount payable is calculated) and shall be prima facie evidence thereof, in the absence of manifest error. If such Lender makes the payment to the Agent required herein, the amount so paid shall constitute such Lender's Rateable Portion of the Loan for purposes of this Agreement. The failure of any Lender to make its Rateable Portion of any Loan shall not relieve any other Lender of its obligation, if any, hereunder to make its Rateable Portion of such Loan on the Drawdown Date, Rollover Date or Conversion Date, as the case may be, but no Lender shall be responsible for the failure of any other Lender to make the Rateable Portion of any Loan to be made by such other Lender on the date of any Drawdown, Rollover or Conversion, as the case may be.

15.3 Remittance of Payments

Except for amounts payable to the Agent for its own account, forthwith after receipt of any repayment pursuant hereto or payment of interest or fees pursuant to Article 5 or payment pursuant to Article 8, the Agent shall remit to each Lender its Rateable Portion of such payment; provided that, if the Agent, on the assumption that it will receive on any particular date a payment of principal, interest or fees hereunder, remits to a Lender its Rateable Portion of such payment and the applicable Borrower fails to make such payment, each of the Lenders on receipt of such remittance from the Agent agrees to repay to the Agent forthwith on demand an amount equal to the remittance together with all reasonable costs and expenses incurred by the Agent in connection therewith and interest thereon at the rate and calculated in the manner applicable to the Loan in respect of which such payment is made, or, in the case of a remittance in respect of Bankers' Acceptances, at the rate of interest applicable to Canadian Prime Rate Loans for each day from the date such amount is remitted to the Lenders without prejudice to any right such Lender may have against the applicable Borrower. The exact amount of the repayment required to be made by the Lenders pursuant hereto shall be as set forth in a certificate delivered by the Agent to each Lender, which certificate shall be conclusive and binding for all purposes in the absence of manifest error.

15.4 Duties and Obligations

Neither the Agent nor any of its directors, officers, agents or employees (and, for purposes hereof, the Agent shall be deemed to be contracting as agent and trustee for and on behalf of such persons) shall be liable to the Lenders for any action taken or omitted to be taken by it or them under or in connection with this Agreement except for its or their own gross negligence or wilful misconduct. Without limiting the generality of the foregoing, the Agent:

(a) may assume that there has been no assignment or transfer by any means by the Lenders of their rights hereunder, unless and until the Agent receives written notice of the assignment thereof from such Lender and the Agent receives from the assignee an executed Assignment Agreement providing, inter alia, that such assignee is bound hereby as it would have been if it had been an original Lender party hereto;

(b) may consult with legal counsel (including receiving the opinions of Borrowers' counsel and Lenders' Counsel required hereunder), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts;

(c) shall incur no liability under or in respect of this Agreement by acting upon any notice, consent, certificate or other instrument or writing (which may be by telegram, cable, telecopier or telex) believed by it to be genuine and signed or sent by the proper party or parties or by acting upon any representation or warranty of a Borrower made or deemed to be made hereunder;

(d) may assume that no Default or Event of Default has occurred and is continuing unless it has actual knowledge to the contrary;

(e) may rely as to any matters of fact which might reasonably be expected to be within the knowledge of any person upon a certificate signed by or on behalf of such person;

(f) shall not be bound to disclose to any other person any information relating to a Loan Party, any of their Subsidiaries or any other person if such disclosure would or might in its opinion constitute a breach of any applicable law, be in default of the provisions hereof or be otherwise actionable at the suit of any other person; and

(g) may refrain from exercising any right, power or discretion vested in it which would or might in its reasonable opinion be contrary to any applicable law or any directive or otherwise render it liable to any person, and may do anything which is in its reasonable opinion necessary to comply with such applicable law.

Further, the Agent (i) does not make any warranty or representation to any Lender nor shall they be responsible to any Lender for the accuracy or completeness of the representations and warranties of the Borrowers herein or the data made available to any of the Lenders in connection with the negotiation of this Agreement, or for any statements, warranties or representations (whether written or oral) made in or in connection with this Agreement; (ii) shall not have any duty to ascertain or to enquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement on the part of the Borrowers or to inspect the property (including the books and records) of the Loan Parties or any of their Subsidiaries; and (iii) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any instrument or document furnished pursuant hereto.

15.5 Prompt Notice to the Lenders

Notwithstanding any other provision herein, the Agent agrees to provide to the applicable Lenders, with copies where appropriate, all information, notices and reports required to be given to the Agent by the Borrowers, promptly upon receipt of same, excepting therefrom information and notices relating solely to the role of Agent hereunder.

15.6 Agent's and Lenders' Authorities

With respect to its Commitments and the Drawdowns, Rollovers, Conversions and Loans made by it as a Lender, the Agent shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not the Agent. Subject to the express provisions hereof relating to the rights and obligations of the Agent and the Lenders in such capacities, the Agent and each Lender may accept deposits from, lend money to, and generally engage in any kind of business with the Loan Parties and their Subsidiaries or any corporation or other entity owned or controlled by any of them and any person which may do business with any of them without any duties to account therefor to the Agent or the other Lenders and, in the case of the Agent, all as if they were not the Agent hereunder.

15.7 Lender Credit Decision

It is understood and agreed by each Lender that it has itself been, and will continue to be, solely responsible for making its own independent appraisal of and investigations into the financial condition, creditworthiness, condition, affairs, status and nature of the Loan

Parties and their Subsidiaries. Each Lender represents to the Agent that it is engaged in the business of making and evaluating the risks associated with commercial revolving loans or term loans, or both, to corporations similar to the Borrowers, that it can bear the economic risks related to the transaction contemplated hereby, that it has had access to all information deemed necessary by it in making such decision (provided that this representation shall not impair its rights against the Borrowers) and that it is entering into this Agreement in the ordinary course of its commercial lending business. Accordingly, each Lender confirms with the Agent that it has not relied, and will not hereafter rely, on the Agent (i) to check or enquire on its behalf into the adequacy, accuracy or completeness of any information provided by the Borrowers or any other person under or in connection with this Agreement or the transactions herein contemplated (whether or not such information has been or is hereafter distributed to such Lender by the Agent), or (ii) to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of the Loan Parties or any of their Subsidiaries. Each Lender acknowledges that a copy of this Agreement has been made available to it for review and each Lender acknowledges that it is satisfied with the form and substance of this Agreement. Each Lender hereby covenants and agrees that, subject to Section 15.15, it will not make any arrangements with either Borrower for the satisfaction of any Loans or other Obligations without the consent of all the other Lenders.

15.8 Indemnification of Agent

The Lenders hereby agree to indemnify the Agent (to the extent not reimbursed by the applicable Borrower), on a pro rata basis in accordance with their respective Commitments as a proportion of the aggregate of all outstanding Commitments, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of this Agreement or any action taken or omitted by the Agent under or in respect of this Agreement in its capacity as Agent; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs expenses or disbursements resulting from the Agent's gross negligence or wilful misconduct. If the applicable Borrower subsequently repays all or a portion of such amounts to the Agent, the Agent shall reimburse the Lenders their pro rata shares (according to the amounts paid by them in respect thereof) of the amounts received from such Borrower. Without limiting the generality of the foregoing, each Lender agrees to reimburse the Agent promptly upon demand for its portion (determined as above) of any out of pocket expenses (including counsel fees) incurred by the Agent in connection with the preservation of any rights of the Agent or the Lenders under, or the enforcement of, or legal advice in respect of rights or responsibilities under, this Agreement, to the extent that the Agent is not reimbursed for such expenses by such Borrower.

15.9 Successor Agent

The Agent may, as hereinafter provided, resign at any time by giving 45 days' prior written notice thereof to the Lenders and the Canadian Borrower. Upon any such resignation, the Lenders shall, after soliciting the views of the Canadian Borrower, have the right to appoint another Lender as a successor agent (the "**Successor Agent**") who shall be acceptable to the Canadian Borrower, acting reasonably. If no Successor Agent shall have been so appointed by the Lenders and shall have accepted such appointment within 30 days after the retiring Agent's giving of notice of resignation, then the retiring Agent shall, on behalf of the Lenders, appoint a Successor Agent who shall be a Lender acceptable to the Canadian Borrower, acting reasonably. Upon the acceptance of any appointment as Agent hereunder by a Successor Agent, such Successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall thereupon be discharged from its further duties and obligations as the Agent under this Agreement. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article shall continue to enure to its benefit as to any actions taken or omitted to be taken by it as Agent or in its capacity as the Agent while it was the Agent hereunder.

15.10 Taking and Enforcement of Remedies

Each of the Lenders hereby acknowledges that, to the extent permitted by applicable law, the remedies provided hereunder to the Lenders are for the benefit of the Lenders collectively and acting together and not severally and further acknowledges that its rights hereunder are to be exercised not severally, but collectively by the Agent upon the decision of the Majority of the Lenders regardless of whether acceleration was made pursuant to Section 12.2. Notwithstanding any of the provisions contained herein, each of the Lenders hereby covenants and agrees that it shall not be entitled to individually take any action with respect to any Credit Facility, including, without limitation, any acceleration under Section 12.2, but that any such action shall be taken only by the Agent with the prior written agreement or instructions of the Majority of the Lenders; provided that, notwithstanding the foregoing, if (a) the Agent, having been adequately indemnified against costs and expenses of so doing by the Lenders, shall fail to carry out any such instructions of a Majority of the Lenders, any Lender may do so on behalf of all Lenders and shall, in so doing, be entitled to the benefit of all protections given the Agent hereunder or elsewhere, and (b) in the absence of instructions from the Majority of the Lenders and where in the sole opinion of the Agent the exigencies of the situation warrant such action, the Agent may without notice to or consent of the Lenders or any of them take such action on behalf of the Lenders as it deems appropriate or desirable in the interests of the Lenders. Each of the Lenders hereby further covenants and agrees that upon any such written consent being given by the Majority of the Lenders, or upon a Lender or the Agent taking action as aforesaid, it shall cooperate fully with the Lender or the Agent to the extent requested by the Lender or the Agent in the collective realization including, without limitation, and, if applicable, the appointment of a receiver, or receiver and manager to act for their collective benefit. Each Lender covenants and agrees to do all acts and things and to make, execute and deliver all agreements and other instruments, including, without limitation, any instruments necessary to effect any registrations, so as to fully carry out the intent and purpose of this Section; and each of the Lenders hereby covenants and agrees that, subject to Section 5.8 and Section 10.2(b) it has not heretofore and shall not seek, take, accept or receive any security for any of the obligations and liabilities of the Borrowers hereunder or under any other document, instrument, writing or agreement ancillary hereto and shall not enter into any agreement with any of the parties hereto or thereto relating in any manner whatsoever to the Credit Facilities, unless all of the Lenders shall at the same time obtain the benefit of any such security or agreement.

With respect to any enforcement, realization or the taking of any rights or remedies to enforce the rights of the Lenders hereunder, the Agent shall be a trustee for each

Lender, and all monies received from time to time by the Agent in respect of the foregoing shall be held in trust and shall be trust assets within the meaning of applicable bankruptcy or insolvency legislation and shall be considered for the purposes of such legislation to be held separate and apart from the other assets of the Agent, and each Lender shall be entitled to their Rateable Portion of such monies. In its capacity as trustee, the Agent shall be obliged to exercise only the degree of care it would exercise in the conduct and management of its own business and in accordance with its usual practice concurrently employed or hereafter instituted for other substantial commercial loans.

15.11 Reliance Upon Agent

The Borrowers shall be entitled to rely upon any certificate, notice or other document or other advice, statement or instruction provided to it by the Agent pursuant to this Agreement, and the Borrowers shall generally be entitled to deal with the Agent with respect to matters under this Agreement which the Agent is authorized to deal with without any obligation whatsoever to satisfy itself as to the authority of the Agent to act on behalf of the Lenders and without any liability whatsoever to the Lenders for relying upon any certificate, notice or other document or other advice, statement or instruction provided to it by the Agent, notwithstanding any lack of authority of the Agent to provide the same.

15.12 No Liability of Agent

The Agent shall have no responsibility or liability to the Borrowers on account of the failure of any Lender to perform its obligations hereunder (unless such failure was caused, in whole or in part, by the Agent's failure to observe or perform its obligations hereunder), or to any Lender on account of the failure of the Borrowers or any Lender to perform its obligations hereunder.

15.13 The Agent and Defaulting Lenders

(1) Each Defaulting Lender shall be required to provide to the Agent cash in an amount, as shall be determined from time to time by the Agent in its discretion, equal to all obligations of such Defaulting Lender to the Agent that are owing or may become owing pursuant to this Agreement, including such Defaulting Lender's obligation to pay its Rateable Portion of any indemnification or expense reimbursement amounts not paid by the applicable Borrower. Such cash shall be held by the Agent in one or more cash collateral accounts, which accounts shall be in the name of the Agent and shall not be required to be interest bearing. The Agent shall be entitled to apply the foregoing cash in accordance with Section 15.8.

(2) In addition to the indemnity and reimbursement obligations noted in Section 15.8, the Lenders agree to indemnify the Agent (to the extent not reimbursed by the Borrowers and without limiting the obligations of the Borrowers hereunder) rateably according to their respective Rateable Portions (and in calculating the Rateable Portion of a Lender, ignoring the Commitments of Defaulting Lenders) any amount that a Defaulting Lender fails to pay the Agent and which is due and

owing to the Agent pursuant to Section 15.8. Each Defaulting Lender agrees to indemnify each other Lender for any amounts paid by such Lender and which would otherwise be payable by the Defaulting Lender.

(3) The Agent shall be entitled to set off and/or withhold any Defaulting Lender's Rateable Portion of all payments received from the applicable Borrower against such Defaulting Lender's obligations to fund payments and Loans required to be made by it and to purchase participations required to be purchased by it in each case under this Agreement and the other Documents (provided that, notwithstanding the exercise of such set-off or withholding, the applicable Borrower shall have been deemed to have made such payment to such Defaulting Lender for the purposes of this Agreement and the other Documents). To the extent permitted by Applicable Laws, the Agent shall be entitled to withhold and deposit in one or more non-interest bearing cash collateral accounts in the name of the Agent all amounts (whether principal, interest, fees or otherwise) received by the Agent and due to a Defaulting Lender pursuant to this Agreement, which amounts shall be used by the Agent:

(a) first, to reimburse the Agent for any amounts owing to it by the Defaulting Lender pursuant to any Document;

(b) second, to repay on a pro rata basis any (i) Loans made by a Lender pursuant to Section 16.2(4) in order to fund a shortfall created by a Defaulting Lender and, upon receipt of such repayment, each such Lender shall be deemed to have assigned to the Defaulting Lender such incremental portion of such Loans;

(c) third, to cash collateralize all other contingent obligations of such Defaulting Lender to the Agent, in its capacity as the Agent or the Agent owing pursuant to this Agreement in such amount as shall be determined from time to time by the Agent in its discretion, including such Defaulting Lender's obligation to pay its Rateable Portion of any indemnification or expense reimbursement amounts not paid by the applicable Borrower; and

(d) fourth, to fund from time to time the Defaulting Lender's Rateable Portion of Loans.

(4) For greater certainty and in addition to the foregoing, neither the Agent nor any of its Affiliates nor any of their respective shareholders, officers, directors, employees, agents or representatives shall be liable to any Lender (including, without limitation, a Defaulting Lender) for any action taken or omitted to be taken by it in connection with amounts payable by a Borrower to a Defaulting Lender and received and deposited by the Agent in a cash collateral account and applied in accordance with the provisions of this Agreement, save and except for the gross negligence or wilful misconduct of the Agent as determined by a final non-appealable judgement of a court of competent jurisdiction.

~~15.14 Article for Benefit of Agent and Lenders~~

~~The provisions of this Article 15 which relate to the rights and obligations of the Lenders to each other or to the rights and obligations between the Agent and the Lenders shall be for the exclusive benefit of the Agent and the Lenders, and, except to the extent provided in Sections 15.1, 15.2, 15.5, 15.9, 15.10, 15.11, 15.12, 15.13, 15.15 and this Section 15.16, the Borrowers shall not have any rights or obligations thereunder or be entitled to rely for any purpose upon such provisions. Any Lender may waive in writing any right or rights which it may have against the Agent or the other Lenders hereunder without the consent of or notice to the Borrowers.~~

15.14 ~~15.15~~ **Redistribution of Payment**

Each Lender agrees that:

(a) if the Lender exercises any security against or right of counter claim, set off or banker's lien or similar right with respect to the property of either Borrower or any other Subsidiary or if under any applicable bankruptcy, insolvency or other similar law it receives a secured claim and collateral for which it is, or is entitled to exercise any set off against, a debt owed by it to either Borrower or any other Subsidiary, the Lender shall apportion the amount thereof proportionately between:

(A) such Lender's Rateable Portion of all outstanding Obligations owing by the applicable Borrower (including the face amounts at maturity of Bankers' Acceptances accepted by the Lenders), which amounts shall be applied in accordance with Section 15.4(b); and

(B) amounts otherwise owed to such Lender by the Borrowers and the other Subsidiaries,

provided that (i) any cash collateral account held by such Lender as collateral for a letter of credit or bankers' acceptance issued or accepted by such Lender on behalf of either Borrower or any other Subsidiary which is Permitted Debt may be applied by such Lender to such amounts owed by such Borrower or such other Subsidiary, as the case may be, to such Lender pursuant to such letter of credit or in respect of any such bankers' acceptance without apportionment and (ii) these provisions do not apply to:

(A) a right or claim which arises or exists in respect of a loan or other debt in respect of which the relevant Lender holds a Security Interest which is a Permitted Encumbrance;

(B) cash collateral provided, or the exercise of rights of counterclaim, set-off or banker's lien or similar rights, in respect of account positioning arrangements for the Borrowers and the other Subsidiaries provided by a Lender in the ordinary course of business or in respect of other cash management services provided by a Lender in the ordinary course of business;

(C) any reduction in amounts owing by a Lender (or its Hedging Affiliates) to a Borrower or any other Subsidiary upon the termination of Lender Financial Instruments entered into with the relevant Lender (or its Hedging Affiliates); or

(D) any payment to which a Lender is entitled as a result of any credit derivative or other form of credit protection obtained by such Lender;

(b) if, in the aforementioned circumstances, the Lender, through the exercise of a right, or the receipt of a secured claim described in Section 15.15(a) above or otherwise, receives payment of a proportion of the aggregate amount of Obligations due to it hereunder which is greater than the proportion received by any other Lender in respect of the aggregate Obligations due to the Lenders (having regard to the respective Rateable Portions of the Lenders), the Lender receiving such proportionately greater payment shall purchase, on a non-recourse basis at par, and make payment for a participation (which shall be deemed to have been done simultaneously with receipt of such payment) in the outstanding Loans of the other Lender or Lenders so that their respective receipts shall be pro rata to their respective Rateable Portions; provided, however, that if all or part of such proportionately greater payment received by such purchasing Lender shall be recovered by or on behalf of a Borrower or any trustee, liquidator, receiver or receiver manager or person with analogous powers from the purchasing Lender, such purchase shall be rescinded and the purchase price paid for such participation shall be returned to the extent of such recovery, but without interest unless the purchasing Lender is required to pay interest on such amount, in which case each selling Lender shall reimburse the purchasing Lender pro rata in relation to the amounts received by it. Such Lender shall exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section to share in the benefits of any recovery on such secured claims; and

(c) if the Lender does, or is required to do, any act or thing permitted by Section 15.15(a) or (b) above, it shall promptly provide full particulars thereof to the Agent.

15.15 **~~15.16~~ Erroneous Payments**

(1) ~~Each Lender hereby agrees that (a) if~~If the Agent notifies a Lender or any person who has received funds on behalf of a Lender (any such Lender or other recipient, a "**Payment Recipient**") that the Agent has determined in its sole discretion (whether or not after receipt of any notice under Section 15.15(2)) that any funds received by such ~~Lender~~Payment Recipient

from the Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such ~~Lender~~Payment Recipient (whether or not known to such Lender or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise~~;~~, individually and collectively, an "**Erroneous Payment**") and demands the return of such Erroneous Payment (or a portion thereof), such ~~Lender shall~~Erroneous Payment shall at all times remain the property of the Agent pending its return or repayment as contemplated below in this Section 15.15 and shall be segregated by the Payment Recipient and held in trust for the benefit of the Agent, and such Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than ~~five~~two Banking Days thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such ~~Lender~~Payment Recipient to the date such amount is repaid to the Agent in same day funds at the greater of (a) in respect of an Erroneous Payment in United States Dollars, the Federal Funds Rate and, and in respect of an Erroneous Payment in Canadian Dollars, at a fluctuating rate per annum equal to the overnight rate at which Canadian Dollars may be borrowed by the Agent in the interbank market in an amount comparable to such Erroneous Payment (as determined by the Agent) and (b) a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect ~~and (b) to the extent permitted by Applicable Law, such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payments received, including, without limitation, waiver of any defense based on "discharge for value" or any similar doctrine~~. A notice of the Agent to any ~~Lender~~Payment Recipient under this Section ~~15.16(1~~15.15(1) shall be conclusive, absent manifest error; provided that, any such interest payable by such Lender or person shall not be reimbursable by the Borrowers under Article 14 for any reason.

(2) Without limiting Section ~~15.16(1~~15.15(1), each Lender or any person who has received funds on behalf of a Lender, hereby further agrees that if it receives ~~an Erroneous Payment~~a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Agent (or any of its Affiliates) (a) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) with respect to such ~~Erroneous Payment (an "**Erroneous Payment Notice**")~~payment, prepayment or repayment, (b) that was not preceded or accompanied by ~~an Erroneous Payment Notice,~~a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) or (c) that such Lender or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part)~~,~~ in each case~~, an error has been made (and that it is deemed to have knowledge of such error at the time of receipt of such Erroneous Payment) with respect to such Erroneous Payment, and to the extent permitted by Applicable Law, such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payments received, including, without limitation, waiver of any defense based on "discharge for value" or any similar doctrine. Each Lender~~

~~agrees that, in each such case, it shall promptly (and, in all events, within one Banking Day of its knowledge (or deemed knowledge) of such error) notify the Agent of such occurrence and, upon demand from the Agent, it shall promptly, but in all events no later than five Banking Days thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect.~~:

(a) (A) in the case of the immediately preceding subparagraphs (a) or (b) in this Section 15.15(2), an error shall be presumed to have been made (absent written confirmation from the Agent to the contrary) or (B) an error has been made (in the case of the immediately preceding subparagraph (c) in this Section 15.15(2)), in each case, with respect to such payment, prepayment or repayment; and

(b) such Lender shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Banking Day of its knowledge of such error) notify the Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Agent pursuant to this Section 15.15(2)(b).

For the avoidance of doubt, the failure to deliver a notice to the Agent pursuant to this Section 15.15(2) shall not have any effect on a Payment Recipient's obligations pursuant to this Section 15.15 or on whether or not an Erroneous Payment has been made.

(3) Each Lender hereby authorizes the Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Document, or otherwise payable or distributable by the Agent to such Lender under any Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Agent has demanded to be returned under Section 15.15(1) or under the indemnification provisions of this Agreement.

(4) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Agent for any reason, after demand therefor by the Agent in accordance with Section 15.15(1), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "**Erroneous Payment Return Deficiency**"), upon the Agent's notice to such Lender at any time, effective immediately (with the consideration therefor being acknowledged by the parties hereto) (a) such Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Agent may specify) (such assignment of the Loans (but not Commitments), the "**Erroneous Payment Deficiency Assignment**") on a cashless basis and at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Agent in such instance), and is hereby (together with the Borrowers) deemed to execute and deliver an Assignment Agreement as to which the Agent and such parties are participants) with respect to

such Erroneous Payment Deficiency Assignment, (b) the Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (c) upon such deemed acquisition, the Agent as the assignee Lender shall become a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (d) the Agent and each Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment and (e) the Agent may reflect in the register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

Subject to Sections 15.5 and 15.6 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrowers or otherwise)), the Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (a) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Agent) and (b) may, in the sole discretion of the Agent, be reduced by any amount specified by the Agent in writing to the applicable Lender from time to time.

(5) ~~(3) Each Borrower and each other Loan Party hereby agrees~~The parties hereto agree that (a) irrespective of whether the Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any ~~Lender~~Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, to the rights and interests of such Lender) under the Documents with respect to such amount (the "**Erroneous Payment Subrogation Rights**") (provided that the Individual Borrower and Loan Parties' obligations under the Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such obligations in respect of Loans that have been assigned to the Agent under an Erroneous Payment Deficiency Assignment) and (b) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by any Borrower or any other Loan Party; provided that this Section 15.15(5) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrowers relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Agent.

(6) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by any of the Borrowers or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Agent from (~~i~~a) ~~the applicable~~any such Borrower or any other Loan Party or (~~ii~~b) the proceeds of realization from the enforcement of one or more of the Documents against or in respect of one or more of the Loan ~~Party~~Parties, in each case, for the purpose of making such Erroneous Payment.

(7) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(8) ~~(4) The~~Each party's obligations~~ of each party to this Agreement~~, agreements and waivers under this Section ~~15.16~~15.15 shall survive the resignation or replacement of the Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Document.

(9) For purposes of this Section 15.15, each Lender:

(a) agrees it is executing and delivering this Agreement with respect to this Section 15.15 both on its own behalf and as agent for and on behalf of its Affiliates referred to in this Section 15.15 and any person receiving funds under or pursuant to any of the Documents on behalf of such Lender or any of such Affiliates;

(b) represents, warrants, covenants and agrees that its Affiliates referred to in this Section 15.15 and any person receiving funds under or pursuant to any of the Documents on behalf of such Lender or any of such Affiliates are bound by the provisions of this Section 15.15; and

(c) agrees that any matter or thing done or omitted to be done by such Lender, its Affiliates or any person receiving funds under or pursuant to any of the Documents on behalf of such Lender or any of such Affiliates which are the subject of this Section 15.15 will be binding upon such Lender and each Lender does hereby indemnify and save the Agent and its Affiliates harmless from any and all losses, expenses, claims, demands or other liabilities of the Agent and its Affiliates resulting from the failure of such Lender, its Affiliates or such persons to comply with their obligations under and in respect of this Section

(d) 15.15, in each case, in accordance with and subject to the limitations in Section 15.8.

(10) Except as expressly provided for herein including, pursuant to an Erroneous Payment Deficiency Assignment or the exercise of any Erroneous Payments

Subrogation Rights (or any equivalent equitable subrogation rights), the Borrowers shall not have any liability to the Agent for any Erroneous Payment or any interest, loss, cost or damages related thereto or arising therefrom under any provision of this Agreement or any other Document or under any legal principle or theory, whether arising by law or in equity.

15.16 Article for Benefit of Agent and Lenders

The provisions of this Article 15 which relate to the rights and obligations of the Lenders to each other or to the rights and obligations between the Agent and the Lenders shall be for the exclusive benefit of the Agent and the Lenders, and, except to the extent provided in Sections 15.1, 15.2, 15.5, 15.9, 15.10, 15.11, 15.12, 15.13, 15.15 and this Section 15.16, the Borrowers shall not have any rights or obligations thereunder or be entitled to rely for any purpose upon such provisions. Any Lender may waive in writing any right or rights which it may have against the Agent or the other Lenders hereunder without the consent of or notice to the Borrowers.

ARTICLE 16 GENERAL

16.1 Exchange and Confidentiality of Information

(1) The Borrowers agree that the Agent and each Lender may provide any assignee or participant or any bona fide prospective assignee or participant pursuant to Sections 16.6 or 16.7 with any information concerning the Loan Parties and their Subsidiaries provided such party agrees in writing with the Agent or such Lender for the benefit of the Borrowers to be bound by a like duty of confidentiality to that contained in this Section.

(2) Each of the Agent and the Lenders acknowledges the confidential nature of the financial, operational and other information and data provided and to be provided to them by the Borrowers pursuant hereto (the “**Information**”) and agrees to use all reasonable efforts to prevent the disclosure thereof provided, however, that:

(a) the Agent and each of the Lenders may disclose all or any part of the Information if, in their reasonable opinion, such disclosure is required in connection with any actual or threatened judicial, administrative or governmental proceedings including, without limitation, proceedings initiated under or in respect of this Agreement;

(b) the Agent and each of the Lenders shall incur no liability in respect of any Information required to be disclosed by any applicable law or regulation, or by applicable order, policy or directive having the force of law, to the extent of such requirement;

(c) the Agent and each Lender may disclose the Information to any Governmental Authority (including any self-regulatory agency or authority) having jurisdiction over it (i) upon the request thereof or (ii) where it considers such disclosure to be required, acting reasonably;

(d) the Agent and each Lender may provide any Affiliate thereof with the Information to the extent reasonably required to be disclosed thereto; provided that each such Affiliate shall be under a like duty of confidentiality to that contained in this Section 16.1 and further provided that the Agent or the Lender, as the case may be, providing the Information shall be responsible for any breach by its Affiliate of the aforementioned like duty of confidentiality;

(e) the Agent and each of the Lenders may provide Lenders' Counsel and their other agents and professional advisors with any Information; provided that such persons shall be under a like duty of confidentiality to that contained in this Section;

(f) the Agent and each of the Lenders shall incur no liability in respect of any Information: (i) which is or becomes readily available to the public (other than by a breach hereof) or which has been made readily available to the public by the Loan Parties or their Subsidiaries, (ii) which the Agent or the relevant Lender can show was, prior to receipt thereof from the applicable Borrower, lawfully in the Agent's or Lender's possession and not then subject to any obligation on its part to the applicable Borrower to maintain confidentiality, or (iii) which the relevant Agent or the relevant Lender received from a third party who was not, to the knowledge of the Agent or such Lender, under a duty of confidentiality to the applicable Borrower at the time the information was so received;

(g) the Agent and each of the Lenders may disclose the Information to (i) any of their respective Affiliates and (ii) other financial institutions and other persons in connection with the syndication by the Agent or Lenders of the Credit Facilities or the granting by a Lender of a participation in the Credit Facilities, in each case, where such Affiliate or financial institution or other person agrees to be under a like duty of confidentiality to that contained in this Section; and

(h) the Agent and each of the Lenders may disclose all or any part of the Information so as to enable the Agent and the Lenders to initiate any lawsuit against a Borrower or to defend any lawsuit commenced by a Borrower the issues of which touch on the Information, but only to the extent such disclosure is necessary to the initiation or defense of such lawsuit.

16.2 Nature of Obligation under this Agreement; Defaulting Lenders

(1) The obligations of each Lender and of the Agent under this Agreement are several. The failure of any Lender to carry out its obligations hereunder shall not

relieve the other Lenders, the Agent or the Borrowers of any of their respective obligations hereunder.

(2) Subject to and without derogating from the operation of Section 15.13 and this Section 16.2, neither the Agent nor any Lender shall be responsible for the obligations of any other Lender hereunder.

(3) Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) the standby fees payable pursuant to Section 5.7 shall cease to accrue on the unused portion of the Commitment of such Defaulting Lender;

(b) a Defaulting Lender shall not be included in determining whether, and the Commitment and the Rateable Portion of the Outstanding Principal of such Defaulting Lender shall not be included in determining whether all Lenders or the Majority of the Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 16.10), provided that any waiver or amendment requiring the consent of all Lenders or each affected Lender that (i) affects such Defaulting Lender in a manner that differs in any material respect from its application to other affected Lenders, (ii) increases the Commitment of such Defaulting Lender, (iii) extends the Maturity Date applicable to such Defaulting Lender, (iv) decreases the Applicable Pricing Rate applicable to such Defaulting Lender or (v) postpones, reduces or waives any principal payment due to such Defaulting Lender hereunder shall in each case require the consent of such Defaulting Lender; and

(c) for the avoidance of doubt, each Borrower shall retain and reserve its other rights and remedies respecting each Defaulting Lender.

(4) If any Lender shall cease to be a Defaulting Lender, then, upon becoming aware of the same, the Agent shall notify the Non-Defaulting Lenders and (in accordance with the written direction of the Agent) such Lender (which has ceased to be a Defaulting Lender) shall purchase, and the Non-Defaulting Lenders shall on a rateable basis sell and assign to such Lender, portions of such Loans equal in total to such Lender's Rateable Portion thereof without regard to Section 15.2(4).

(5) Each Defaulting Lender hereby indemnifies each Borrower for any losses, claims, costs, damages or liabilities (including reasonable out-of-pocket expenses and reasonable legal fees on a solicitor and his own client basis) incurred by such Borrower as a result of such Defaulting Lender failing to comply with the terms of this Agreement including any failure to fund its portion of any Loans required to be made by it hereunder.

(6) The applicable Borrower shall have the right, at its option, to (i) replace Defaulting Lenders under the Credit Facilities (by causing them to assign their rights and interests under the Credit Facilities to additional financial institutions which have agreed to become Lenders or by increasing the Commitments of existing Lenders under the Credit Facilities with, in the latter case, the consent of such increasing Lenders, or any combination thereof), (ii) repay the Obligations outstanding to Defaulting Lenders under the Credit Facilities and cancelling their Commitments (without corresponding repayment to other Lenders), or (iii) any combination of the foregoing; provided that increases in the Commitments of existing Lenders and the addition of new financial institutions as Lenders shall require the consent of the Agent, such consent not to be unreasonably withheld.

(7) In order to give effect to the provisions of Section 16.2(9) (but subject to such provisions), each Borrower may, from time to time:

(a) require any Defaulting Lender to assign all of its rights, benefits and interests under the Documents, its Commitments and its Rateable Portion of all Loans and other Obligations (collectively, the "**Defaulting Lender's Assigned Interests**") to (i) any other Lenders which have agreed to increase their Commitments and purchase the Defaulting Lender's Assigned Interests, and (ii) to third party financial institutions selected by the applicable Borrower. The applicable Borrower shall provide the Agent with 10 Banking Days' prior written notice of its desire to proceed under this Section. The assignment of the Defaulting Lender's Assigned Interests shall be effective upon: (w) execution and delivery of assignment documentation satisfactory to the relevant Defaulting Lender the assignee, the applicable Borrower and the Agent (each acting reasonably); (x) upon payment to the relevant Defaulting Lender, by the relevant assignee of an amount equal to such Lender's Rateable Portion of all Loans being assigned and all accrued but unpaid interest and fees hereunder in respect of those portions of the Loans and Commitments being assigned; (y) upon payment by the relevant assignee to the Agent (for the Agent's own account) of the transfer fee contemplated in Section 16.6; and (z) upon provision satisfactory to the Defaulting Lender (acting reasonably) being made for payment at maturity of outstanding Bankers' Acceptances accepted by it. Upon such assignment and transfer, the assigning Defaulting Lender shall have no further right, interest, benefit or obligation in respect of the Defaulting Lender's Assigned Interests (except as provided in Section 7.7(3)) and the assignee thereof shall succeed to the position of such Lender as if the same was an original party hereto in the place and stead of such Defaulting Lender; for such purpose, the assignee shall execute and deliver an Assignment Agreement and such other documentation as may be reasonably required by the Agent and the applicable Borrower to confirm its agreement to be bound by the provisions hereof as a Lender and to give effect to the foregoing; and

(b) to the extent that the applicable Borrower has not caused any Defaulting Lender to assign its rights, benefits and interests to another Lender or other financial institution as provided in paragraph (a) above, repay to such Defaulting Lender at any time while such Lender continues to be a Defaulting Lender, all such Lender's Rateable Portion of all Loans outstanding under the Credit Facilities, together with all accrued but unpaid interest and fees thereon and with respect to its Commitments, without making corresponding repayment to the other Lenders and, upon such repayment and provision satisfactory to the relevant Defaulting Lender, (acting reasonably) being made for payment at maturity of all outstanding Bankers' Acceptances accepted by such Lender and the applicable Borrower may cancel such Lender's Commitments. Upon completion of the foregoing, such Defaulting Lender shall have no further right, interest, benefit or obligation in respect of the Credit Facilities (except as provided in Section 7.7(3)) and each Credit Facility shall be reduced by the amount of such Lender's cancelled Commitment thereunder.

16.3 Notices

Any demand, notice or communication to be made or given hereunder shall be in writing and may be made or given by personal delivery or by transmittal by telecopy or other electronic means of communication addressed to the respective parties as follows:

To the Canadian Borrower:

Phoenix Technology Services Inc.
~~1400, 250 – 2nd Street SW~~
1600, 215 9th Ave SW
Calgary~~,~~ Alberta
, T2P ~~0C~~1K3

Attention:	Senior Vice President Finance and Chief Financial Officer
E-Mail:	[redacted]
~~Facsimile:~~	~~(403) 543-6025~~

To the U.S. Borrower:

Phoenix Technology Services USA Inc.
1400, 250 – 2nd Street SW
Calgary, Alberta
T2P 0C1

Attention:	Vice President, Finance and Secretary
E-Mail:	[redacted]
~~Facsimile:~~	~~(403) 543-6025~~

To the Agent:

HSBC Bank Canada, as Agent
~~5th Floor, 70~~Wholesale Client
Services
16 York Street, Suite 500
Toronto, Ontario
M5J ~~1S9~~0E6
Email: [redacted]
Facsimile: (647) 788-2185

with a copy, in the case of each demand, notice or communication to the Agent other than Drawdown Notices, Conversion Notices, Rollover Notices and Repayment Notices, to:

HSBC Bank Canada
407 – 8th Avenue S.W.
Calgary, Alberta
T2P 1E5

Attention: Assistant Vice President – Energy Financing
Facsimile: (403) 693-8561

To each Lender: As set forth in the most recent administrative questionnaire or other written notification provided to the Agent by such Lender (a copy of which shall be provided to each Borrower upon request to the Agent),

or to such other address or telecopy number as any party may from time to time notify the others in accordance with this Section. Any demand, notice or communication made or given by personal delivery or by telecopier or other electronic means of communication during normal business hours at the place of receipt on a Banking Day shall be conclusively deemed to have been made or given at the time of actual delivery or transmittal, as the case may be, on such Banking Day. Any demand, notice or communication made or given by personal delivery or by telecopier or other electronic means of communication after normal business hours at the place of receipt or otherwise than on a Banking Day shall be conclusively deemed to have been made or given at 9:00 a.m. (Calgary time) on the first Banking Day following actual delivery or transmittal, as the case may be.

16.4 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, without prejudice to or limitation of any other rights or remedies available under the laws of any jurisdiction where property or assets of the Borrowers may be found.

16.5 Benefit of the Agreement

This Agreement shall enure to the benefit of and be binding upon each Borrower, the Lenders, the Agent and their respective successors and permitted assigns.

16.6 Assignment

Any Lender may, without consent of the Borrowers during the continuance of an Event of Default and at all other times with the prior written consent of each of the Borrowers and the Agent, which consents shall not be unreasonably withheld, sell, assign, transfer or grant an interest in its Commitments (in a minimum amount of Cdn.$5,000,000), its Rateable Portion of the Loans and its rights under the Documents; provided that, without the consent of the Borrowers and the Agent, no Lender shall sell, assign, transfer or grant an interest in any Commitment, Loan or Document if the effect of the same would be to have a Lender with aggregate Commitments of less than Cdn.$5,000,000 (such amount to be reduced in proportion to any partial reductions in each Credit Facility) and further provided that, it shall be a precondition to any such sale, assignment, transfer or grant that the contemplated assignor Lender shall have paid to the Agent, for the Agent's own account, a transfer fee of [redacted]. Subject to Section 7.7(3), upon any such sale, assignment, transfer or grant, the granting Lender shall have no further obligation hereunder with respect to such interest. Upon any such sale, assignment, transfer or grant, the granting Lender, the new Lender, the Agent and the applicable Borrower shall execute and deliver an Assignment Agreement. Each Borrower shall not assign its rights or obligations hereunder without the prior written consent of all of the Agent and the Lenders, which consents shall not be unreasonably withheld. In connection with any assignment pursuant to this Section 16.6, the Borrowers shall not be required to pay any additional obligation by way of withholding tax or otherwise than it would have been obligated to pay if such assignment had not been made.

16.7 Participations

Any Lender may, without the consent of the Borrowers, grant one or more participations in its Commitments and its Rateable Portion of the Loans to other persons, provided that the granting of such a participation: (a) shall be at the Lender's own cost, (b) shall not affect the obligations of such Lender hereunder nor shall it increase the costs to the Borrowers hereunder or under any of the other Documents, and (c) shall not provide the participant with any right to approve the provision by the Lender of any consent, waiver or approval hereunder or require the Borrowers to deal directly with such participant.

16.8 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

16.9 Whole Agreement

This Agreement and the other Documents constitute the whole and entire agreement between the parties hereto regarding the subject matter hereof and thereof and cancel and supersede any prior agreements (including, without limitation, any commitment letters), undertakings, declarations, commitments, representations, written or oral, in respect thereof.

16.10 Amendments and Waivers

Any provision of this Agreement may be amended only if the Borrowers and the Majority of the Lenders so agree in writing and, except as otherwise specifically provided herein, may be waived only if the Majority of the Lenders so agree in writing, but:

(a) an amendment or waiver which changes or relates to (i) the amount of the Loans available hereunder (or decreases in the periods of notice for Drawdowns, Conversions, Rollovers or voluntary prepayment of Loans) or any Lender's Commitment, (ii) decreases in the rates of or deferral of the dates of payment of interest, Bankers' Acceptance or Letter of Credit fees, or mandatory repayments of principal, (iii) decreases in the amount of or deferral of the dates of payment of fees hereunder (other than fees payable for the account of the Agent), (iv) the definition of "Majority of the Lenders", (v) any provision hereof contemplating or requiring consent, approval or agreement of "all Lenders", "the Lenders" or similar expressions or permitting waiver of conditions or covenants or agreements by "all Lenders", "the Lenders" or similar expressions, (vi) Section ~~2.17~~2.16 or the definition of "Event of Default", (vii) the release or discharge of, or any material amendment or waiver of, any Security, (viii) the conditions precedent to Drawdowns, (ix) the Borrowing Base, (x) Section ~~2.26~~2.25 or (xii) this Section, shall require the agreement or waiver of all the Lenders and also (in the case of an amendment) of the other parties hereto;

(b) an amendment or waiver which changes or relates to the rights and/or obligations of the Agent shall also require the agreement of the Agent thereto; and

(c) an amendment or waiver which changes or relates to the rights or obligations of the Lenders under only one Credit Facility (but not the Lenders under the other Credit Facilities) shall only require the agreement of a Majority of the Lenders under such affected Credit Facility or all of the Lenders under such affected Credit Facility, as the case may.

Any such waiver and any consent by the Agent, any Lender, the Majority of the Lenders or all of the Lenders under any provision of this Agreement must be in writing and may be given subject to any conditions thought fit by the person giving that waiver or consent. Any waiver or consent shall be effective only in the instance and for the purpose for which it is given.

16.11 Further Assurances

The Borrowers, the Lenders and the Agent shall promptly cure any default by it in the execution and delivery of this Agreement, the other Documents or any of the agreements provided for hereunder to which it is a party. The Borrowers, at their expense, shall promptly execute and deliver to the Agent, upon request by the Agent (acting reasonably), all such other and further deeds, agreements, opinions, certificates, instruments, affidavits, registration materials and other documents reasonably necessary for the Borrowers' compliance with, or accomplishment of the covenants and agreements of the Borrowers hereunder or more fully to state the obligations of the Borrowers as set out herein or to make any registration, recording, file any notice or obtain any consent, all as may be reasonably necessary or appropriate in connection therewith.

16.12 Attornment

The parties hereto each hereby attorn and submit to the non-exclusive jurisdiction of the courts of the Province of Alberta in regard to legal proceedings relating to the Documents. For the purpose of all such legal proceedings, this Agreement shall be deemed to have been performed in the Province of Alberta and the courts of the Province of Alberta shall have jurisdiction to entertain any action arising under this Agreement. Notwithstanding the foregoing, nothing in this Section shall be construed nor operate to limit the right of any party hereto to commence any action relating hereto in any other jurisdiction, nor to limit the right of the courts of any other jurisdiction to take jurisdiction over any action or matter relating hereto.

16.13 Time of the Essence

Time shall be of the essence of this Agreement.

16.14 Credit Agreement Governs

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the other Documents, the provisions of this Agreement, to the extent of the conflict or inconsistency, shall govern and prevail.

16.15 Anti-Money Laundering Laws

(1) Each Borrower acknowledges that, pursuant Anti-Money Laundering Laws, the Lenders and the Agent may be required to obtain, verify and record information regarding PHX Energy, the Borrowers, the other Subsidiaries and their respective directors, authorized signing officers, direct or indirect shareholders or other persons in control of PHX Energy, the Borrowers or any of the other Subsidiaries, and the transactions contemplated hereby. The Borrowers shall, with respect to direct or indirect shareholders or other persons in control of PHX Energy use commercially reasonably efforts to, promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or the Agent, or any prospective assignee or participant

of a Lender or the Agent, in order to comply with any applicable Anti-Money Laundering Laws.

(2) If the Agent has ascertained the identity of a Borrower or any of the other Subsidiaries or any authorized signatories such persons for the purposes of applicable Anti-Money Laundering Laws, then the Agent:

(a) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a "written agreement" in such regard between each Lender and the Agent within the meaning of applicable Anti-Money Laundering Laws; and

(b) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that the Agent has no obligation to ascertain the identity of the either Borrower or any of the other Subsidiaries or any authorized signatories of such persons on behalf of any Lender or to confirm the completeness or accuracy of any information it obtains from any such persons or any such authorized signatory in doing so.

16.16 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of manually executed counterpart of this Agreement.

16.17 USA Patriot Act

The U.S. Operating Lender and the Agent (for itself and not on behalf of the U.S. Operating Lender) hereby notifies the Borrowers and their Material Subsidiaries that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**") it is required to obtain, verify and record information that identifies PHX Energy and its Subsidiaries, which information includes the name and address of such person and other information that will allow the U.S. Operating Lender or the Agent, as applicable, to identify each person in accordance with the *Patriot Act*.

16.18 Acknowledgement and Consent to Bail-In of ~~EEA~~Affected Financial Institutions

Notwithstanding anything to the contrary in any Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any ~~EEA~~Affected Financial Institution arising under any Document, to the extent such liability is unsecured, may be subject to the Write-Down and

Conversion Powers of ~~an EEA~~the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by ~~an EEA~~the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an ~~EEA~~Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such ~~EEA~~Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of ~~any EEA~~the applicable Resolution Authority.

[The remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

PHOENIX TECHNOLOGY SERVICES INC.

By: ______________________________

Name: Cameron Ritchie
Title: Senior Vice President Finance, Chief Financial Officer and Corporate Secretary

By: ______________________________

Name:
Title:

PHOENIX TECHNOLOGY SERVICES USA INC.

By: ______________________________

Name: Cameron Ritchie
Title: Vice President, Finance and Secretary

By: ______________________________

Name:
Title:

LENDERS:

HSBC BANK CANADA

By: ____________________________________
Name:
Title:

By: ____________________________________
Name:
Title:

HSBC BANK USA, NATIONAL ASSOCIATION

By: ____________________________________
Name:
Title:

By: ____________________________________
Name:
Title:

THE BANK OF NOVA SCOTIA

By: ______________________________
Name:
Title:

By: ______________________________
Name:
Title:

ATB FINANCIAL

By: ____________________________________
Name:
Title:

By: ____________________________________
Name:
Title:

<u>AGENT:</u>

HSBC BANK CANADA,
in its capacity as the Agent

By: ______________________________________
Name:
Title:

SCHEDULE A

LENDERS AND COMMITMENTS

Lender	**Operating Facility Commitment**	**U.S. Operating Facility Commitment**	**Syndicated Facility Commitment**
HSBC Bank Canada	[redacted]	[redacted]	[redacted]
HSBC Bank USA, National Association	[redacted]	[redacted]	[redacted]
The Bank of Nova Scotia	[redacted]	[redacted]	[redacted]
ATB Financial	[redacted]	[redacted]	[redacted]
Total	Cdn.$15,000,000	U.S.$15,000,000	Cdn.$50,000,000