

# TAB F

THIS IS EXHIBIT "F" REFERRED TO IN THE

AFFIDAVIT OF JOHN E. MAGUIRE

SWORN BEFORE ME

ON THIS 5<sup>TH</sup> DAY OF OCTOBER, 2009

A handwritten signature in black ink, appearing to read 'S. Irving', is written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Shawn Irving

Execution Version

**CREDIT AGREEMENT**

dated as of

May 22, 2009

among

**CANWEST MEDIA INC.**

as Borrower

**THE GUARANTORS FROM TIME TO TIME PARTIES HERETO**

as Guarantors

and

**THE LENDERS FROM TIME TO TIME PARTIES HERETO**

as Lenders

and

**CIT BUSINESS CREDIT CANADA INC.**

as Agent

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## CREDIT AGREEMENT

**THIS CREDIT AGREEMENT** is dated as of May 22, 2009 and is entered into among Canwest Media Inc, as Borrower, the Guarantors from time to time parties hereto, as Guarantors, the Lenders from time to time parties hereto, as Lenders, and CIT Business Credit Canada Inc., as Agent.

### RECITALS

- A. The Credit Parties require new financing to assist with the refinancing of certain indebtedness in favour of its existing senior secured lenders under the BNS Credit Agreement and for working capital purposes and have requested that the Lenders provide to the Borrower the credit facilities contemplated herein.
- B. The Guarantors have agreed to guarantee the obligations of the Borrower in connection herewith, and the Credit Parties have agreed to grant Liens over their assets on the basis contemplated in Section 2.20 of this Agreement.
- C. In light of the financial condition of the Credit Parties, the Credit Parties may seek a compromise and arrangement with their creditors under the CCAA.
- D. The Lenders have advised the Credit Parties that they would only provide the credit facilities contemplated herein if, in connection with any CCAA Proceedings, the Initial Order provides for matters substantially as set forth in section 2.19 of this Agreement, and the Credit Parties have so agreed.

NOW THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

### ARTICLE 1 DEFINITIONS

**1.1 Defined Terms.** As used in this Agreement, the following terms have the meanings specified below:

“**Accounts**” means, in respect of each Credit Party, all of such Credit Party’s now existing and future: (a) accounts (as defined in the PPSA), and any and all other receivables (whether or not specifically listed on schedules furnished to the Agent), including all accounts created by, or arising from, all of such Credit Party’s sales, leases, loans, rentals of goods or renditions of services to its customers, including those accounts arising under any of such Credit Party’s trade names or styles, or through any of such Credit Party’s divisions; (b) any and all instruments, documents, bills of exchange, notes or any other writing that evidences a monetary obligation and chattel paper (including electronic chattel paper) (all as defined in the PPSA); (c) unpaid seller’s or lessor’s rights (including rescission, replevin, reclamation, repossession and stoppage in transit) relating to the foregoing or arising therefrom; (d) rights to any goods

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represented by any of the foregoing, including rights to returned, reclaimed or repossessed goods; (e) reserves and credit balances arising in connection with or pursuant hereto; (f) guarantees, indemnification rights, supporting obligations, payment intangibles, tax refunds and letter of credit rights; (g) insurance policies or rights relating to any of the foregoing; (h) intangibles pertaining to any and all of the foregoing (including all rights to payment, including those arising in connection with bank and non-bank credit cards), and including books and records and any electronic media and software relating thereto; (i) notes, deposits or property of borrowers or other account debtors securing the obligations of any such borrowers or other account debtors to such Credit Party; (j) cash and non cash proceeds (as defined in the PPSA) of any and all of the foregoing; and (k) all monies and claims for monies now or hereafter due and payable in connection with any and all of the foregoing or otherwise.

**“Acquisition”** means any transaction, or any series of related transactions, consummated after the Effective Date, by which any Credit Party, directly or indirectly, by means of a take-over bid, tender offer, amalgamation, merger, purchase of assets or otherwise (a) acquires any business or all or substantially all of the assets of any Person engaged in any business, (b) acquires control of securities of a Person engaged in a business representing more than 50% of the ordinary voting power for the election of directors or other governing position if the business affairs of such Person are managed by a board of directors or other governing body, (c) acquires control of more than 50% of the ownership interest in any Person engaged in any business that is not managed by a board of directors or other governing body, or (d) otherwise acquires Control of a Person engaged in a business.

**“Action Request”** means any request received by any Credit Party from any Governmental Authority under any Environmental Law whereby such Governmental Authority requests that it take action or steps or do acts or things in respect of any property or assets in the charge, management or control of such Credit Party to remediate a matter which is not or is alleged not to be in compliance with all Environmental Laws.

**“Administrative Charge”** shall have the meaning given such term in Section 2.19.

**“Administrative Questionnaire”** means an administrative questionnaire in a form supplied by the Agent.

**“Affiliate”** means, (a) any Person which, directly or indirectly, Controls, is Controlled by or is under common Control with any other Person; (b) any Person which beneficially owns or holds, directly or indirectly, 10% or more of any class of voting stock or equity interest (including partnership interests) of any other Person; (c) any Person, 10% or more of any class of the voting stock (or if such Person is not a corporation, 10% or more of the equity interest, including partnership interests) of which is beneficially owned or held, directly or indirectly, by any other Person; or (d) any Person related within the meaning of the ITA to any such Person and includes any “Affiliate” within the meaning specified in the *Canada Business Corporations Act* on the date hereof. The term control (including the terms “controlled by” and “under common control with”), means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person in question.

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**"Agent"** means CIT Business Credit Canada Inc., in its capacity as Agent for the Lenders hereunder, or any successor Agent appointed pursuant to Section 8.9.

**"Agreement"** means this credit agreement and the schedules and exhibits hereto and any amendments, restatements, supplements or other modifications to this credit agreement or the schedules or exhibits made at any time and from time to time.

**"Applicable Law"** means all federal, provincial, municipal, foreign and international statutes, acts, codes, ordinances, decrees, treaties, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards or any provisions of the foregoing, including general principles of common and civil law and equity, and all policies, practices and guidelines of any Governmental Authority binding on or affecting the Person referred to in the context in which such word is used (including, in the case of tax matters, any accepted practice or application or official interpretation of any relevant taxation authority).

**"Applicable Margin"** means, with respect to any Loan, 6% rate per annum.

**"Applicable Percentage"** means with respect to any Lender, the percentage of the total Commitments represented by such Lender's Commitment. If any Commitments have terminated or expired, the Applicable Percentages in respect of the terminated or expired Commitments shall be determined based upon the relevant Commitments most recently in effect (*i.e.*, immediately prior to their termination or expiry), giving effect to any assignments.

**"Assignment and Assumption"** means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.4), and accepted by the Agent, in the form of Exhibit I or any other form approved by the Agent.

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

**"Authorization and Direction"** means the authorization and direction dated as of May 21, 2009 made in favour of the Collateral Agent by The Bank of Nova Scotia, in its capacity as agent of the existing Secured Creditors under and as defined in the Collateral Agency Agreement.

**"Availability Block"** means \$15,000,000 at all times.

**"Availability Reserves"** means, as of any date of determination, the Availability Block and, without duplication, such other amounts as the Agent may from time to time establish and revise in its sole discretion reducing the Borrowing Base which would otherwise be available to the Borrower under the lending formulas provided for herein (a) to reflect criteria, events, conditions, contingencies or risks which, as determined by the Agent in its sole discretion, do or may affect either (i) any component of the Borrowing Base or its value, (ii) the assets, business,

operations, industry, financial performance, financial condition or prospects of the Credit Parties, or (iii) the security interests and other rights of the Agent in the Collateral (including the enforceability, perfection and priority thereof), or (b) to reflect the Agent's reasonable belief that any collateral report or financial information furnished by or on behalf of the Borrower to the Agent is or may have been incomplete, inaccurate or misleading, or (c) in respect of any state of facts which the Agent determines constitutes a Default or an Event of Default. Without limiting the foregoing, the Agent, in its sole discretion, may establish and/or increase Availability Reserves in respect of: (a) (i) three months' rental payments or similar charges for any of the Borrower's leased premises or other collateral locations for which the Borrower has not delivered to the Agent a landlord's waiver or bailee's letter substantially in the form attached hereto as Exhibits G and H, respectively, plus (ii) any other fees or charges owing by the Borrower to any applicable warehousemen or third party processor (all as determined by the Agent in its reasonable business judgement); (b) any reserve established by the Agent on account of statutory claims, deemed trusts, or inventory subject to rights of suppliers under Section 81.1 of the BIA (generally known as the "30-day goods" rule); (c) liabilities of any Credit Party under any Blocked Account Agreement, (d) employee or employee benefit related liabilities and any other claims which may have priority over the claims of the Agent and the Lenders, including Priority Payables and potential claims under the *Wage Earners' Protection Program Act* (Canada); (e) the Administrative Charge; and (f) such other reserves as the Agent may at any time or times deem necessary in its reasonable judgment as a result of (x) negative forecasts and/or trends in the Borrower's business, operations, industry, prospects, profits, operations or financial condition or assets or (y) other issues, circumstances or facts that could otherwise negatively impact the Borrower, its business, operations, industry, prospects, profits, operations or financial condition or assets.

**"Base Rate"** means, on any day, the annual rate of interest equal to the greater of (i) the annual rate of interest announced from time to time by CIBC and in effect as its base rate at its principal office in Toronto, Ontario on such day for determining interest rates on U.S. Dollar-denominated commercial loans made in Canada, (ii) the Federal Funds Effective Rate plus 1.00%, and (iii) 2.25%. The Base Rate is a rate set by CIBC based upon various factors including CIBC's cost and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans; however, CIBC may price loans at, above or below such announced rate.

**"Base Rate Borrowing"** means a Borrowing comprised of one or more Base Rate Loans.

**"Base Rate Loan"** means a Loan denominated in U.S. Dollars made by the Lenders to the Borrower hereunder pursuant to a drawdown, rollover or conversion of a Loan on which interest is payable upon the Base Rate.

**"BIA"** means the *Bankruptcy and Insolvency Act* (Canada), as amended from time to time (or any successor statute).

**"Blocked Account Agreement"** has the meaning set out in Section 2.17(c).

**"Blocked Accounts"** has the meaning set out in Section 2.17(c).

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**"BNS Credit Agreement"** means the credit agreement dated as of October 13, 2005 among the Borrower, the Guarantors parties thereto, the lenders parties thereto and The Bank of Nova Scotia, as administrative agent, the lenders from time to time party thereto as lenders, as amended by a First Amendment Agreement dated as of February 15, 2006, a Second Amendment Agreement dated as of April 30, 2007, a Third Amendment Agreement dated as of July 31, 2007, and a Fourth Amendment Agreement dated as of November 4, 2008.

**"BNS Priority Collateral"** means the cash collateral accounts (and the amounts deposited therein) to be established with The Bank of Nova Scotia as contemplated in the Credit Confirmation and Amendment Agreement.

**"Borrower"** means Canwest Media Inc., a CBCA corporation.

**"Borrowing"** means any availing of the Credit, which includes a Loan and the issuance of a Letter of Credit Guarantee in accordance with Section 2.18, and a Borrowing includes a conversion of any outstanding Loan and the provision of any Loan as required for the Agent to honour any obligations pursuant to any Letter of Credit Guarantee.

**"Borrowing Base"** means, at any time, an amount (which may not be less than zero) equal to the sum of (i) 85% of the aggregate amount of all Eligible Accounts, plus (ii) the lesser of (x) up to 60% of the Fair Market Value of Eligible Real Property or (y) \$40,000,000, plus (iii) the lesser of (x) up to 80% of the Net Orderly Liquidation Value of Eligible Equipment or (y) \$30,000,000, minus (iv) an amount equal to all Priority Payables, and minus (v) without duplication, an amount equal to all aggregate Availability Reserves; provided that, at all times, the aggregate amount contributed pursuant to subparagraphs (ii) and (iii) above shall not exceed an amount equal to \$40,000,000. For greater certainty, if any Credit Party sells or otherwise disposes of any Eligible Real Property or Eligible Equipment, the amount (if any) previously included in the Borrowing Base on account thereof shall be removed from the Borrowing Base.

**"Borrowing Base Report"** means the report of the Borrower concerning the amount of the Borrowing Base, to be delivered pursuant to Section 5.1, substantially in the form attached as Exhibit A.

**"Borrowing Request"** means a request by the Borrower for a Borrowing substantially in the form of Exhibit B.

**"Broadcast Permits"** is defined in Section 3.30(iii).

**"Business Day"** means any day that is not (i) a Saturday, Sunday or other day on which commercial banks in Toronto, Ontario are authorized or required by Applicable Law to remain closed, and (ii) in the case of any U.S. Dollar-denominated Borrowing, any other day on which commercial banks in New York, New York are authorized or required by Applicable Law to remain closed, and (iii) in the case of any LIBO Rate Loan any other day on which commercial banks in London, England are authorized or required by Applicable Law to remain closed.

**"Canadian Dollars", "Dollars", "Cdn.\$" and "\$"** refer to lawful money of Canada.

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**“Canadian \$ Equivalent”** means, on any day, the amount of Canadian Dollars that the Agent could purchase, in accordance with its normal practice, with a specified amount of U.S. Dollars based on the spot rate at which Canadian Dollars are offered at the start of such day by CIBC in Toronto, Ontario.

**“Canadian Prime Borrowing”** means a Borrowing comprised of one or more Canadian Prime Loans.

**“Canadian Prime Loan”** means a Loan denominated in Canadian Dollars made by the Lenders to the Borrower hereunder pursuant to a drawdown, rollover or conversion of a Loan which bears interest at a rate based upon the Canadian Prime Rate.

**“Canadian Prime Rate”** means the greater of (i) the rate of interest publicly announced from time to time by CIBC as its reference rate of interest for loans made in Canadian Dollars to Canadian customers and designated as its “prime” rate, and (ii) 2.25%. It is a rate set by CIBC based upon various factors including CIBC’s costs and desired return, general economic conditions and other factors and is used as a reference point for pricing some loans. However, CIBC may price loans at, above or below such announced rate.

**“Capital Expenditures”** means all payments due or accruing due (whether or not paid) during a Fiscal Year in respect of the cost (including expenditures on materials, contract labour and direct labour, but excluding expenditures properly chargeable to repairs and maintenance in accordance with GAAP) of any fixed asset or improvement, or replacement, substitution, or addition thereto, which have a useful life of more than one (1) year, including, without limitation, those arising in connection with the direct or indirect acquisition of such assets by way of increased product or service charges or offset items or in connection with Capital Leases.

**“Capital Lease”** means any lease of Property that, in accordance with GAAP, is required to be capitalized on the consolidated balance sheet of the Credit Parties.

**“Capital Lease Obligations”** of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as Capital Leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

**“CCAA”** means the *Companies’ Creditors Arrangement Act* (Canada) as amended from time to time (or any successor statute).

**“CCAA Orders”** means, collectively, the Initial Order and all other orders issued or to be issued by the Ontario Superior Court of Justice in connection with the CCAA Proceedings.

**“CCAA Proceedings”** means any proceedings commenced by the Credit Parties under the CCAA, under which the Credit Parties may seek an arrangement and compromise with certain of its creditors.

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**"CDOR Rate"** means, on any day and for any period, an annual rate of interest equal to the average rate applicable to Canadian Dollar bankers' acceptances for the applicable period appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000 definitions, as modified and amended from time to time), rounded to the nearest 1/100<sup>th</sup> of 1% (with .005% being rounded up), at approximately 10:00 a.m., Toronto time, on such day, or if such day is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day as contemplated, then the CDOR Rate on such day shall be calculated as the rate for such period applicable to Canadian Dollar bankers' acceptances quoted by CIBC as of 10:00 a.m., Toronto time, on such day or, if such day is not a Business Day, then on the immediately preceding Business Day.

**"Change in Control"** means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group of Persons acting jointly or otherwise in concert, other than the Permitted Holders, of Equity Securities representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Securities of the Borrower; (b) the occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated by the board of directors of the Borrower nor (ii) appointed by directors so nominated; or (c) the acquisition of direct or indirect Control of the Borrower by any Person or group of Persons acting jointly or otherwise in concert, other than the Permitted Holders.

**"Change in Law"** means (i) the adoption of any new Applicable Law after the date of this Agreement, (ii) any change in any existing Applicable Law or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement, or (iii) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.12(b), by any lending office of such Lender or Issuing Bank or by such Lender's or such Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law, but in the case of a request, guideline or directive not having the force of law, being a request, guideline or directive with which persons customarily comply) of any Governmental Authority made or issued after the date of this Agreement.

**"Chapter 15 Entities"** means Canwest Global Communications Corp., the Borrower, 4501063 Canada Inc., Canwest Television GP Inc., and Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc.

**"CIBC"** means Canadian Imperial Bank of Commerce and its successors.

**"CIT Priority Collateral"** means, with respect to each Credit Party, all present and future assets other than the Noteholder Priority Collateral and BNS Priority Collateral. "CIT Priority Collateral" includes all Accounts of each Credit Party; inventory and other goods; real property, plant and equipment; intangibles (including intellectual property rights, broadcast licenses and broadcast rights (including Broadcast Permits)); and collateral proceeds accounts (other than BNS Priority Collateral) and other accounts; and capital stock in any Subsidiary owned directly by a Credit Party.

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**"Collateral"** means the property described in and subject to the Liens, privileges, priorities and security interests purported to be created by any Security Document.

**"Collateral Agency Agreement"** means the Intercreditor and Collateral Agency Agreement dated as of October 13, 2005 among the Borrower, the Guarantors, the Collateral Agent and the Persons who are, and from time to time become, parties to such agreement as Secured Creditors (as defined therein), as amended by the Credit Confirmation and Amending Agreement.

**"Collateral Agent"** means CIBC Mellon Trust Company, in its capacity as Collateral Agent under the Collateral Agency Agreement.

**"Collateral Management Fee"** has the meaning ascribed thereto in the Commitment Letter.

**"Commitment"** means, with respect to each Lender, the commitment(s) of such Lender to make Loans hereunder as such commitment may be reduced from time to time pursuant to Sections 2.6 and/or 2.9, and as such commitments may be reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.4. The initial amount(s) of each Lender's Commitment(s) are set forth on Schedule A, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment(s), as applicable. The initial aggregate amount of the Commitments is Cdn.\$75,000,000. Subject to Section 4.2, on the Restructuring Event Date, the aggregate amount of the Commitments shall be increased to Cdn.\$100,000,000.

**"Commitment Letter"** means the letter dated May 20, 2009 between the Borrower and the Agent providing for, among other things, the payment by the Borrower of certain fees.

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

**"Court"** means the Ontario Superior Court of Justice Commercial List.

**"Cover"** means, at any time on or after the Maturity Date, an amount equal to 105% of the aggregate amount of Letter of Credit Exposure at such time and such amount shall be paid by the Borrower to the Agent and retained by the Agent in a collateral account maintained by the Agent at its Payment Office and collaterally assigned to the Agent as security until such time as the applicable Letters of Credit shall have expired or matured and Reimbursement Obligations, if any, with respect thereto shall have been fully satisfied; provided that if any such Reimbursement Obligations are not satisfied when due hereunder, the Agent may apply any or all amounts in such collateral account in satisfaction of any or all such Reimbursement Obligations.

**"Credit Confirmation and Amending Agreement"** means the credit confirmation and amending agreement dated as of the date hereof among the Credit Parties, the Collateral Agent,



the holders of the New Notes, The Bank of Nova Scotia and CIT, as agent of the lenders under this Agreement.

**“Credit Party”** means the Borrower and each Guarantor.

**“Credit”** means the revolving credit facility established pursuant to the Commitments of the Lenders.

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

**“DIP Charge”** shall have the meaning set forth in Section 2.19.

**“Directors’ Charge”** means any charge provided for in the Initial Order to secure the Directors’ Charge Expenses, which charge shall be junior and subordinate to the DIP Charge and otherwise in form and substance satisfactory to the Agent.

**“Directors’ Charge Expenses”** means those disbursements, expenses, liabilities and fees of the directors and officers of the debtors under the CCAA Proceedings.

**“Disclosed Matters”** means the actions, suits and proceedings and the environmental matters disclosed in Schedule B.

**“EDC”** means Export Development Corporation Canada and its successors and assigns.

**“Effective Date”** means the date on which all of the conditions specified in Section 4.1 are satisfied or waived in accordance with Section 9.2, as confirmed by the making of the first Loans under this Agreement.

**“Eligible Account”** means, at any time, the invoice amount (which shall be the Canadian \$ Equivalent at such time of any amount denominated in U.S.\$) owing on each Account of a Credit Party (net of any credit balance, returns, trade discounts, contras, unapplied cash, unbilled amounts, tax refunds that have not yet been received or retention or finance charges or any other dilutive factors) which meet such standards of eligibility as the Agent shall establish from time to time in its sole and absolute discretion; provided that, in any event, no account shall be deemed an Eligible Account unless each of the following statements is accurate and complete (and by including such Account in any computation of the applicable Borrowing Base, the Borrower shall be deemed to represent and warrant to the Agent, each Issuing Bank and the Lenders the accuracy and completeness of such statements and the compliance of each such Account with each such other eligibility standard established by the Agent):

(1) Such Account is a binding and valid obligation of the obligor thereon and is in full force and effect;

(2) Such Account is evidenced by an invoice and is payable in either Canadian Dollars or U.S. Dollars;

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- (3) Such Account is genuine as appearing on its face or as represented in the books and records of the Borrower and the applicable Credit Party;
- (4) Such Account is free from claims regarding rescission, cancellation or avoidance, whether by operation of Applicable Law or otherwise;
- (5) Payment of such Account is less than 90 days past the original invoice date thereof and less than 60 days past the original due date thereof; notwithstanding the foregoing, Accounts which are more than 90 days past the original invoice date thereof but less than 120 days past the original invoice date thereof, and which otherwise meet the criteria set forth in this definition of "Eligible Account", shall be Eligible Accounts subject to an aggregate maximum of \$10,000,000;
- (6) Such Account is net of concessions, offset, deduction, contras, returns, chargebacks or understandings with the obligor thereon that in any way could reasonably be expected to adversely affect the payment of, or the amount of, such Account;
- (7) The Agent on behalf of the Lenders, has a first-priority perfected Lien covering such Account and such Account is, and at all times will be, free and clear of all other Liens other than Priority Payables which are Permitted Liens;
- (8) The obligor on such Account is not an Affiliate, employee, officer, director, agent, holder of more than 2% of the issued and outstanding capital stock of the Parent or any stockholder of any other Credit Party;
- (9) Such Account arose in the ordinary course of business of the Credit Party out of the sale of goods or services by the Credit Party;
- (10) Such Account is not payable by an obligor in respect of which 50% or more (by amount) of the total aggregate Accounts owed to the Credit Party by such obligor or any of its Affiliates are more than 90 days past the original invoice date thereof or more than 60 days past the original due date thereof;
- (11) All consents, licenses, approvals or authorizations of, or registrations or declarations with, any Governmental Authority required to be obtained, effected or given in connection with the execution, delivery and performance of such Account by each party obligated thereunder, or in connection with the enforcement and collection thereof by the Agent, have been duly obtained, effected or given and are in full force and effect;
- (12) The obligor on such Account is not an individual, and is not the subject of any bankruptcy or insolvency proceeding, does not have a trustee or receiver appointed for all or a substantial part of its property, has not made an assignment for the benefit of creditors, admitted its inability to pay its debts as they mature, suspended its business or initiated negotiations regarding a compromise of its debt with its creditors, and the Agent, in its reasonable discretion, is otherwise satisfied with the credit standing of such obligor;

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(13) The chief executive office of the obligor of such Account is located in the United States of America or Canada and the obligor of such Account is organized and existing under the laws of the United States of America or a state thereof or the federal laws of Canada, a province or territory thereof, or if the obligor is not so organized and existing, such Account is covered under letters of credit or export/import insurance provided by EDC (or such other provider of letters of credit or import/export insurance as shall be agreed to in writing by the Agent and with security provided to the Agent in respect thereof (all to the satisfaction of the Agent) on terms and in a manner satisfactory to the Agent;

(14) The obligor of such Account is not a Governmental Authority, if the enforceability or effectiveness against such Governmental Authority of an assignment of such Account is subject to any precondition which has not been fulfilled;

(15) In respect of an Account arising from the sale of goods, the subject goods have been completed, sold and shipped, on a true sale basis on open account, or subject to contract, and not on consignment, on approval, on a "sale or return" basis, or on a "bill and hold" or "pre-sale" basis or subject to any other repurchase or return agreement; no material part of the subject goods has been returned, rejected, lost or damaged; and such Account is not evidenced by chattel paper or a promissory note or an instrument of any kind, unless such chattel paper, promissory note or other instrument has been delivered to the Agent and is subject to a Lien under the Security Documents;

(16) Each of the representations and warranties set forth herein and in the Loan Documents with respect to such Account is true and correct on such date;

(17) A cheque, promissory note, draft, trade acceptance or other instrument has not been received with respect to such Account (or with respect to any other account due from the same account debtor), presented for payment and returned uncollected for any reason;

(18) Such Account is not in respect of a volume rebate;

(19) Such Account is not a pre-billed account or an account arising from progress billing;

(20) The assignment (whether absolutely or by way of security) of such Account is not limited or restricted by the terms of the contract evidencing or relating to such Account or, if assignment of such Account is so restricted, such limitation or restriction has been complied with and the laws of the jurisdiction(s) governing the validity of such assignment do not provide that such limitation or restriction is ineffective as against the secured creditor with a security interest therein; and

(21) Such Account is not an Account which the Agent, in the exercise of its good faith credit discretion, has determined to be ineligible for any other reason, including the Agent's determination that the prospect of the collection of such Account is impaired or that the Account may not be paid because of the account debtor's inability to pay or any other reason as may be customary either in the commercial lending industry or in the lending practices of the Agent.

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provided that, if at any time the aggregate amount of all Eligible Accounts owed to a Credit Party by a particular obligor or its Affiliates exceeds 10% of the aggregate amount of all Eligible Accounts at such time owed to such Credit Party (determined without giving effect to any reduction in Eligible Accounts pursuant to this proviso), then, unless the Accounts of such obligors and its Affiliates are insured pursuant to credit insurance acceptable to the Agent which has been assigned to the Agent in form acceptable to the Agent, the amount of such Accounts in excess of 10% of such aggregate amount of all Eligible Accounts shall be excluded in determining the aggregate amount of all Eligible Accounts at such time.

**“Eligible Equipment”** means the equipment owned by a Credit Party located in Canada at the Credit Parties’ facilities described on Schedule 3.28, as updated from time to time with the consent of the Agent, and meeting each of the following requirements:

- (a) such Credit Party has good title to such equipment;
- (b) such Credit Party has the right to subject such equipment to a Lien in favor of the Collateral Agent; such equipment is subject to a first priority perfected Lien in favor of the Collateral Agent and is free and clear of all other Liens of any nature whatsoever (except for (i) Permitted Liens which do not have priority over the Lien in favor of the Collateral Agent, (ii) unregistered Liens in respect of Priority Payables that are not yet due and payable, and (iii) after the Restructuring Event Date, the Administrative Charge;
- (c) the full purchase price for such equipment has been paid by such Credit Party;
- (d) such equipment is located on premises (i) owned by such Credit Party, which premises are subject to a first priority perfected Lien in favor of the Collateral Agent, or (ii) leased by such Credit Party where (x) the lessor has delivered to the Agent a landlord lien waiver or (y) an Availability Reserve for rent, charges, and other amounts due or to become due with respect to such facility has been established by the Agent in its sole discretion;
- (e) such equipment is in good working order and condition (ordinary wear and tear excepted) and is used or held for use by such Credit Party in the ordinary course of business of the Credit Party;
- (f) such equipment is not subject to any agreement which restricts the ability of such Credit Party to use, sell, transport or dispose of such equipment or which restricts the Collateral Agent's ability to take possession of, sell or otherwise dispose of such equipment;
- (g) in respect of which an appraisal report has been delivered to the Agent in form, scope and substance satisfactory to the Agent; and
- (h) such equipment does not constitute “fixtures” under the Applicable Laws of the jurisdiction in which such equipment is located.

**“Eligible Real Property”** means the real property (including fixtures thereto) located in Canada listed on Schedule 3.28 and identified as such thereon as updated from time to time with the consent of the Agent, owned by a Credit Party (i) that is acceptable in the sole and absolute

discretion of the Agent for inclusion in the Borrowing Base, (ii) in respect of which an appraisal report has been delivered to the Agent in form, scope and substance satisfactory to the Agent, (iii) in respect of which the Agent is satisfied that all actions necessary or desirable in order to create in favour of the Collateral Agent a perfected first priority Lien (subject only to Permitted Liens and, after the Restructuring Event Date, the Administrative Charge and an unregistered Lien in respect of Priority Payables that are not yet due and payable) on such real property have been taken, including the filing and recording of Security Documents, (iv) in respect of which an environmental assessment report has been completed and delivered to the Agent in form and substance satisfactory to such Agent and which does not indicate any material environmental liability, or material non-compliance with any Environmental Law (which liability or non-compliance was not previously disclosed to the Agent), (v) which is adequately protected by fully-paid valid title insurance with endorsements and in amounts reasonably acceptable to the Agent, insuring that the Collateral Agent shall have a perfected first priority Lien (subject only to Permitted Liens and, after the Restructuring Event Date, the Administrative Charge and an unregistered Lien in respect of Priority Payables that are not yet due and payable) on such real property, evidence of which shall have been provided in form and substance reasonably satisfactory to the Agent, and (vi) if required by the Agent: (A) a survey has been delivered for which all necessary fees have been paid and which is dated no more than 30 days prior to the date on which the applicable Security Document is recorded, certified to the Agent and the issuer of the title insurance policy in a manner reasonably satisfactory to the Agent by a land surveyor duly registered and licensed in the state or province in which such Eligible Real Property is located and reasonably acceptable to the Agent, and shows all buildings and other improvements, any offsite improvements, the location of any easements, parking spaces, rights of way, building setback lines and other dimensional regulations and the absence of encroachments, either by such improvements or on to such property, and other defects, other than encroachments and other defects reasonably acceptable to the Agent; and (B) such Credit Party shall have used its reasonable best efforts to obtain such consents, agreements and confirmations of lessors and third parties as the Agent may deem necessary or desirable, together with evidence that all other actions that the Agent may deem necessary or desirable in order to create perfected first priority Liens (subject only to (i) the Administrative Charge and (ii) an unregistered Lien in respect of Priority Payables that are not yet due and payable) on the property described in the Collateral Document have been taken.

**“Environmental Laws”** means all Applicable Laws relating in any way to the environment, preservation or reclamation of natural resources, the generation, use, handling, collection, treatment, storage, transportation, recovery, recycling, release, threatened release or disposal of any Hazardous Material, or to health and safety matters.

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

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**"Equity Securities"** means, with respect to any Person, any and all shares, interests, participations, rights in, or other equivalents (however designated and whether voting and non-voting) of, such Person's capital, whether outstanding on the date hereof or issued after the date hereof, including any interest in a partnership, limited partnership or other similar Person and any beneficial interest in a trust, and any and all rights, warrants, debt securities, options or other rights exchangeable for or convertible into any of the foregoing.

**"ETA"** means Part IX of the *Excise Tax Act* (Canada) as amended from time to time (or any successor statute).

**"Event of Default"** has the meaning set out in Section 7.1.

**"Excess Availability"** means, as of any date, the remainder of (a) the Borrowing Base as of such date, less (b) the aggregate outstanding balance of the Indebtedness of the Borrower hereunder as of such date, and less (c) the aggregate face amount of issued and outstanding Letters of Credit as of such date. Excess Availability shall always be determined on the basis that all debts and obligations shall be current, and all accounts payable shall be handled in the normal course of the Borrower's business consistent with its past practices.

**"Excluded Taxes"** means, with respect to the Agent, any Lender or any other recipient (in this definition, a "recipient") of any payment to be made by or on account of any obligation of the Borrower hereunder, income or franchise Taxes imposed on (or measured by) such recipients taxable income or capital Taxes imposed on (or measured by) such recipient's taxable capital, in each case by Canada, or by the jurisdiction under the Applicable Law of which such recipient is organized or in which its principal office is located.

**"Existing Notes"** means the 8% senior subordinated notes due 2012 issued by the Borrower pursuant to the Note Indenture dated as of November 18, 2004 among the Borrower, as issuer, certain guarantors and The Bank of New York, as trustee.

**"Exposure"** means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans and, without duplication, its Letter of Credit Exposure at such time.

**"Fair Market Value"** shall mean the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts determined in a manner acceptable to the Agent by an appraiser acceptable to the Agent.

**"Federal Funds Effective Rate"** means, for any day, the per annum rate equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System of the United States of America arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Board of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Agent from three Federal funds brokers of recognized standing selected by it.

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**"Financial Officer"** means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

**"Fiscal Quarter"** means any fiscal quarter of the Borrower.

**"Fiscal Year"** means any fiscal year of the Borrower.

**"Futures Account"** has the meaning ascribed to it in the PPSA.

**"GAAP"** means at any particular time with respect to any Credit Party, generally accepted accounting principles as in effect at such time in Canada, consistently applied; provided, however, that, if employment of more than one principle shall be permissible at such time in respect of a particular accounting matter, "GAAP" shall refer to the principle which is then employed by the applicable Credit Party with the concurrence of its independent public or chartered accountants, who are acceptable to the Agent provided further that, for the purposes of determining compliance with the financial covenants herein, "GAAP" means GAAP as at the date hereof.

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

**"GST"** means the goods and services tax and all other amounts payable under the ETA or any similar legislation in any other jurisdiction of Canada, including QST and HST.

**"Guarantee"** of or by any Person (in this definition, the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (in this definition, the "primary credit party") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital solvency, or any other balance sheet, income statement or other financial statement condition or liquidity of the primary credit party so as to enable the primary credit party to pay such Indebtedness or other obligation, (d) as an account party in respect of any letter of credit or letter of guarantee issued to support such Indebtedness or other obligation, or (e) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss.

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**“Guarantor”** means each Person which has executed and delivered to the Agent, for the benefit of the Lenders, a guarantee in form and substance satisfactory to the Agent.

**“Hazardous Materials”** means any substance, product, liquid, waste, pollutant, chemical, contaminant, insecticide, pesticide, gaseous or solid matter, organic or inorganic matter, fuel, micro-organism, ray, odour, radiation, energy, vector, plasma, constituent or material which (a) is or becomes listed, regulated or addressed under any Environmental Laws, or (b) is, or is deemed to be, alone or in any combination, hazardous, hazardous waste, toxic, a pollutant, a deleterious substance, a contaminant or a source of pollution or contamination under any Environmental Laws, including, asbestos or asbestos-containing materials, petroleum and polychlorinated biphenyls, including petroleum or petroleum distillates, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Laws.

**“HST”** means all amounts payable as harmonised sales tax in the Provinces of Nova Scotia, Newfoundland and Labrador and New Brunswick under the ETA.

**“Indebtedness”** of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guarantee, (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (k) all obligations of such Person under Swap Agreements, and (l) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value (other than for other Equity Securities) any Equity Securities of such Person, valued, in the case of redeemable Equity Securities, at the greater of voluntary or involuntary liquidation preference, plus accrued and unpaid dividends.

**“Indemnified Taxes”** means all Taxes other than Excluded Taxes.

**“Indemnitee”** has the meaning set out in Section 9.3(b).

**“Initial Order”** has the meaning set out in Section 2.19.

**“Interest Payment Date”** means the first Business Day of each month.

**“Investment”** means, as applied to any Person (the **“investor”**), any direct or indirect purchase or other acquisition by the investor of, or a beneficial interest in, Equity Securities of any other Person, including any exchange of Equity Securities for Indebtedness, or any direct or



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indirect loan, advance (other than advances to employees for moving and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by the investor to any other Person, including all Indebtedness and Accounts owing to the investor from such other Person that did not arise from sales or services rendered to such other Person in the ordinary course of the investor's business, or any direct or indirect purchase or other acquisition of bonds, notes, debentures or other debt securities of, any other Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment minus any amounts (a) realized upon the disposition of assets comprising an Investment (including the value of any liabilities assumed by any Person other than the Borrower or any Credit Party in connection with such disposition), (b) constituting repayments of Investments that are loans or advances or (c) constituting cash returns of principal or capital thereon (including any dividend, redemption or repurchase of equity that is accounted for, in accordance with GAAP, as a return of principal or capital).

**"Issuing Bank"** means the bank issuing Letters of Credit for the Borrower with the assistance of the Agent in accordance with Section 2.18.

**"ITA"** means the *Income Tax Act* (Canada) as amended from time to time (or any successor statute).

**"Lender"** means any Lender having a Commitment hereunder and/or a Revolving Loan outstanding hereunder.

**"Lender Affiliate"** means, with respect to any Lender, an Affiliate of such Lender.

**"Lenders"** means the Persons listed as lenders on Schedule A (and includes their respective successors) and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

**"Letter of Credit"** means a letter of credit issued by the Issuing Bank for or on behalf of the Borrower with the assistance of the Agent in accordance with Section 2.18.

**"Letter of Credit Exposure"** means, at any time and subject to the Letter of Credit Sub-Line, the sum of: (a) the aggregate face amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all Reimbursement Obligations in respect of all Letter of Credit Guarantees at such time. The Letter of Credit Exposure of any Lender at any time shall be its Applicable Percentage of the total Letter of Credit Exposure at such time with the total of all such Letter of Credit Exposure of all Lenders not to exceed the Letter of Credit Sub-Line. Any Letter of Credit Exposure denominated in U.S. Dollars shall be the Cdn.\$ Equivalent thereof.

**"Letter of Credit Guarantee"** means the agreement for the substitution of applicants or such other form of guarantee or indemnity agreement which is acceptable to the Issuing Bank and the Agent, supporting the issuance of Letters of Credit by the Issuing Bank provided the aggregate amount of all such Letters of Credit issued and to be issued shall not exceed the Letter of Credit Sub-Line.

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**“Letter of Credit Sub-Line”** means the amount of the commitment by the Agent and the Lenders hereunder, in an aggregate amount up to but not exceeding \$35,000,000, to assist the Borrower in obtaining Letters of Credit.

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

**“Loan”** means any loan made by the Lenders to the Borrower pursuant to this Agreement.

**“Loan Documents”** means this Agreement, the Security Documents, the Collateral Agency Agreement (including the Credit Confirmation and Amending Agreement), the Blocked Account Agreement, the Borrowing Requests, the Borrowing Base Reports and the Commitment Letter, and any other document, instrument or agreement (other than participation, agency or similar agreements among the Lenders or between any Lender and any other bank or creditor with respect to any indebtedness or obligations of any Credit Party hereunder or thereunder) now or hereafter entered into in connection with this Agreement, as such documents, instruments or agreements may be amended, modified or supplemented from time to time.

**“Loan Facility Fee”** has the meaning ascribed thereto in the Commitment Letter.

**“Material Adverse Change”** means any event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

**“Material Adverse Effect”** means a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of the Credit Parties taken as a whole, or (b) the validity or enforceability of any of the Loan Documents, the priority of the Liens created thereby or the rights and remedies of the Agent and the Lenders thereunder or (c) any Material Contract, or (d) the amount which the Lenders would be likely to receive (after giving effect to delays in payment and costs of enforcement) upon the liquidation of the Collateral; provided that the commencement and continuation of the CCAA Proceedings shall not, in an of itself, be deemed to constitute or give rise to a Material Adverse Effect.

**“Material Contract”** means (a) the contracts, licences and agreements listed and described on Schedule C, and (b) any other contract, licence or agreement (i) to which any Credit Party is a party or bound, (ii) which is material to, or necessary in, the operation of the business of any Credit Party, and (iii) which a Credit Party cannot promptly replace by an alternative and comparable contract with comparable commercial terms.

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**“Material Indebtedness”** means any Indebtedness (other than the Loans ) of any one or more of the Credit Parties in an aggregate principal amount exceeding Cdn.\$5,000,000.

**“Maturity Date”** means (a) if the Restructuring Event Date has not occurred, June 30, 2009, and (b) if the Restructuring Event Date has occurred, the date which is the earliest of (i) the date which is 12 months after the Restructuring Event Date, (ii) the date on which a plan of arrangement with respect to the Credit Parties under the CCAA has been implemented, having regard to all requisite CRTC approvals being in place, and (iii) the date of termination of this Agreement.

**“Monitor”** means the monitor to be appointed in the CCAA Proceedings.

**“Net Orderly Liquidation Value”** means, as to any particular asset, the value that is estimated to be recoverable in an orderly liquidation thereof, as determined from time to time by a qualified appraiser selected by the Agent, net of all liquidation costs and expenses.

**“New Notes”** means the notes issued by Canwest Media Inc. and Canwest Television Limited Partnership, as co-issuers, pursuant to the Note Purchase Agreement.

**“New Noteholders”** means the holders from time to time of the New Notes.

**“Note Purchase Agreement”** means the note purchase dated as of May 20, 2009 among Canwest Media Inc. and Canwest Television Limited Partnership, as co-issuers, and the note purchasers which are parties thereto, as purchasers, pursuant to which Canwest Media Inc. and Canwest Television Limited Partnership, as co-issuers, have issued notes in the aggregate principal amount of the US\$ Equivalent of Cdn.\$105,000,000 for a purchase price of the US\$ Equivalent of Cdn.\$100,000,000.

**“Noteholder Priority Collateral”** means the Ten Network Shares and all proceeds thereof and distributions thereon.

**“Obligations”** means all obligations, liabilities and Indebtedness of a Credit Party to the Agent, the Lenders or a Lender with respect to the principal of and interest on the Loans and the payment or performance of all other obligations, liabilities and Indebtedness of such Credit Party to the Agent, the Lenders or a Lender hereunder or arising under or pursuant to any one or more of the other Loan Documents or with respect to the Loans, including, without limitation, (i) all reimbursement and indemnity obligations of such Credit Party to the Agent, the Lenders or a Lender hereunder or in connection with any Letter of Credit Guarantee or otherwise and (ii) all interest (including all interest that accrues after the commencement of any case or proceeding by or against a Credit Party under any federal, provincial or state bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case or proceeding), and all charges, expenses, fees, legal fees, filing fees and any other sums chargeable to such Credit Party hereunder, under another Loan Document, or under any other agreement or instrument with the Agent, Lenders or Issuing Bank.

**“Out-of-Pocket Expenses”** means all of the Agent’s present and future expenses incurred relative to this Agreement or any other Loan Documents, whether incurred heretofore or

hereafter, which expenses shall include, without being limited to: the reasonable cost of retaining external legal counsel, record searches, all costs and expenses incurred by the Agent in opening bank accounts, depositing cheques, receiving and transferring funds, and wire transfer charges, any charges imposed on the Agent due to returned items and "insufficient funds" of deposited cheques and the Agent's standard fees relating thereto, any amounts paid by, incurred by or charged to, the Agent by the Issuing Bank under a Letter of Credit Guarantee or the reimbursement agreements related thereto, applications for Letters of Credit or other like document which pertain either directly or indirectly to such Letters of Credit, and the Agent's standard fees relating to the Letters of Credit and any drafts thereunder, reasonable travel, lodging and similar expenses of the Agent's personnel (or any of its agents) in connection with inspecting and monitoring the Collateral from time to time at reasonable intervals hereunder, any applicable reasonable counsel fees and disbursements, fees and taxes relative to the filing of financing statements, and all expenses, costs and fees set forth incurred by or imposed on the Agent by reason of the exercise of any of its rights and remedies under this Agreement or any of the other Loan Documents.

**"Parent"** means Canwest Global Communications Corp., a CBCA corporation.

**"Participant"** has the meaning set out in Section 9.4.

**"Payment Office"** means the Agent's office located at 207 Queen's Quay West, Suite 700, Toronto, Ontario, M5J 1A7, Attention: Chief Credit Officer (or such other office or individual as the Agent may hereafter designate in writing to the other parties hereto).

**"Pension Plan"** means any registered or unregistered pension plan (including any plan subject to the *Pension Benefits Standards Act, 1985* (Canada), the *Pension Benefits Act* (Ontario), or any similar pension benefits standards legislation, each as amended from time to time (or any successor statute) (i) which is maintained by any Credit Party or Affiliate, (ii) in respect of which any Credit Party or Related Party makes, has made or is required to make (at any time during the five (5) calendar years preceding the date of this Agreement) contributions in respect of its employees, or (iii) with respect to which any Credit Party or any Affiliate has incurred or may incur liability, including contingent liability either to such plan or to any Person, administration or Governmental Authority.

**"Permitted Holders"** means (a) the late Israel Harold Asper (in this definition, the "Primary Permitted Holder"); (b) the spouse of the Primary Permitted Holder (including a widow or widower); (c) any lineal descendent of the Primary Permitted Holder (treating for this purpose, any legally adopted descendant as a lineal descendant); (d) the estate trustee of any Person listed in clauses (a) to (c); (e) any trust (whether testamentary or *inter vivos*) primarily for the lineal descendants of the Primary Permitted Holder, spouses of such lineal descendants, the Primary Permitted Holder himself or his spouse; and (f) any and all corporations which are directly or indirectly Controlled by any one or more of the foregoing.

**"Permitted Liens"** means "Permitted Encumbrances" as defined in the Collateral Agency Agreement, but excluding paragraph (o) thereof.

**“Person”** includes any natural person, corporation, company, limited liability company, unlimited liability company, trust, joint venture, association, incorporated organization, partnership, Governmental Authority or other entity.

**“PPSA”** means the *Personal Property Security Act* (Ontario), as amended from time to time (or any successor statute) or similar legislation of any other jurisdiction the laws of which are required by such legislation to be applied in connection with the issue, perfection, enforcement, validity or effect of security interests.

**“Priority Payables”** means, with respect to any Person, any amount payable by such Person which is secured by a Lien in favour of a Governmental Authority which ranks or is capable of ranking prior to or *pari passu* with the Liens created by the Security Documents in respect of any Eligible Accounts, including amounts owing for wages, vacation pay, severance pay, employee deductions, sales tax, excise tax, Tax payable pursuant to the ETA (net of GST input credits), income tax, workers compensation, government royalties, pension fund obligations, Canadian Pension and other Pension Plan obligations, real property tax and other statutory or other claims that have or may have priority over, or rank *pari passu* with, such Liens created by the Security Documents.

**“Property”** means any interest in any kind of property or asset, whether real (including chattels real), personal or mixed, movable or immovable, tangible or intangible.

**“PST”** means all taxes payable under the *Retail Sales Tax Act* (Ontario) or any similar statute of another jurisdiction of Canada.

**“QST”** means the Quebec sales tax imposed pursuant to an *Act respecting the Québec sales tax*.

**“Register”** has the meaning set out in Section 9.4(c).

**“Reimbursement Obligations”** means, at any date, the sum of the outstanding obligations of the Borrower to reimburse the Agent at such time to the extent that the Agent is obligated to reimburse the Issuing Bank at such time pursuant to any Letter of Credit Guarantee.

**“Related Parties”** means, with respect to any Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

**“Release”** is to be broadly interpreted and shall include an actual or potential discharge, deposit, spill, leak, pumping, pouring, emission, emptying, injection, escape, leaching, seepage or disposal of any Hazardous Materials which is or may be in breach of any Environmental Laws.

**“Repayment Notice”** means a notice in the form of Exhibit J;

**“Required Lenders”** means, at any time, Lenders having Commitments which represent, in the aggregate, more than 50% of the aggregate amount of the Commitments of all the Lenders under the Credit.

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

**“Restricted Payment”** shall mean, with respect to any Person, any payment by such Person (i) of any dividends on any of its Equity Securities, (ii) on account of, or for the purpose of setting apart any property for a sinking or other analogous fund for, the purchase, redemption, retirement or other acquisition of any of its Equity Securities or any warrants, options or rights to acquire any Equity Securities, or the making by such Person of any other distribution in respect of any of its Equity Securities, (iii) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Indebtedness of such Person ranking in right of payment or security subordinate to any liability of such Person under the Loan Documents, (iv) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Indebtedness of such Person to a shareholder of such Person or to an Affiliate of a shareholder of such Person, (v) in respect of an Investment, or (vi) of any management, consulting or similar fee or any bonus payment or comparable payment, or by way of gift or other gratuity, to any Affiliate of such Person or to any director or officer thereof.

**“Restructuring Event”** means if the Borrower and the Guarantors which are organized under the laws of Canada or a province thereof or which have assets located in Canada, including Canwest MediaWorks Ireland Holdings, were to apply for relief from the Court via an initial order in proceedings under the CCAA and the Chapter 15 Entities for relief from the United States Bankruptcy Court for the Southern District of the State of New York in proceedings (the **“Chapter 15 Proceedings”**) under Chapter 15 of the United States Code via an order recognizing the CCAA Proceedings as the foreign main proceedings and granting a restraining order providing for a stay on substantially the same terms as provided for in the Initial Order (the **“Chapter 15 Orders”**).

**“Restructuring Event Date”** means the date on which a Restructuring Event first occurs.

**“Revolving Loan”** has the meaning set out in Section 2.1.

**“Rolling Period”** means, as at the end of any calendar month, such calendar month taken together with the eleven immediately preceding calendar months.

**“Scheduled Capital Expenditures”** means Capital Expenditures of the Borrower and the Credit Parties permitted for any Fiscal Year pursuant to Section 6.16.

**“Security Documents”** means the agreements, documents or instruments described or referred to in Section 4.1 and Section 5.11 (including, to the extent such Section describes an amendment, the agreement, document or instrument amended thereby) and any and all other agreements, documents or instruments now or hereafter executed and delivered by any Credit Party or any other Person as security for the payment or performance of all or part of the obligations of the Borrower (or such Credit Party or other Person) hereunder or under any other

Loan Documents, as any of the foregoing may have been, or may hereafter be, amended, modified or supplemented.

“**Securities Account**” has the meaning ascribed to it in the STA.

“**Settlement Date**” means the date, which shall be weekly, or more frequently at the discretion of the Agent upon the occurrence of an Event of Default or a continuing decline or increase of the Loans, that the Agent and the Lenders shall settle among themselves so that (a) the Agent shall not at any time have, as the agent for the Lenders, any money at risk, and (b) on such Settlement Date each Lender shall be responsible for its pro rata amount of the Revolving Loan, calculated on the basis of each of their Applicable Percentages in respect of the outstanding Exposure as at such date, provided that each Settlement Date shall be a Business Day.

“**STA**” means the *Securities Transfer Act, 2006* (Ontario), as amended from time to time (or any successor statute).

“**Stay of Proceedings**” means the stay of proceedings against the Borrower and its Property and the stay of the exercise of rights and remedies against the Borrower and its property contained in the Initial Order, as it may be extended or amended by any other CCAA Order.

“**Subsidiary**” means, with respect to any Person (in this definition, the “parent”) at any date, any other Person the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other Person (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, in each case by the parent or one or more Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent; provided that, for the purpose of this Agreement, “Subsidiary” shall not include Canwest (Canada) Inc., Canwest Limited Partnership, Ten Network Holdings Limited, 4414616 Canada Inc. or any of their respective Subsidiaries.

“**Swap Agreement**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

“**Swap Transaction**” means any transaction or agreement entered into between the Borrower and any other counterparty with respect to any swap, forward, future or derivative transaction or agreement or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

**"Taxes"** means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, value added, capital, capital gains, alternative, franchise, net worth, branch transfer, land transfer, profits, withholding, payroll, employer health, excise, stamp, documentary, real property and personal property taxes, and any other taxes, customs duties, fees, assessments, or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, unemployment insurance payments and workers' compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties with respect thereto, imposed by any Governmental Authority (including federal, state, provincial, territorial, municipal and foreign Governmental Authorities), and whether disputed or not.

**"Ten Network Shares"** means all Equity Securities owned, directly or indirectly, by the Borrower in Ten Network Holdings Limited.

**"Transactions"** means the execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

**"Turkish Asset Sale"** shall mean the sale of the shares or assets of Canwest Medya A.S., Canwest Medya Yönetim Ticaret U.C. A.S., Karaköy Televizyon ve Radyo Yayinciliği Ticaret A.S., CGS Televizyon ve Radyo Yayinciliği Ticaret A.S., Pasifik Televizyon ve Radyo Yayinciliği Ticaret A.S., Galata Televizyon ve Radyo Yayinciliği Ticaret A.S., and Halic Televizyon ve Radyo Yayinciliği A.S. or the sale of any amounts receivable from such entities or their shareholder, as applicable, pursuant to notes made to such entities or their shareholder by Canwest Irish Holdings (Barbados) Inc. or Canwest International Communications Inc. (all such assets collectively, the **"Turkish Assets"**).

**"Type"**, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Canadian Prime Rate or the Base Rate, or is a Letter of Credit.

**"UCC"** means the Uniform Commercial Code as in effect from time to time for the applicable State in question.

**"U.S. Dollars"** and **"U.S.\$"** refer to lawful money of the United States of America.

**"U.S.\$ Equivalent"** means, on any day, the amount of U.S. Dollars that the Agent could purchase, in accordance with its normal practice, with a specified amount of Canadian Dollars based on the spot rate at which U.S. Dollars are offered at the start of such day by CIBC in Toronto, Ontario.

**"Violation Notice"** means any notice received by any Credit Party from any Governmental Authority under any Environmental Law that the applicable Credit Party or any of its property and assets is not in compliance with the requirements of any Environmental Law.

**"Weekly Cash Flow Projection"** means a rolling 13-week cash flow projection, certified by a Responsible Officer and, after the Restructuring Event Date, the Monitor and in all cases



approved by the Lenders. The initial Weekly Cash Flow Projection is the cash flow projection dated May 19, 2009 delivered by the Borrower to the Agent.

**1.2 Classification of Loans and Borrowings.** For purposes of this Agreement, Loans may be classified and referred to by Type (*e.g.*, a “Canadian Prime Rate Loan”) and Borrowings also may be classified and referred to by Type (*e.g.*, a “Canadian Prime Rate Borrowing”).

**1.3 Terms Generally.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. The word “or” is disjunctive; the word “and” is conjunctive. The word “shall” is mandatory; the word “may” is permissive. The words “to the knowledge of” means, when modifying a representation, warranty or other statement of any Person, that the fact or situation described therein is known by the Person (or, in the case of a Person other than a natural Person, known by the Responsible Officer of that Person) making the representation, warranty or other statement, or with the exercise of reasonable due diligence under the circumstances (in accordance with the standard of what a reasonable Person in similar circumstances would have done) would have been known by the Person (or, in the case of a Person other than a natural Person, would have been known by such Responsible Officer of that Person). Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time, (c) any reference herein to any Person shall be construed to include such Person’s successors and permitted assigns, (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, and (f) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

**1.4 Accounting Terms; GAAP.** Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time. All calculations of the components of the financial information for the purposes of determining compliance with the financial ratios and financial covenants contained herein shall be made on a basis consistent with GAAP in existence as at the date of this Agreement and used in the preparation of the consolidated financial statements of the Borrower referred to in Section 5.1(f). Upon the adoption by the Borrower of International Financial Reporting Standards, or in the event of a change in GAAP, the Borrower and the Agent shall negotiate in good faith to revise (if appropriate) such ratios and covenants to give effect to the intention of the parties under this Agreement as at the Closing Date, and any new ratio or covenant shall be subject to

approval by the Required Lenders. In the event that such negotiation is unsuccessful, all calculations thereafter made for the purpose of determining compliance with the financial ratios and financial covenants contained herein shall be made on a basis consistent with GAAP in existence as at the Closing Date.

**1.5 Time.** All time references herein shall, unless otherwise specified, be references to local time in Toronto, Ontario. Time is of the essence of this Agreement and the other Loan Documents.

**1.6 Permitted Liens.** Any reference in any of the Loan Documents to a Permitted Lien is not intended to subordinate or postpone, and shall not be interpreted as subordinating or postponing, or as any agreement to subordinate or postpone, any Lien created by any of the Loan Documents to any Permitted Lien.

**1.7 Interpretation Clause (Québec).** For purposes of any assets, liabilities or entities located in the Province of Québec and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) "personal property" shall be deemed to include "movable property", (b) "real property" shall be deemed to include "immovable property", (c) "tangible property" shall be deemed to include "corporeal property", (d) "intangible property" shall be deemed to include "incorporeal property", (e) "security interest", "mortgage" and "lien" shall be deemed to include a "hypothec", "prior claim" and a resolutive clause, (f) all references to filing, registering or recording under the PPSA or UCC shall be deemed to include publication under the Civil Code of Québec, (g) all references to "perfection" of or "perfected" liens or security interest shall be deemed to include a reference to an "opposable" or "set up" lien or security interest as against third parties, (h) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (i) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) an "agent" shall be deemed to include a "mandatary", (k) "construction liens" shall be deemed to include "legal hypothecs"; (l) "joint and several" shall be deemed to include solidary; (m) "gross negligence or wilful misconduct" shall be deemed to be "intentional or gross fault"; (n) "beneficial ownership" shall be deemed to include "ownership on behalf of another as mandatary"; (o) "servitude" shall be deemed to include easement; (p) "priority" shall be deemed to include "prior claim"; (q) "survey" shall be deemed to include "certificate of location and plan"; (r) "state" shall be deemed to include "province"; (s) "fee simple title" shall be deemed to include "absolute ownership". The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en la langue anglaise seulement.

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## ARTICLE 2 THE CREDITS

**2.1 Commitments.** Subject to the terms and conditions set forth herein, each Lender commits to make Loans (each such Loan made under this Section 2.1, a "Revolving Loan") to the Borrower from time to time during the period commencing on the Effective Date and ending on the Maturity Date (each such commitment, a "Commitment") in an aggregate principal amount up to the amount set forth beside such Lender's name in Schedule A under the heading "Commitment", provided that any Revolving Loans made by any Lender as requested by the Borrower will not result in (i) such Lender's Exposure exceeding such Lender's Commitment, or (ii) the sum of the total Exposure exceeding either the total Commitment or the Borrowing Base. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, repay and reborrow Revolving Loans.

### **2.2 Loans and Borrowings.**

(a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Lenders rateably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to the Letter of Credit Sub-Line limitation, the Borrowing Base limitations and the other limitations on Loans and Borrowings as provided in this Agreement, each Borrowing shall be comprised entirely of Canadian Prime Loans, Base Rate Loans, and/or the delivery of Letters of Credit Guarantees as the Borrower may request in accordance herewith.

### **2.3 Requests for Borrowings.**

(a) The initial Borrowings hereunder on the Effective Date in respect of the Revolving Credit shall be Canadian Prime Borrowings. Thereafter, to request a Borrowing, the Borrower shall notify the Agent of such request by written Borrowing Request not later than 10:00 a.m., Toronto time, on the date of the proposed Borrowing; or (ii) in the case of the issuance of a Letter of Credit Guarantee in accordance with Section 2.18, not later than 11:00 a.m., Toronto time, five (5) Business Days before the date of the proposed Borrowing. The Agent and each Lender are entitled to rely and act upon any written Borrowing Request given or purportedly given by the Borrower, and the Borrower hereby waives the right to dispute the authenticity and validity of any such request or resulting transaction once the Agent or any Lender has advanced funds or issued a Letter a Credit Guarantee based on such written Borrowing Request. Each such written Borrowing Request shall be substantially in the form of Exhibit B and shall specify the following information:

- (i) the aggregate amount of each requested Borrowing and the Type thereof;
- (ii) the date of such Borrowing, which shall be a Business Day;

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- (iii) whether such Borrowing is to be a Canadian Prime Borrowing, a Base Rate Borrowing, or the issuance of a Letter of Credit Guarantee in accordance with Section 2.18;
  - (iv) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of this Agreement.
- (b) If no currency is specified, the Borrowing shall be denominated in Canadian Dollars.
- (c) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request. Thereafter, the Borrower may elect to convert a Borrowing to a different Type. To make an election pursuant to this Section 2.3(c), the Borrower shall notify the Agent of such election in the manner and by the time that a Borrowing Request would be required under Section 2.3(a).
- (d) The Agent shall not incur any liability to the Borrower as a result of acting in accordance with any notice or request referred to in this Section 2.3, which notice or request the Agent believes in good faith to have been given by an officer duly authorized by the Borrower to request Loans on its behalf or for otherwise acting in good faith under this Section 2.3, and the crediting of Loans to the Borrower's disbursement accounts, or transmittal to such Person or other bank account as the Borrower shall direct, shall conclusively establish the obligation of the Borrower to repay such Loans as provided herein. Nothing herein shall, however, release or be deemed to release the Agent in respect of its gross negligence or wilful misconduct.
- (e) Except to the extent otherwise permitted to the contrary hereunder, any Borrowing Request made pursuant to in this Section 2.3 shall be irrevocable and the Borrower shall be bound to borrow the funds requested therein in accordance therewith.

#### **2.4 Funding of Borrowings.**

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, Toronto time, to the account of the Agent most recently designated by it for such purpose by notice to the Lenders. The Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower and designated by the Borrower in the applicable Borrowing Request. The Borrower shall satisfy Reimbursement Obligations promptly as they arise by way of a request for a Loan and all Loans made hereunder to satisfy Reimbursement Obligations in respect of any Letter of Credit Guarantee shall be remitted by the Agent to the Issuing Bank in accordance with such Letter of Credit Guarantee (unless the Issuing Bank has already been fully reimbursed directly by the Borrower in respect of drawings under the Letter of Credit which is the subject of such Letter of Credit Guarantee).

(b) The Agent may, upon notice given by the Agent no later than 12:00 p.m. Toronto time on any Settlement Date, request each Lender to make, and each Lender hereby agrees to make, a Revolving Loan in an amount equal to such Lender's Applicable Percentage (calculated

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with respect to the aggregate Commitments then outstanding) of the aggregate amount of the Revolving Loans made by the Agent from the preceding Settlement Date to the date of such notice. Each Lender's obligation to make the Revolving Loans and to make the settlements pursuant to this Section 2.4 shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defence or other right which any such Lender or the Borrower may have against the Agent, the Borrower, any Lender or any other Person for any reason whatsoever; (ii) any adverse change in the condition (financial or otherwise) of the Borrower; or (iii) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. Without limiting the liability and obligation of each Lender to make such advances, the Borrower authorizes the Agent to charge the Borrower's loan account to the extent amounts received from the Lenders are not sufficient to repay in full the amount of any such deficiency. To the extent that any Lender has failed to fund all such payments and Revolving Loans, the Agent shall be entitled to set off the funding short-fall against that Lender's pro rata share of all payments received from the Borrower.

(c) The Agent, for the account of the Lenders, shall disburse all amounts to the Borrower and shall handle all collections. It is understood that for purposes of advances to the Borrower and for purposes of this Section 2.4, the Agent is using the funds of the Agent.

(d) Unless the Agent shall have been notified in writing by any Lender prior to any advance to the Borrower that such Lender will not make the amount which would constitute its share of the Borrowing on such date available to the Agent, the Agent may assume that such Lender shall make such amount available to the Agent on a Settlement Date, and the Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. A certificate of the Agent submitted to any Lender with respect to any amount owing under this Section 2.4 shall be conclusive, absent manifest error. If such Lender's share of such Borrowing is not in fact made available to the Agent by such Lender on the Settlement Date, the Agent shall be entitled to recover such amount with interest thereon at the rate per annum applicable to Revolving Loans hereunder, on demand, from the Borrower without prejudice to any rights which the Agent may have against such Lender hereunder. Nothing contained in this shall relieve any Lender which has failed to make available its Applicable Percentage of any borrowing hereunder from its obligation to do so in accordance with the terms hereof. Nothing contained herein shall be deemed to obligate the Agent to make available to the Borrower the full amount of a requested advance when the Agent has any notice (written or otherwise) that any of the Lenders will not advance its Applicable Percentage thereof.

(e) On the Settlement Date, the Agent and the Lenders shall each remit to the other, in immediately available funds, all amounts necessary so as to ensure that, as of the Settlement Date, the Lenders shall have their Applicable Percentage share of all outstanding Obligations.

(f) The Agent shall forward to each Lender, at the end of each calendar month, a copy of the account statement rendered by the Agent to the Borrower.

(g) The Agent shall, after receipt of any interest and fees earned under this Agreement, promptly remit to the Lenders their Applicable Percentage of any (i) fees they are entitled to receive, and (ii) interest computed at the rate and as provided for in this Agreement on

all outstanding amounts advanced by the Lenders on each Settlement Date, prior to adjustment, that are subsequent to the last remittance by the Agent to the Lenders of such interest amounts.

## 2.5 Interest.

(a) The Loans comprising each Canadian Prime Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 days or 366 days, as the case may be) at a rate per annum equal to the Canadian Prime Rate plus the Applicable Margin from time to time in effect. The Loans comprising each Base Rate Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days at a rate per annum equal to the Base Rate plus the Applicable Margin from time to time in effect.

(b) If there is a Default or an Event of Default has occurred and is continuing, all amounts outstanding hereunder (including, without duplication, all Loans and all Letter of Credit Exposure) shall bear interest, after as well as before judgment, at a rate per annum equal to 2% plus the rate otherwise applicable to such Loan or, in the case of any amount not constituting principal or interest on a Loan, at a rate equal to 2% plus the rate otherwise applicable to, in the case of Canadian Dollar amounts, Canadian Prime Loans, or in the case of U.S. Dollar amounts, Base Rate Loans.

(c) Accrued interest on each Loan shall be payable in arrears on the earlier of (i) each applicable Interest Payment Date, and (ii) the date of termination of the Commitments. In addition, in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(d) All interest hereunder shall be payable for the actual number of days elapsed (including the first day but excluding the last day). Any Loan that is repaid on the same day on which it is made shall bear interest for one day. The applicable Canadian Prime Rate or Base Rate shall be determined by the Agent, and such determination shall be conclusive absent manifest error.

(e) For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

(f) If any provision of this Agreement would oblige the Borrower to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by any Applicable Law or would result in a receipt by that Lender of "interest" at a "criminal rate" (as such terms are construed under the *Criminal Code* (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would

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not be so prohibited by Applicable Law or so result in a receipt by that Lender of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

- (i) first, by reducing the amount or rate of interest required to be paid to the affected Lender under Section 2.5; and
- (ii) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the affected Lender which would constitute interest for purposes of section 347 of the *Criminal Code* (Canada).

## **2.6 Termination and Reduction of Commitments.**

(a) Unless previously terminated and subject to any earlier demand for payment upon the occurrence of an Event of Default, the Commitments shall terminate on the Maturity Date.

(b) The Borrower may, upon five Business Days prior written notice to the Agent, permanently cancel any unused portion of the Commitments. The Agent shall promptly notify each Lender of the receipt by the Agent of any such notice. Any such cancellation shall be applied rateably in respect of the Commitments of each Lender. Each notice delivered by the Borrower pursuant to this Section 2.6(b) shall be irrevocable. Notwithstanding the termination of this Agreement, until all Obligations are irrevocably and indefeasibly paid and performed in full, the Credit Parties shall remain bound by the terms of this Agreement and under the Loan Documents and shall not be relieved of any of their Obligations and the Agent and Lenders shall retain all their rights and remedies hereunder and under the Loan Documents (including, without limitation, in all then existing and after-arising Collateral). Pending a final accounting, the Agent may withhold any balances in the Borrower's loan account to cover all of the Obligations, whether absolute or contingent, including cash reserves for any contingent Obligations, including an amount equal to 110% of the face amount of any outstanding Letters of Credit with an expiry date on, or within thirty (30) days of the effective date of termination of this Agreement.

(c) Unless the Commitments have been previously terminated, upon the occurrence of the Maturity Date in respect of any Lender, the Commitment thereof shall be permanently reduced to an amount equal to the amount of the Loans made by such Lender at such date and the Commitment shall be permanently reduced by an amount equal to such reduction of such Commitment.

**2.7 Repayment of Loans.** The Borrower hereby unconditionally promises to pay to the Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan and all other Obligations on the earlier of the Maturity Date and the date that the Commitment is terminated pursuant to Section 2.6(b) or Section 7.1.

## **2.8 Evidence of Debt.**

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each

Borrowing made by such Lender hereunder, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Agent shall maintain accounts in which it shall record (i) the amount of each Borrowing made hereunder, and the Type thereof, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder, and (iii) the amount of any sum received by the Agent hereunder for the account of the Lenders and each Lender's share thereof.

(c) The entries made in the accounts maintained pursuant to Sections 2.8(a) and (b) shall be conclusive evidence (absent manifest error) of the existence and amounts of the obligations recorded therein and shall be admissible in any action or proceeding arising therefrom; provided that the failure of any Lender or the Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Borrowings in accordance with the terms of this Agreement. In the event of a conflict between the records maintained by the Agent and any Lender, the records maintained by the Agent shall govern.

(d) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

## 2.9 Prepayments.

(a) Mandatory Borrowing Base Prepayments. If at any time the aggregate Exposure of all Lenders is in excess of (i) the Borrowing Base or (ii) the total Commitment, the Borrower shall immediately pay to the Agent, for the account of the Lenders, the amount of such excess to be applied (i) first, in satisfaction of all Reimbursement Obligations, if any, outstanding at such time, (ii) second, as a prepayment of the Revolving Loans, and (iii) third, as Cover for any remaining Letter of Credit Exposure in an amount of such remaining excess.

(b) Application of Cover Amount. The amount of Cover shall be paid by the Borrower to the Agent on the Maturity Date and retained by the Agent in a collateral account maintained by the Agent at its Payment Office and collaterally assigned to, or charged in favour of, the Agent as security until such time as the applicable Letters of Credit shall have expired or matured and Reimbursement Obligations, if any, with respect thereto shall have been fully satisfied; provided that if any such Reimbursement Obligations are not satisfied when due hereunder, the Agent may apply any or all amounts in such collateral account in satisfaction of any or all such Reimbursement Obligations.

(c) Currency Fluctuations. If, at any time, the Canadian \$ Equivalent of the Loans made by any Lender to the Borrower under any Credit exceeds the Commitment of such Lender under such Credit (any such excess being referred to in this Section as an "**Excess Amount**"),



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then the Borrower will forthwith repay to the Agent, for the account of each applicable Lender, an amount equal to the Excess Amount with respect to such Lender. The Agent shall request repayment of any Excess Amount forthwith upon request therefor by any Lender, but the Agent is not otherwise required to monitor Excess Amount levels or to request repayment thereof.

(d) Voluntary Prepayment. The Borrower may, upon delivery of a Repayment Notice to the Agent (delivered in accordance with the notice periods applicable to delivery of a Borrowing Request under Section 2.3(a)), prepay all or any part of a Canadian Prime Borrowing or Base Rate Borrowing. No prepayment under this Section 2.9(d) shall permanently reduce or terminate any of the Commitments.

(e) Mandatory Payments. If any Credit Party sells or otherwise disposes of any assets (other than obsolete assets in the ordinary course of business and other than the Turkish Assets), then the applicable Credit Party shall pay an amount equal to the net proceeds received by such Credit Party on account of such sale or other disposition (i) to the Agent in reduction of the Exposure hereunder if such assets constitute CIT Priority Collateral (and the Commitments shall be reduced by a corresponding amount) or (ii) to the New Noteholders if such assets constitute Noteholder Priority Collateral to the extent required in accordance with the Note Purchase Agreement and, following repayment in full of the amounts owing to the New Noteholders under the Note Purchase Agreement, any balance shall be paid to the Agent in reduction of the Exposure hereunder (and the Commitments shall be reduced by a corresponding amount).

(f) Notice by Agent. Upon receipt of any prepayment or Repayment Notice pursuant to this Section 2.9, the Agent shall promptly notify each applicable Lender of the contents thereof and of such Lender's Applicable Percentage of such prepayment. Each Repayment Notice provided by the Borrower in respect of any permanent repayment or prepayment hereunder shall be in the form of Schedule 2.9 (e) and shall be irrevocable at such time as the Agent or any Lender has commenced taking any action pursuant to any such prepayment notice.

## 2.10 Fees.

(a) The Borrower shall pay to the Agent for the account of and distribution to each Lender rateably in accordance with each such Lender's Applicable Percentage an unused line fee (the "**Unused Line Fee**") for the period commencing on the Effective Date to and including the Maturity Date (or such earlier date as the Commitments shall have been terminated entirely) computed at a rate of 0.50% per annum on the average daily excess amount of the aggregate Commitments over the aggregate Exposure. The Unused Line Fees on the Commitments shall be calculated monthly in arrears on the last Business Day of each calendar month (and on the date on which the Commitments terminate) and each such calculated amount shall be payable on the first Business Day of the immediately following calendar month (or on the date on which the Commitments terminate, as the case may be). All Unused Line Fees shall be computed on the basis of a year of 365 or 366 days, as the case may be, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrower agrees to pay to the Agent for the account of each Lender rateably in accordance with each Lender's Applicable Percentage, a guarantee fee (a "**Letter of Credit**

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**Guarantee Fee**”) with respect to the provision of Letter of Credit Guarantees, at the rate of 7.75% per annum on the average daily amount of the Letter of Credit Exposure during the period from and including the Effective Date (or the date on which any Letter of Credit Exposure first exists to but excluding the latter of: (i) the date of termination of the Commitments and (ii) the date on which there ceases to be any Letter of Credit Exposure. All Letter of Credit Guarantee Fees payable pursuant to this Section 2.10(b) shall be computed on the basis of a year of 365 or 366 days, as the case may be, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The Borrower also agrees to pay to the Agent, for the account of the Issuing Bank, the Issuing Bank’s standard fees (the “**Standard Letter of Credit Fees**”) with respect to the issuance (currently 0.45% on the face amount of the Letter of Credit at the time of issuance), administration, handling, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Such standard fees shall be payable within 10 days after demand by the Agent or the Issuing Bank. It is acknowledged and agreed by the Lenders that the Issuing Bank may charge fees and other amounts directly to the Agent as a condition to issuing Letters of Credit and such fees and other amounts, to the extent that the Agent has not been reimbursed therefor by the Borrower, shall be charged by the Agent against each Lender’s rateable share (taking into account each such Lender’s Applicable Percentage) of other amounts owing from the Agent to each Lender (including, without limitation, each such Lender’s rateable share of Letter of Credit Guarantee Fees or Standard Letter of Credit Fees).

(c) The Borrower agrees to pay to the Agent, for its own account, (i) on the Effective Date that portion of the Loan Facility Fee payable (in accordance with the Commitment Letter) on the Effective Date, and (ii) on the Restructuring Event Date that portion of the Loan Facility Fee payable (in accordance with the Commitment Letter) on the Restructuring Event Date.

(d) The Borrower agrees to pay to the Agent, for its own account, on the Effective Date and on the first Business Day of each calendar month thereafter the Administrative Management Fee, which the Borrower acknowledges and agrees shall be fully earned when paid.

(e) The Borrower agrees to pay to the Agent, for its own account, the Agent’s standard charges, fees, costs and expenses for its field examinations, verifications and audits in an amount equal to \$1,200 per person per day plus such field examiner’s and auditor’s out-of-pocket expenses.

(f) The Borrower agrees to pay to the Agent, for its own account, fees payable in the amounts and at the times separately agreed upon in writing between the Borrower and the Agent.

(g) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Agent, for its own account or for distribution to the Lenders or the Issuing Bank, as the case may be. Fees paid shall not be refundable except in the case of manifest error in the calculation of any fee payment.

2.11 [Intentionally Deleted.]

2.12 Increased Costs; Illegality; Alternate Rate of Interest.

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- (a) If any Change in Law shall:
- (i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender; or
  - (ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement (including the imposition on any Lender of, or any change to, any Indemnified Tax or other charge with respect to its Loans or any Letter of Credit or participation therein, or its obligation to make Loans or any Letter of Credit);

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender of participating in, issuing or maintaining any Letter of Credit or any Loan or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender, such additional amount or amounts as will compensate such Lender, for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy) and such Lender's desired return on capital, then from time to time the Borrower will pay to such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth amount or amounts necessary to compensate such Lender as specified in Sections 2.12(a) or (b), together with a brief description of the Change of Law, shall be delivered to the Borrower, and shall be conclusive absent manifest error. In preparing any such certificate, a Lender shall be entitled to use averages and to make reasonable estimates, and shall not be required to "match contracts" or to isolate particular transactions. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's right to demand such compensation.

(e) In the event that any Lender shall have determined (which determination shall be reasonably exercised and shall, absent manifest error, be final, conclusive and binding upon all parties) at any time that the current or reasonably expected foreign currency markets are unusually unstable or that the making or continuance of any Loan denominated in a currency

other than Canadian Dollars has become unlawful or materially restricted as a result of compliance by such Lender in good faith with any Applicable Law, or by any applicable guideline or order (whether or not having the force of law and whether or not failure to comply therewith would be unlawful), then, in any such event, such Lender shall give prompt notice (by telephone and confirmed in writing) to the Borrower and to the Agent of such determination (which notice the Agent shall promptly transmit to the other Lenders). Upon the giving of the notice to the Borrower referred to in this Section 2.12(e), the Borrower's right to request (by continuation, conversion or otherwise), and such Lender's obligation to make, Loans denominated in a currency other than Canadian Dollars shall be immediately suspended, and thereafter any requested Borrowing of Loans denominated in a currency other than Canadian Dollars shall, as to such Lender only, be deemed to be a request for a Canadian Prime Loan, and if the affected Loan or Loans are then outstanding, the Borrower shall immediately, or if permitted by Applicable Law, no later than the date permitted thereby, upon at least one Business Day prior written notice to the Agent and the affected Lender, convert each such Loan denominated in a currency other than Canadian Dollars into a Canadian Prime Loan, provided that if more than one Lender is affected at any time, then all affected Lenders must be treated the same pursuant to this Section 2.12(e).

**2.13 Intentionally Deleted.**

**2.14 Taxes.**

(a) Any and all payments by or on account of any obligation of the Borrower hereunder shall be made free and clear of and without deduction or withholding for any Indemnified Taxes; provided that if the Borrower shall be required to deduct or withhold any Indemnified Taxes from such payments, then (i) the sum payable shall be increased as necessary so that, after making all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section 2.14), the Agent, or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deduction or withholding been made, (ii) the Borrower shall make such deduction or withholding, and (iii) the Borrower shall pay to the relevant Governmental Authority in accordance with Applicable Law the full amount deducted or withheld.

(b) In addition to the payments by the Borrower required by Section 2.14(a), the Borrower shall pay any and all present or future stamp or documentary Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement to the relevant Governmental Authority in accordance with Applicable Law.

(c) The Borrower shall indemnify the Agent, and each Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes paid by the Agent, such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.14) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the

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amount of such payment or liability delivered to the Borrower by a Lender, or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(e) If the Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.14 and, in the Agent's or such Lender's opinion, such refund amount is both reasonably identifiable and quantifiable by it without involving it in an unacceptable administrative burden, it shall pay over such refund amount to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.14 with respect to the Taxes giving rise to such refund, and only to the extent that the Agent or Lender, as applicable, is satisfied that it may do so without prejudice to its right, as against the relevant Governmental Authority, to retain such refund), net of all out-of-pocket expenses of the Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that the Borrower, upon the request of the Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent or such Lender if the Agent or such Lender is required to repay such refund to such Governmental Authority. Nothing herein contained shall (i) interfere with the right of the Agent or any Lender to arrange its affairs in whatever manner it thinks fit and, in particular, no Lender shall be under any obligation to claim relief for tax purposes on its corporate profits or otherwise, or to claim such relief in priority to any other claims, reliefs, credits or deductions available to it, or (ii) require the Agent or any Lender to make available its tax returns (or any other information relating to its Taxes which it deems confidential) to the Borrower or any other Person.

#### **2.15 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.**

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or amounts payable in respect of Reimbursement Obligations, amounts payable under any of Sections 2.12 or 2.14, or amounts otherwise payable hereunder) prior to 12:00 noon, Toronto time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Agent at the Payment Office, except that payments pursuant to any indemnities contained herein shall be made directly to the Persons entitled thereto. The Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension, Base Rate Loans shall be made in U.S. Dollars. All other payments under this Section 2.15 shall

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be made in Canadian Dollars. The Borrower hereby authorizes the Agent to debit the Borrower's loan account to effect any payment due to the Lenders or the Agent pursuant to this Agreement. Any resulting overdraft in such account shall be payable by the Borrower to the Agent in same day funds.

(b) If at any time insufficient funds are received by and available to the Agent to pay fully all amounts of principal, interest, fees, amounts payable in respect of Reimbursement Obligations, amounts payable under any of Sections 2.12 or 2.14 and other amounts payable hereunder, any available funds shall be applied (i) first, to pay any fees, indemnities or expense reimbursements then due to the Agent from the Borrower, (ii) second, to pay any fees or expense reimbursements then due to the Lenders from the Borrower, (iii) third, to pay interest due in respect of all Revolving Loans, (iv) fourth, to pay or prepay principal of the Revolving Loans and unpaid Reimbursement Obligations and (v) fifth, to the payment of any other Obligation due to the Agent or any Lender by the Borrower, including amounts payable under any of Sections 2.12 or 2.14 and other amounts otherwise payable hereunder.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on or fees in respect of any of its Revolving Loans or its share of Reimbursement Obligations resulting in such Lender receiving payment of a greater proportion of the aggregate amount of any principal of or interest on or fees in respect of any of its Revolving Loans or participations in Reimbursement Obligations than the proportion to which it is entitled, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans or participations in Reimbursement Obligations owed to other Lenders (as the case may be) to the extent necessary so that the benefit of all such payments shall be shared by the Lenders rateably taking into account each of the Applicable Percentages in respect of each Lender; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) this Section 2.15(c) shall not apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in Reimbursement Obligations to any assignee or participant, other than to the Borrower or other Credit Party or any Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Agent shall have received written notice from the Borrower prior to the date on which any payment is due to the Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and

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including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the applicable rate for Canadian Prime Loans (if such amount is denominated in Canadian Dollars) or the applicable rate for Base Rate Loans (if such amount is denominated in U.S. Dollars).

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.15(d), then the Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Agent for the account of such Lender to satisfy such Lender's obligations under such Section 2.15(d) until all such unsatisfied obligations are fully paid.

(f) Nothing in this Agreement shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

**2.16 Currency Indemnity.** If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement or any other Loan Document, it becomes necessary to convert into a particular currency (the "**Judgment Currency**") any amount due under this Agreement or under any other Loan Document in any currency other than the Judgment Currency (the "**Currency Due**"), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For this purpose "rate of exchange" means the rate at which the Agent is able, on the relevant date, to purchase the Currency Due with the Judgment Currency in accordance with its normal practice at its head office in Toronto, Ontario. In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given and the date of receipt by the Agent of the amount due, the Borrower will, on the date of receipt by the Agent, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by the Agent on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of receipt by the Agent is the amount then due under this Agreement or such other Loan Document in the Currency Due. If the amount of the Currency Due which the Agent is so able to purchase is less than the amount of the Currency Due originally due to it, the Borrower shall indemnify and save the Agent and the Lenders harmless from and against all loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Agreement and the other Loan Documents, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Agent from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due under this Agreement or any other Loan Document or under any judgment or order.

**2.17 Collection of Accounts.**

(a) Each Credit Party shall, and shall cause each other Credit Party to, at its expense, enforce, collect and receive all amounts owing on its Accounts in the ordinary course of its business and any proceeds it so receives shall be subject to the terms hereof. Any proceeds received by a Credit Party in respect of Accounts, and any cheques, cash, credit card sales and

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receipts, notes or other instruments or property received by a Credit Party with respect to any Collateral, shall be held by such Credit Party in trust or as mandatary for the Agent, separate from such Credit Party's own property and funds, and promptly turned over to the Agent with proper assignments or endorsements by deposit to the Blocked Accounts.

(b) Each Credit Party shall, and shall cause each other Credit Party to: (i) irrevocably authorize and direct any bank which maintains any Credit Party's initial receipt of cash, cheques and other items to promptly wire transfer all available funds to a Blocked Account; and (ii) advise all such banks of the Agent's security interest in such funds. The Borrower shall, and shall cause each other Credit Party to, provide the Agent with prior written notice of any and all deposit accounts opened or to be opened subsequent to the Effective Date. All amounts received by the Agent in payment of Accounts will be credited to the Blocked Account when the Agent is advised by its bank of its receipt of "collected funds" at the Agent's bank account in Toronto, Ontario on the Business Day of such advise if advised no later than 12:00 noon, Toronto time, or on the next succeeding Business Day if so advised after 12:00 noon, Toronto time. No cheques, drafts or other instrument received by the Agent shall constitute final payment to the Agent unless and until such instruments have actually been collected.

(c) At the request of the Agent, the Borrower shall, and shall cause each Credit Party to: (i) indicate on all of its invoices that funds should be delivered to and deposited in a lock box or a Blocked Account, as applicable; and (ii) direct all of its account debtors to deposit any and all proceeds of Collateral into the lock boxes or the Blocked Accounts, as applicable.

(d) Each Credit Party shall, and shall cause each other Credit Party to, establish and maintain, in its own respective name and at its expense, deposit accounts and lock boxes with such banks as are acceptable to the Agent (the "**Blocked Accounts**") into which the Borrower shall promptly cause to be deposited: (i) all proceeds of Collateral received by any Credit Party, including all amounts payable to any Credit Party from credit card issuers and credit card processors, and (ii) all amounts on deposit in deposit accounts used by any Credit Party at each of its locations, all as further provided in Section 2.17(b). The banks at which the Blocked Accounts are established and the applicable Credit Parties shall enter into agreements, in form and substance satisfactory to the Agent (the "**Blocked Account Agreements**"), providing that, among other things, all cash, cheques and items received or deposited in the Blocked Accounts are subject to Liens in favour of the Agent, that the depository bank has no Lien upon, or right of set off against, the Blocked Accounts and any cash, cheques, items, wires or other funds from time to time on deposit therein, except as otherwise provided in the Blocked Account Agreements, and that on a daily basis the depository bank will wire, or otherwise transfer, in immediately available funds, all funds received or deposited into the Blocked Accounts to such bank account as the Agent may from time to time designate for such purpose. The Borrower hereby confirms and agrees that all amounts deposited in such Blocked Accounts and any other funds received and collected by the Agent, whether as proceeds of Inventory or other Collateral or otherwise, shall be subject to the Liens in favour of the Agent.

(e) The parties hereto hereby acknowledge, confirm and agree that the implementation of the cash management arrangements is a contractual right provided to the Agent and the Lenders hereunder in order for the Agent and the Lenders to manage and monitor their collateral position and not a proceeding for enforcement or recovery of a claim, or pursuant



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to, or an enforcement of, any security or remedies whatsoever, that the cash management arrangements contemplated herein are critical to the structure of the lending arrangements contemplated herein, that the Lenders are relying on the Borrower's acknowledgement, confirmation and agreement with respect to such cash management arrangements in making accommodations of credit available to the Borrower and in particular that any accommodations of credit are being provided by the Lenders to the Borrower strictly on the basis of a borrowing base calculation to fully support and collateralize any such accommodations of credit hereunder.

**2.18 Letters of Credit.** In order to assist the Borrower in establishing Letters of Credit with the Issuing Bank, the Borrower has requested the Agent and the Agent has agreed to execute a Letter of Credit Guarantee subject to the following terms and conditions:

(a) Within the limits of the Commitments and the Borrowing Base, and the other limitations contained in this Agreement, the Agent shall assist the Borrower in obtaining Letters of Credit, denominated in Canadian Dollars or U.S. Dollars, in an amount not to exceed the outstanding amount of the Letter of Credit Sub-Line. The Agent's assistance for amounts in excess of the limitation set forth herein shall at all times and in all respects be in the Agent's sole discretion. It is understood that the term, form and purpose of each Letter of Credit and all documentation in connection therewith, and any amendments, modifications or extensions thereof, must be mutually acceptable to the Agent, the Issuing Bank and the Borrower.

(b) The Agent shall have the right, without notice to the Borrower, to charge the Borrower's loan account with the amount of any and all indebtedness, liability or obligation of any kind incurred by the Agent under the Letter of Credit Guarantees at the earlier of (a) payment by the Agent under the Letter of Credit Guarantee; or (b) the occurrence and continuance of an Event of Default, unless the Borrower has provided Cover to the Agent in an amount equal to the face amount of such Letter of Credit Guarantees. Any amount so charged to the Borrower's loan account shall be deemed a Canadian Prime Rate Loan or a US Base Rate Loan hereunder, depending on the currency of the Borrower's payment obligation thereunder, and shall incur interest at the rate provided in Section 2.5.

(c) The Borrower unconditionally indemnifies the Agent and holds the Agent harmless from any and all loss, claim or liability incurred by the Agent arising from any transactions or occurrences relating to Letters of Credit established or opened for the Borrower's account, the collateral relating thereto and any drafts or acceptances thereunder, and all Obligations thereunder, including any such loss or claim due to any errors, omissions, negligence, misconduct or action taken by any Issuing Bank, other than for any such loss, claim or liability arising out of the gross negligence or willful misconduct by the Agent under the Letter of Credit Guarantee. This indemnity shall survive termination of this Agreement. The Borrower agrees that any charges incurred by the Agent for the Borrower's account from the Issuing Bank shall be conclusive upon the Agent and may be charged to the Borrower's loan account.

(d) The Agent shall not be responsible for: (a) the existence, character, quality, quantity, condition, packing, value or delivery of the goods purporting to be represented by any documents; (b) any difference or variation in the character, quality, quantity, condition, packing, value or delivery of the goods from that expressed in the documents; (c) the validity, sufficiency

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or genuineness of any documents or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (d) the time, place, manner or order in which shipment is made; partial or incomplete shipment, or failure or omission to ship any or all of the goods referred to in the Letters of Credit or documents; (e) any deviation from instructions; (f) delay, default, or fraud by the shipper and/or anyone else in connection with the goods or the shipping thereof; or (g) any breach of contract between the shipper or vendors and the Borrower.

(e) Each of the Credit Parties agrees that any action taken by the Agent, if taken in good faith, or any action taken by any Issuing Bank, under or in connection with the Letters of Credit, the Letter of Credit Guarantees, the drafts or acceptances, or the Collateral, shall be binding on the Credit Parties and shall not result in any liability whatsoever of the Agent to any Credit Party. In furtherance thereof, the Agent shall have the full right and authority to: (a) clear and resolve any questions of non compliance of documents; (b) give any instructions as to acceptance or rejection of any documents or goods; (c) execute any and all steamship or airways guarantees (and applications therefor), indemnities or delivery orders; (d) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances, or documents; and (e) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letters of Credit, drafts or acceptances or Letters of Credit Guarantees; all in the Agent's sole discretion. The Issuing Bank shall be entitled to comply with and honor any and all such documents or instruments executed by or received solely from the Agent, all without any consent from any Credit Party. In addition, without the Agent's express consent and endorsement in writing, each of the Credit Parties agrees: (a) not to (i) execute any applications for steamship or airway guarantees, indemnities or delivery orders; (ii) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances or documents; or (iii) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letters of Credit, drafts or acceptances or Letters of Credit Guarantees; and (b) upon the occurrence and during the continuance of an Event of Default, not to (i) clear and resolve any questions of non compliance of documents, or (ii) give any instructions as to acceptances or rejection of any documents or goods.

(f) Each of the Credit Parties shall, and shall cause each other Credit Party to: (a) procure any necessary import, export or other licenses or certificates for the import or handling of the Collateral; (b) comply with all Applicable Law in regard to the shipment and importation of the Collateral, or the financing thereof; and (c) deliver to the Agent any certificates in that regard that the Agent may at any time request to be furnished. In connection herewith, the Borrower warrants and represents that all shipments made under any such Letters of Credit are in accordance with Applicable Law of the countries in which the shipments originate and terminate, and are not prohibited by any such Applicable Law. Each of the Credit Parties assumes all risk, liability and responsibility for, and agrees to pay and discharge, all present and future local, provincial, state, federal or foreign Taxes, duties, or levies with respect to such Collateral. Any embargo, restriction, laws, customs or regulations of any country, state, city, or other political subdivision, where the Collateral is or may be located, or wherein payments are to be made, or wherein drafts may be drawn, negotiated, accepted, or paid, shall be solely the Borrower's risk, liability and responsibility.

(g) Upon any payments made to the Issuing Bank under the Letter of Credit Guarantee, the Agent shall acquire by subrogation, any rights, remedies, duties or obligations granted or undertaken by the Borrower to the Issuing Bank in any application for Letters of Credit, any standing agreement relating to Letters of Credit or otherwise, all of which shall be deemed to have been granted to the Agent and apply in all respects to the Agent and shall be in addition to any rights, remedies, duties or obligations contained herein.

**2.19 Conversion to DIP Facility.** Upon the occurrence of a Restructuring Event, and provided that such Restructuring Event shall include the following steps (each of which shall be in form and substance satisfactory to the Lenders), the Credit shall be converted into a debtor-in-possession financing arrangement:

- (a) a court of competent jurisdiction shall have issued an initial order under the CCAA (the “**Initial Order**”), which order shall be approved by the Lenders and shall include:
- (i) provisions approving this Agreement and all other Loan Documents, together with such other documents as the Lenders deem necessary or appropriate;
  - (ii) provisions granting to the Lenders, as security for the Obligations, Liens on all present and future assets of the Credit Parties having the priority as set out under Section 2.20 (the “**DIP Charge**”) with such DIP Charge (together with the existing Liens in favour of the Collateral Trustee) explicitly having priority over all present and future Liens other than a Lien for administrative expenses in scope and quantum acceptable to the Lenders (the “**Administrative Charge**”);
  - (iii) provisions confirming that, subject to Section 2.19(a)(ii), the priorities of the Lenders and New Noteholders under the DIP Charge are as set forth under Section 2.20.
  - (iv) provisions confirming that the DIP Charge is in addition to and without prejudice to the existing Liens in favour of the Collateral Agent and that all Obligations will be secured by the existing Liens in favour of the Collateral Agent as well as by the DIP Charge;
  - (v) provisions declaring that the granting of the DIP Charge and all other documents executed and delivered to the Lenders as contemplated herein, including all actions taken to perfect, record and register the DIP Charge, do not constitute conduct meriting an oppression remedy, settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions under any applicable laws;
  - (vi) provisions restricting the granting of any additional Liens on the assets of the Credit Parties other than the Directors’ Charge;

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- (vii) provisions appointing FTI Consulting as Monitor, or such other Monitor that is acceptable to the Lenders;
  - (viii) provisions ordering and declaring the Lenders to be treated as unaffected creditors in any CCAA plan of arrangement and providing that the stay of proceedings under the Initial Order shall not apply to the Lenders and their rights under this Agreement or any other Loan Documents (including the existing Liens in favour of the Collateral Agent); and
  - (ix) provisions providing the Lenders and their advisors clear and unfettered access to the books and records of the Credit Parties and such other information as the Credit Parties deem necessary or appropriate; and
- (b) the execution and delivery by the Credit Parties of any additional legal documentation deemed necessary or appropriate by the Lenders.

**2.20 Priorities.** The obligations of the Credit Parties under this Agreement shall be secured by a first priority Lien on the CIT Priority Collateral and a second priority Lien on the Noteholder Priority Collateral. The obligations of the Credit Parties under the New Notes shall be secured by a first priority Lien on the Noteholder Priority Collateral and a second priority Lien on the CIT Priority Collateral. Certain obligations of the Credit Parties to The Bank of Nova Scotia in respect of cash management services and letters of credit shall be secured by the BNS Priority Collateral.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES

In order to induce the Agent and the Lenders to enter into this Agreement, to make any Loans hereunder and to issue any Letters of Credit hereunder, each Credit Party hereby represents and warrants to the Agent and each Lender that each statement set forth in this Article 3 is true and correct on the date hereof, and will be true and correct on the date of each Borrowing, on the date each Letter of Credit is requested hereunder and on the date each Letter of Credit is issued hereunder:

**3.1 Organization; Powers.** The Borrower and each other Credit Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now and formerly conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

**3.2 Authorization; Enforceability.** The Transactions are within each Credit Party's corporate powers and have been duly authorized by all necessary corporate and, if required, shareholder action. This Agreement and the other Loan Documents have been duly executed and delivered by the Borrower and each other Credit Party thereto and constitute legal, valid and binding obligations of the Borrower and each other Credit Party thereto, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganisation,

moratorium or other Applicable Law affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

**3.3 Governmental Approvals; No Conflicts.** The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except as disclosed in Schedule 3.3, (b) will not violate any Applicable Law or the charter, by-laws or other organizational documents of the Borrower or any other Credit Party or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any other Credit Party or their respective assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any other Credit Party, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any other Credit Party, except for any Lien arising in favour of the Agent, for the benefit of the Lenders, under the Loan Documents.

**3.4 Financial Condition; No Material Adverse Effect.**

(a) The Borrower has furnished to the Lenders its consolidated balance sheets and statements of income, retained earnings and changes in financial position (i) as of and for the Fiscal Years ended August 31, 2006, August 31, 2007 and August 31, 2008, reported on by its auditors, and (ii) as of and for the fiscal month and the portion of the Fiscal Year ended February 28, 2009, certified by a Responsible Officer. Such financial statements present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Borrower as of such dates and for such periods in accordance with GAAP, subject to year end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) All information (including that disclosed in all financial statements) pertaining to the Borrower and the other Credit Parties (other than projections) (in this Section 3.4(c), the "Information") that has been or will be made available to the Lenders, or the Agent by the Borrower or any representative of the Borrower and the other Credit Parties, taken as a whole, is or will be, when furnished, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made. The projections that have been or will be made available to the Lenders, or the Agent by the Borrower or any representative of the Borrower have been or will be prepared in good faith based upon reasonable assumptions.

(c) The Borrower has delivered to the Lenders a weekly cash flow forecast for the period ending December 31, 2009. Such weekly cash flow forecast has been prepared in good faith by the Borrower, are based on assumptions which are believed by the Borrower on the date hereof and on the Effective Date to be reasonable, are based on the best information available to the Borrower as of the date of delivery thereof.

**3.5 Litigation.** Except with respect to the CCAA Proceedings and litigation that is stayed by the commencement of the CCAA Proceedings or as otherwise disclosed in Schedule 3.5, there are no actions, suits, counterclaims or proceedings (including any Tax-related matter) by any Person or investigation by any Governmental Authority pending against or, to the knowledge of

the Borrower, threatened against or affecting the Borrower or any of the other Credit Parties (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters), or (ii) that involve this Agreement, any other Loan Document, or the Transactions. Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or could reasonably be expected to have, a Material Adverse Effect.

**3.6 Compliance with Applicable Laws and Agreements.** The Borrower and each other Credit Party is in compliance with all Applicable Laws applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect and except with respect to the Existing Notes. Neither the Borrower nor any other Credit Party has violated or failed to obtain any Authorization necessary to the ownership of any of its property or assets or the conduct of its business, which violation or failure could reasonably be expected to have (in the event that such a violation or failure were asserted by any Person through appropriate action) a Material Adverse Effect.

**3.7 Professional Retainers.** The Borrower has delivered to the Agent a true and complete list of (i) all retainers for professionals and advisors engaged by the Borrower or any Guarantor as of the date hereof with respect to the proposed CCAA Proceedings, together with the fees payable pursuant to such retainers, and (ii) all of the Borrowers' and Guarantors' (and their Subsidiaries') existing directors' and officers' insurance; and there are no directors or employees trusts that have been established by any Issuer or Guarantor (or any of their Subsidiaries). Except as otherwise disclosed in writing to the Agent, the Credit Parties have not established a "key employee retention program" in connection with its current restructuring process.

**3.8 Taxes.** The Borrower and each other Credit Party has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it (including all instalments with respect to the current period) and has made adequate provision for Taxes for the current period, except Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such other Credit Party, as applicable, has set aside on its books adequate reserves.

**3.9 Titles to Real Property.** The Borrower and each other Credit Party have fee simple title to their respective owned real properties (or in Quebec, immovable properties), and with respect to leased real properties, title to the leasehold estate with respect thereto, pursuant to valid and enforceable leases, free and clear of all Liens except Permitted Liens, including the Liens disclosed to the Lenders in Schedule 3.9.

**3.10 Titles to Personal Property.** The Borrower and each other Credit Party have title to their respective owned moveable properties, and with respect to leased moveable properties, title to the leasehold estate with respect thereto, pursuant to valid and enforceable leases, free and clear of all Liens except Permitted Liens, including the Liens disclosed in Schedule 3.10.

**3.11 Pension Plans.** The Pension Plans and any benefit plans sponsored, maintained or contributed by any Credit Party or any Affiliate are, with the exception of a supplemental

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retirement plan for eligible employees (such supplemental retirement plan not being intended to be subject to, and is not subject to, pension benefits standards legislation), duly registered under the ITA (where required) and any other Applicable Laws which require registration, have been administered in accordance with the ITA and such other Applicable Laws and no event has occurred which could reasonably be expected to cause the loss of such registered status, except to the extent that any failure to do so could not reasonably be expected to have a Material Adverse Effect. All material obligations of the Borrower and each other Credit Party (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Pension Plans and other benefit plans and the funding agreements therefor have been performed on a timely basis, except to the extent that any failure to do so could not reasonably be expected to have a Material Adverse Effect. There are no outstanding disputes concerning the assets of the Pension Plans or any benefit plans. No promises of benefit improvements under the Pension Plans or any benefit plans have been made except where such improvement could not reasonably be expected to have a Material Adverse Effect. All employer and employee payments, contributions (including "normal cost", "special payments" and any other payments in respect of any funding deficiencies or shortfalls) or premiums required to be withheld, made, remitted or paid to or in respect of each Pension Plan or benefit plan and all other amounts that are due to the pension fund of a Pension Plan from a Credit Party or an Affiliate have been withheld, made, remitted or paid on a timely basis in accordance with the terms of such plans, any applicable collective bargaining agreement or employment contract and all Applicable Laws. Any assessments owed to the Pension Benefits Guarantee Fund established under the *Pension Benefits Act* (Ontario), or other assessments or payments required under similar legislation in any other jurisdiction, have been paid when due. There have been no improper withdrawals or applications of the assets of the Pension Plans or any benefit plans. For any Pension Plan which is a defined benefit plan ("**Defined Benefit Plan**") of the Borrower or any Subsidiary, the most recent actuarial valuations prepared for funding purposes in respect thereof have been made available to the Agent. Except as disclosed in Schedule 3.11, no events have occurred which could give rise to a partial or full termination of any Pension Plan which would have a Material Adverse Effect and there is no non-registered Pension Plan in respect of which an event has occurred that could require immediate or accelerated funding in respect of unfunded liabilities or other deficit amounts which would have a Material Adverse Effect. Except as disclosed in Schedule 3.11, as of the date hereof, each of the Pension Plans is fully funded on a solvency, going concern and wind-up basis (using actuarial methods and assumptions which are consistent with the valuations last filed with the applicable Governmental Authorities and in accordance with Canadian generally accepted actuarial practice). Subject to the matters disclosed in Schedule 3.11, no material changes have occurred (other than to the value of plan assets as a direct result of the return on plan investments due to current economic markets where such investments were made in accordance with Applicable Laws and the relevant statement of investment policies and procedures for such plan) in respect of any Defined Benefit Plan or non-pension post-retirement benefit plan since the date of the most recently completed actuarial valuations which could reasonably be expected to have a Material Adverse Effect. None of the Borrower, or any Credit Party or any of their respective Affiliates is subject to the *United States Employee Retirement Income Security Act of 1974*, as amended.

**3.12 Disclosure.** The Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it or any other Credit Party is subject, and all other

matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the representations or warranties made by any Credit Party in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of any Credit Party in connection with the Loan Documents, contains any untrue statement of a material fact or omits any material fact necessary to be stated therein to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered.

**3.13 Defaults.** Neither the Borrower nor any other Credit Party is in default nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute a default (in any respect that would have a Material Adverse Effect) under any loan or credit agreement, indenture, mortgage, deed of trust, security agreement or other instrument or agreement evidencing or pertaining to any Indebtedness of or Lien against the Borrower or any other Credit Party, or under any material agreement or instrument to which the Borrower or any other Credit Party is a party or by which the Borrower or any other Credit Party is bound, except with respect to the Existing Notes and as otherwise disclosed to the Lenders in Schedule 3.13. No Default has occurred and is continuing.

**3.14 Casualties; Taking of Properties.** Since August 31, 2008, neither the business nor the properties of the Borrower or any other Credit Party have been affected in a manner that has had, or could reasonably be expected to have, a Material Adverse Effect as a result of any fire, explosion, earthquake, flood, drought, windstorm, accident, strike or other labour disturbance, embargo, requisition or taking of property or cancellation of contracts, permits or concessions by any domestic or foreign Governmental Authority, riot, activities of armed forces, or acts of God or of any public enemy.

**3.15 Subsidiaries.** As of the Effective Date, Schedule 3.15 correctly sets forth the (i) names, (ii) form of legal entity, (iii) Equity Securities issued and outstanding, (iv) Equity Securities owned by each Credit Party or a Subsidiary of such Credit Party (and specifying such owner), and (v) jurisdictions of organization of all Credit Parties and their Subsidiaries. Except as described in Schedule 3.15, as of the Effective Date, the Credit Parties directly or indirectly do not own any Equity Securities or debt security which is convertible, or exchangeable, for Equity Securities of any other Person. Unless otherwise indicated in Schedule 3.15, as of the Effective Date, all of the outstanding Equity Securities of each Credit Party is directly or indirectly owned of record and beneficially by the Borrower, there are no outstanding options, warrants or other rights to purchase Equity Securities of any such Credit Party, and all such Equity Securities so owned are duly authorized, validly issued, fully paid and non-assessable, and were issued in compliance with all applicable federal, provincial or foreign securities and other Applicable Laws, and are free and clear of all Liens, except for Permitted Liens. Except in respect of Foxsports World Canada and Canwest Television Limited Partnership, none of the terms of any Equity Securities in any partnership or limited liability company that form part of the Collateral provide that such Equity Securities are a "security" for the purposes of the STA. Schedule 3.15 also lists those Subsidiaries, the Equity Securities of which have not been pledged to the Collateral Agent as at the Effective Date.



**3.16 Insurance.** All policies of fire, liability, workers' compensation, casualty, flood, business interruption and other forms of insurance owned or held by the Borrower or any other Credit Party are (a) sufficient for compliance with all requirements of Applicable Law and of all agreements to which the Borrower or any other Credit Party is a party, (b) are valid, outstanding and enforceable policies, (c) provide adequate insurance coverage in at least such amounts and against at least such risks (but including in any event public liability) as are usually insured against in the same general area by Persons engaged in the same or a similar business to the assets and operations of the Borrower and each other Credit Party, and (d) will not in any way be adversely affected by, or terminate or lapse by reason of, the Transactions. All such material policies are in full force and effect, all premiums with respect thereto have been paid in accordance with their respective terms, and no notice of cancellation or termination has been received with respect to any such policy. Neither the Borrower nor any other Credit Party maintains any formalized self-insurance program with respect to its assets or operations or material risks with respect thereto. The certificate of insurance delivered to the Agent pursuant to Section 4.1(f) contains an accurate and complete description of all material policies of insurance owned or held by the Borrower and each other Credit Party on the Effective Date.

**3.17 Management Payments.** All payments to management and senior executives of the Credit Parties, including salary and pension payments, and all bonus payments contractually required to be paid to any management and senior executives of the Credit Parties are contemplated in the Weekly Cash Flow Projection most recently provided to the Agent.

**3.18 Material Contracts.** Schedule C sets out all Material Contracts as of the Effective Date. A true and complete copy of each Material Contract has been delivered to the Agent as of the Effective Date. Each of the Material Contracts is in full force and effect. Except in respect of the Existing Notes as disclosed in Schedule 3.13, neither the Borrower nor any other Credit Party is in default under or in breach of any term or condition of any Material Contract that would have, either individually or in the aggregate, a Material Adverse Effect, nor is the Borrower or any other Credit Party aware of any material default under or material breach of any term or condition of any Material Contract by any other party thereto. No contract to which the Borrower or any other Credit Party is a party contains any material provisions which impose burdensome or onerous obligations on the Borrower or such other Credit Party which are inconsistent with prudent commercial activity by the Borrower or such other Credit Party. Each agreement relating to television programming for the 2008-2009 season is in full force and effect and such agreement, in aggregate, provide sufficient programming to cover substantially the programming requirements for the balance of such season.

**3.19 Environmental Matters.** Except as disclosed to the Lenders in the Disclosed Matters:

(a) **Environmental Laws.** Neither any property of the Borrower or any other Credit Party nor the operations conducted thereon violate any applicable order of any court or Governmental Authority or any Environmental Laws, which violation could reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

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(b) Notices and Permits. All notices, permits, licenses or similar authorizations, if any, required to be obtained or filed by the Borrower or any other Credit Party in connection with the operation or use of any and all property of the Borrower or any other Credit Party, including but not limited to past or present treatment, transportation, storage, disposal or Release of Hazardous Materials into the environment, have been duly obtained or filed, except to the extent the failure to obtain or file such notices, permits, licenses or similar authorizations could not reasonably be expected to have a Material Adverse Effect, or which could not reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

(c) Hazardous Substances Carriers. All Hazardous Materials generated at any and all property of the Borrower or any other Credit Party have been treated, transported, stored and disposed of only in accordance with all Environmental Laws applicable to them, except to the extent the failure to have such Hazardous Materials transported, treated or disposed of by such carriers could not reasonably be expected to have a Material Adverse Effect, and only at treatment, storage and disposal facilities maintaining valid permits under applicable Environmental Laws, which carriers and facilities have been and are operating in compliance with such permits, except to the extent the failure to have such Hazardous Materials treated, transported, stored or disposed of at such facilities, or the failure of such carriers or facilities to so operate, could not reasonably be expected to have a Material Adverse Effect or which could not reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

(d) Hazardous Materials Disposal. The Borrower and the other Credit Parties have taken all reasonable steps necessary to determine and have determined that no Hazardous Materials have been disposed of or otherwise released and there has been no threatened Release of any Hazardous Materials on or to any property of the Borrower or any other Credit Party other than in compliance with Environmental Laws, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect or which could not reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

(e) No Contingent Liability. The Borrower and the other Credit Parties have no material contingent liability in connection with any Release or threatened Release of any Hazardous Materials into the environment other than such contingent liabilities at any one time and from time to time which could reasonably be expected to exceed \$250,000 and for which adequate reserves for the payment thereof as required by GAAP have been provided, or which could reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all relevant facts, conditions and circumstances, if any, pertaining to such Release or threatened Release.

**3.20 Employee Matters.** Except as set forth on Schedule 3.20, as of the Effective Date, none of the Borrower or any of the other Credit Parties, nor any of their respective employees, is subject to any collective bargaining agreement. There are no strikes, slowdowns, work

stoppages or controversies pending or, to the best knowledge of the Borrower, threatened against the Borrower or any other Credit Party, or their respective employees, which could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Except as set forth in Schedule 3.20 or as otherwise disclosed to the Agent in writing, as of the Effective Date, none of the Borrower nor any other Credit Party is subject to an employment contract providing for special payments on termination of employment (it being agreed by the Borrower that any such payments which are projected to be made will be included in the Weekly Cash Flow Forecast before they are made). Each of the Borrower and the other Credit Parties has withheld from each payment to each of their respective officers, directors and employees the amount of all Taxes, including income tax, Canada pension plan, employment insurance and other payments and deductions required to be withheld therefrom, and has paid the same to the proper taxation or other receiving authority in accordance with Applicable Law. None of the Borrower nor any other Credit Party is subject to any claim by or liability to any of their respective officers, directors or employees for salary (including vacation pay) or benefits which would rank in whole or in part *pari passu* with or prior to the Liens created by the Security Documents, other than Permitted Liens to the extent reserved for as Priority Payables of any Credit Party.

**3.21 Fiscal Year.** The Fiscal Year of each Credit Party ends on August 31 of each calendar year.

**3.22 Intellectual Property Rights.** The Borrower and each Credit Party is the licensee of or registered and beneficial owner of, with good and marketable title, free of all Liens other than Permitted Liens, to all patents, patent applications, trade marks, trade mark applications, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, or other rights with respect to the foregoing and other similar property, used in or necessary for the present and planned future conduct of its business, without any conflict with the rights of any other Person, other than as listed on Schedule 3.22, or other than for such conflicts as could not reasonably be expected to have a Material Adverse Effect. All material patents, trade marks, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, and other similar rights owned or licensed by the Borrower or any other Credit Party, and all rights of the Borrower and each other Credit Party to the use of any patents, trade marks, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, or other similar rights, are described in Schedule 3.22 (collectively, the "**Intellectual Property Rights**"). Except as set forth in Schedule 3.22, no material claim has been asserted and is pending by any Person with respect to the use by the Borrower or any other Credit Party of any intellectual property or challenging or questioning the validity, enforceability or effectiveness of any intellectual property necessary for the conduct of the business of the Borrower or any other Credit Party. Except as disclosed in Schedule 3.22 or except as could not reasonably be expected to have a Material Adverse Effect, (i) the Borrower and each other Credit Party has the exclusive right to use the intellectual property which the Borrower (or each other Credit Party) owns, (ii) all applications and registrations for such owned intellectual property are current, and (iii) to the knowledge of the Borrower and the other Credit Parties, the conduct of the Borrower's and each other Credit Party's business does not infringe the intellectual property rights of any other Person.

**3.23 Residency of Borrower for Tax Purposes.** The Borrower is a resident of Canada for tax purposes.

**3.24 Restricted Payments.** No Restricted Payment has been declared, paid, or made upon or in respect of Equity Securities of any Credit Party except as expressly permitted hereby.

**3.25 Debt.** None of the Credit Parties has any Indebtedness except (a) the Obligations, (b) the Indebtedness set forth in the most recent financial statements delivered to the Agent, or the notes thereto, (c) Tax obligations (including deferred Taxes), trade payables and other contractual obligations arising in the ordinary course of business as carried on by the Credit Parties since the date of such financial statements, and (d) Indebtedness created in accordance with Section 6.1.

**3.26 Workers' Compensation.** None of the Credit Parties has any unpaid workers' compensation or like obligations except as are being incurred, and paid on a current basis in the ordinary course of business, and there are no proceedings, claims, actions, orders or investigations of any Governmental Authority relating to workers' compensation outstanding, pending or, to their knowledge, threatened relating to them or any of their employees or former employees which could reasonably be expected to have a Material Adverse Effect.

**3.27 Bank Accounts; Securities Accounts; Futures Accounts.** Schedule 3.27 contains a complete and accurate list of all bank accounts maintained by the Credit Parties with any bank or other financial institution as of the Effective Date. No Credit Party maintains any Securities Accounts or Futures Accounts.

**3.28 Real Property and Leases.** Schedule 3.28 hereto is a correct and complete list of all real property owned by each Credit Party, all leases and subleases of real property by any Credit Party, as lessee or sublessee, and all leases and subleases of real property by any Credit Party, as lessor or sublessor. Each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no material default by any party to any such lease or sublease exists, in each case except to the extent any failure to be in full force and effect and/or the existence of any breaches could not reasonably be expected to have a Material Adverse Effect.

**3.29 Further Real Property Matters.**

(a) Except as advised in writing to the Agent, no investigation or proceeding of any Governmental Authority is pending in respect of real property owned by any of the Credit Parties. No material part of any such real property has been condemned, taken or expropriated by any Governmental Authority, federal, state, provincial, municipal or any other competent authority.

(b) Except as advised in writing to the Agent, all present uses in respect of any real property of the Credit Parties may lawfully be continued and all permitted uses are satisfactory for the Credit Parties' current and intended purposes, in each case except to the extent any non-compliance with laws and/or the existence of an unsatisfactory use could not reasonably be expected to have a Material Adverse Effect.

(c) No Eligible Equipment is located at any leased real property of the Credit Parties except as indicated in Schedule 3.28.

**3.30 Priorities; Jurisdictions of Credit Parties; List of Security Documents; Broadcast Permits.** The Obligations shall be secured by Liens having the priorities set forth in Section 2.20. Schedule 3.30 sets out (i) the various jurisdictions in which the Borrower and each other Credit Party carries on business or has tangible assets having an aggregate value in excess of Cdn.\$100,000, (ii) as of the Effective Date, all agreements, documents or instruments that have been executed and delivered by any Credit Party or any other Person to the Collateral Agent as security for the payment or performance of, among other things, the Obligations, and (iii) a correct and complete list of all licenses, permits and privileges issued or granted by the Canadian Radio-television and Telecommunications Commission pursuant to the *Broadcasting Act* (Canada) to, or otherwise held by, a Credit Party (collectively, the "**Broadcast Permits**"). None of the Broadcast Permits have been issued or granted to, or otherwise held by, any Credit Party that is domiciled in, or was formed or created under, the laws of the Province of Quebec.

#### ARTICLE 4 CONDITIONS

**4.1 Effective Date.** The obligations of the Lenders to make any Loan or provide a Letter of Credit Guarantee shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.2):

(a) **Credit Agreement.** The Agent (or its counsel), each Lender, and the Issuing Bank shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of each party hereto, or (ii) written evidence satisfactory to the Agent (which may include facsimile transmission of a signed signature page of this Agreement) that each such party has signed a counterpart of this Agreement.

(b) **Legal Opinions.** The Agent shall have received a favourable written opinion of counsel to the Borrower and the Credit Parties, substantially in the form of Exhibit D, and covering such other matters relating to the Borrower, the Credit Parties, this Agreement, the other Loan Documents, or the Transactions as the Lenders shall reasonably request (together with copies of all factual certificates and legal opinions delivered to such counsel in connection with such opinion upon which counsel has relied). The Agent shall also have received favourable written opinions of such special and local counsel within and outside Canada as may be required by the Agent (together with copies of all factual certificates and legal opinions delivered to such counsel in connection with such opinion upon which such counsel has relied). The Borrower hereby requests each such counsel to deliver such opinions and supporting materials. All opinions and certificates referred to in this Section 4.1(b) shall be addressed to the Agent and the Lenders and dated the Effective Date.

(c) **Corporate Certificates.** The Agent shall have received:

- (i) certified copies of the resolutions of the Board of Directors of the Borrower and any other Credit Party which is a party to any Loan Document, dated as of the Effective Date, and approving, as appropriate,

the Loans, this Agreement and the other Loan Documents, and all other documents, if any, to which the Borrower or such other Credit Party is a party and evidencing corporate or similar authorization with respect to such documents;

- (ii) a certificate of the Secretary or an Assistant Secretary of the Borrower, and any other Credit Party which is a party to any Loan Document, dated as of the Effective Date, and certifying (A) the name, title and true signature of each officer of such Person authorized to execute this Agreement and the other Loan Documents to which it is a party, (B) the name, title and true signature of each officer of such Person authorized to provide the certifications required pursuant to this Agreement, including certifications required pursuant to Section 5.1 and Borrowing Requests, and (C) that attached thereto is a true and complete copy of the articles of incorporation or comparable constating documents and bylaws of the Borrower, and any other Credit Party which is a party to any Loan Document, as amended to date, and a recent certificate of status, certificate of compliance, good standing certificate or analogous certificate; and
- (iii) a certificate of the Chief Financial Officer or Senior Financial Officer of each of Canwest Finance Inc./Financiere Canwest Inc. and Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc. stating the amount equal to the book value or the realization value of the assets of each such Guarantor, whichever is greater, less the sum of its liabilities and its issued and paid-up share capital account and whether such Guarantor is able to discharge its liabilities when due, the whole in accordance with the guarantee agreement to be executed by such Guarantor in accordance with section Section 4.1 (j)(i) hereof.

(d) Closing Conditions Certificate. The Agent shall have received a certificate, dated the Effective Date and signed by a Responsible Officer of the Borrower, confirming compliance with the conditions set forth in Section 4.3(a) and (b).

(e) Fees. The Agent and the Lenders shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all legal fees and other Out-of-Pocket Expenses required to be reimbursed or paid by the Borrower hereunder or under any other Loan Document, and all fees payable under the Commitment Letter.

(f) Insurance. The Agent shall have received a certificate of insurance coverage, naming the Collateral Agent as loss payee dated not more than 30 days prior to the Effective Date, evidencing that the Borrower and the Credit Parties are carrying insurance in accordance with Section 5.9 hereof.

(g) Inventory Control Systems; Appraisal; Field Audit; Opening Availability. The Agent shall have reviewed and be satisfied with the Collateral, the inventory control systems, the books and records and the reporting capability of the Credit Parties. In addition, the Agent shall

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have received the results of an updated field audit, and the Borrowing Base on the Effective Date shall be sufficient in value, as determined by Agent, to provide Borrower with Excess Availability, after giving effect to the extensions of credit to be made hereunder on the Effective Date (on a pro forma basis, with trade payables being paid currently, and expenses and liabilities being paid in the ordinary course of business and without acceleration of sales or deterioration of working capital) of at least \$45,000,000.

(h) No Cessation of Financing Market. There shall have not been occurred and be continuing on the Effective Date any general banking moratorium or any practical cessation in the bank or private debt financing markets, and there shall not have been introduced any material governmental restrictions imposed on lending institutions, which materially affect the type of lending transactions contemplated by this Agreement.

(i) Execution and Delivery of Documentation. The Borrower and any other Credit Party which is a party to any Loan Document shall have duly authorized, executed and delivered all documents, including Loan Documents, required hereunder, all in form and substance satisfactory to the Agent and all of the Security Documents shall have been registered in all offices in which, in the opinion of the Agent or its counsel, registration is necessary or of advantage to preserve the priority of the Liens intended to be created thereby, and duplicate copies of such Security Documents bearing or accompanied by appropriate endorsements or certificates of registration shall have been delivered to the Agent. The Agent shall have received and be satisfied with the results of all personal property, bankruptcy, execution and other searches conducted by the Agent and its counsel with respect to the Borrower and any other Credit Party in all jurisdictions selected by the Agent and its counsel. The Agent shall have received and be satisfied with all estoppel letters, acknowledgements, waivers, subordinations, postponements, discharges, priority agreements and inter-creditor and non-disturbance agreements as the Agent may reasonably require to ensure its first priority, subject to Permitted Liens, over and unfettered access to, the Collateral or, at the reasonable discretion of the Agent, have implemented Availability Reserves in connection therewith.

(j) Security Documents. The Agent shall have received:

- (i) a guarantee executed by each Guarantor listed in Schedule 4.1(j) in favour of the Agent, as agent for the Lenders, dated as of the Effective Date and substantially in the form of Exhibit C;
- (ii) the Authorization and Direction;
- (iii) the Credit Confirmation and Amending Agreement; and
- (iv) copies of each of the agreements, documents or instruments described in Schedule 3.30;

provided that if any of the foregoing documents are not suitable for use in any jurisdiction, the applicable Credit Party shall provide to the Agent such alternative document(s) which, are requested by the Agent with substantially equivalent substantive

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effect and which are suitable for use in such jurisdiction. The Obligations shall be secured by Liens having the priorities set forth in Section 2.20.

(k) Regulatory Approval; Consents; Waivers. The Agent and the Lenders shall be satisfied, acting reasonably, that all material Authorizations required in connection with the Transactions contemplated hereby have been obtained and are in full force and effect (including all approvals listed in Schedule 3.3), and that all consents and waivers required to consummate the Transactions have been obtained, to the extent that consummation of the Transactions would otherwise be restricted or prohibited under the terms of any Material Contract to which the Borrower or any other Credit Party is a party, or by which it is bound, in each case without the imposition of any burdensome provisions.

(l) Delivery of Financial Statements. The Agent and the Lenders shall have received and be satisfied with the financial statements described in Section 3.4(a) and unaudited consolidated balance sheets of the Borrower and its Subsidiaries as of February 28, 2009, together with consolidating balance sheets for the Borrower and Guarantors for the six months ended February 28, 2009.

(m) Indebtedness. The Transactions contemplated in this Agreement and the other Loan Documents shall not have caused any event or condition to occur which has resulted, or which will result, in any Material Indebtedness becoming due prior to its scheduled maturity or that permits (with or without the giving of notice, the lapse of time, or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, or which will result in the creation of any Liens under any Indebtedness.

(n) Blocked Account/Cash Management Systems. The Agent shall have received evidence satisfactory to the Agent that, as of the Effective Date, blocked account and cash management systems complying with Section 2.17 have been established and are currently being maintained in the manner set forth in such Section 2.17, and the Agent shall have received copies of duly executed tri-party blocked account and other control agreements satisfactory to the Agent with the banks and other Persons as required by Section 5.15.

(o) New Notes. The Agent shall have received a fully executed copy of the Note Purchase Agreement; the New Notes shall have been issued by the issuers under the Note Purchase Agreement and purchased by the New Noteholders for the equivalent amount in US Dollars of Cdn.\$105,000,000; and the Borrower shall have used the net proceeds of such note issuance and purchase, together with the proceeds of Loans made hereunder, to repay in full all amounts owing under the BNS Credit Agreement; and the BNS Credit Agreement shall have been terminated.

(p) Judgments/Litigation. The Agent shall be satisfied that there are no judgments outstanding, and no legal or administrative proceedings (including in any court arbitrator or any Governmental Authority) pending or threatened except as expressly permitted hereunder which could reasonably be expected to give rise to a Material Adverse Effect.



(q) Post-Closing Matters Agreement. The Agent shall have received a fully executed copy of a post-closing matters agreement substantially in the form attached hereto as Exhibit H.

(r) Other Documentation. The Agent and the Lenders shall have received such other documents and instruments as are customary for transactions of this type or as they may reasonably request.

The obligations of the Lenders to make Loans or provide a Letter of Credit Guarantee hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.2) at or prior to 3:00 p.m., Toronto time, on May 22, 2009 (and, in the event such conditions are not so satisfied or waived by such time, the Commitments shall terminate at such time). The conditions set forth in Section 4.1 are for the exclusive benefit of the Lenders, and may be waived by the Lender in accordance with Section 9.2 at any time and from time to time, with or without further conditions.

**4.2 Restructuring Event Date Conditions.** The obligation of the Lenders to increase the Commitments to Cdn.\$100,000,000 on the Restructuring Event Date, and the obligation of the Lenders to make any Loan or provide a Letter of Credit Guarantee on and after the Restructuring Event Date, shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.2):

(a) if the Restructuring Event Date has occurred, the granting and issuance of the Initial Order satisfactory in form and substance to the Agent and the Initial Order being in full force and effect, unamended and unstayed, except to the extent approved in writing by the Agent;

(b) if the Restructuring Event Date has occurred, the issuance of the Chapter 15 Orders, satisfactory in form and substance to the Agent, and such orders being in full force and effect, unamended and unstayed except to the extent approved in writing by the Agent;

(c) receipt by the Agent, for and on behalf of the Lenders, of (i) a Weekly Cash Flow Projection for the Credit Parties, in form and substance reasonably satisfactory to the Agent, and (ii) a Borrowing Base certificate confirming that, on the Restructuring Event Date, Excess Availability shall be not less than an amount to be determined by the Agent; and

(d) the Borrower shall have formalized the duties and responsibilities to be performed by the special committee of the board of directors of the Borrower and by a Chief Restructuring Officer or restructuring advisor on terms acceptable to the Agent.

**4.3 Each Credit Event.** The obligation of the Agent (on behalf of the Lenders) to make any Loan or provide a Letter of Credit Guarantee on the occasion of any Borrowing, (including on the occasions of the initial Borrowings hereunder), is subject to the satisfaction of the following conditions:

(a) the representations and warranties of the Borrower set forth in this Agreement shall be true and correct on and as of the date of each such Borrowing (including the date of

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issuance, amendment, renewal or extension of such Letter of Credit, as applicable) as if made on such date (except where such representation or warranty refers to a different date);

(b) at the time of and immediately after giving effect to such Borrowing (including the issuance, amendment, renewal or extension of such Letter of Credit, as applicable), no Default shall have occurred and be continuing;

(c) following the Restructuring Event Date, the Initial Order shall remain in full force and effect, the Initial Order shall not have been amended, supplemented or otherwise modified except to the extent approved in writing by the Agent; all claims of all creditors of the Credit Parties shall have been and shall remain stayed, the exercise by all creditors of the Credit Parties of creditor rights and remedies shall have been and shall remain stayed; the Lenders and the Agent shall continue to be "unaffected creditors" in the CCAA Proceedings; and all creditors of the Credit Parties shall remain prohibited from interfering with property or contract rights of the Credit Parties; except in each case to the extent agreed in writing by the Agent;

(d) the Agent shall have received a Borrowing Request in the manner and within the time period required by Section 2.3; and

(e) except as may be otherwise agreed to from time to time by the Agent and the Borrower in writing, after giving effect to the extension of credit requested to be made by the Borrower on such date, the aggregate Exposure will not exceed the lesser of (i) the Commitments, or (ii) an amount equal to the Borrowing Base.

Each Borrowing, including each issuance, amendment, renewal or extension of a Letter of Credit, shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the accuracy of the matters specified in paragraphs (a) and (b) above. This requirement does not apply on the conversion or rollover of an existing Borrowing provided that the aggregate outstanding Borrowings will not be increased as a consequence thereof.

## ARTICLE 5 AFFIRMATIVE COVENANTS

From (and including) the Effective Date until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit and Letter of Credit Guarantees shall have expired and been terminated and all Reimbursement Obligations have been satisfied by the Borrower, the Borrower and each other Credit Party covenants and agrees with the Lenders that:

**5.1 Financial Statements and Other Information.** The Borrower will furnish to the Agent:

(a) on the fourth Business Day of each week, a Weekly Cash Flow Projection;

(b) on the fourth Business Day of each week, a weekly rolling 13-week Excess Availability projection, certified by a Responsible Officer and, after the Restructuring Event Date, the Monitor;