
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2014

OR

- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number: 001-35905

BIOAMBER INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

98-0601045
(I.R.S. Employer
Identification No.)

Jean-François Huc
President and Chief Executive Officer
BioAmber Inc.
1250 Rene Levesque West, Suite 4110
Montreal, Quebec, Canada H3B 4W8
Telephone: (514) 844-8000

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of August 7, 2014, there were 21,806,299 shares of the registrant's Common Stock, \$0.01 par value per share, outstanding.

BIOAMBER INC.
Form 10-Q
For the Quarter Ended June 30, 2014

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PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

BIOAMBER INC.
(a development stage company)

Consolidated Statements of Operations
for the three and six months ended June 30, 2014 and 2013
and the period from October 15, 2008 (inception) to June 30, 2014
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,		Period from October 15, 2008 (inception) to June 30, 2014
	2014	2013	2014	2013	
	\$	\$	\$	\$	\$
Revenues					
Licensing revenue from related parties (Note 17)	—	—	—	—	1,300,580
Product sales	414,600	1,028,389	765,261	1,359,111	6,282,117
Total revenues	414,600	1,028,389	765,261	1,359,111	7,582,697
Cost of goods sold excluding depreciation and amortization (Note 17)	2,251,101	1,411,225	2,530,961	1,609,741	7,802,864
Gross loss	(1,836,501)	(382,836)	(1,765,700)	(250,630)	(220,167)
Operating expenses					
General and administrative	2,865,175	2,292,082	5,784,238	4,630,395	37,767,634
Research and development, net	4,258,554	4,220,580	7,572,803	10,319,720	67,989,134
Sales and marketing	1,737,458	1,652,302	2,848,860	2,747,732	14,404,904
Depreciation of property and equipment and amortization of intangible assets	59,909	538,987	119,583	1,072,165	4,931,698
Impairment loss and write-off of property and equipment and of intangible assets	—	8,619,405	—	8,619,405	9,960,743
Foreign exchange (gain) loss	(379,442)	(28,450)	(211,814)	(116,687)	347,385
Operating expenses	8,541,654	17,294,906	16,113,670	27,272,730	135,401,498
Operating loss	10,378,155	17,677,742	17,879,370	27,523,360	135,621,665.0
Amortization of deferred financing costs and debt discounts	71,909	117,120	144,709	186,433	670,681
Financial charges (income), net (Note 10)	3,870,799	(10,616,800)	16,223,520	(10,616,800)	14,433,346
Gain on debt extinguishment (Note 8)	—	—	—	(314,305)	(314,305)
Interest revenue from related parties (Note 17)	—	—	—	—	(161,771)
Equity participation in (income) losses of equity method investments (Note 3)	(162)	51	(108)	15,390	7,062,969
Gain on re-measurement of BioAmber S.A.S.	—	—	—	—	(6,215,594)
Other expense (income), net	(185,000)	—	(185,000)	—	(185,000)
Loss before income taxes	14,135,701	7,178,113	34,062,491	16,794,078	150,911,991
Income taxes (Note 14)	9,439	46,570	34,690	46,570	(599,451)
Net loss	14,145,140	7,224,683	34,097,181	16,840,648	150,312,540
Net loss attributable to:					
BioAmber Inc. shareholders	13,992,561	7,056,877	33,903,606	16,557,133	148,947,554
Non-controlling interest	152,579	167,806	193,575	283,515	1,364,986
	14,145,140	7,224,683	34,097,181	16,840,648	150,312,540
Net loss per share attributable to BioAmber Inc. shareholders - basic	\$ 0.75	\$ 0.47	\$ 1.83	\$ 1.31	
Weighted-average of common shares outstanding - basic	18,574,690	15,035,037	18,567,213	12,658,484	

The accompanying notes are an integral part of the consolidated financial statements.

BIOAMBER INC.
(a development stage company)

Consolidated Statements of Comprehensive Loss
For the three and six months ended June 30, 2014 and 2013
and the period from October 15, 2008 (inception) to June 30, 2014
(Unaudited)

	Three Months ended		Six Months ended		Period from
	June 30,		June 30,		October 15, 2008 (inception) to June 30, 2014
	2014	2013	2014	2013	
	\$	\$	\$	\$	\$
Net loss.....	14,145,140	7,224,683	34,097,181	16,840,648	150,312,540
Foreign currency translation adjustment.....	(1,378,656)	507,239	(530,548)	619,202	(198,180)
Total comprehensive loss.....	<u>12,766,484</u>	<u>7,731,922</u>	<u>33,566,633</u>	<u>17,459,850</u>	<u>150,114,360</u>
Total comprehensive loss attributable to:					
BioAmber Inc. shareholders.....	12,972,600	7,709,887	33,473,419	17,136,577	148,891,352
Non-controlling interest.....	(206,116)	22,035	93,214	323,273	1,223,008
	<u>12,766,484</u>	<u>7,731,922</u>	<u>33,566,633</u>	<u>17,459,850</u>	<u>150,114,360</u>

The accompanying notes are an integral part of the consolidated financial statements.

BIOAMBER INC.
(a development stage company)

Consolidated Balance Sheets
June 30, 2014 and December 31, 2013
(Unaudited)

	As of	As of
	June 30,	December 31,
	2014	2013
	\$	\$
Assets		
Current assets		
Cash (Note 8 iv)	54,303,616	83,728,199
Accounts receivable	627,508	754,987
Inventories (Note 4)	3,977,660	2,415,402
Prepaid expenses and deposits (Note 4).....	3,645,369	5,131,367
Valued added tax, income taxes and other receivables.....	3,405,432	2,262,139
Deferred financing costs	92,500	671,270
Total current assets	66,052,085	94,963,364
Property and equipment, net (Note 5).....	46,156,102	13,554,279
Investment in equity method investments (Note 3)	35,141	710,033
Intangible assets, net (Note 6).....	4,227,511	4,158,550
Goodwill.....	688,313	692,788
Restricted Cash.....	702,900	—
Deferred financing costs	1,006,206	—
Total assets	<u>118,868,258</u>	<u>114,079,014</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities (Note 7).....	12,450,573	7,081,471
Income taxes payable (Note 14)	1,094,626	1,120,669
Accounts payable Agro-industries Recherches et Développements (“ARD”) (Note 17).....	2,637,304	29,497
Deferred grants (Note 9)	3,051,372	3,061,140
Short-term portion of long-term debt (Note 8)	13,103,885	6,520,263
Total current liabilities.....	32,337,760	17,813,040
Long-term debt (Note 8).....	19,591,955	23,209,629
Warrants financial liability (Note 13).....	20,480,000	5,840,000
Other long-term liabilities	105,000	82,500
Total liabilities	<u>72,514,715</u>	<u>46,945,169</u>
Commitments and contingencies (Note 11)		
Redeemable Non-controlling interest (Note 12)	10,153,411	—
Shareholders' equity		
Share capital		
Common stock:		
\$0.01 par value per share; 250,000,000 authorized, 18,586,299 and 18,558,369 issued and outstanding at June 30, 2014 and December 31, 2013, respectively.....	185,863	185,584
Additional paid-in capital.....	181,956,603	177,275,934
Warrants	2,949,018	2,964,335
Deficit accumulated during the development stage	(148,947,556)	(115,043,950)
Accumulated other comprehensive income (loss)	56,204	(373,983)
Total BioAmber Inc. shareholders' equity.....	36,200,132	65,007,920
Non-controlling interest (Note 12)	—	2,125,925
Total shareholders' equity	<u>36,200,132</u>	<u>67,133,845</u>
Total liabilities and equity	<u>118,868,258</u>	<u>114,079,014</u>

The accompanying notes are an integral part of the consolidated financial statements.

BIOAMBER INC.
(a development stage company)

Consolidated Statements of Shareholders' Equity
for the period from June 30, 2009 to June 30, 2014
(in U.S. dollars, except for shares data)
(Unaudited)

	Common stock		Series A Participating Convertible Preferred shares		Additional paid-in capital	Warrants		Deficit accumulated during the development stage	Accumulated other comprehensive loss	Non-controlling interest	Total shareholders' equity
	Shares	Par value	Shares	Par value		Shares	Par value				
		\$		\$	\$		\$	\$	\$	\$	\$
Balance, June 30, 2009	408,100	4,081	1,177,925	11,779	3,691,382	1,522,465	2,118,563	(1,850,906)	(4,120)	—	3,970,779
Issuance of common stock pursuant to the conversion of warrants (Note 13)	696,500	6,965	—	—	3,992,935	—	—	—	—	—	3,999,900
Issuance of common stock pursuant to Private placement proceeds, net of issuance cost of \$589,854 (Note 13)	1,393,070	13,931	—	—	7,396,417	—	—	—	—	—	7,410,348
Issuance of warrants pursuant to private placement (Note 13)	—	—	—	—	(244,373)	66,185	244,373	—	—	—	—
Conversion of preferred shares to shares of common stock pursuant to private placement (Note 13)	1,177,925	11,779	(1,177,925)	(11,779)	—	—	—	—	—	—	—
Warrants exercised	82,355	824	—	—	156,445	(82,355)	(54,302)	—	—	—	102,967
Warrants expired	—	—	—	—	11,769	(29,050)	(11,769)	—	—	—	—
Stock options exercised	7,000	70	—	—	7,434	—	—	—	—	—	7,504
Acquisition of Sinoven Biolymers Inc. Stock-based compensation (Note 13)	—	—	—	—	470,325	—	—	—	—	339,142	339,142
Net loss	—	—	—	—	—	—	—	(7,992,216)	—	(77,306)	(8,069,522)
Foreign currency translation	—	—	—	—	—	—	—	—	(646,824)	—	(646,824)
Balance, June 30, 2010	<u>3,764,950</u>	<u>37,650</u>	<u>—</u>	<u>—</u>	<u>15,482,334</u>	<u>1,477,245</u>	<u>2,296,865</u>	<u>(9,843,122)</u>	<u>(650,944)</u>	<u>261,836</u>	<u>7,584,619</u>
Balance, June 30, 2010	3,764,950	37,650	—	—	15,482,334	1,477,245	2,296,865	(9,843,122)	(650,944)	261,836	7,584,619
Expired warrants	—	—	—	—	7,879	(7,350)	(7,879)	—	—	—	—
Issuance of common stock pursuant to the acquisition of Bioamber SAS	1,107,540	11,075	—	—	7,333,149	—	—	—	—	—	7,344,224
Stock-based compensation (Note 13)	—	—	—	—	635,284	—	—	—	—	—	635,284
Net loss	—	—	—	—	—	—	—	(2,010,861)	—	(101,923)	(2,112,784)
Foreign currency translation	—	—	—	—	—	—	—	—	403,302	—	403,302
Balance, December 31, 2010	<u>4,872,490</u>	<u>48,725</u>	<u>—</u>	<u>—</u>	<u>23,458,646</u>	<u>1,469,895</u>	<u>2,288,986</u>	<u>(11,853,983)</u>	<u>(247,642)</u>	<u>159,913</u>	<u>13,854,645</u>
Balance, December 31, 2010	4,872,490	48,725	—	—	23,458,646	1,469,895	2,288,986	(11,853,983)	(247,642)	159,913	13,854,645
Issuance of common stock pursuant to private placement, net of issuance costs of \$231,374 (Note 13)	3,887,485	38,875	—	—	40,730,500	—	—	—	—	—	40,769,375
Issuance of common stock pursuant to private placement, net of issuance costs \$31,230 (Note 13)	702,135	7,021	—	—	19,962,566	—	—	—	—	—	19,969,587
Issuance of common stock, pursuant to conversion of unsecured convertible notes, net of costs of \$8,626 (Note 13)	379,155	3,792	—	—	3,986,475	—	—	—	—	—	3,990,267
Issuance of warrants pursuant of private placement	—	—	—	—	—	94,745	810,448	—	—	—	810,448

	Common stock		Series A Participating Convertible Preferred shares		Additional paid-in capital	Warrants		Deficit accumulated during the development stage	Accumulated other comprehensive loss	Non-controlling interest	Total shareholders' equity
	Shares	Par value	Shares	Par value		Shares	Par value				
		\$		\$	\$		\$	\$	\$	\$	\$
Release of common stock to Sinoven owners	70,000	700	—	—	1,228,400	—	—	—	—	—	1,229,100
Warrants exercised	45,500	455	—	—	97,164	(45,500)	(9,902)	—	—	—	87,717
Warrants expired	—	—	—	—	14,254	(59,850)	(14,254)	—	—	—	—
Stock options exercised	7,000	70	—	—	7,434	—	—	—	—	—	7,504
Stock-based compensation (Note 13)	—	—	—	—	3,905,478	—	—	—	—	—	3,905,478
Net loss	—	—	—	—	—	—	—	(30,621,159)	—	(231,244)	(30,852,403)
Acquisition of non-controlling interest	—	—	—	—	2,984,550	—	—	—	—	3,950	2,988,500
Contribution by non-controlling interest	—	—	—	—	—	—	—	—	—	2,912,628	2,912,628
Foreign currency translation	—	—	—	—	—	—	—	—	(257,615)	—	(257,615)
Balance, December 31, 2011	<u>9,963,765</u>	<u>99,638</u>	<u>—</u>	<u>—</u>	<u>96,375,467</u>	<u>1,459,290</u>	<u>3,075,278</u>	<u>(42,475,142)</u>	<u>(505,257)</u>	<u>2,845,247</u>	<u>59,415,231</u>
Balance, December 31, 2011	9,963,765	99,638	—	—	96,375,467	1,459,290	3,075,278	(42,475,142)	(505,257)	2,845,247	59,415,231
Issuance of common shares, net of \$ 22,254	351,050	3,510	—	—	9,974,146	—	—	—	—	—	9,977,656
Release of shares held in trust	35,000	350	—	—	(350)	—	—	—	—	—	—
Warrants expired	—	—	—	—	321	(1,435)	(321)	—	—	—	—
Stock-based compensation (Note 13)	—	—	—	—	7,431,262	—	—	—	—	—	7,431,262
Net loss	—	—	—	—	—	—	—	(39,351,050)	—	(187,413)	(39,538,463)
Foreign currency translation	—	—	—	—	—	—	—	—	410,288	101,601	511,889
Balance, December 31, 2012	<u>10,349,815</u>	<u>103,498</u>	<u>—</u>	<u>—</u>	<u>113,780,846</u>	<u>1,457,855</u>	<u>3,074,957</u>	<u>(81,826,192)</u>	<u>(94,969)</u>	<u>2,759,435</u>	<u>37,797,575</u>
Balance, December 31, 2012	10,349,815	103,498	—	—	113,780,846	1,457,855	3,074,957	(81,826,192)	(94,969)	2,759,435	37,797,575
Release of shares - Sinoven	63,000	630	—	—	(630)	—	—	—	—	—	—
Cancellation of shares - Sinoven	—	—	—	—	(140,000)	—	—	—	—	—	(140,000)
Stock-based compensation (Note 13)	—	—	—	—	6,731,539	—	—	—	—	—	6,731,539
IPO proceeds	8,000,000	80,000	—	—	79,920,000	—	—	—	—	—	80,000,000
IPO costs	—	—	—	—	(7,136,291)	—	—	—	—	—	(7,136,291)
Warrants issued at IPO	—	—	—	—	(16,148,000)	—	—	—	—	—	(16,148,000)
Warrants exercised	145,554	1,456	—	—	268,470	(145,554)	(110,622)	—	—	—	159,304
Net loss	—	—	—	—	—	—	—	(33,217,758)	—	(573,524)	(33,791,282)
Foreign currency translation	—	—	—	—	—	—	—	—	(279,014)	(59,986)	(339,000)
Balance, December 31, 2013	<u>18,558,369</u>	<u>185,584</u>	<u>—</u>	<u>—</u>	<u>177,275,934</u>	<u>1,312,301</u>	<u>2,964,335</u>	<u>(115,043,950)</u>	<u>(373,983)</u>	<u>2,125,925</u>	<u>67,133,845</u>
Balance at December 31, 2013	18,558,369	185,584	—	—	177,275,934	1,312,301	2,964,335	(115,043,950)	(373,983)	2,125,925	67,133,845
Stock-based compensation (Note 13)	—	—	—	—	4,521,641	—	—	—	—	—	4,521,641
Reclassification of non-controlling interest to redeemable non-controlling interest (Note 12)	—	—	—	—	—	—	—	—	—	(2,125,925)	(2,125,925)
Contribution by non-controlling interest	—	—	—	—	—	—	—	—	—	—	—
Warrants issued at IPO	—	—	—	—	—	—	—	—	—	—	—
Warrants exercised	6,930	69	—	—	38,698	(6,930)	(15,317)	—	—	—	23,450
Stock options exercised	21,000	210	—	—	120,330	—	—	—	—	—	120,540
Net loss	—	—	—	—	—	—	—	(33,903,606)	—	—	(33,903,606)
Foreign currency translation	—	—	—	—	—	—	—	—	430,187	—	430,187
Balance, June 30, 2014	<u>18,586,299</u>	<u>185,863</u>	<u>—</u>	<u>—</u>	<u>181,956,603</u>	<u>1,305,371</u>	<u>2,949,018</u>	<u>(148,947,556)</u>	<u>56,204</u>	<u>—</u>	<u>36,200,132</u>

The accompanying notes are integral part of the consolidated financial statements.

BIOAMBER INC. (a development stage company)

**Consolidated Statements of Cash Flows
for three and six months ended June 30, 2014 and 2013
and the period from October 15, 2008 (inception) to June 30, 2014
(Unaudited)**

	Three Months Ended June 30,		Six Months Ended June 30,		Period from October 15, 2008 (inception) to June 30, 2014
	2014	2013	2014	2013	
	\$	\$	\$	\$	\$
Cash flows from operating activities					
Net loss	(14,145,140)	(7,224,683)	(34,097,181)	(16,840,648)	(150,312,540)
Adjustments to reconcile net loss to cash:					
Stock-based compensation	3,037,960	2,059,224	4,521,641	4,476,591	23,892,526
Depreciation of property and equipment and amortization of intangible assets	59,909	538,987	119,583	1,072,165	4,931,698
Impairment loss and write-off of property and equipment and of intangible assets	—	8,619,405	—	8,619,405	9,960,743
Amortization of deferred financing costs and debt discounts	71,909	117,120	144,709	186,433	670,681
Write-off of IPO costs	—	—	—	—	1,828,074
Equity participation in losses (income) of equity method investments	(162)	51	(108)	15,390	7,062,969
Other long-term liabilities	11,250	11,250	22,500	22,500	105,000
Gain on re-measurement of Bioamber S.A.S. (Note 8 iii)	—	—	—	—	(6,215,594)
Financial charges (income), net (Note 10)	3,278,492	(11,748,000)	15,114,362	(11,748,000)	10,942,004
(Gain) loss on debt extinguishment (Note 8) ...	—	—	—	(314,305)	(314,305)
Deferred income taxes	—	—	—	—	(736,935)
Changes in operating assets and liabilities					
Change in accounts receivable	(47,608)	(35,025)	127,479	(31,124)	(627,508)
Change in accounts receivable from Bioamber S.A.S.	—	—	—	—	(5,963,869)
Change in inventories	(110,643)	931,966	(1,562,258)	(421,191)	(3,977,660)
Change in prepaid expenses and deposits	376,478	2,117,460	1,252,076	(3,394,675)	(3,638,588)
Change in research and development tax credits receivable, value added tax, income taxes and other receivables	(642,366)	443,669	(1,246,416)	(88,076)	(771,244)
Change in accounts payable to ARD	2,089,630	(432,014)	2,606,462	(118,871)	3,015,368
Change in accounts payable and accrued liabilities	<u>2,936,710</u>	<u>1,300,201</u>	<u>5,046,282</u>	<u>1,195,674</u>	<u>9,295,704</u>
Net cash used in operating activities	<u>(3,083,581)</u>	<u>(3,300,389)</u>	<u>(7,950,869)</u>	<u>(17,368,732)</u>	<u>(100,853,476)</u>
Cash flows from investing activities					
Acquisition of property and equipment	(19,997,463)	(2,073,690)	(32,728,279)	(2,112,459)	(52,244,935)
Change in restricted cash	—	—	(678,450)	—	(678,450)
Cash consideration paid on the acquisition of Sinoven	—	—	—	—	(20)
Capital redistribution from (Investment in) equity method investments (Note 3)	675,000	—	675,000	—	(325,000)
Net cash from acquisition of Bioamber S.A.S.	—	—	—	—	1,016,969
Net cash used in investing activities	<u>(19,322,463)</u>	<u>(2,073,690)</u>	<u>(32,731,729)</u>	<u>(2,112,459)</u>	<u>(52,231,436)</u>

	Three Months Ended June 30,		Six Months Ended June 30,		Period from
	2014	2013	2014	2013	October 15, 2008
	\$	\$	\$	\$	(inception) to
					June 30, 2014
					\$
Cash flows from financing activities					
Issuance of bridge loan	—	—	—	—	585,000
Repayment of bridge loan.....	—	—	—	—	(585,000)
Deferred financing costs	(561,100)	(624,946)	(561,100)	(771,659)	(2,736,416)
Issuance of long-term debt (Note 8)	2,191,218	24,979,219	2,191,218	25,589,855	31,616,406
Government grants (Note 9)	792,111	(17,105)	792,111	485,462	8,348,437
Proceeds from issuance of convertible notes, net of financing costs	—	—	—	—	7,805,798
Net proceeds from issuance of common shares	140,238	—	143,990	—	78,634,741
Proceeds from issuance of shares by a subsidiary (Note 12)	—	—	8,120,700	—	11,033,328
Net proceeds on issuance of units (Note 13)	—	72,863,709	—	72,863,709	72,863,709
Cancellation of shares (Note 2)	—	—	—	(140,000)	(140,000)
Net cash provided by financing activities	<u>2,562,467</u>	<u>97,200,877</u>	<u>10,686,919</u>	<u>98,027,367</u>	<u>207,426,003</u>
Foreign exchange impact on cash	1,125,124	(376,702)	571,096	(637,304)	(37,475)
Increase (decrease) in cash	(18,718,453)	91,450,096	(29,424,583)	77,908,872	54,303,616
Cash, beginning of period	73,022,069	11,531,113	83,728,199	25,072,337	—
Cash, end of period.....	<u>54,303,616</u>	<u>102,981,209</u>	<u>54,303,616</u>	<u>102,981,209</u>	<u>54,303,616</u>
Supplemental cash flow information:					
Non-cash transactions:					
Shares and warrants issued in connection with the spin-off transaction	—	—	—	—	4,011,220
Conversion of convertible notes into common shares (Note 13)	—	—	—	—	5,999,347
Conversion of preferred shares into common shares	—	—	—	—	11,779
Acquisition of Sinoven - contingent consideration	—	—	—	—	1,005,000
Acquisition of Bioamber S.A.S. common stock	—	—	—	—	7,344,224
Warrants issued in connection with the bridge loan and closing of private placement	—	—	—	—	810,448
Deferred financing costs related to the second public offering not yet paid	93,559	842,705	93,559	842,705	93,559
Construction in Progress costs not yet paid	8,113,000	137,367	8,113,000	137,367	8,113,000
Amortization of debt discounts capitalized to CIP	161,237	—	303,635	—	603,635

The accompanying notes are an integral part of the consolidated financial statements.

BIOAMBER INC.
(a development stage company)

Notes to Consolidated Financial Statements
for the three and six months ended June 30, 2014 and 2013, year ended December 31, 2013 and
the period from October 15, 2008 (inception) to June 30, 2014
(Unaudited)

1. Summary of significant accounting policies

Basis of presentation

The accompanying unaudited consolidated financial statements have been prepared in accordance with SEC rules and regulations and using the same accounting policies as described in Note 2 of the audited consolidated financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2013. Accordingly, these unaudited consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2013.

The preparation of financial statements in conformity with generally accepted accounting principles in the United States of America ("GAAP") requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Management bases its estimates on various assumptions and historical experience, which are believed to be reasonable; however, due to the inherent nature of estimates, actual results may differ significantly due to changed conditions or assumptions. The results of operations for the six and three months ended June 30, 2014 are not necessarily indicative of results to be expected for the year ended December 31, 2014 or any other future period.

Fair value of financial instruments

The Company applies FASB ASC 820, *Fair Value Measurement*, which defines fair value and establishes a framework for measuring fair value and making disclosures about fair value measurements. FASB ASC 820 establishes a hierarchical disclosure framework which prioritizes and ranks the level of market price observability used in measuring financial instruments at fair value. Market price observability is impacted by a number of factors, including the type of financial instruments and the characteristics specific to them. Financial instruments with readily available quoted prices or for which fair value can be measured from actively quoted prices generally will have a higher degree of market price observability and a lesser degree of judgment used in measuring fair value.

There are three levels within the hierarchy that may be used to measure fair value:

Level 1 — A quoted price in an active market for identical assets or liabilities.

Level 2 — Significant pricing inputs are observable inputs, which are inputs that reflect the assumptions market participants would use in pricing the asset or liability developed based on market data obtained from independent sources.

Level 3 — Significant pricing inputs are unobservable inputs, which are inputs that reflect the Company's own assumptions about the assumptions market participants would use in pricing the asset or liability developed based on the best information available in the circumstances.

The fair value measurements level of an asset or liability within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used should maximize the use of observable inputs and minimize the use of unobservable inputs.

The valuation methodologies described above may produce a fair value calculation that may not be indicative of future net realizable value or reflective of future fair values. There have been no changes in the methodologies used since December 31, 2013.

Restricted Cash

Cash amounts that are restricted to withdrawal or usage are presented as restricted cash. As of June 30, 2014 and 2013, the Company had \$702,900 and nil, respectively, of restricted cash held in an escrow account as a guarantee to a long-term supply agreement. See also Note 17.

Revenue

The Company's revenues represent sales of bio-succinic acid and derivative products to a limited number of customers. Revenues from two customers represented 52% and 68% of the consolidated revenue for the six months ended June 30, 2014 and 2013, respectively. Revenues from two customers represented 47% and 70% of the consolidated revenue for the three months ended June 30, 2014 and 2013, respectively.

Intangible assets

Costs incurred in obtaining patents are capitalized and amortized on a straight-line basis over their estimated useful lives of between 8 and 15 years. The Company's patent portfolio was acquired as part of the spin-off transaction and the acquisition of Bioamber SAS. The cost of servicing the patents is expensed as incurred.

As required by FASB ASC 805, *business combinations*, acquired in-process research and development ("IPR&D") through business combinations is accounted for as an indefinite-lived intangible asset until completion or abandonment of the associated research and development efforts. Therefore, such assets are not amortized but are tested for impairment at least annually. Once the research and development activities are deemed to be substantially complete, the assets will be amortized over the related product's useful life. If the project is abandoned, the assets will be written off if they have no alternative future use. The Company reviews its portfolio of patents and acquired in-process research and development taking into consideration events or circumstances that may affect its recoverable value.

Long-lived asset impairment

Management assesses the fair value of its long-lived assets in accordance with FASB ASC 360, *Property, Plant, and Equipment*. At the end of each reporting period, it evaluates whether there is objective evidence of events or changes in business conditions which suggest that an asset may be impaired.

In such cases the Company determines the fair value based upon forecasted cash flows which the assets are expected to generate and the net proceeds expected from their sale. If the carrying amount exceeds the fair value of the assets, estimated by discounting cash flows techniques, an impairment charge is recorded. The impairment charge is determined as the difference between the fair value of the assets and their corresponding carrying value.

Warrants financial liability

The Company accounts for common stock warrants in accordance with applicable accounting guidance provided in FASB ASC 815, *Derivatives and Hedging—Contracts in Entity's Own Equity*, as either derivative liabilities or as equity instruments depending on the specific terms of the warrant agreement. Derivative warrant liabilities were valued using the Black-Scholes pricing model at the date of initial issuance and are valued using the closing value as quoted on the New York Stock Exchange at each subsequent balance sheet date.

The liability is presented as warrants financial liability in the consolidated balance sheet, and changes in the fair value of the warrants are reflected in the consolidated statement of operations as part of financial charges (income), net.

Redeemable non-controlling interest

The Company accounts for redeemable non-controlling interest in accordance with FASB ASC 480-10-S99, *Classification and Measurement of Redeemable Securities*, under which the initial carrying value of the redeemable non-controlling interest is classified as temporary equity. The redeemable non-controlling interest is presented at the greater of their carrying amount or redemption value at the end of each reporting period. The changes in the value from period to period are charged to redeemable non-controlling interest on the consolidated balance sheets, or in reduction of retained earnings and earnings available to common shareholders if the redemption value is greater than the carrying amount. Refer to Note 12.

Net loss per share

The Company computes net loss per share in accordance with FASB ASC 260, *Earnings Per Share*, under which basic net loss per share attributable to common shareholders is computed by dividing net loss attributable to common shareholders by the basic weighted-average number of common shares outstanding during the period. Shares issued and reacquired during the period are weighted for the portion of the period that they were outstanding. The computation of diluted earnings per share ("EPS") is similar to the computation of the basic EPS except that the denominator is increased to include the number of additional shares of common stock that would have been outstanding if all of the potentially dilutive shares of common stock had been issued. In addition, in computing the dilutive effect of convertible securities, the numerator is adjusted to add back any convertible preferred dividends and the after-tax

amount of interest recognized in the period associated with any convertible debt. The numerator is also adjusted for any other changes in income or loss that would result from the assumed conversion of those potential shares of common stock such as profit-sharing expenses. Common equivalent shares are excluded from the diluted EPS calculation if their effect is anti-dilutive. Losses have been incurred in each period since inception; accordingly, diluted loss per share is not presented.

Recent accounting pronouncements

In July 2013, the FASB issued an amended accounting standard update on the financial statement presentation of unrecognized tax benefits. The amended guidance provides that a liability related to an unrecognized tax benefit should be presented as a reduction of a deferred tax asset for a net operating loss carryforward, a similar tax loss or a tax credit carryforward if such settlement is required or expected in the event the uncertain tax position is disallowed. The new guidance became effective for the Company on January 1, 2014 and was applied prospectively to unrecognized tax benefits that existed at the effective date with retrospective applications permitted. The Company's current presentation of unrecognized tax benefits conforms with the amended guidance. Accordingly, there was no impact to the Company resulting from this amended standard.

In May 2014, the FASB issued Accounting Standards Update (ASU) No. 2014-09, "Revenue Recognition - Revenue from Contracts with Customers," which is a comprehensive revenue recognition standard that will supersede nearly all existing revenue recognition guidance under U.S. GAAP. The standard is effective for interim and annual periods beginning after December 15, 2016, and either full retrospective adoption or modified retrospective adoption is permitted. The Company is in the process of evaluating the impact of the standard.

In June 2014, the FASB issued Accounting Standards Update (ASU) No. 2014-10, "Development Stage Entities," - Elimination of Certain Financial Reporting Requirements, including an Amendment to Variable Interest Entities Guidance in Topic 810, Consolidation, which eliminates the concept of a development stage entity (DSE) in its entirety from current accounting guidance. Amendments to the consolidation guidance may result in more DSEs being considered variable interest entities (VIEs). The new guidance is effective for fiscal years and interim periods beginning after 15 December 2014, with early adoption permitted. The Company is in the process of evaluating the impact of the standard. The Company is considering early adoption of this ASU.

2. Sinoven Biopolymers Inc. ("Sinoven")

On March 1, 2013, the Company and Sinoven's selling shareholders entered into a Termination and Release Agreement (the "Termination Agreement"), whereby their employment was terminated. Pursuant to the Termination Agreement, the 70,000 shares held in trust on behalf of the selling shareholders were dealt with as follows:

- i) 63,000 shares were released, and
- ii) 7,000 shares were forfeited in exchange for cash consideration of \$140,000.

The shares held in trust were considered deferred stock-based compensation and expensed in accordance with FASB ASC 718, ratably over the period in which the shares vested. As a result of entering into the Termination Agreement, the Company recognized the remaining deferred compensation as an expense in the amount of \$872,375 on March 1, 2013 and recorded the \$140,000 paid in cash as a decrease of additional paid-in capital.

3. Investment in AmberWorks LLC

AmberWorks had a net (income) loss of \$(216) and \$30,780, for the six months ended June 30, 2014 and 2013, respectively. Sinoven's share of the net (income) loss amounted to \$(108) and \$15,390 for those periods, respectively.

AmberWorks had a net (income) loss of \$(324) and \$102, for the three months ended June 30, 2014 and 2013, respectively. Sinoven's share of the net (income) loss amounted to \$(162) and \$51 for those periods, respectively.

AmberWorks had total assets of \$70,282 and \$1,420,066 and total liabilities of nil as of June 30, 2014 and December 31, 2013, respectively. Sinoven's share of net assets amounted to \$35,141 and \$710,033 as of those periods, respectively.

On May 6, 2014, AmberWorks proceeded to a capital distribution totaling \$1,350,000, to Sinoven and NatureWorks LLC, both 50% holders of the joint venture, in proportion of their respective investments in the joint venture. This distribution was in the form of cash and was recorded as a reduction of investment.

4. Inventories and Prepaid expenses and deposits

The Company had \$4.0 million and \$2.4 million of finished goods inventory as of June 30, 2014 and December 31, 2013, respectively, net of an inventory reserve of \$1.6 million and nil, as of June 30, 2014 and December 31, 2013, respectively.

The Company had \$3.6 million and \$5.1 million of prepaid expenses and deposits as of June 30, 2014 and December 31, 2013, respectively, which was comprised primarily of deposits made to secure the purchase of equipment and advances for the construction of the manufacturing facility in Sarnia, Ontario.

5. Property and equipment

	Estimated Useful Life (years)	June 30, 2014	December 31, 2013
		\$	\$
Land		315,679	316,689
Furniture and fixtures	5 - 8	90,204	80,081
Machinery and equipment	5 - 15	750,598	747,549
Computers, office equipment and peripherals	3 - 7	406,108	238,143
Construction in-progress		50,103,925	16,784,763
Grants applied to construction in-progress		<u>(5,116,436)</u>	<u>(4,338,168)</u>
		46,550,078	13,829,057
Less: accumulated depreciation		<u>(393,976)</u>	<u>(274,778)</u>
Property and equipment, net		<u>46,156,102</u>	<u>13,554,279</u>

Depreciation expense is recorded as an operating expense in the consolidated statements of operations and amounted to \$119,583 and \$70,198 for the six months ended June 30, 2014 and 2013, respectively and to \$59,909 and \$38,926 for the three months ended June 30, 2014 and 2013, respectively.

6. Intangible assets

	June 30, 2014	December 2013
	\$	\$
Intellectual property, patents and licenses:		
Beginning balance	4,878,813	12,644,197
Write-off of patents and completed IPR&D	—	<u>(7,785,384)</u>
	4,878,813	4,878,813
Foreign currency translation adjustment	<u>(350,074)</u>	<u>(350,074)</u>
	4,528,739	4,528,739
Less: accumulated amortization	<u>(4,528,739)</u>	<u>(4,528,739)</u>
Intellectual property, patents and licenses, net	—	—
Acquired in-process research and development	4,158,550	4,158,550
Computer software and licenses	68,961	—
Intangible assets, net	<u>4,227,511</u>	<u>4,158,550</u>

Amortization expense is recorded as an operating expense in the consolidated statements of operations and amounted to nil and \$1,001,967 for the six months ended June 30, 2014 and 2013, respectively and to nil and \$500,061 for the three months ended June 30, 2014 and 2013, respectively.

7. Accounts payable and accrued liabilities

Accounts payable and accrued liabilities consisted of the following:

	June 30, 2014	December 31, 2013
	\$	\$
Trade accounts payable.....	9,648,276	4,020,205
Accrued payroll and bonus	1,574,804	2,291,369
Consulting and legal fees	286,995	203,958
Other	940,498	565,939
Total	<u>12,450,573</u>	<u>7,081,471</u>

8. Long-term debt

Project Financing

The Company entered into the following facilities to fund the construction of the manufacturing facility in Sarnia, Ontario:

i) Sustainable Jobs and Investment Fund (“SJIF”)

On September 30, 2011, BioAmber Sarnia Inc. (“BioAmber Sarnia”) and the Minister of Economic Development and Trade of Ontario, Canada (Sustainable Jobs Innovation Fund) entered into an agreement pursuant to which a loan in the amount of CAD\$15,000,000, or \$14,058,000 when converted into U.S. dollars as of June 30, 2014, was granted to BioAmber Sarnia, according to the following principal terms:

- the loan is interest free during the first five years provided BioAmber Sarnia creates or retains an average of 31 jobs per year, calculated on an annual basis;
- the loan will bear interest from the fifth anniversary date of its disbursement at an annual rate of 3.98% (or 5.98% if BioAmber Sarnia does not fully achieve the cumulative job target for the first five years);
- the principal will be repayable in five annual equal installments from the sixth anniversary date of the disbursement of the loan;
- the loan is secured by a guarantee from BioAmber and Mitsui & Co., Ltd., the non-controlling shareholder of BioAmber Sarnia (the guarantee being limited to its percentage of ownership held in BioAmber Sarnia); and
- the loan is secured by (i) a general security agreement representing a valid charge on BioAmber Sarnia’s present and future accounts receivable, inventory, equipment and other personal property and (ii) a valid charge against the leasehold interest on the portion of the real property located in Sarnia Ontario, Canada and leased to BioAmber Sarnia.

During March 2013, BioAmber Sarnia received the first disbursement of CAD\$929,000, or \$871,133 when converted into U.S. dollars as of June 30, 2014. The loan was originally recorded at \$466,847 when converted into U.S. dollars as of June 30, 2014, being the discounted amount of the future cash payments of principal and interest over the term of the loan. The discount rate used was 15%, being the interest rate a loan with similar terms and conditions would carry.

The difference between the face value of the loan and the discounted amount of the loan of \$404,286 when converted into U.S. dollars as of June 30, 2014 was recorded as a short-term deferred grant and subsequently reclassified to reduce the cost of construction in-progress.

The discounted loan is being accreted to its face value through a charge in the consolidated statement of operations using the effective interest method over the term of the loan.

ii) Sustainable Chemistry Alliance (“SCA”)

In November 2011, BioAmber Sarnia entered into a loan agreement with SCA in the amount of CAD\$500,000, or \$468,600 when converted into U.S. dollars as of June 30, 2014. The loan was interest free until November 30, 2013, and the unpaid balance of the loan subsequently bears interest at the rate of 5% per annum compounded monthly. The principal repayment will be effected by way of 20 consecutive quarterly installments of CAD\$25,000 from November 2015 to November 2020. The loan agreement contains various legal and financial covenants including i) third party credit facilities which cannot exceed \$45 million in the aggregate as long as any principal of the loan remains outstanding, ii) the funds are to be used for research and development expenses only and iii) dividends may not be declared or paid without the consent of the lender.

The loan was originally recorded at \$243,088 when converted into U.S. dollars as of June 30, 2014, being the discounted amount of the future cash payments of principal and interest over the term of the loan. The discount rate used was 15%, being the interest rate a loan with similar terms and conditions would carry.

The difference between the face value of the loan and the discounted amount of the loan of \$225,512 was recorded as a deferred grant (see Note 9).

The discounted loan is being accreted to its face value through a charge in the consolidated statement of operations using the effective interest method over the term of the loan.

iii) Federal Economic Development Agency (“FEDDEV”)

On September 30, 2011, BioAmber Sarnia and FEDDEV entered into a contribution agreement pursuant to which a loan of up to a maximum amount of CAD\$12,000,000 or \$11,246,400 when converted into U.S. dollars as of June 30, 2014, was granted to BioAmber Sarnia. The loan is non-interest bearing with repayment of principal from October 2013 to October 2018 in 60 monthly installments. The repayment terms were later modified as described below.

The loan agreement contains various legal and financial covenants ordinarily found in such government agency loan agreements. In addition the following specific covenants also apply:

- (a) the Company will carry appropriate amounts of liability and casualty insurance during the duration of the loan agreement;
- (b) the Company will file for and obtain all necessary permits and licenses from all required jurisdictional authorities in order to build the facility;
- (c) the Company will not alter the project nor project management without prior written consent of the Minister;
- (d) the Company will complete the project to the Minister’s satisfaction by the completion date; and
- (e) the Company will not allow change of control without prior written consent of the Minister.

These covenants were met as of June 30, 2014.

During October 2012, BioAmber Sarnia received the first disbursement for CAD\$3,645,000 or \$3,416,055 when converted into U.S. dollars as of June 30, 2014. The loan was originally recorded at \$2,087,541 when converted into U.S. dollars as of June 30, 2014, being the discounted amount of the future cash payments of principal and interest over the term of the loan. The discount rate used was 15%, being the interest rate a loan with similar terms and conditions would carry. The difference between the face value of the loan and the discounted amount of the loan of \$1,328,514 when converted into U.S. dollars as of June 30, 2014 was recorded as a deferred grant and subsequently reclassified to reduce the cost of construction in progress.

During January 2013, BioAmber Sarnia received a second disbursement for CAD\$221,000, or \$207,487 when converted into U.S. dollars as of June 30, 2014. The loan was originally recorded at \$133,254 when converted into U.S. dollars as of June 30, 2014, being the discounted amount of the future cash payments of principal and interest over the term of the loan. The discount rate used was 15%, being the interest rate a loan with similar terms and conditions would carry. The difference between the face value of the loan and the discounted amount of the loan of \$74,233 when converted into U.S. dollars as of June 30, 2014 was recorded as a deferred grant and subsequently reclassified to reduce the cost of construction in progress.

On March 20, 2013, the Company agreed with FEDDEV to amend the repayment of principal from the period October 2013 to October 2018, to the period October 2014 to October 2019. The Company recorded the impact of the amendment in accordance with FASB ASC 470-50, *Debt Modifications and Extinguishments*. Accordingly, the amendment was recorded as a debt extinguishment and the issuance of new debt, with new terms. As a result, the Company recognized a gain on debt extinguishment of \$314,305.

During December 2013, BioAmber Sarnia received a third disbursement for CAD\$1,882,700, or \$1,764,469 when converted into U.S. dollars as of June 30, 2014. The loan was originally recorded at \$1,105,387 when converted into U.S. dollars as of June 30, 2014, being the discounted amount of the future cash payments of principal and interest over the term of the loan. The discount rate used was 15%, being the interest rate a loan with similar terms and conditions would carry. The difference between the face value of the loan and the discounted amount of the loan of \$659,082 when converted into U.S. dollars as of June 30, 2014 was recorded as a deferred grant and subsequently reclassified to reduce the cost of construction in progress.

During June 2014, BioAmber Sarnia received a fourth disbursement for CAD\$3,183,200, or \$2,983,329 when converted into U.S. dollars as of June 30, 2014. The loan was originally recorded at \$2,191,218 when converted into U.S. dollars as of June 30, 2014, being the discounted amount of the future cash payments of principal and interest over the term of the loan. The discount rate used was 12%, being the interest rate a loan with similar terms and conditions would carry.

The difference between the face value of the loan and the discounted amount of the loan of \$792,111 when converted into U.S. dollars as of June 30, 2014 was recorded as a grant classified in reduction of the cost of construction in progress.

The discounted loan is being accreted to its face value through a charge in the consolidated statement of operations using the effective interest method over the term of the loan

iv) Hercules Technology Growth Capital, Inc. (“HTGC”)

On June 27, 2013, the Company entered into a Loan and Security Agreement (the “Loan Agreement”) with HTGC. Pursuant to the Loan Agreement, HTGC agreed to make a senior secured term loan of \$25 million, which was funded on June 27, 2013, net of a 2.5% loan fee. The term loan is repayable over 36 months after closing, at a floating interest rate per annum based on the greater of (a) 10% and (b) the prime rate (as reported in the Wall Street Journal) plus 6.75% and is subject to an end of term charge of 11.5% based on the \$25 million loaned amount (\$2,875,000). There was an initial interest-only period until January 1, 2014, to be extended until July 1, 2014 in the event that the Company received an additional equity contribution by its joint venture partner of at least \$1.5 million relating to its planned Sarnia facility by December 31, 2013, which was subsequently extended to January 31, 2014 pursuant to an amendment dated December 20, 2013. On January 24, 2014, the Company received the additional equity contribution from Mitsui of CAD \$9 million, and fulfilled the condition to extend the initial interest-only period until July 1, 2014.

At its option, the Company may prepay some or all of the loan balance, subject to a prepayment fee equal to 2% of the amount prepaid during the first 12 months after closing, 1% after 12 months but prior to 24 months after closing, and without prepayment fee thereafter. In addition, the Company is obligated to pay an end of term charge (as referenced above) in the amount of \$2,875,000 on the date on which the term loan is paid or becomes due and payable in full, which is being accreted over the expected term of the loan.

As of June 30, 2014, the balance of deferred financing cost associated with this transaction was \$537,607 and is being amortized over the estimated term of the loan using the effective interest method.

The loan obligation is secured by a security interest on substantially all of the Company’s assets (subject to certain exceptions), including its intellectual property, but excluding certain licenses from third parties and its equity interest in its subsidiary, BioAmber Sarnia. The security interest does not apply to any assets owned by BioAmber Sarnia, the entity that will own the Company’s planned Sarnia, Ontario manufacturing facility.

The Loan Agreement contains certain representations and warranties, affirmative covenants, negative covenants and conditions that are customarily required for similar financings. The Loan Agreement also contains customary events of default (subject, in certain instances, to specified grace periods) including, but not limited to, the failure to make payments of interest or premium, if any, on, or principal under the loan, the failure to comply with certain covenants and agreements specified in the Loan Agreement, the occurrence of a material adverse effect, defaults in respect of certain other indebtedness, and certain events of insolvency. The Company must maintain at least \$10 million in unrestricted cash as long as the loan remains outstanding. If the Company makes investments into BioAmber Sarnia in an amount exceeding \$15 million per quarter, or an aggregate amount exceeding \$50 million during the term of the loan, the Company is required to maintain an amount not less than the lesser of (a) \$20 million and (b) the then outstanding principal balance of the term loan, in unrestricted cash through the period ending December 31, 2014 at which time, under the terms of the Loan Agreement, the planned Sarnia facility must be mechanically complete. If any event of default occurs, the principal, premium, if any (including the end of term fee referenced above), interest and any other monetary obligations on all the then outstanding amounts under the loan may become due and payable immediately. These covenants were met as of June 30, 2014.

v) Minister of Agriculture and Agri-Food of Canada

On March 10, 2014, BioAmber Sarnia entered into a repayable contribution agreement in the form of a non-interest bearing loan with the Minister of Agriculture and Agri-Food of Canada in the amount of CAD\$10 million for the AgriInnovation Program. This loan provides for progressive disbursements as eligible costs are incurred for building construction, installation of equipment and start-up and commissioning of the Sarnia facility. The loan is repayable in equal, monthly installments beginning March 31, 2016 through March 31, 2025 and it contains various legal and financial covenants ordinarily found in such government agency loan agreements. No payments were received as of June 30, 2014.

vi) Comerica Bank, Export Development Canada and Farm Credit Canada

On June 20, 2014, BioAmber Sarnia signed a loan agreement with a financial consortium, comprised of Export Development Canada, Farm Credit Canada and Comerica Bank, for a senior secured loan in the principal amount of CAD\$20.0 million. The loan will bear interest at a floating interest rate per annum based on the greater of (i) the Canadian prime rate and (ii) the Canadian dealer offered rate plus 1%, in either case plus an interest spread of 5%. There will be an initial interest-only period from draw down of the term loan until the first payment of principal. The loan’s principal will be repaid in 26 equal, quarterly installments beginning three months after the completion of the commissioning and start-up phase of the Sarnia plant, but at the latest on June 30, 2015. The

disbursement of the loan, net of a 2.5% upfront loan fee which is due and payable 30 days after the date of the agreement, is subject to customary conditions, including continued progress on the construction of the Sarnia plant, which are expected to be met in or around December 2014. The 2.5% upfront fee of CAD\$500,000, or \$468,600 when converted into U.S. dollars as of June 30, 2014, was recorded as deferred financing costs and will be amortized over the estimated term of the loan using the effective interest method. Until drawdown of the CAD\$20.0 million term loan, BioAmber Sarnia will pay a 1.0% per annum commitment fee on the undrawn amount. BioAmber Sarnia may prepay all or a portion of the loan outstanding from and after the date of the first principal repayment, without penalty.

BioAmber Sarnia's obligations under the loan are secured by (i) a security interest on all of BioAmber Sarnia's assets and (ii) a pledge of all the shares of BioAmber Sarnia. In addition, we will provide the lenders with a guarantee representing 70% of the secured obligations under the loan, and Mitsui & Co., Ltd. will provide a guarantee representing 30% of the secured obligations under the loan that is capped at CAD\$6.0 million plus all accrued interest on the secured obligations and fees and expenses. The proceeds of the loan will be used by BioAmber Sarnia to complete the ongoing construction of the Sarnia Plant and fund its startup and commissioning.

The loan agreement contains certain representations and warranties, affirmative covenants, negative covenants and conditions that are customarily required for similar financings, including in connection with the disbursement of the loan. The financial covenants require BioAmber Sarnia to maintain a minimum debt service ratio of 1.75 on a historical basis, at the end of any and each quarter during the term of the loan. The agreement also contains customary events of default (subject, in certain instances, to specified grace periods) including, but not limited to, the failure to make payments of interest or premium, if any, on, or principal under the loan, the failure to comply with certain covenants and agreements specified in the agreement, the occurrence of a material adverse effect, defaults in respect of certain other indebtedness and agreements, and certain events of insolvency. If an event of default occurs, the principal, premium, if any, interest and any other monetary obligations on all the then outstanding amounts under the loan may become due and payable immediately.

The balance of the outstanding long-term debt is as follows:

	<u>June 30,</u> <u>2014</u>	<u>December 31,</u> <u>2013</u>
	\$	\$
Sustainable Chemistry Alliance:		
Face value (CAD \$500,000)	468,600	470,100
Less: debt discount	(225,512)	(226,234)
Amortization of debt discount	95,367	83,344
	<u>338,455</u>	<u>327,210</u>
Sustainable Jobs and Investment Fund:		
Face value (CAD \$929,000)	871,133	873,922
Less: debt discount	(404,286)	(405,580)
Amortization of debt discount	95,623	55,401
	<u>562,470</u>	<u>523,743</u>
Federal Economic Development Agency:		
Face value (CAD \$8,931,900)	8,371,340	5,405,259
Less: debt discount	(2,853,940)	(2,068,429)
Less: short-term portion of debt	(1,255,701)	(270,263)
Gain on debt extinguishment	(298,893)	(299,852)
Amortization of debt discount	609,339	349,254
	<u>4,572,145</u>	<u>3,115,969</u>
Hercules Technology Growth Capital, Inc.:		
Face value (US \$25,000,000)	25,000,000	25,000,000
Less: short-term portion of debt	(11,848,184)	(6,250,000)
Less: End of term charge	967,069	492,707
	<u>14,118,885</u>	<u>19,242,707</u>
Long-term debt, net	<u>19,591,955</u>	<u>23,209,629</u>

The principal repayments of the outstanding loans payable are as follows:

	SCA	SJIF	FEDDEV	HTGC	Total
	\$	\$	\$	\$	\$
July 2014 - June 2015	—	—	1,255,701	11,848,184	13,103,885
July 2015 - June 2016	46,860	—	1,674,268	13,151,816	14,872,944
July 2016 - June 2017	93,720	—	1,674,268	—	1,767,988
July 2017 - June 2018	93,720	—	1,674,268	—	1,767,988
June 2018 and thereafter	234,300	871,133	2,092,835	—	3,198,268
Total	<u>468,600</u>	<u>871,133</u>	<u>8,371,340</u>	<u>25,000,000</u>	<u>34,711,073</u>

9. Deferred Grants

As of June 30, 2014, the Company has the following deferred grants:

a) Sustainable Development Technology Canada (“SDTC”)

Grant from Sustainable Development Technology Canada to BioAmber Sarnia in the amount of CAD\$7,500,000, or \$6,784,500 when converted into U.S. dollars as of June 30, 2014, with progressive disbursements according to the terms of the agreement and milestones, as follows:

- i) Detailed Engineering Package, Construction and Procurement. The Company fulfilled this Milestone in October 2012.
- ii) Procurement of Equipment and Construction of the manufacturing facility, expected to be prior to December 2014.
- iii) Commissioning, Start-up and Optimization of the manufacturing facility, expected to be prior to March 31, 2015.

The grant is non-reimbursable by BioAmber Sarnia except upon the occurrence of certain events of default defined in the agreement.

An advance on Milestone I of CAD\$1,982,726, or \$1,858,210 when converted into U.S. dollars as of June 30, 2014, was received in December 2011 (net of 10% holdback) and was originally recorded as deferred grant. During October 2012, Milestone I was fulfilled and as a result BioAmber Sarnia received an additional amount of CAD\$3,015,000, or \$2,825,658 when converted into U.S. dollars as of June 30, 2014, as advance on Milestone II. Accordingly, the advance on Milestone I was reclassified from deferred grants reducing the cost of construction in-progress, whereas the advance in Milestone II has been recorded as a deferred grant and will be reclassified as a reduction of such expenses as they are incurred in the future.

b) Sustainable Chemistry Alliance (“SCA”)

The loan received from SCA is to be used primarily for maintenance and operation of the Company’s facility, staff salaries and commercialization costs. As the loan bears a below market interest rate, it has been recorded at a discount and a portion of the proceeds has been recorded as a deferred grant. The expenses for which the loan was received have not yet been incurred as of June 30, 2014, but are expected to be incurred during the next year. Accordingly, the grant portion of the loan in the amount of \$225,512 when converted into U.S. dollars as of June 30, 2014, has been deferred and will be reclassified as a reduction of such expenses as they are incurred in the future.

The balance of the outstanding current liability deferred grant is as follows:

	June 30, 2014	December 31, 2013
	\$	\$
SDTC	2,825,860	2,834,906
SCA	225,512	226,234
Total	<u>3,051,372</u>	<u>3,061,140</u>

10. Financial charges (income)

	Three Months		Six Months		Cumulative from inception to June 30, 2014
	ended June 30,		ended June 30,		
	2014	2013	2014	2013	
	\$	\$	\$	\$	\$
End of term charge on long-term debt (Note 8).....	238,492	—	474,362	—	967,069
Interest on long-term debt.....	631,944	—	1,256,944	—	2,562,500
Revaluation of the warrants financial liability (Note 13) ...	3,040,000	(11,748,000)	14,640,000	(11,748,000)	4,332,000
Issuance of the warrants financial liability.....	—	1,131,200	—	1,131,200	1,131,200
Increase in estimated fair value of shares to be issued to the non-controlling shareholders of SBI.....	—	—	—	—	3,215,100
Accreted interest on convertible notes.....	—	—	—	—	1,855,755
Bridge loan financing charge.....	—	—	—	—	572,080
Interest revenue.....	(39,637)	—	(147,786)	—	(202,358)
Total financial charges (income), net.....	<u>3,870,799</u>	<u>(10,616,800)</u>	<u>16,223,520</u>	<u>(10,616,800)</u>	<u>14,433,346</u>

11. Commitments and contingencies

Leases

The Company leases its premises and other assets under various operating leases. Future lease payments aggregate \$1,062,636 as at December 31, 2013 and include the following future amounts payable on a twelve month basis:

	<u>December 31, 2013</u>
	\$
2014.....	489,997
2015.....	433,744
2016.....	138,895
2017 and thereafter.....	—

Royalties

The Company has entered into exclusive license agreements that provide for the payment of royalties in the form of up-front payments, minimum annual royalties, and milestone payments. The Company has the right to convert such exclusive agreements into non-exclusive agreements without the right to sublicense and without the obligation to pay minimum royalties. As of December 31, 2013, the Company has commitments related to royalty payments as follows:

	<u>December 31, 2013</u>
	\$
2014.....	601,824
2015.....	597,667
2016.....	593,500
2017.....	722,667
2018 and thereafter.....	7,688,667

The Company has such contractual agreements with the following partners: Cargill Inc., DuPont, Michigan State University, UT-Batelle on behalf of the U.S. National Laboratories and the U.S. DOE, Celexion LLC, University of Guelph, Gene Bridges GmbH, the University of North Dakota and the National Research Council of Canada in partnership with the INRS University.

The royalties which the Company owes are in return for the use or development of proprietary tools, patents and know-how and the actual expenses incurred amounted to a total of \$317,307 and \$ 691,442 for the six months ended June 30, 2014 and 2013, respectively, and to a total of \$135,224 and \$ 348,028 for the three months ended June 30, 2014 and 2013, respectively, and are included in research and development expenses in the consolidated statements of operations.

Purchase Obligations

BioAmber Sarnia has entered into a steam supply agreement with LANXESS Inc., under which, BioAmber Sarnia has agreed to pay a Monthly Take or Pay fee during the term of the contract, which will vary upon the natural gas price index. BioAmber Sarnia has also entered into a service agreement with LANXESS Inc. under which minimum yearly payments are required. As of December 31, 2013, BioAmber Sarnia has commitments related to purchase obligations and service payments as follows:

	<u>December 31, 2013</u>
	\$
2014	642,000
2015	1,608,914
2016	3,022,829
2017	3,315,612
2018 and thereafter	17,804,060

No payments were made during the six and three months ended June 30, 2014 under those agreements.

Litigation

As of June 30, 2014 there were no outstanding claims or litigations.

12. Redeemable non-controlling interest

On January 24, 2014, the Company signed an amended and restated joint venture agreement (the "Amended JV Agreement") with Mitsui & Co. Ltd. related to the Sarnia joint venture. Under the Amended JV Agreement, Mitsui invested an additional \$8.1 million (CAD\$9 million) of equity on January 29, 2014 in BioAmber Sarnia to maintain its 30% ownership. The Amended JV Agreement also revised each party's rights and obligations under the buy/sell provisions of the Agreement, including a put option exercisable at Mitsui's sole discretion that requires the Company to purchase Mitsui's equity for a purchase price of 50% of Mitsui's equity in the joint venture. This option remains in effect until December 31, 2018. As a result of the Amended JV Agreement, the Company's previously recorded non-controlling interest in BioAmber Sarnia joint venture of \$2.1 million as at December 31, 2013 in shareholders' equity on the consolidated balance sheet, was re-classified to redeemable non-controlling interest in temporary equity on the Company's consolidated balance sheets, at the greater of the carrying value or the redemption value, in accordance with FASB ASC 480-10-S99. As of June 30, 2014, the estimated redemption value of the redeemable non-controlling interest was \$5.5 million. The following table reflects the activity of the redeemable non-controlling interest:

Balance, January 1, 2014	—
Reclassification of non-controlling interest to redeemable non-controlling interest.....	2,125,925
Mitsui's additional capital contribution.....	8,120,700
Net loss attributable to non-controlling interest (NCI).....	(193,575)
Accumulated other comprehensive income attributable to NCI	100,361
Balance, June 30, 2014	<u>10,153,411</u>

13. Share capital

On April 10, 2013, the Company's board of directors approved a 35-for-1 forward stock split of the Company's outstanding common stock, with a post-split par value of \$0.01 per share of common stock, which became effective May 2, 2013, upon the filing of the Company's amended and restated certificate of incorporation. All share and per share information in the accompanying consolidated financial statements and related notes have been retroactively adjusted to reflect the stock split for all periods presented.

Authorized

The Company was authorized to issue from the date of inception to April 13, 2011, 9,310,000 shares of common stock and 1,190,000 preferred shares, issuable in series, each with a par value of \$0.01 per share.

On April 14, 2011, the Company's board of directors resolved (i) to increase the total number of authorized shares of common stock to 17,500,000 and (ii) to eliminate the authorization for issuance of preferred shares.

On May 1, 2013, the Company’s board of directors resolved (i) to increase the total number of authorized shares of common stock to 250,000,000, and (ii) to authorize to issue 5,000,000 shares of undesignated preferred shares, which became effective May 2, 2013, upon the filing of the Company’s amended and restated certificate of incorporation.

Common stock—dividends and voting rights

Each share entitles the record holders thereof to one vote per share on all matters on which shareholders shall have the right to vote. The holders of shares shall be entitled to such dividends, if any, as may be declared thereon by the Company’s board of directors at its sole discretion.

Preferred stock—dividends and voting rights

Holders of Series A preferred stock were entitled to dividends and votes on the same basis as the common stock, and had a liquidation preference of \$2.72 per share. In addition, the Series A participating convertible stock was convertible, at the option of the holders, into shares of common stock on a one-to-one basis. As of September 30, 2010 all shares of preferred stock had been converted into shares of common stock.

Liquidation, dissolution and winding up rights

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of shares of common stock shall be entitled to receive all of the remaining assets of the Company available for distribution to its shareholders, ratably in proportion to the number of shares held by them.

Initial Public Offering

On May 9, 2013, the Company completed an initial public offering (“IPO”) of 8,000,000 units, each unit consisting of one share of common stock and one warrant to purchase half of one share of common stock, at a price of \$10.00 per unit. Each warrant is exercisable during the period commencing on August 8, 2013 and ending on May 9, 2017 at an exercise price of \$11.00 per whole share of common stock.

The Company received approximately \$71.7 million in net proceeds from the IPO, net of fees, expenses and underwriting discounts of \$8.3 million, of which \$1.1 million was allocated to the warrants and recorded as financial charges in the Consolidated Statements of Operations.

The units began trading on the New York Stock Exchange on May 10, 2013 under the symbol BIOA.U. On June 10, 2013, the common shares began trading on the New York Stock Exchange separately under the symbol BIOA and the warrants began trading on the New York Stock Exchange separately under the symbol BIOA.WS and the trading of the units was suspended and they were delisted.

Warrants financial liability

The warrants issued upon the completion of the IPO, are exercisable during the period beginning on August 8, 2013 and ending on May 9, 2017. The warrants contain full ratchet, anti-dilution protection upon the issuance of any common stock, securities convertible into common stock, or certain other issuances at a price below the then-existing exercise price of the warrant, with certain exceptions. The exercise price of \$11.00 per whole share of common stock is subject to appropriate adjustment in the event of certain stock dividends and distributions, stock splits, stock issuances or other similar events affecting the company’s common stock. At issuance, the fair value of the warrants was classified as a financial liability as a result of their characteristics, in accordance with FASB ASC 815.

The fair value of the warrants was determined to be \$2.02 per warrant using the Black-Scholes option pricing model using the following assumptions:

Risk free interest rate	0.54%
Expected life	4 years
Volatility	56.06%
Expected dividend yield.....	0%
Forfeiture rate.....	0%

Accordingly, a liability of \$16.1 million was recorded at the unit issuance date. On June 30, 2014, the closing value of the warrant on the New York Stock Exchange, a level 1 fair value measure, was \$2.56 per warrant, as compared to \$0.73 per warrant on December 31, 2013. As a result, the liability was revalued at the balance sheet date resulting in a financial charge of \$14.6 million and \$3.0 million for the six and three months ended June 30, 2014, respectively.

Private placement—period ended December 31, 2012

On February 6, 2012, the Company completed a private placement for gross proceeds of \$9,999,910, pursuant to which 351,050 shares of common stock were issued at a price per share of \$28.49.

Share issue costs incurred amounted to \$22,254 consisting principally of legal fees.

Private placements—period ended December 31, 2011

On April 15, 2011, the Company completed a private placement for gross proceeds of approximately \$45,000,000, pursuant to which 4,266,640 shares of common stock were issued at a price per share of \$10.55. The private placement consisted of the following:

- Issuance of 379,155 shares of common stock resulting from the conversion of \$3,998,893 in unsecured convertible notes;
- Issuance of 3,887,485 shares of common stock for gross cash proceeds of \$41,000,749; and
- Issuance of 94,745 warrants with fair value of \$810,448 recorded as a financial charge. Each warrant expires 10 years from the warrant issue date and entitles the holder to purchase one share of common stock at a price of \$10.55 per share. The fair value of the warrants was determined using the Black-Scholes option pricing model using the following assumptions:

Risk-free interest rate	2.62%
Expected life	10 years
Volatility	78.25%
Expected dividend yield	0%

Share issue costs incurred amounted to approximately \$240,000 consisting principally of legal fees, of which \$231,374 was allocated to the share issuance and \$8,626 were allocated to the conversion of the unsecured convertible note.

On November 4, 2011 the Company completed a private placement for gross proceeds of approximately \$20,000,817, pursuant to which 702,135 shares of common stock were issued at a price per share of \$28.49.

Share issue costs incurred amounted to \$31,230 consisting principally of legal fees.

Private placement—period ended June 30, 2010

In October 2009, the Company completed a private placement for gross proceeds of approximately \$12,000,000, pursuant to which 2,089,570 shares of common stock were issued at a price of \$5.74 per share as follows:

- Conversion of a secured convertible note, for a total amount of \$4,000,000, into 696,500 shares of common stock, at \$5.74 per share price totaling \$3,999,900. The remaining \$100 was forgiven;
- Issuance of 1,393,070 shares of common stock for gross cash proceeds of \$8,000,102; and
- Issuance of 66,185 warrants as broker fees with a fair value of \$244,373. Each warrant expires five years from the warrant issue date and entitles the holder to purchase one share of common stock at a price of \$5.74 per share. The fair value of the warrants was determined using the Black-Scholes option pricing model, using the following assumptions:

Risk-free interest rate	2.62%
Expected life	5 years
Volatility	78.25%
Expected dividend yield	0%

In October 2009, as part of the private placement transaction, all outstanding issued preferred stock were converted into 1,177,925 shares of common stock.

Share issue costs incurred amounted to \$589,854 consisting principally of legal fees and commissions.

Stock option plan

On December 8, 2008, the Company's board of directors approved the Company's Employee Stock Option Plan (the "Plan"), available to certain employees, outside directors and consultants of the Company and its affiliated companies. The options under the Plan are granted for the purchase of common stock at exercise prices determined by the Company's board of directors and generally vest two, three and four years from the date of grant and expire in 10 years. The total number of options allowable in the plan is 2,121,000, of which 974,750 were approved under the initial plan, 1,050,000 were approved by the Company's board of directors on June 27, 2011 and 96,250 were approved by the Company's board of directors on December 6, 2011.

On April 10, 2013, the Company's board of directors adopted the 2013 Stock Option and Incentive Plan, or the 2013 Plan, which was subsequently approved by the stockholders on May 2, 2013. The 2013 Plan replaced the 2008 Plan, as the Company's board of directors has determined not to make additional awards under that plan. The 2013 Plan provides flexibility to the compensation committee to use various equity-based incentive awards as compensation tools to motivate its workforce.

The Company initially reserved 2,761,922 shares of its common stock for the issuance of awards under the 2013 Plan. The 2013 Plan may also provide that the number of shares reserved and available for issuance under the plan will automatically increase each January 1, beginning in 2014, by 3% of the outstanding number of shares of common stock on the immediately preceding December 31. This number is subject to adjustment in the event of a stock split, stock dividend or other changes in the Company's capitalization.

The 2013 Plan is administered by the Company's board of directors or the compensation committee of the board of directors (the "Administrator"). The Administrator has full power to select, from among the individuals eligible for awards, the individuals to whom awards will be granted, to make any combination of awards to participants, and to determine the specific terms and conditions of each award, subject to the provisions of the 2013 Plan. Persons eligible to participate in the 2013 Plan are those full or part-time officers, employees, non-employee directors and other key persons (including consultants and prospective officers) of the Company and its subsidiaries as selected from time to time by the Administrator in its discretion.

The 2013 Plan permits the granting of (1) options to purchase common stock intended to qualify as incentive stock options under Section 422 of the Code and (2) options that do not so qualify. The exercise price of each option will be determined by the Administrator but may not be less than 100% of the fair market value of the common stock on the date of grant. The term of each option will be fixed by the Administrator and may not exceed ten years from the date of grant. The Administrator will determine at what time or times each option may be exercised.

The Administrator may award stock appreciation rights, restricted shares of common stock, restricted stock units and may also grant shares of common stock which are free from any restrictions under the 2013 Plan. The Administrator may grant performance share awards to any participant, which entitle the recipient to receive shares of common stock upon the achievement of certain performance goals and such other conditions as the Administrator shall determine. The Administrator may grant dividend equivalent rights to participants which entitle the recipient to receive credits for dividends that would be paid if the recipient had held specified shares of common stock.

The 2013 Plan provides that upon the effectiveness of a "sale event" as defined in the 2013 Plan, except as otherwise provided by the Administrator in the award agreement, all stock options and stock appreciation rights will automatically become fully exercisable and the restrictions and conditions on all other awards with time-based conditions will automatically be deemed waived, unless the parties to the sale event agree that such awards will be assumed or continued by the successor entity.

No other awards may be granted under the 2013 Plan after the date that is ten years from the date of stockholder approval.

Stock-based compensation expense was allocated as follows:

	Three Months ended June 30,		Six Months ended June 30,		Cumulative from inception to June 30, 2014
	2014	2013	2014	2013	
	\$	\$	\$	\$	\$
General and administrative	796,215	528,644	1,460,237	1,287,844	8,301,070
Research and development.....	1,583,261	956,156	2,230,786	2,410,080	12,163,258
Sales and marketing	658,484	574,424	830,618	778,667	3,428,198
Total compensation expense	<u>3,037,960</u>	<u>2,059,224</u>	<u>4,521,641</u>	<u>4,476,591</u>	<u>23,892,526</u>

The following table summarizes activity under the Plan:

	Three Months ended				Six Months ended			
	June 30, 2014		June 30, 2013		June 30, 2014		June 30, 2013	
	Number of options	Weighted Average Exercise price	Number of options	Weighted Average Exercise price	Number of options	Weighted Average Exercise price	Number of options	Weighted Average Exercise price
		\$		\$		\$		\$
Options outstanding, beginning of period	4,342,841	8.49	2,061,500	10.80	4,329,560	8.46	2,072,000	10.89
Granted	125,901	10.27	248,716	10.55	185,901	10.84	252,216	10.80
Exercised	(21,000)	5.74	—	—	(21,000)	5.74	—	—
Forfeited	(314,542)	27.06	(77,365)	28.49	(361,261)	24.86	(91,365)	28.49
Options outstanding, end of period	4,133,200	7.15	2,232,851	10.31	4,133,200	7.15	2,232,851	10.31
Options exercisable, end of period	1,588,022	6.46	1,479,148	7.39	1,588,022	6.46	1,479,148	7.39
Per share weighted average grant-date fair value of options granted		5.73		4.91		6.05		9.50

On May 31, 2014, all holders of options outstanding at an exercise price of \$28.49 per share agreed to cancel these options for no consideration, whereby the remaining expense associated with the unvested options of \$1,852,787 was recorded as stock-based compensation expense during the three months ended June 30, 2014. As of June 30, 2014, the weighted-average remaining contractual life of options outstanding and options exercisable were 8.21 years and 6.46 years, respectively.

The fair value of options granted during the three months ended June 30, 2014 and 2013, respectively, was determined using the Black-Scholes option pricing model and the following weighted-average assumptions:

	Three Months ended June 30,	
	2014	2013
Risk-free interest rate	1.93%	2.52%
Expected life	6.25 years	10 years
Volatility	57.79%	72.30%
Expected dividend yield.....	0%	0%

Warrants

During the six months ended June 30, 2014, 3,500 warrants were exercised at an exercise price of \$1.07 per share and an additional 3,430 warrants were exercised at an exercise price of \$1.43 per share. During the three months ended June 30, 2014, 3,430 warrants were exercised at an exercise price of \$1.43 per share.

As at June 30, 2014, the Company had the following warrants outstanding to acquire common shares:

Number	Exercise price	Expiration date
335,066	\$ 1.07	February 2014 - September 2019
610,890	\$ 1.43	February 1, 2019
264,670	\$ 5.74	October 2014 - June 2019
94,745	\$ 10.55	April 1, 2021
4,000,000	\$ 11.00	May 1, 2017
<u>5,305,371</u>		

14. Income taxes

Deferred income tax assets and liabilities are recognized for the future tax consequences attributable to differences between financial reporting and tax bases of assets and liabilities and available net operating loss carry forwards. A valuation allowance is established to reduce tax assets if it is more likely than not that all or some portions of such tax assets will not be realized.

The Company's valuation allowance was recorded on the deferred tax assets to provide for a reasonable provision, which in the Company's estimation is more likely than not that all or some portions of such tax assets will not be realized. In determining the adequacy of the valuation allowance, the Company applied the authoritative guidance and considered such factors as (i) which subsidiaries were producing income and which subsidiaries were producing losses and (ii) temporary differences occurring from depreciation and amortization which the Company expects to increase the taxable income over future periods.

The Company follows the guidance concerning accounting for uncertainty in income taxes, which clarifies the accounting and disclosure for uncertainty in tax positions. The guidance requires that the Company determine whether it is more likely than not that a tax position will not be sustained upon examination by the appropriate taxing authority. If a tax position does not meet the more likely than not recognition criterion, the guidance requires that the tax position be measured at the largest amount of benefit greater than 50 percent not likely of being sustained upon ultimate settlement.

Based on the Company's evaluation at June 30, 2014, management has concluded that there has been no change to the recorded uncertain tax positions requiring recognition in the consolidated financial statements or adjustments to deferred tax assets and related valuation allowance. Open tax years include the tax years December 31, 2010 through December 31, 2013.

The Company from time to time has been assessed interest or penalties by major tax jurisdictions; however such assessments historically have been minimal and immaterial to our financial results. If the Company receives an assessment for interest and/or penalties, it would be classified in the consolidated financial statements as an income tax expense.

For the three month periods ended June 30, 2014 and June 30, 2013, the Company's effective income tax rates was (0.26)% and (0.28)% respectively, compared to an applicable U.S. federal statutory income tax rate of 34%. The difference between the effective tax rate and U.S. statutory tax as of June 30, 2014 is primarily due the existence of valuation allowances for deferred tax assets including net operating losses and stock options. For the three months ended June 30, 2014, the Company recorded valuation allowances on deferred tax assets relating to current year losses. As of June 30, 2014, no changes have been made to the unrecognized tax benefits that were previously recorded.

The Company accounts for interest and penalties related to uncertain tax positions, if any, as part of tax expense unless it is associated with intercompany profits. The Company recognizes interest and penalties related to uncertain tax positions associated with intercompany profits as prepaid tax expense. The asset is amortized over the life of the assets involved in the intercompany sale. For each of the periods presented herein, there were no material changes to the amounts accrued or charged to expense for tax-related interest and penalties.

The Company is subject to possible income tax examinations for its U.S. federal and state income tax returns filed for the tax years 2009 to present. International tax statutes may vary widely regarding the tax years subject to examination, but generally range from 2009 to the present.

15. Financial instruments

Currency risk

The Company is exposed to foreign currency risk as result of foreign-denominated transactions and balances. The Company does not hold any financial instruments that mitigate this risk.

Credit risk

The Company's exposure to credit risk as of June 30, 2014, is equal to the carrying amount of its financial assets. As of June 30, 2014, amounts due from one customer represented approximately 63% of the total accounts receivable.

16. Fair value of financial assets and liabilities

For cash, accounts receivable and accounts payable and accrued liabilities, the carrying amount approximates fair value because of the short-term maturity of those instruments.

The carrying amount of long-term debt approximates fair value as at June 30, 2014 and December 31, 2013. The fair value of long-term debt received from government organizations was determined using Level 3 information as the Company produces an estimate of fair value based on internally developed valuation techniques which are based on a discounted cash flow methodology and incorporates all relevant observable market inputs. The interest free loans were discounted using an interest rate between 12% and 15%, a level 3 fair value measurement, representing the interest rate a loan with similar terms and conditions would carry.

The fair value of the warrants which were issued upon the completion of the IPO on May 10, 2013 was calculated using the Black-Scholes option pricing model using various assumptions described in note 13, which was a level 3 fair value measurement. As these warrants starting trading freely on the New York Stock Exchange on June 10, 2013, the closing value of these warrants, which is a level 1 measurement was used to calculate the fair value from June 10, 2013 onwards.

17. Related party transactions

Transactions with related parties not disclosed elsewhere were as follows:

	Three Months		Six Months		Cumulative from inception to June 30, 2014
	ended		ended		
	June 30,		June 30,		
	2014	2013	2014	2013	2014
	\$	\$	\$	\$	\$
Licensing fees charged to Bioamber S.A.S.	—	—	—	—	1,300,580
Interest revenue from Bioamber S.A.S.	—	—	—	—	161,771
Product sales to companies under the common control of a shareholder.....	—	—	—	—	257,865
Product sales to a shareholder.....	42,104	295,462	63,686	297,122	488,482
Toll Manufacturing services provided by ARD recorded as research and development expenses	186,833	258,200	376,005	396,200	3,369,842
Toll manufacturing services provided by ARD initially recorded as inventory.....	2,101,269	786,929	3,898,665	2,115,457	11,075,763
Land purchased from Lanxess	—	—	—	—	338,550
Services provided by Saltigo, a subsidiary of Lanxess, recorded as research and development expenses.....	—	—	—	—	387,440

On December 7, 2012, the Company entered into a restated toll manufacturing agreement with ARD, whereby ARD granted the Company exclusive access to a demonstration plant in France to develop and produce succinic acid until June 30, 2013, and the Company has exercised its option to extend the access to this facility through the end of 2014, during which time the Company is only guaranteed 60% of the capacity of this facility. The Company purchases 100% of the succinic acid produced by the demonstration plant from ARD. ARD remains a shareholder of the Company.

BioAmber Sarnia has entered into a steam supply agreement and a service agreement with LANXESS Inc. under which, an amount of CAD\$750,000 or \$702,900 when converted into U.S. dollars as of June 30, 2014 is held in an escrow account as a guarantee for the supply agreement. Refer to Note 11.

The related party transactions noted above were undertaken in the normal course of operations and were measured at the exchange amount, which is the amount of consideration established and agreed to by the parties.

18. Business segments

The Company allocates, for the purpose of geographic segment reporting, its revenue based on the location of the seller. The Company's licensing revenues have been generated in the United States while the product sales have been generated in France.

For the purpose of geographic segment reporting, the non-current assets of the Company are allocated as follows:

	Europe		North America		Consolidated	
	June 30, 2014	December 31, 2013	June 30, 2014	December 31, 2013	June 30, 2014	December 31, 2013
	\$	\$	\$	\$	\$	\$
Property and equipment, net	2,537	3,333	46,153,565	13,550,946	46,156,102	13,554,279
Investment in equity method investments	—	—	35,141	710,033	35,141	710,033
Intangible assets, net (Note 6)	4,158,550	4,158,550	68,961	—	4,227,511	4,158,550
Goodwill	688,313	692,788	—	—	688,313	692,788

19. Subsequent events

On July 2, 2014, the Company announced that BioAmber Sarnia secured an additional CAD\$7.0 million grant to the initial grant of CAD\$7.5 million from SDTC pursuant to a contribution agreement dated November 29, 2011, to support the ongoing construction of the Sarnia plant.

On July 10, 2014, the Company received a second disbursement of CAD\$4,975,723 from the SJIF loan (See Note 8).

On July 21, 2014, the Company completed a public offering (the “Offering”) and issued 2,800,000 shares of common stock, at an offering price of \$12.00 per share, with an option to the underwriters to purchase an additional 420,000 shares of common stock at the same price, which was fully exercised on July 24, 2014, for total aggregate offering proceeds of \$38.6 million. The Company estimates that the total net proceeds from the Offering, after deducting underwriting discounts and estimated offering expenses to be \$35.8 million.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The information included in this management's discussion and analysis of financial condition and results of operations should be read in conjunction with our consolidated financial statements and the notes included in this Quarterly Report on Form 10-Q.

Forward-Looking Statements

This Quarterly Report on Form 10-Q contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements reflect the views of our management regarding current expectations and projections about future events and are based on currently available information. Actual results could differ materially from those contained in these forward-looking statements for a variety of reasons, including, but not limited to, those discussed in Part II, Item 1A. "Risk Factors" as well as those discussed elsewhere in this report. Other unknown or unpredictable factors also could have a material adverse effect on our business, financial condition and results of operations. Accordingly, readers should not place undue reliance on these forward-looking statements. The use of words such as "anticipates," "estimates," "expects," "intends," "plans" and "believes," among others, generally identify forward-looking statements; however, these words are not the exclusive means of identifying such statements. In addition, any statements that refer to expectations, projections or other characterizations of future events or circumstances are forward-looking statements. These forward-looking statements are inherently subject to uncertainties, risks and changes in circumstances that are difficult to predict. We are not under any obligation to, and do not intend to, publicly update or review any of these forward-looking statements, whether as a result of new information, future events or otherwise, even if experience or future events make it clear that any expected results expressed or implied by those forward-looking statements will not be realized. Please carefully review and consider the various disclosures made in this report and in our other reports filed with the Securities and Exchange Commission that attempt to advise interested parties of the risks and factors that may affect our business, prospects and results of operations.

Additional Information

Our investors and others should note that we announce material financial information using our company website (www.bio-amber.com), our investor relations website (investor.bio-amber.com), SEC filings, press releases, public conference calls and webcasts. Information about BioAmber, its business, and its results of operations may also be announced by posts on the following social media channels:

- BioAmber's Twitter feed (www.twitter.com/BioAmber)

The information that we post on these social media channels could be deemed to be material information. As a result, we encourage investors, the media, and others interested in BioAmber to review the information that we post on these social media channels. These channels may be updated from time to time on BioAmber's investor relations website.

Overview

We are an industrial biotechnology company producing sustainable chemicals. Our proprietary technology platform combines industrial biotechnology and chemical catalysis to convert renewable feedstocks into sustainable chemicals that are cost-competitive replacements for petroleum-derived chemicals, which are used in a wide variety of everyday products including plastics, resins, food additives and personal care products. We currently sell our first product, bio-succinic acid, to customers in a variety of chemical markets. We intend to produce bio-succinic acid that is cost-competitive with succinic acid produced from petroleum at our planned facility in Sarnia, Ontario, which is being built pursuant to a joint venture agreement with Mitsui and Co. Ltd., or Mitsui. We currently produce our bio-succinic acid in a large-scale demonstration facility using a 350,000 liter fermenter in Pomacle, France, which we believe to be among the largest bio-based chemical manufacturing fermenters in the world.

We believe we can produce bio-succinic acid that is cost-competitive with succinic acid produced from oil priced as low as \$35 per barrel, based on management's estimates of production costs at our planned facility in Sarnia, Ontario and an assumed corn price of \$6.50 per bushel. While we can provide no assurance that we will be able to secure corn at \$6.50 per bushel given the fluctuations in corn prices, we believe this assumption is reasonable given the historic price of corn and management's expectations as to their ability to manage the cost of corn and other inputs for our planned facility in Sarnia, Ontario. Over the past five years, the price of corn ranged from a low of \$2.91 per bushel to a high of \$8.44 per bushel. As of June 30, 2014, the spot price was \$4.13 per bushel and the six-month forward price was \$4.25 per bushel. We estimate that a \$1.00 increase or decrease in the per bushel price of corn would result in just a \$0.025 per pound change in the variable cost of our bio-succinic acid. We expect the productivity of our yeast and on-going process improvements to further reduce our production costs. Our ability to compete on cost is not dependent on government subsidies or tariffs. We are currently building our first facility in cooperation with Mitsui in Sarnia, Ontario. We expect this facility to be mechanically complete by early 2015, at which time we plan to begin commissioning and start-up. We also intend to build and operate additional facilities over the next three to four years.

We have been manufacturing our bio-succinic acid at a large-scale demonstration facility in Pomacle, France for over four years. We shipped commercial quantities to customers, such as shipments of one ton super sacks and container loads. We and our customers used the products produced at the facility as part of our efforts to validate and optimize our process and to continue to refine and improve our bio-succinic acid to meet our customers' specifications. We expect to move from a development stage enterprise to a commercial enterprise as our planned principal operations begin in the Sarnia, Ontario facility. As we scale-up our manufacturing capacity and prepare to manufacture and commercialize, we expect the majority of our revenue will initially come from sales of bio-succinic acid. We also intend to leverage our proprietary technology platform and expertise in the production of bio-succinic acid to target additional high value-added products, such as bio-based 1,4 butanediol, or BDO, bioplastics, de-icing solutions and plasticizers. In addition, we are also working to expand our product portfolio to additional building block chemicals, including adipic acid and caprolactam.

As of June 30, 2014, we had raised an aggregate of \$168.9 million from our initial public offering of our equity securities, private placements of our equity securities, and the sale of shares issued by a subsidiary and convertible notes. On May 9, 2013, we raised net proceeds of \$71.7 million from the initial public offering of our equity securities. In addition, on June 27, 2013, we received net proceeds of \$24.2 million from a three year term loan with Hercules Technology Growth Capital, Inc., or HTGC.

On July 21, 2014, we completed a public offering of 3,220,000 shares of our common stock, at a price of \$12.00 per share. We estimate that the net proceeds from this offering, after deducting underwriting discounts and estimated offering expenses to be \$35.8 million.

Manufacturing Expansion Plan

In order to support our growth, we plan to rapidly expand our manufacturing capacity beyond the current production at the large-scale demonstration facility we operate in Pomacle, France. We have entered into a joint venture with Mitsui to finance, build and operate a manufacturing facility in Sarnia, Ontario through our BioAmber Sarnia subsidiary in which we own a 70% equity interest and Mitsui owns the remaining 30%. The joint venture agreement, which was entered into on November 2, 2011 and amended on January 24, 2014, also establishes our non-binding intent to build and operate a BDO and/or an additional succinic acid production facility with Mitsui, which we expect to occur by the end of 2017. As part of the amendment, Mitsui increased its maximum capital commitment to the project from \$23.7 million to \$45.6 million in order to maintain a 30% equity stake in the joint venture. In exchange, Mitsui obtained the right to sell us back its shares in the Sarnia joint venture under certain specific circumstances: (i) Mitsui has the right to sell its shares and we have the obligation to purchase those shares at 100% of the investment value if the cost of the Sarnia facility is greater than \$140 million and we do not provide the additional funds to complete the facility, with a corresponding increase in our prorata share of the joint venture; (ii) in the event of an occurrence of a dissolution event of the joint venture until December 31, 2020, Mitsui has the right to sell its shares and we have the obligation to purchase those shares at 100% of the investment value, with the dissolution event consisting of the Sarnia plant not being operational by January 31, 2016, cumulative losses accrued from 2016 through 2020 exceeding 75% of paid-in capital, no after-tax profit earned in any three consecutive years from 2016 onwards, and any act of insolvency, bankruptcy, or similar event, and (iii) until December 31, 2018, Mitsui in its sole discretion may sell its shares and we must purchase those shares at a 50% discount to their investment value.

For future facilities, we expect to enter into agreements with minority interest partners and we intend to partially finance these facilities with debt. We expect to fund the initial phase of our planned facility in Sarnia, Ontario using available cash, a portion of the \$71.7 million in net proceeds from the initial public offering of our equity securities, which was completed on May 9, 2013, equity from our partner Mitsui, low-interest loans, government grants, and \$24.2 million in net proceeds from a three year term loan with HTGC. For future facilities, we currently expect to fund the construction of these facilities using internal cash flows, partner equity, project financing and we may also require fundraising through the capital markets.

We also expect to grow our revenue base by developing new value-added applications and derivative products. On January 22, 2014, we entered into a take-or-pay supply contract with Vinmar International Ltd., or Vinmar, to supply bio-based 1,4 BDO from a planned 100,000 metric ton, or MT, facility. Under the terms of the 15-year master off-take agreement, Vinmar has committed to purchase 100% of the BDO produced in a 100,000 MT per year capacity plant that we plan to build in North America and commission in 2017. In addition to a guarantee of the purchase of the off-take from the planned facility, Vinmar plans to take an equity stake of at least 10% in the facility and assist in seeking other financing for the planned facility. BDO is a building block chemical that is used in a wide range of products, including engineering plastics for the automotive industry, polyurethanes, biodegradable plastics, and spandex. While this agreement is binding, our inability to finance and construct the BDO plant would relieve Vinmar of its obligation to purchase BDO under the terms of the take-or-pay agreement. We believe the current size of the global BDO market is approximately \$4 billion. We produce BDO by combining our succinic acid technology with a catalyst technology licensed from DuPont. We believe our bio-based BDO is cost competitive with petroleum-derived BDO. To date, we have validated the high quality of our bio-based BDO with over 20 purchasers of petroleum-derived BDO.

We signed a second take-or-pay agreement on July 3, 2014 with Vinmar to supply 10,000 tons of bio-succinic acid per year for 15 years from the Sarnia plant. The take-or-pay agreement also includes an expansion to the BDO facility previously announced of an additional 70,000 tons per year of bio-succinic acid, with Vinmar off-taking 70% of the bio-succinic acid produced for 15 years. Vinmar also commits to off-take 75% of the production from a new, third bio-succinic acid plant with 200,000 MT capacity that BioAmber plans to commission in 2020.

Sarnia Facility

The first facility we are currently building in partnership with Mitsui is located in a bio-industrial park in Sarnia, Ontario. We have commenced construction and the initial phase is expected to be mechanically complete by early 2015, at which time we plan to begin commissioning and start-up. The facility will be constructed to have an initial projected capacity of 30,000 MT of bio-succinic acid and could subsequently be expanded to produce another 20,000 MT of bio-succinic acid. Completion of this initial phase of our planned facility in Sarnia is expected to cost approximately \$125.0 million, which we plan to fund through capital contributions of \$40.6 million and \$17.4 million from us and from Mitsui, respectively, and an additional CAD\$72.0 million (\$67.0 million) in low-interest loans and governmental grants that have been committed, subject to our meeting certain milestones, by various governmental authorities in Canada. The milestones vary depending on the government grant or loan. We have received loan proceeds from Canadian government agencies of CAD\$6.7 million and grant proceeds in the amount of CAD\$8.7 million as of June 30, 2014.

We had originally planned to complete the expansion of our facility in Sarnia in 2016, which would entail increasing the capacity of the plant by an additional 20,000 metric tons of bio-succinic acid. This expansion was estimated to cost approximately \$31.0 million, of which, we expected to contribute a maximum amount of approximately \$21.7 million (corresponding to our 70% equity stake). In light of the July 3, 2014 take-or-pay agreement with Vinmar, which expands the scope of our next plant to include 70,000 tons per year of succinic acid capacity in addition to the 100,000 tons per year of 1,4-BDO capacity, we are re-evaluating the timing and eventual size of the Sarnia expansion. Since we expect our next plant to be in construction in 2016 and completed in late 2017, we may decide to focus our human and financial resources on the second plant and not simultaneously expand the Sarnia plant. We anticipate making a final decision in the second half of 2015.

Additional Facilities

Our agreement with Mitsui contemplates the potential construction and operation of an additional manufacturing facility. We have entered into a take-or-pay contract with Vinmar to purchase 100% of a planned 100,000 MT per year bio-based BDO facility in North America, to be expanded by an additional 70,000 tons per year of succinic acid, with Vinmar off-taking 70% of the bio-succinic acid produced for 15 years. In addition, Vinmar plans to invest at least 10% in the equity of the facility and will help us to secure other funding to construct the planned facility. We anticipate that Vinmar and other potential parties will be equity partners in this facility, but we may also seek low interest loans and government grants to fund the facility, which would substantially reduce our equity funding requirement. Based on current estimates and assumptions, we expect our second manufacturing facility to have a projected initial bio-based 1,4 BDO capacity of 100,000 MT and bio-succinic acid capacity of 70,000 MT with construction costs of approximately \$400.0 million. This facility is expected to be mechanically complete in the second half of 2017.

Our second take-or-pay contract with Vinmar also commits to off-take 75% of the production from a new, third bio-succinic acid plant with 200,000 MT per year capacity that we plan to commission in 2020.

Our business strategy is to leverage the value of our technology by building and operating production facilities around the world. However, depending on our access to capital and third-party demand for our technology, we may also enter into technology licenses on an opportunistic basis.

Performance Drivers

We expect that the fundamental drivers of our results of operations going forward will be the following:

Commercialization of our products. We commenced recognizing revenue from sales of our existing bio-succinic acid product in 2011. Our ability to grow revenue from this product will be dependent on expanding the addressable market for succinic acid using our low-cost, bio-based alternative. We also expect to grow our revenue base by developing new value-added applications and derivative products. The supply agreement we signed with PTTMCC Biochem Company Limited, or PTTMCC Biochem, on April 18, 2014 is an example of market development in new applications, and we expect to sign additional supply agreements in other new applications such as artificial leather, plasticizers, polyurethanes, personal care products and foams and heat transfer fluids, prior to Sarnia starting production. We also plan to develop and commercialize derivatives of succinic acid, such as bio-based 1,4 BDO, and to target large and established chemical markets such as adipic acid, where succinic acid can partially substitute the incumbent chemical. Our revenue for future periods will be impacted by our ability to develop new applications and the speed with which we are able to bring our succinic acid derivatives to market. To accelerate this process, we are developing our sales and marketing capability and entering into distribution and joint development agreements with strategic partners. On January 22, 2014, we entered a take-or-pay

supply contract with Vinmar to supply bio-based 1,4-BDO from a planned 100,000 MT facility. Under the terms of the 15-year master off-take agreement, Vinmar has committed to purchase 100% of the bio-based 1,4 BDO produced in a 100,000 ton per year capacity plant that we plan to build in North America and commission in 2017. We entered into a second take-or-pay agreement with Vinmar on July 3, 2014 for an additional 70,000 tons per year of bio-succinic acid, with Vinmar off-taking 70% of the bio-succinic acid produced for 15 years. Our second take-or-pay contract with Vinmar also commits them to off-take 75% of the production from a new, third bio-succinic acid plant with 200,000 MT per year capacity that we plan to commission in 2020.

We are also engaging in a collaborative process with our customers to test and optimize new applications and derivative products such as 1,4-BDO in order to ensure that they meet specifications in each of their potential applications. We will continue to seek to establish supply agreements and distribution agreements with strategic customers as we expand our markets and product offerings after Sarnia has been commissioned.

Production capacity. Our ability to further lower our production costs and drive customer adoption of our product is dependent on our manufacturing expansion strategy. In particular, in our planned facility in Sarnia, Ontario, we expect to benefit from significantly lower operating expenses than those in the large-scale demonstration facility in Pomacle, France due to lower expected raw material, utility and other costs. For example, we project that during 2014 our costs of glucose from wheat used in the large-scale demonstration facility we operate in Pomacle, France will be 110% higher than the expected costs of glucose from corn wet millers to be used in our planned facility in Sarnia, Ontario. We project our cost of steam in Pomacle, France to be 275% higher than the expected cost in Sarnia, Ontario. We also project direct labor costs, electricity costs and other raw material costs in Sarnia, Ontario, to be lower than in Pomacle, France. If we were to adjust the current costs of goods sold in the large-scale demonstration facility we operate in Pomacle, France for the lower expected raw material and utility costs, the economies of scale and the engineering design improvements we have incorporated into our planned facility in Sarnia, Ontario, our gross profit from products sold would increase significantly. As a result, we expect to produce bio-succinic acid that is cost-competitive with succinic acid produced from oil priced as low as \$35 per barrel. We expect to further reduce costs by transitioning from our *E. coli*-based technology to our yeast-based technology and by implementing on-going process improvements. We intend to capitalize on our first-to-market advantage by rapidly expanding our production capacity and building additional facilities. Our results will be impacted by the speed with which we execute on this strategy and the capital costs and operating expenses of each of these facilities.

Feedstock and other manufacturing input prices. We use sugars that can be derived from wheat, corn and other feedstocks. We intend to locate our facilities near readily available sources of sugars and other inputs, such as steam, electricity, hydrogen and carbon dioxide, in order to ensure reliable supply of cost-competitive feedstocks and utilities. While our process requires less sugar than most other renewable products and is therefore less vulnerable to sugar price increases relative to other bio-based processes, our margins will be affected by significant fluctuations in these required inputs.

Petroleum prices. We expect sales of our bio-based products to be impacted by the price of petroleum. In the event that petroleum prices increase, we may see increased demand for our products as chemical manufacturers seek lower-cost alternatives to petroleum-derived chemicals. Conversely, a long-term reduction in petroleum prices below \$35 per barrel may result in our products being less competitive with petroleum-derived alternatives. In addition, oil prices may also impact the cost of certain feedstocks we use in our process, which may affect our margins.

Recent Developments

Vinmar Take-or-Pay Agreements

On January 22, 2014, we entered into a take-or-pay supply contract with Vinmar, to supply bio-based 1,4 BDO from a planned 100,000 MT facility. Under the terms of the 15-year master off-take agreement, Vinmar has committed to purchase 100% of the BDO produced in a 100,000 MT per year capacity plant that we plan to build in North America and commission in 2017. In addition to a guarantee of the purchase of the off-take from the planned facility, Vinmar plans to take an equity stake of at least 10% in the facility and assist in seeking other financing for the planned facility. While this agreement is binding, our inability to finance and construct the BDO plant would relieve Vinmar of its obligation to purchase BDO under the terms of the take-or-pay agreement.

On July 3, 2014 we entered into a second take-or-pay agreement with Vinmar to supply 10,000 tons per year of bio-succinic acid for 15 years from the Sarnia plant. The agreement also includes an expansion of the BDO facility previously announced that will supply 70,000 tons per year of bio-succinic acid, with Vinmar off-taking 70% of the bio-succinic acid produced for 15 years. Additionally, Vinmar also commits to off-take 75% of the production from a new, third bio-succinic acid plant with 200,000 MT per year capacity that BioAmber plans to commission in 2020.

Joint Venture with Mitsui and Co. Ltd.

On January 24, 2014, we signed an amended and restated joint venture agreement with Mitsui. The amendment contained several provisions designating each party's rights and obligations with respect to funding, construction and operation of a 30,000 MT

bio succinic acid facility in Sarnia using the yeast technology and a potential future facility. Mitsui invested an additional CAD\$9.0 million of equity on January 29, 2014 in BioAmber Sarnia maintaining its 30% ownership. This satisfied the equity investment required by HTGC per the terms of its loan agreement with BioAmber. Certain changes made by the amendment, among others included a removal of exclusivity restrictions for constructing future facilities for succinic acid and or bio-based 1,4 BDO, an increase in total cash committed to the project by Mitsui under certain conditions, the possibility for additional strategic partners to participate in the Sarnia project or future projects with Mitsui and BioAmber, and made changes to both party's rights and obligations under the buy/sell provisions of the Agreement.

Loan from Agriculture Canada

On March 10, 2014, BioAmber Sarnia entered into a repayable contribution agreement in the form of a non-interest bearing loan, with the Minister of Agriculture and Agri-Food of Canada in the amount of CAD\$10 million for the AgriInnovation Program. This loan provides for progressive disbursements as eligible costs are incurred for building construction, installation of equipment and start-up and commissioning of the Sarnia facility. The loan is repayable in equal, monthly installments beginning March 31, 2016 through March 31, 2025 and contains various legal and financial covenants ordinarily found in such government agency loan agreements. No payments were received as of June 30, 2014.

Supply Agreements for Bio-Succinic Acid Produced at Sarnia Facility

On April 18, 2014, we entered into a three year supply agreement with PTT MCC Biochem, a joint venture between PTT Public Company Limited and Mitsubishi Chemical Corporation that was established to produce and sell polybutylene succinate, or PBS, a biodegradable plastic made from succinic acid and 1,4 BDO. PTTMCC is constructing a PBS plant in Thailand that is expected to be operational in the first half of 2015 and consume approximately 14,000 tons of succinic acid per year at full capacity. This supply agreement provides that we will exclusively supply a minimum of 80% of PTTMCC's total bio-succinic needs until the end of 2017, with approximately 50% of the total purchases under take-or-pay terms. We also entered into a second take-or-pay agreement with Vinmar on July 3, 2014, for 10,000 tons per year for 15 years from the Sarnia plant. These are two of many potential customers and applications that we are targeting for the bio-succinic acid that we plan to produce at our Sarnia facility, and we expect to enter into additional definitive supply agreements in advance of mechanical completion by early 2015. These supply agreements reflect our ongoing efforts to expand the succinic acid addressable market into new applications such as PBS.

We have also entered into several agreements and MOUs that contemplate, but do not obligate, us to supply approximately 144,000 metric tons of bio-succinic acid, and, as we continue construction of our planned facility in Sarnia, Ontario, we are actively seeking to enter into definitive supply agreements and form new relationships with potential customers.

Comerica Bank, Export Development Canada and Farm Credit Canada Senior Secured Term Loan

On June 20, 2014, our BioAmber Sarnia joint venture signed a loan agreement with a financial consortium, comprised of Export Development Canada, Farm Credit Canada and Comerica Bank, for a senior secured loan in the principal amount of CAD\$20.0 million. The loan will bear interest at a floating interest rate per annum based on the greater of (i) the Canadian prime rate and (ii) the Canadian dealer offered rate plus 1%, in either case plus an interest spread of 5%. There will be an initial interest-only period from draw down of the term loan until the first payment of principal. The loan's principal will be repaid in 26 equal, quarterly installments beginning three months after the completion of the commissioning and start-up phase of the Sarnia plant, but at the latest on June 30, 2015. The disbursement of the loan, net of a 2.5% upfront loan fee which is due and payable 30 days after the date of the agreement, is subject to customary conditions, including continued progress on the construction of the Sarnia plant, which are expected to be met in or around December 2014. Until drawdown of the CAD\$20.0 million term loan, BioAmber Sarnia will pay a 1.0% per annum commitment fee on the undrawn amount.

BioAmber Sarnia may prepay all or a portion of the loan outstanding from and after the date of the first principal repayment, without penalty. BioAmber Sarnia's obligations under the loan are secured by (i) a security interest on all of BioAmber Sarnia's assets and (ii) a pledge of all the shares of BioAmber Sarnia. In addition, we will provide the lenders with a guarantee representing 70% of the secured obligations under the loan, and Mitsui & Co., Ltd. will provide a guarantee representing 30% of the secured obligations under the loan that is capped at CAD\$6.0 million plus all accrued interest on the secured obligations and fees and expenses. The proceeds of the loan will be used by BioAmber Sarnia to complete the ongoing construction of the Sarnia Plant and fund its startup and commissioning.

The loan agreement contains certain representations and warranties, affirmative covenants, negative covenants and conditions that are customarily required for similar financings, including in connection with the disbursement of the loan. The financial covenants require BioAmber Sarnia to maintain a minimum debt service ratio of 1.75 on a historical basis, at the end of any and each quarter during the term of the loan. The agreement also contains customary events of default (subject, in certain instances, to specified grace periods) including, but not limited to, the failure to make payments of interest or premium, if any, on, or principal under the loan, the failure to comply with certain covenants and agreements specified in the agreement, the occurrence of a material adverse effect,

defaults in respect of certain other indebtedness and agreements, and certain events of insolvency. If an event of default occurs, the principal, premium, if any, interest and any other monetary obligations on all the then outstanding amounts under the loan may become due and payable immediately.

Additional grant from Sustainable Development Technology Canada (SDTC)

On July 2, 2014, we announced that our BioAmber Sarnia subsidiary had secured a CAD\$7.0 million increase in the initial grant of CAD\$7.5 million from Sustainable Development Technology Canada (SDTC) pursuant to a contribution agreement dated November 29, 2011. This grant, now totaling CAD\$14.5 million, is and will be used to support the ongoing construction of the Sarnia Plant.

Public Offering

On July 21, 2014, we closed a public offering of shares of our common stock. In the Offering, we issued 2,800,000 shares of common stock, at an offering price of \$12.00 per share, with an option for the underwriters to purchase an additional 420,000 shares of common stock at the same price, less underwriting discounts and commissions. The underwriters subsequently exercised this option in full, which closed on July 24, 2014. We estimate that the total net proceeds from the Offering, after deducting underwriting discounts and estimated offering expenses payable by us, to be \$35.8 million.

Financial Operations Overview

Revenue

Revenue comprises the fair value of the consideration received or receivable for the sale of products and services in the ordinary course of our activities and is presented net of discounts.

Licensing revenue from related parties was derived from services rendered to Bioamber S.A.S. Following our acquisition of Bioamber S.A.S. on and after September 30, 2010, licensing revenue from related parties is eliminated upon consolidation.

We expect revenue to grow as our sales and marketing efforts continue and our planned facility in Sarnia, Ontario reaches the stage of being mechanically complete by early 2015, at which time we will begin commissioning and start-up. We currently manufacture our products at our large-scale demonstration facility in Pomacle, France, and we have exercised our option to extend our access to this facility through the end of 2014, during which time we are only guaranteed 60% of the capacity of this facility and we must pay plant amortization costs in addition to the fixed, variable and tolling fees previously negotiated with ARD. Based on our supply contracts, we expect that this 60% limitation may limit our capacity to grow our revenues in 2014.

Cost of Goods Sold

Cost of goods sold consists of the cost to produce finished goods at the large-scale demonstration facility in Pomacle, France under a tolling arrangement. The costs to produce product in this facility are currently higher than we expect to incur in the future at Sarnia due to the higher raw material costs such as sugar and utilities, the amount of fixed costs relative to the total production capacity available to us, and the inefficiencies created by the need to stop production from time to time to allocate the capacity to other parties. Going forward, we expect our cost of goods sold as a percent of revenues to decrease as we increase volumes produced, transition from a development stage entity to a full scale commercial enterprise and benefit from efficiencies in utilizing our yeast in our fermentation process at our planned Sarnia facility.

Operating Expenses

Operating expenses consist of general and administrative expenses, research and development expenses, net, sales and marketing expenses, depreciation of property and equipment, amortization of intangible assets, impairment losses, write-offs of property and equipment and intangible assets and foreign exchange gains and losses.

General and Administrative Expenses

General and administrative expenses consist of personnel costs (salaries, and other personnel-related expenses, including stock-based compensation), recruitment and relocation expenses, accounting and legal fees, business travel expenses, rent and utilities for the administrative offices, web site design, press releases, membership fees, office supplies, corporate insurance programs and other miscellaneous expenses.

We expect these expenses to increase in the future as we hire additional management and operational employees to respond to a growing revenue base and add infrastructure to support it, expand our finance and administration staff, and incur additional compliance and related costs associated with being a public company.

Research and Development Expenses, Net

Research and development expenses, net consist primarily of fees paid for contract research and internal research costs in connection with the development, expansion and enhancement of our proprietary technology platform. These costs also include personnel costs (salaries and other personnel-related expenses, including stock-based compensation), expenses incurred in our facility located in Plymouth, Minnesota, laboratory supplies, research consultant costs, patent and trademark maintenance costs, royalties, professional and consulting fees and business travel expenses.

We expect research and development expenses, including our patent maintenance expenses, to increase as we continue to invest in the deployment and implementation of our bio-succinic acid and derivative technologies in a commercial scale manufacturing facility. We expect to continue conducting our research and development in-house by utilizing our 27,000 square foot facility in Plymouth, Minnesota. Certain research and development activities that can be performed more effectively by outside consultants will be performed with their respective expertise as required.

Sales and Marketing Expenses

Sales and marketing expenses consist primarily of personnel costs (salaries, and other personnel-related expenses, including stock-based compensation), marketing services, product development costs, advertising, selling and distributor costs and feasibility study fees.

We expect to increase our sales and marketing efforts as we look to establish additional strategic alliances, grow our commercial customer base and expand our product offerings. As we transition from a developmental stage company and commence commercial operations, we expect to significantly increase our sales and marketing personnel and programs to support the expected expansion of our business. This may include increasing the use of distributors and other commercial partners where deemed appropriate.

Depreciation of Property and Equipment and Amortization of Intangible Assets

Depreciation of property and equipment consists primarily of the depreciation of our office furniture, research and development equipment and computer equipment, which is depreciated using the straight-line method over their estimated useful lives. Amortization of intangible assets consists primarily of the amortization of certain in-process research and development acquired technology, patents and technology licenses, which are amortized using the straight-line method over their estimated useful lives. We expect depreciation of property and equipment to increase significantly as our planned manufacturing facilities are put in to use. As of June 30, 2014, we received \$14.4 million in government grants and loans in relation to our planned facility in Sarnia, Ontario, of which, \$5.1 million was applied as a reduction of construction in-progress. This will result in reduced depreciation expense over the useful life of the asset.

Foreign Exchange (Gain) Loss

We expect to conduct operations throughout the world. Our financial position and results of operations will be affected by economic conditions in countries where we plan to operate and by changing foreign currency exchange rates. We are exposed to changes in exchange rates in Europe and Canada. The Euro and the Canadian dollar are our most significant foreign currency exchange risks. A strengthening of the Euro and the Canadian dollar against the U.S. dollar may increase our revenues and expenses since they are expressed in U.S. dollars. As we move our production to our manufacturing facility under construction in Sarnia, Ontario, we expect our foreign currency risk to continue as a significant portion of our uses of cash will be denominated in Canadian dollars while our sources of cash will be primarily in U.S. dollars and in Euros. We will monitor foreign currency exposures and will look to mitigate exposures through normal business operations such as manufacturing and selling in the same currencies where practical or buying required currencies at spot where advantageous. We may use forward contracts or currency swaps to mitigate any remaining exposures.

Amortization of Deferred Financing Costs and Debt Discounts

Amortization of deferred financing costs and debt discounts consists primarily of costs from past financings that are recognized over the life of the funding instrument and will continue to increase in line with the expenses incurred to obtain future financing. Those costs are deferred and amortized on a straight-line basis over the term of the related debt. Amortization of deferred financing costs and debt discounts also includes the accretion of the debt discount on the interest free or low-interest loans received from the government agencies if the expenditures for which the loans were received have not yet been incurred.

Financial Charges (Income), Net

For the six and three months ended June 30, 2014, financial charges (income), include interest on long-term debt, end of term accretion charge from the HTGC loan and the recognition of gains or losses resulting from the mark-to-market adjustment required at the balance sheet date on the warrants issued in connection with our initial public offering, or IPO completed on May 9, 2013.

We account for common stock warrants in accordance with applicable accounting guidance provided in ASC 815, *Derivatives and Hedging—Contracts in Entity's Own Equity*, as either derivative liabilities or as equity instruments depending on the specific terms of the warrant agreement. Derivative warrant liabilities were valued using the Black-Scholes pricing model at the date of initial issuance and using the closing value as quoted on the New York Stock Exchange at each subsequent balance sheet date.

Changes in the fair value of the warrants issued in connection with our IPO, are reflected in the consolidated statement of operations as financial charges (income), net.

Income Taxes

We are subject to income taxes in France, Luxembourg, the United States, Canada and China. As a development stage company, we have incurred significant losses and have not generated taxable income in these jurisdictions, with the exception of Canada. In the future, we expect to become subject to taxation based on the statutory rates in effect in the countries in which we operate and our effective tax rate could fluctuate accordingly. We have incurred net losses since our inception and have not recorded any federal, state or foreign current income tax provisions other than for unrecognized tax benefits in the years ended December 31, 2011, 2012 and 2013 and a recovery of income taxes in the 258 day period ended September 30, 2009. We have a full valuation allowance against our net deferred tax assets. Additionally, under the U.S. Internal Revenue Code, our net operating loss carryforwards and tax credits may be limited if a cumulative change in ownership of more than 50% is deemed to have occurred within a three year period. We have not performed a detailed analysis to determine whether an ownership change under Section 382 of the Internal Revenue Code has occurred after each of our previous issuances of shares of common stock and warrants.

Equity Participation in Losses of Equity Method Investments

Equity participation in losses of equity method investments consist primarily of our share of losses incurred by AmberWorks LLC. We recognize our 50% share of losses incurred by AmberWorks LLC, a joint venture formed on February 15, 2012.

Comparison of Three Months Ended June 30, 2014 and Three Months Ended June 30, 2013

The following table shows the amounts of the listed items from our consolidated statements of operations for the periods presented, showing period-over-period changes:

	Three months ended June 30, 2014	Three months ended June 30, 2013 (in thousands)	\$ Increase (decrease)
Revenues			
Product sales	\$ 415	\$ 1,028	\$ (613)
Total revenues	415	1,028	(613)
Cost of goods sold	2,251	1,411	840
Gross loss	(1,836)	(383)	(1,453)
Operating expenses			
General and administrative	2,865	2,292	573
Research and development, net	4,259	4,221	38
Sales and marketing	1,737	1,652	85
Depreciation of property and equipment and amortization of intangible assets	60	539	(479)
Impairment loss and write-off of property and equipment and intangible assets	—	8,619	(8,619)
Foreign exchange (gain) loss	(379)	(28)	(351)
Operating expenses	8,542	17,295	(8,753)
Operating loss	10,378	17,678	(7,300)
Amortization of deferred financing costs and debt discounts	72	117	(45)
Financial charges (income), net	3,871	(10,617)	14,488
Gain on debt extinguishment	—	—	—
Equity participation in losses of equity method investments	—	—	—
Other expense (income), net	(185)	—	(185)
Loss before income taxes	14,136	7,178	6,958
Income taxes	9	47	(38)
Net loss	<u>14,145</u>	<u>7,225</u>	<u>6,920</u>
Net loss attributable to:			
BioAmber Inc. shareholders	13,992	7,057	6,935
Non-controlling interest	153	168	(15)
	<u>14,145</u>	<u>7,225</u>	<u>6,920</u>

Product sales

Product sales decreased from \$1.0 million for the three months ended June 30, 2013 to \$415,000 for the three months ended June 30, 2014 due to a decrease in the volume sold, along with a decrease in the average selling price.

Supply contracts generated \$242,000 and \$802,000 for the three months ended June 30, 2014 and 2013, respectively. Non-contracted sales generated \$173,000 and \$226,000 of our product sales for the three months ended June 30, 2014 and 2013, respectively.

Cost of goods sold

Cost of goods sold increased from \$1.4 million for the three months ended June 30, 2013 to \$2.3 million for the three months ended June 30, 2014. The increase is primarily due to a non-cash charge for an inventory reserve of \$1.6 million recorded for the three months ended June 2014 and a decrease in the volume sold, partially reduced by a decrease in the average cost per unit sold.

General and administrative expenses

General and administrative expenses increased by \$573,000 to \$2.9 million for the three months ended June 30, 2014, as compared to \$2.3 million for the three months ended June 30, 2013. The increase is primarily due to additional costs related to compliance and public company operations and a non-recurring charge to stock-based compensation expense during the second

quarter of 2014, resulting from cancellation of certain stock options, which was partially offset by the immediate vesting of certain stock options upon the completion of the IPO, during the second quarter of 2013.

Research and development expenses, net

Research and development expenses, net, increased by \$38,000 to \$4.3 million for the three months ended June 30, 2014, as compared to \$4.2 million for the three months ended June 30, 2013. This was driven primarily by a decrease of \$0.8 million in research expenses due to the completion of the yeast development project with Cargill during the second half of 2013, and a reduction of expenses related to the development of our adipic acid platform. There was an additional reduction of \$0.2 million due to the streamlining of the patent portfolio which decreased the expenses for filing and maintaining patents. These reductions were offset by an increase in BDO development work, an increase in payroll expenses related to work that is supporting the commissioning and start-up of the Sarnia plant, and an increase in stock-based compensation expense. The increase in stock-based compensation expense is due to the stock option cancellations in the second quarter of 2014, partially offset by stock options being granted during the second quarter of 2013, some of which vested immediately and the vesting of certain stock options upon the completion of the IPO.

Sales and marketing expenses

Sales and marketing expenses increased by \$85,000 to \$1.7 million for the three months ended June 30, 2014, as compared to \$1.6 million for the three months ended June 30, 2013. The increase is primarily due to an increase in incentive remuneration and in stock-based compensation expense due the stock option cancellations in the second quarter of 2014. These increases are partially offset by a decrease in salaries and benefits costs and travel expenses.

Depreciation of property and equipment and amortization of intangible assets

Depreciation of property and equipment and amortization of intangible assets expense decreased by \$479,000 to \$60,000 for the three months ended June 30, 2014, as compared to \$539,000 for the three months ended June 30, 2013. This decrease is due to the write-off of intellectual property (patent rights and licenses, and in-process research and development) during the second quarter of 2013, related to the *E. coli*-based technology.

Foreign exchange (gain) loss

The foreign exchange gain increased by \$351,000 to \$379,000 for the three months ended June 30, 2014 as compared to \$28,000 for the three months ended June 30, 2013. The increased gain was driven by a more significant strengthening of the Canadian Dollar versus the U.S. Dollar during the 3 months ended June 30, 2014 compared to the three months ended June 30, 2013, which impacted the Canadian Dollar cash balances being carried on our books to meet vendor obligations for the Sarnia Project.

Financial charges (income), net

Financial charges (income), net comprised of a charge of \$3.9 million for the three months ended June 30, 2014 as compared to an income of \$10.6 million for the three months ended June 30, 2013. The decrease was due to the mark-to-market adjustment change of \$14.8 million on the warrants that were part of the units issued in our IPO and the interest expense and the end of term charge accretion on the HTGC loan for a total of \$870,000, which was partially offset by expenses of \$1.1 million recorded in the second quarter of 2013 related to the issuance of the warrants.

Other expense (income), net

Other expense (income), net comprised of a gain of \$185,000 on sales of fixed assets for the three months ended June 30, 2014 as compared to nil for the three months ended June 30, 2013.

Comparison of Six Months Ended June 30, 2014 and Six Months Ended June 30, 2013

The following table shows the amounts of the listed items from our consolidated statements of operations for the periods presented, showing period-over-period changes:

	Six months ended June 30, 2014	Six months ended June 30, 2013 (in thousands)	\$ Increase (decrease)
Revenues			
Product sales.....	\$ 765	\$ 1,359	\$ (594)
Total revenues	765	1,359	(594)
Cost of goods sold.....	2,531	1,610	921
Gross loss	(1,766)	(251)	(1,515)
Operating expenses			
General and administrative.....	5,784	4,630	1,154
Research and development, net.....	7,573	10,320	(2,747)
Sales and marketing	2,849	2,748	101
Depreciation of property and equipment and amortization of intangible assets	120	1,072	(952)
Impairment loss and write-off of property and equipment and intangible assets	—	8,619	(8,619)
Foreign exchange (gain) loss	(212)	(117)	(95)
Operating expenses	16,114	27,272	(11,158)
Operating loss.....	17,880	27,523	(9,643)
Amortization of deferred financing costs and debt discounts	145	186	(41)
Financial charges (income), net	16,223	(10,616)	26,839
Gain on debt extinguishment	—	(314)	314
Equity participation in losses of equity method investments	—	15	(15)
Other expense (income), net	(185)	—	(185)
Loss before income taxes.....	34,063	16,794	17,269
Income taxes	34	47	(13)
Net loss.....	34,097	16,841	17,256
Net loss attributable to:			
BioAmber Inc. shareholders.....	33,904	16,557	17,347
Non-controlling interest	193	284	(91)
	34,097	16,841	17,256

Product sales

Product sales decreased from \$1.4 million for the six months ended June 30, 2013 to \$765,000 for the six months ended June 30, 2014 due to a decrease in the volume sold, along with a decrease in the average selling price.

Supply contracts generated \$467,000 and \$1,092,000 for the six months ended June 30, 2014 and 2013, respectively. Non-contracted sales generated \$298,000 and \$267,000 of our product sales for the six months ended June 30, 2014 and 2013, respectively.

Cost of goods sold

Cost of goods sold increased from \$1.6 million for the six months ended June 30, 2013 to \$2.5 million for the six months ended June 30, 2014. The increase is primarily due to a non-cash charge from an inventory reserve of \$1.6 million recorded during the second quarter of 2014 and a decrease in the volume sold, partially offset by a decrease in the average cost per unit sold.

General and administrative expenses

General and administrative expenses increased by \$1.2 million to \$5.8 million for the six months ended June 30, 2014, as compared to \$4.6 million for the six months ended June 30, 2013. The increase is primarily due to additional costs related to compliance and public company operations, including insurance, professional fees and filings fees.

Research and development expenses, net

Research and development expenses, net, decreased by \$2.7 million to \$7.6 million for the six months ended June 30, 2014, as compared to \$10.3 million for the six months ended June 30, 2013. This was driven primarily by a decrease of \$2.2 million in research expenses due to (i) the completion of the yeast development project with Cargill during the second half of 2013, (ii) the reduction of expenses related to the development of our adipic acid platform, and (iii) the reduction of expenses related to engineering development work related to our Sarnia plant including travel. An additional reduction of \$0.5 million is due to the streamlining of the patent portfolio which decreased the expenses for filing and maintaining patents. In addition, stock-based compensation expense decreased due to the accelerated vesting of Sinoven's stockholder shares of BioAmber during the first of quarter 2013, by stock options being granted during the second quarter of 2013, some of which vested immediately, by the vesting of certain stock options upon the completion of the IPO, which was partially offset due to the stock option cancellations in the second quarter of 2014. These reductions were partially offset by an increased in BDO development work expense.

Sales and marketing expenses

Sales and marketing expenses increased by \$101,000 for the six months ended June 30, 2014, as compared to the six months ended June 30, 2013. The increase is primarily due to an increase in incentive remuneration and in stock-based compensation expense due the stock option cancellations in the second quarter of 2014. These increases were partially offset by a decrease in salaries and benefits costs and travel expenses.

Depreciation of property and equipment and amortization of intangible assets

Depreciation of property and equipment and amortization of intangible assets expense decreased by \$952,000 to \$120,000 for the six months ended June 30, 2014, as compared to \$1,072,000 for the six months ended June 30, 2013. This decrease is due to the write-off of intellectual property (patent rights and licenses, and in-process research and development) during the second quarter of 2013, related to the *E. coli*-based technology.

Foreign exchange (gain) loss

The foreign exchange gain increased by \$95,000 to \$212,000 for the six months ended June 30, 2014 as compared to \$117,000 for the six months ended June 30, 2013. The increased gain was driven by a more significant strengthen of the Canadian Dollar versus the U.S. Dollar during the six months ended June 30, 2014 compared to the six months ended June 30, 2013, which impacted the Canadian Dollar cash balances being carried on our books to meet vendor obligations for the Sarnia Project.

Financial charges (income), net

Financial charges (income), net comprised of a charge of \$16.2 million for the six months ended June 30, 2014 as compared to an income of \$10.6 million for the six months ended June 30, 2013. The decrease was due to the mark-to-market adjustment change of \$26.4 million on the warrants that were part of the units issued in our IPO and the interest expense and the end of term charge accretion on the HTGC loan for a total of \$1.7 million, which was partially offset by expenses of \$1.1 million recorded in the second quarter of 2013 related to the issuance of the warrants.

Equity participation in losses of equity method investments

Equity participation in losses of equity method investments decreased by \$15,000 to nil for the six months ended June 30, 2014, due to lower losses incurred by AmberWorks LLC, a joint venture that was formed on February 15, 2012.

Other expense (income), net

Other expense (income), net comprised of a gain of \$185,000 on sales of fixed assets for the six months ended June 30, 2014 as compared to nil for the six months ended June 30, 2013.

Liquidity and Capital Resources

From inception through June 30, 2014, we have funded our operations primarily through an aggregate of \$168.9 million from our initial public offering of our equity securities, private placements of our equity securities, and the sale of shares issued by a subsidiary and convertible notes, CAD\$15.4 million from loan and grants proceeds from various Canadian government agencies and \$24.2 million from a loan with HTGC.

In the periods ended December 31, 2012 and June 30, 2013, there was substantial doubt raised about our ability to continue as a going concern because of the Company's recurring operating losses, negative cash flows from operating activities, the uncertainty of efforts to raise additional capital and the ability to execute on the Company's plans. Subsequent to these reporting periods we raised net proceeds of \$71.7 million from the completion of an IPO on May 9, 2013, raised net proceeds of \$24.2 million from the closing of a three year term loan with HTGC, received an additional CAD\$5.1 million of loan proceeds from FEDDEV. In January 2014, we received an equity investment of CAD\$9.0 million in our Sarnia venture. Additionally, we secured the following funding: (i) CAD\$10.0 million interest free loan from the Minister of Agriculture and Agri-Food of Canada to be made in 2014, (ii) CAD\$20.0 million loan from a commercial consortium including a Canadian Crown Corporation, subject to certain conditions, and (iii) an additional CAD\$7.0 million grant from SDTC, which reduced our capital contributions for the Sarnia plant to \$40.6 million. Our unrestricted cash on hand at June 30, 2014 was \$54.3 million. In addition, subsequent to the second quarter of 2014, in July 2014 we completed a public offering of our common stock for an aggregate net proceeds of \$35.8 million, and we received additional loan proceeds of \$5.0 million from SJIF. The expected cash needs for the construction of our manufacturing facility in Sarnia, Ontario are \$125.0 million, which is expected to be funded by us through a portion of the net proceeds of the IPO, available cash, low-interest loans, governmental grants, the term loan with HTGC, and Mitsui's capital contribution. We plan to begin commissioning and start-up of this facility by early 2015. In addition, we will require funds for our research and development programs and for general corporate purposes. Based on these funding activities, the additional equity expected from our partner Mitsui, the cash on hand at June 30, 2014, combined with the previously committed funding from grants and loans not yet drawn as of June 30, 2014, upon totaling CAD\$56.6 million, it was determined that we have sufficient cash to fund its operations for at least the next twelve months.

There are certain covenants in our debt and grant agreements, which are discussed in the notes to our consolidated financial statements. We are in compliance with all of the covenants provided in each of these agreements. We expect to continue to be in compliance with these covenants in the future.

The following table sets forth the major sources and uses of cash for each of the periods set forth below:

	Three Months ended June 30, 2014	Three Months ended June 30, 2013	Six Months ended June 30, 2014	Six Months ended June 30, 2013
	(in thousands)			
Net cash used in operating activities	\$ (3,084)	\$ (3,300)	\$ (7,951)	\$ (17,369)
Net cash used in investing activities	(19,322)	(2,074)	(32,732)	(2,112)
Net cash provided by financing activities	2,562	97,201	10,687	98,027

Operating activities

The cash from operating activities is primarily used for general and administrative expenses and research and development activities. These include expenses on research and development projects, consultancy and advisory fees from third parties, licensing and royalty expenses, payroll expenses, legal and accounting expenses and office rent and utilities.

Cash used in operating activities during the three months ended June 30, 2014 of \$3.1 million reflected our net loss of \$14.1 million, which was adjusted for non-cash net charges of \$6.5 million and a positive change in operating assets and liabilities of \$4.6 million. Non-cash expense adjustments included stock-based compensation of \$3.0 million and financial charges of \$3.3 million for the mark-to-market accounting for warrants that were part of the units issued in our IPO and the end of term charge on long-term debt. The amount of operating assets and liabilities is a net inflow of \$4.6 million due to an increase in current liabilities, which offsets an increase in current assets.

Cash used in operating activities during the three months ended June 30, 2013 of \$3.3 million reflected our net loss of \$7.2 million, which was adjusted for net non-cash credits of \$0.4 million and a positive change in operating assets and liabilities of \$4.3 million. Non-cash expense adjustments included depreciation and amortization of assets of \$0.5 million, stock-based compensation of \$2.1 million, and the impairment loss and write-off of property and equipment and of intangible assets of \$8.6 million. Non-cash gain adjustments included the gain on the mark-to-market accounting for warrants that were part of the units issued in our IPO of \$11.7 million. The amount of operating assets and liabilities is a net inflow of \$4.3 million due to a decrease in current assets and an increase in current liabilities.

Cash used in operating activities during the six months ended June 30, 2014 of \$8.0 million reflected our net loss of \$34.1 million, which was adjusted for non-cash charges of \$19.9 million and a positive change in operating assets and liabilities of \$6.2 million. Non-cash expense adjustments included stock-based compensation of \$4.5 million and financial charges of \$15.1 million for the mark-to-market accounting for warrants that were part of the units issued in our IPO and the end of term charge on long-term debt. The amount of operating assets and liabilities is a net inflow of \$6.2 million due to an increase in current liabilities, which offsets an increase in current assets.

Cash used in operating activities during the six months ended June 30, 2013 of \$17.4 million reflected our net loss of \$16.8 million, which was adjusted for net non-cash charges, of \$2.3 million and a negative change in operating assets and liabilities of \$2.9 million. Non-cash expense adjustments included depreciation and amortization of assets of \$1.1 million, stock-based compensation of \$4.5 million, and the impairment loss and write-off of property and equipment and of intangible assets of \$8.6 million. Non-cash gain adjustments included the gain on the mark-to-market accounting for warrants that were part of the units issued in our IPO of \$11.7 million and the gain on debt extinguishment of \$0.3 million. The amount of operating assets and liabilities is a net outflow of \$2.9 million due to an increase in current assets, which offsets an increase in current liabilities.

Investing activities

Cash used in investing activities during the three months ended June 30, 2014 of \$19.3 million included property and equipment purchases mostly related to the building of our facility in Sarnia, Ontario of \$20.0 million, offset by a capital distribution from our equity investment in AmberWorks LLC of \$675,000.

Cash used in investing activities during the three months ended June 30, 2013 of \$2.1 million included property and equipment purchases primarily related to the building of our facility in Sarnia, Ontario.

Cash used in investing activities during the six months ended June 30, 2014 of \$32.7 million included property and equipment purchases mostly related to the building of our facility in Sarnia, Ontario of \$32.7 million and an increase in restricted cash of \$678,000, offset by a capital distribution from our equity investment in AmberWorks LLC of \$675,000.

Cash used in investing activities during the six months ended June 30, 2013 of \$2.1 million represented property and equipment purchases related to the building of our facility in Sarnia, Ontario.

Financing activities

Cash provided by financing activities during the three months ended June 30, 2014 of \$2.6 million represents primarily the loan and grant proceeds from FEDDEV of \$3.0 million, offset by the deferred financing costs related to the \$20.0 million commercial loan from a financial consortium and our public offering in July 2014 of \$561,000.

Cash provided by financing activities during the three months ended June 30, 2013 of \$97.2 million included \$72.9 million net proceeds from the issuance of common shares from our IPO, and \$24.3 million in net proceeds from the three year term loan from HTGC, \$0.9 million from loans and grants for the construction of our planned facility in Sarnia, Ontario offset by \$0.6 million paid for IPO costs.

Cash provided by financing activities during the six months ended June 30, 2014 of \$10.7 million represents a capital contribution by Mitsui maintaining their 30% equity in our BioAmber Sarnia joint venture of \$8.1 million, the loan and grant proceeds from FEDDEV of \$3.0 million, offset by the deferred financing costs related to the CAD\$20.0 million commercial loan from a financial consortium and our public offering in July 2014 of \$561,000.

Cash provided by financing activities during the six months ended June 30, 2013 of \$98.0 million included \$72.9 million net proceeds from the issuance of common shares from our IPO, \$24.3 million in net proceeds from the three year term loan from HTGC, \$1.1 million from loans and grants for the construction of our planned facility in Sarnia, Ontario and \$140,000 of a cash consideration paid for the forfeiture of 70,000 shares by Sinoven's selling shareholders.

Off-balance Sheet Arrangements

During the periods presented, we did not have, and we do not currently have, any relationships with unconsolidated entities, such as entities often referred to as structured finance or special purpose entities, established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

Critical Accounting Policies and Estimates

We prepare our consolidated financial statements in accordance with accounting principles generally accepted in the United States of America. As such, management is required to make certain estimates, judgments and assumptions that it believes are reasonable based on the information available. These estimates and assumptions affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses for the periods presented. The significant accounting policies which management believes are the most critical to aid in fully understanding and evaluating our reported financial results include fair value determination of assets, liabilities and consideration paid or payable in connection with business acquisitions, contingent consideration, fair value of intangible assets and goodwill, useful lives of intangible assets, income taxes, stock-based compensation and value of certain equity and debt instruments. These critical accounting policies are the same as those detailed in our audited consolidated financial statements for the year ended December 31, 2013.

Intangible assets

Costs incurred in obtaining patents are capitalized and amortized on a straight-line basis over their estimated useful lives of between 8 and 15 years. Our patent portfolio was acquired as part of the spin-off transaction and the acquisition of Bioamber SAS. The cost of servicing the patents is expensed as incurred.

As required by FASB ASC 805, acquired IPR&D through business combinations is accounted for as an indefinite-lived intangible asset until completion or abandonment of the associated research and development efforts. Therefore, such assets are not amortized but are tested for impairment at least annually. Once the research and development activities are completed, the assets will be amortized over the related product's useful life. If the project is abandoned, the assets will be written off if they have no alternative future use.

We review our portfolio of patents and acquired in-process research and development taking into consideration events or circumstances that may affect its recoverable value.

Long-lived asset impairment

We assess the fair value of our long-lived assets in accordance with ASC 360, *Property, Plant, and Equipment*. At the end of each reporting period, we evaluate whether there is objective evidence of events or changes in business conditions which suggest that an asset may be impaired. In such cases we determine the fair value based upon forecasted, undiscounted cash flows which the assets are expected to generate and the net proceeds expected from their sale. If the carrying amount exceeds the fair value of the asset, it is decreased by the difference between the two being the amount of the impairment.

Stock-based compensation

We account for our stock-based compensation expense in accordance with FASB ASC 718, *Compensation—Stock Compensation*. Stock options are granted to employees and consultants at exercise prices equal to the estimated fair value of our stock at the grant dates. Stock options vest over two, three or four years and have a term of ten years. Each stock option entitles the holder to purchase one share of common stock which comes from our authorized shares. Compensation expense is recognized over the period during which an employee is required to provide services in exchange for the award, generally the vesting period.

We recognize stock-based compensation for awards to employees based on the estimated fair value of the awards granted. The fair value method requires us to estimate the fair value of stock-based awards on the date of grant using an option pricing model. We use the Black-Scholes option-pricing model to estimate the fair value of awards granted to employees and consultants, and the requisite fair value is recognized as an expense on a straight-line basis over the service period of the award.

On June 10, 2013, our common stock became separately listed on the New York Stock Exchange trading under the symbol BIOA. For all options granted after the completion of the IPO process, we use the stock price at the date of grant as per the market. However, in the absence of sufficient historical information on our stock price, in order to determine assumptions such as future stock price volatility to determine the fair value of the Common Stock for the purpose of calculating the stock based compensation, we utilize factors including the nature and history of our business, our historical operations and results as well as investors perception of the value of our business at the time, based on completed equity capital raises. As we have more historical data of our stock price, we will use the values from our publicly traded common stock for the purpose of determining future stock price volatility to calculate stock based compensation.

On April 10, 2013, the board of directors, adopted the 2013 Stock Option and Incentive Plan, or the 2013 Plan, which was subsequently approved by our stockholders on May 2, 2013. The 2013 Plan replaced the 2008 Stock Incentive Plan, or the 2008 Plan, as our board of directors determined not to make additional awards under that plan. The 2013 Plan provides flexibility to the compensation committee to use various equity-based incentive awards as compensation tools to motivate our workforce.

We have initially reserved 2,761,922 shares of our common stock for the issuance of awards under the 2013 Plan. The 2013 Plan may also provide that the number of shares reserved and available for issuance under the plan will automatically increase each January 1, beginning in 2014, by 3% of the outstanding number of shares of common stock on the immediately preceding December 31. This number is subject to adjustment in the event of a stock split, stock dividend or other changes in our capitalization.

The 2013 Plan is administered by our board of directors or the compensation committee of the board of directors, or the Administrator. The Administrator has full power to select, from among the individuals eligible for awards, the individuals to whom awards will be granted, to make any combination of awards to participants, and to determine the specific terms and conditions of each award, subject to the provisions of the 2013 Plan. Persons eligible to participate in the 2013 Plan are those full or part-time officers, employees, non-employee directors and other key persons (including consultants and prospective officers) of the company and its subsidiaries as selected from time to time by the Administrator in its discretion.

The 2013 Plan permits the granting of (1) options to purchase common stock intended to qualify as incentive stock options under Section 422 of the Code and (2) options that do not so qualify. The exercise price of each option will be determined by the Administrator but may not be less than 100% of the fair market value of the common stock on the date of grant. The term of each option will be fixed by the Administrator and may not exceed ten years from the date of grant. The Administrator will determine at what time or times each option may be exercised.

The Administrator may award stock appreciation rights, restricted shares of common stock, restricted stock units and may also grant shares of common stock which are free from any restrictions under the 2013 Plan. The Administrator may grant performance share awards to any participant, which entitle the recipient to receive shares of common stock upon the achievement of certain performance goals and such other conditions as the Administrator shall determine. The Administrator may grant dividend equivalent rights to participants which entitle the recipient to receive credits for dividends that would be paid if the recipient had held specified shares of common stock.

The 2013 Plan provides that upon the effectiveness of a “sale event” as defined in the 2013 Plan, except as otherwise provided by the Administrator in the award agreement, all stock options and stock appreciation rights will automatically become fully exercisable and the restrictions and conditions on all other awards with time-based conditions will automatically be deemed waived, unless the parties to the sale event agree that such awards will be assumed or continued by the successor entity.

Warrants

We account for certain issued warrants to purchase our common stock as equity on our consolidated balance sheet at fair value because the warrants are not redeemable. As such, these warrants are accounted for as equity and are not subject to re-measurement at each balance sheet date. We estimated the fair value of these warrants at the respective issuance date utilizing the Black-Scholes pricing model. The Black-Scholes pricing model requires a number of variables that require management judgment including the estimated price of the underlying instrument, the risk-free interest rate, the expected volatility, the expected dividend yield and the expected exercise period of the warrants. Our Black-Scholes assumptions are discussed in greater detail in “—Stock-based compensation” above.

On May 9, 2013, we completed our initial public offering and issued 8,000,000 units at \$10.00 per unit of which each unit consisted of one share of common stock and one warrant to purchase to purchase half of one share of common stock at an exercise price of \$11.00 per whole share of common stock. The warrants are exercisable during the period beginning on August 8, 2013 and ending on May 9, 2017. The warrants contain full ratchet, anti-dilution protection upon the issuance of any common stock, securities convertible into common stock, or certain other issuances at a price below the then-existing exercise price of the warrant, with certain exceptions. The exercise price of \$11.00 per whole share of common stock is subject to appropriate adjustment in the event of certain stock dividends and distributions, stock splits, stock issuances or other similar events affecting our common stock. At issuance, the fair value of the warrants was classified as a financial liability as a result of their characteristics, in accordance with FASB ASC 815. The fair value of the warrants was determined using the Black-Scholes option pricing model.

Accordingly, a liability of \$16.1 million was recorded at the unit issuance date. On June 30, 2014, the closing value of the warrant on the New York Stock Exchange, a level 1 fair value measure, was \$2.56 per warrant, as compared to \$0.73 per warrant on December 31, 2013. As a result, the liability was revalued at the balance sheet date resulting in a financial charge of \$14.6 million and \$3.0 million for the six and three months ended June 30, 2014, respectively.

During the six months ended June 30, 2014, 3,500 warrants were exercised at an exercise price of \$1.07 per share and an additional 3,430 warrants were exercised at an exercise price of \$1.43 per share. During the three months ended June 30, 2014, 3,430 warrants were exercised at an exercise price of \$1.43 per share.

As at June 30, 2014, we had the following warrants outstanding to acquire common shares:

<u>Number</u>	<u>Exercise price</u>	<u>Expiration date</u>
335,066	\$ 1.07	February 2014 - September 2019
610,890	\$ 1.43	February 1, 2019
264,670	\$ 5.74	October 2014 - June 2019
94,745	\$ 10.55	April 1, 2021
<u>4,000,000</u>	<u>\$ 11.00</u>	<u>May 1, 2017</u>
<u>5,305,371</u>		

Recent accounting pronouncements

In July 2013, the FASB issued an amended accounting standard update on the financial statement presentation of unrecognized tax benefits. The amended guidance provides that a liability related to an unrecognized tax benefit should be presented as a reduction of a deferred tax asset for a net operating loss carryforward, a similar tax loss or a tax credit carryforward if such settlement is required or expected in the event the uncertain tax position is disallowed. The new guidance became effective for the Company on January 1, 2014 and was applied prospectively to unrecognized tax benefits that existed at the effective date with retrospective applications permitted. The Company's current presentation of unrecognized tax benefits conforms with the amended guidance. Accordingly, there was no impact to the Company resulting from this amended standard.

In May 2014, the FASB issued Accounting Standards Update (ASU) No. 2014-09, "Revenue Recognition - Revenue from Contracts with Customers," which is a comprehensive revenue recognition standard that will supersede nearly all existing revenue recognition guidance under U.S. GAAP. The standard is effective for interim and annual periods beginning after December 15, 2016, and either full retrospective adoption or modified retrospective adoption is permitted. The Company is in the process of evaluating the impact of the standard.

In June 2014, the FASB issued Accounting Standards Update (ASU) No. 2014-10, "Development Stage Entities," - Elimination of Certain Financial Reporting Requirements, Including an Amendment to Variable Interest Entities Guidance in Topic 810, Consolidation, which eliminates the concept of a development stage entity (DSE) in its entirety from current accounting guidance. Amendments to the consolidation guidance may result in more DSEs being considered variable interest entities (VIEs). The new guidance is effective for fiscal years and interim periods beginning after 15 December 2014, with early adoption permitted. The Company is in the process of evaluating the impact of the standard. The Company is planning to early adopt this ASU.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Risk

We had unrestricted cash totaling \$54.3 million at June 30, 2014. These amounts were deposited in current and interest-bearing accounts and were held for working capital purposes. Our primary objective is to preserve our capital for the purpose of constructing our planned facility in Sarnia, Ontario, Canada and funding our operations. We do not enter into investments for trading or speculative purposes. Our three-year term loan with Hercules Technology Growth Capital, Inc. bears interest at U.S. Prime Rate plus 6.50% with an interest rate floor at the current rate of 10%. If the U.S. Prime Rate were to increase, the interest rate for the remaining term of the loan would increase.

Commodity Price Risk

We use glucose in our processes, which can be derived from corn, wheat and other feedstocks. Thus, our raw material is sensitive to price fluctuations in feedstock commodities. Prices of corn, wheat and other feedstocks are subject to fluctuations due to unpredictable factors such as weather, quantities planted and harvested, changes in national and global supply and demand, and government programs and policies.

Foreign Currency Risk

We currently conduct our operations in U.S. dollars, Canadian dollars and Euros, which exposes us to fluctuations in foreign currency exchange rates. The planned facility in Sarnia, Ontario will require Canadian dollar funding as well as U.S. dollar funding. We will monitor the amounts and timing of foreign currency exposures related to the construction of the facility and will look to mitigate exposure through normal business operations such as carrying appropriate foreign currency deposits and sourcing as much funding in Canadian dollars as practicable. We may use forward contracts or currency swaps to mitigate any remaining exposure.

Once we complete our planned facility in Sarnia, Ontario, we expect our foreign currency risk to increase as our sources of cash will be primarily in U.S. dollars and in Euros, while our uses of cash will be primarily in Canadian dollars. We will monitor foreign currency exposures and will look to mitigate exposures through normal business operations such as manufacturing and selling in the same currencies where practical.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

As of June 30, 2014, our management, with the participation of our President and Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15(b) promulgated under the Securities Exchange Act of 1934, as amended, or the Exchange Act. Based upon that evaluation, our President and Chief Executive Officer and our Chief Financial Officer concluded that, as of June 30, 2014, our disclosure controls and procedures were effective at a reasonable assurance level in ensuring that material information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules, regulations and forms of the Securities and Exchange Commission, including ensuring that such material information is accumulated and communicated to our management, including our President and Chief Executive Officer and our Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

There were no changes to our internal control over financial reporting that occurred during the quarter ended June 30, 2014 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations of Internal Controls

Our management does not expect that our disclosure controls and procedures or our internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings

We are, from time to time, involved in the normal course of business in various legal proceedings. Rules of the Securities and Exchange Commission require the description of material pending legal proceedings, other than ordinary, routine litigation incident to our business, and advise that proceedings ordinarily need not be described if they primarily involve damages claims for amounts (exclusive of interest and costs) not individually exceeding 10% of the current assets of the registrant and its subsidiaries on a consolidated basis. In the judgment of management, none of the pending litigation matters that we and our subsidiaries are defending involves or is likely to involve amounts of that magnitude. There may be claims or actions pending or threatened against us of which we are currently not aware and the ultimate disposition of which would have a material adverse effect on us.

Item 1A. Risk Factors

Part I, Item 1A, "Risk Factors" of our Annual Report on Form 10-K for the year ended December 31, 2013 filed with the Securities and Exchange Commission on March 28, 2014, sets forth information relating to important risks and uncertainties that could materially adversely affect our business, financial condition and operating results. Except to the extent that information disclosed elsewhere in this Quarterly Report on Form 10-Q relates to such risk factors (including, without limitation, the matters described in Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations"), and except to the extent the risk factor below has been updated to reflect recent changes to our partnership arrangement with Mitsui, there have been no material changes to our risk factors disclosed in our Annual Report on Form 10-K for the year ended December 31, 2013 filed on March 28, 2014. However, those risk factors continue to be relevant to an understanding of our business, financial condition and operating results and, accordingly, you should review and consider such risk factors in making any investment decision with respect to our securities.

We are dependent on our relationships with strategic partners, licensors, collaborators and other third parties for research and development, the funding, construction and operation of our manufacturing facilities and the commercialization of our products. The failure to manage these relationships could delay or prevent us from developing and commercializing our products.

We have built our business largely by forming technology partnerships and licensing and other relationships with market leaders in the industrial biotechnology and chemicals industries. For example, through an exclusive worldwide license from Cargill, we have developed a next-generation yeast microorganism. In addition, we are developing a proprietary purification process that we believe will provide a key cost differentiator to our competitors by reducing the cost profile of our products and the capital intensity of our plants. We have also entered into license agreements with DuPont, entities funded by the DOE, Celexion and others. We expect that our ability to maintain and manage these collaborations will be significant factors in the success of our business.

Also, we expect that our ability to maintain and manage partnerships for the funding, construction and operation of our manufacturing facilities will be a significant factor in the success of our business. The large-scale demonstration facility we operate in Pomacle, France is owned by ARD and we are guaranteed 60% the facility's capacity through a toll-manufacturing agreement with ARD.

We have entered into a joint venture agreement with Mitsui for the financing and construction of our planned facility in Sarnia, Ontario. We have commenced construction and expect this facility to be mechanically complete by early 2015. We may work with Mitsui to build and operate an additional BDO plant in the future. We may not be able to maintain our partnership with Mitsui if it decides not to go forward based on certain rights granted to it in our agreement. Mitsui has the right to sell its shares and we have the obligation to purchase those shares at 100% of the investment value if the cost of the Sarnia facility is greater than \$140 million and we cannot provide the additional funds needed to complete the facility. In the event of an occurrence of a dissolution event until December 31, 2020 the same rights apply and Mitsui has the right to sell its shares and we have the obligation to purchase those shares at 100% of the investment value. The dissolution events giving Mitsui this right are: (i) the Sarnia plant not being operational by January 31, 2016, (ii) cumulative losses accrued from 2016 through 2020 exceeding 75% of paid in capital, (iii) no after-tax profit earned in any three consecutive years from 2016 onwards, and (iv) any act of insolvency, bankruptcy, or similar event. Until December 31, 2018, Mitsui in its sole discretion may sell its shares and we must purchase those shares at a discount of 50% to the cumulative investment value.

We are working with strategic partners and collaborators through whom we either own or license the technology needed to develop new specialty chemical products. We will rely on these partners to commercialize our products and the success of these relationships will impact the market opportunity and demand for our products across our target end-markets.

Our partnering or collaboration opportunities could be harmed and our anticipated timelines could be delayed if:

- we do not achieve our objectives under our arrangements in a timely manner, or at all;
- our existing or potential industry partners become unable, unwilling or less willing to expend their resources on research and development or commercialization efforts with us due to general market conditions, their financial condition, feedstock pricing or other circumstances, many of which are beyond our control;
- we disagree with a strategic partner or collaborator regarding strategic direction, economics of our relationship, intellectual property or other matters;
- we are unable to successfully manage multiple simultaneous partnering arrangements;
- our strategic partners and collaborators breach or terminate their agreements with us or fail to perform their agreed activities or make planned equity contributions;
- our industry partners become competitors of ours or enter into agreements with our competitors;
- applicable laws and regulations, domestic or foreign, impede our ability to enter into strategic arrangements;
- we develop processes or enter into additional partnering arrangements that conflict with the business objectives of our other arrangements; or
- consolidation in our target markets limits the number of potential industry partners.

If any of these events occur, or if we fail to maintain our agreements with our strategic partners and collaborators, we may not be able to commercialize our existing and future products, further develop our business or generate sufficient revenues to support our operations. Additionally, our business could be negatively impacted if any of our industry partners undergo a change of control or assign the rights or obligations under any of our agreements.

Item 2. Use of Proceeds

Use of Proceeds

On May 9, 2013, the SEC declared effective our registration statement on Form S-1 (File No. 333-177917) in connection with our initial public offering, pursuant to which we registered an aggregate of 8,000,000 units, each unit consisting of one share of common stock and one warrant to purchase half of one share of common stock, as well as a maximum of 1,200,000 additional units to cover over-allotments, if any. Each warrant is exercisable during the period commencing on August 8, 2013 and ending at 5:30 p.m. on May 9, 2017 at an exercise price of \$11.00 per whole share of common stock. The managing underwriters were Credit Suisse Securities (USA) LLC, Barclays Capital Inc., Société Générale and Pacific Crest Securities LLC.

Our net proceeds from the sale of units in this offering were approximately \$71.7 million, based upon an initial public offering price of \$10.00 per unit, and after deducting underwriting discounts and commissions and offering expenses payable by us. No offering expenses were paid directly or indirectly to any of our directors or officers (or their associates) or persons owning ten percent or more of any class of our equity securities or to any other affiliates. We received these proceeds at a closing held on May 14, 2013. We intend to use the remainder of the net proceeds of our initial public offering as follows:

- approximately \$40.6 million for our capital contributions relating to the construction of the initial phase of our planned facility in Sarnia, Ontario with an expected capacity of 30,000 metric tons; and
- the balance for working capital and other general corporate purposes, which will also include expenses and costs associated with being a public company as well as certain interest and principal payments as they come due under our government loans and our credit facility with HTGC.

The approximately \$40.6 million for our capital contributions relating to the construction of the initial phase of our Sarnia facility has been reduced from the initial estimate of \$63.0 million, as set forth in our final prospectus, dated May 9, 2013, filed with the SEC pursuant to Rule 424(b), as a result of our receipt of additional low-interest loans from Canadian governmental agencies discussed elsewhere in this Quarterly Report on Form 10-Q and the related foreign exchange fluctuation on these Canadian dollar loans. Other than the reduction in our capital contributions, there has been no other material changes in the planned use of proceeds from our initial public offering from that described in our final prospectus, dated May 9, 2013, filed with the SEC pursuant to Rule 424(b).

Item 6. Exhibits

The exhibits listed below are filed as part of this Quarterly Report on Form 10-Q.

Exhibit No.	Exhibit Description	Filed or Furnished Herewith	Incorporated by Reference			
			Form	SEC File No.	Exhibit	Filing Date
3.1	Amended and Restated Certificate of Incorporation		S-1	333-177917	3.1	4/11/13
3.2	Amended and Restated By-laws		S-1	333-177917	3.2	4/11/13
4.1	Specimen Common Stock Certificate		S-1	333-177917	4.1	4/11/13
4.2	Form of Common Stock Purchase Warrant		S-1	333-177917	4.6	5/9/13
10.1	Comerica, Export Development Canada, and Farm Credit Canada Senior Secured Term Loan, dated June 20, 2014.	X				
31.1	Certification of the Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X				
31.2	Certification of the Chief Financial Officer pursuant Section 302 of the Sarbanes-Oxley Act of 2002	X				
32.1*	Certification of the Chief Executive Officer pursuant Section 906 of the Sarbanes-Oxley Act of 2002	X				

Exhibit No.	Exhibit Description	Filed or Furnished Herewith	Incorporated by Reference			
			Form	SEC File No.	Exhibit	Filing Date
32.2*	Certification of the Chief Financial Officer pursuant Section 906 of the Sarbanes-Oxley Act of 2002	X				
101.INS**	XBRL Instance Document	X				
101.SCH**	XBRL Taxonomy Extension Schema Document	X				
101.CAL**	XBRL Taxonomy Extension Calculation Linkbase Document	X				
101.DEF**	XBRL Taxonomy Extension Definition Linkbase Document	X				
101.LAB**	XBRL Taxonomy Extension Labels Linkbase Document	X				
101.PRE**	XBRL Taxonomy Extension Presentation Linkbase Document	X				

* The certification furnished in Exhibit 32.1 and Exhibit 32.2 hereto are deemed to accompany this Quarterly Report on Form 10-Q and will not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, except to the extent that the Registrant specifically incorporates it by reference.

** Pursuant to Rule 406T of Regulation S-T, the information in these exhibits shall not be deemed to be “filed” for the purposes of Section 18 of the Securities Act of 1934, as amended, or otherwise subject to liability under that section, and shall not be incorporated by reference into any registration statement or other document filed under the Securities Act of 1934, as amended, except as expressly set forth by specific reference in such filing.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

BIOAMBER INC.

August 12, 2014

By: /s/ Jean-François Huc
Jean-François Huc
President and Chief Executive Officer
(Principal Executive Officer)

By: /s/ Andrew Ashworth
Andrew Ashworth
Chief Financial Officer
(Principal Financial Officer)

**\$20,000,000
LOAN AGREEMENT**

BIOAMBER SARNIA INC.
as Borrower

THE LENDERS PARTY HERETO

COMERICA BANK
as Agent

Dated as of June 20, 2014



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LOAN AGREEMENT

LOAN AGREEMENT dated as of June 20, 2014

AMONG:

BIOAMBER SARNIA INC., as Borrower

THE INSTITUTIONS NAMED HEREIN AS LENDERS, as Lenders

COMERICA BANK, as Agent

The Borrower proposes to borrow Loans to fund a proportion of the overall Project Costs required to finance the designs, development, construction commissioning and operation of the Project and the Lenders are prepared to advance Loans to the Borrower for such purpose on the terms and subject to the conditions set forth herein.

NOW THEREFORE in consideration of the mutual obligations contained herein and for other consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

As used herein, the following terms shall have the following respective meanings:

“**Account Bank**” means Comerica Bank in its capacity as account bank.

“**Accounts**” means the Cost Overrun Account, the Debt Service Reserve Account, the Maintenance Reserve Account, the Punch List Reserve Sub-Account and the Project Revenue Account.

“**Acquisition**” means an acquisition of all or any part of the business of another person, including any line of business or division and the assets comprised therein, in a single transaction or in a series of related transactions, whether by acquisition of assets or of Capital Stock of that person or by way of Business Combination.

“**Additional Project Document**” means:

- (a) each agreement entered into by, or on behalf of, the Borrower subsequent to the date hereof relating to the design, development, equipment procurement, engineering, construction, commissioning, start-up, maintenance, operation, feedstock supply or financing of the Project; and

- (b) each agreement entered into by, or on behalf of, the Borrower subsequent to the date hereof relating to the production, transportation, processing or sale of Product,

in each case under which the Borrower shall have (A) the right to receive payments or be obligated to pay in excess of \$500,000 or the Equivalent in the aggregate over the term of such agreement or (B) non-monetary obligations of the Borrower the performance or non-performance of which (I) either is material in nature or is adverse to the Borrower or the Project or (II) materially impacts the Borrower's obligations to the Secured Parties.

“**Affected Lender**” has the defined meaning assigned to it in Section 3.4.1 or Section 3.5, as applicable, and also (where the context so admits) includes an Affected Secured Party.

“**Affected Secured Party**” has the defined meaning assigned to it in Section 3.6.1, as applicable.

“**Affiliate**” in relation to any person (the “**relevant party**”) means any other person (i) that, directly or indirectly, Controls, is Controlled by or is under common Control with, the relevant party, (ii) that beneficially owns or Controls 10% or more of the Voting Capital Stock, on an undiluted or a fully diluted basis, of the relevant party or (iii) of which 10% or more of the Voting Capital Stock, on an undiluted or a fully diluted basis, is beneficially owned or Controlled by the relevant party.

“**Affiliated Secured Party**” means an Affiliate of a Lender that enters into a Lender Affiliate Joinder Agreement and a Cash Management Agreement and/or Permitted Derivative, as the case may be.

“**Agent**” means Comerica Bank acting from its offices in Toronto in its capacity as administration agent with respect to the Loan Facility and the other Secured Documents for its own benefit and the rateable benefit of the other Secured Parties, and not in its individual capacity as a Lender, or (as the context requires) any replacement for such administration agent that is appointed pursuant to Section 11.15.1.

“**Agent's Account**” means the account to be opened and maintained by the Agent to which payments and transfers to the Agent under this Agreement are to be effected or such other account of the Agent marked to such reference as the Agent may notify to each of the Lenders and the Borrower from time to time as being the applicable account to which payments and transfers to the Agent pursuant to this Agreement are to be made.

“**Agreement**” means this loan agreement.

“**Annual Budget**” means the annual budget and operating plan of the Borrower for the Project for the then current financial year prepared on a monthly basis based on the Base Financial Model.

“**Anti-Money Laundering Laws**” means (as the context requires) (i) the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), including any guidelines or orders thereunder, (ii) the USA Patriot Act or (iii) any other applicable anti-money laundering, anti-

terrorist financing, economic sanction and “know your client” laws of Canada or any other applicable jurisdiction.

“**Anti-Terrorism Laws**” means (i) US Executive order No. 13224, the USA Patriot Act, the laws comprising or implementing the “Bank Secrecy Act”, 31 U.S.C. §§ 5311 et seq., the laws administered by OFAC and any similar law enacted by the United States of America subsequent to the date of this Agreement, or (ii) the Canadian Economic Sanctions and Export Control Laws, as the context requires.

“**Applicable Accounting Principles**” means (i) generally accepted accounting principles, including accounting standards for private enterprises if the relevant person has adopted the same, from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, including those set out in the Handbook of the Canadian Institute of Chartered Accountants, applied on a consistent basis, (ii) IFRS, if the relevant person has adopted IFRS or (iii) generally accepted accounting principles in the United States of America (“**US GAAP**”), if the relevant person has adopted US GAAP, subject at all times to the application of Section 1.7.

“**Applicable Law**” means, in respect of any person, property, transaction or event, any international treaty, any domestic or foreign constitution or any multinational, federal, provincial, territorial, state, municipal, county or local statute, law, ordinance, code, rule, regulation, decree, judgment, code, standard, act, order, by-law, order, approval, permit or requirement (including any consent decree or administrative order), applicable to, or any guideline or policy (the compliance with which guideline or policy is generally regarded as mandatory by the person to whom it applies) or Authorization of any Governmental Authority.

“**Applicable Margin**” means, with respect to each Loan, five percent (5.0%), subject to reduction to four percent (4.0%) for any Interest Period in which (i) the Borrower is or was not in breach of the covenants set out in Section 9.2 and (ii) the Borrower is party to valid and enforceable take-or-pay agreements with counterparties which in the aggregate provide for the purchase by such counterparties of not less than 50% of the Project’s annual production of Product after the Commercial Operation Date. Changes in the Applicable Margin shall take effect as of the third (3rd) Business Day following the date the Borrower delivers a Compliance Certificate to the Agent pursuant to Section 9.1.1 which, when delivered, demonstrates compliance with the covenants set out in Section 9.2 and confirms compliance of the requirements provided for in clause (ii) above. The Applicable Margin applicable to Loans outstanding on the date any such change takes effect will be adjusted immediately, but without retroactive effect. Notwithstanding the foregoing, for the purposes of this definition, if the Borrower fails to deliver a Compliance Certificate to the Agent by the date required to do so under Section 9.1.1, the Applicable Margin shall be five percent (5.0%), but without any adjustments having retroactive effect.

“**Approved Capital Expenditures**” means for any year those capital expenditures which are set forth in the Annual Budget for such year and do not exceed \$1,000,000 in the aggregate.

“**Approved Fund**” means any person (other than an individual) that is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by a Lender,

an Affiliate of a Lender or an entity or an Affiliate of an entity that administers or manages a Lender.

“**Approved Operating Costs**” means for any year those Operating Costs which are set forth in the Annual Budget for such year.

“**Asset Disposal**” means any asset disposal by the Borrower, except any asset disposal permitted by Clauses (a), (b), (c) and (d) of Section 9.4.7.

“**Auditors**” means the firm of Deloitte LLP or any other firm of certified public accountants as the Borrower may designate from time to time as its auditors, provided such auditors are reasonably acceptable to the Agent.

“**Authorization**” means any authorization, consent, approval, licence, ruling, permit, permission, award, order, determination, direction, decree, declaration, writ, injunction, right, lease, concession, claim, franchise, privilege, grant, waiver, certification, exemption, screening, assessment, filing, registration, qualification, variance, judgment, publication or notice (i) issued, made or provided by or from any Governmental Authority, (ii) issued, made or provided by or from any person in connection with any contractual rights or (iii) otherwise required pursuant to Applicable Law, including the Project Authorizations.

“**Base Financial Model**” means, at any particular time prior to the review by the Independent Technical Consultant and the Required Lenders of an updated Base Financial Model, the initial Base Financial Model Project dated June 5, 2014 with file name EDC Financial Model June52014.xls as emailed by Ms. Anne Waddell to Ms. Ashley Glen on June 19, 2014 at 11:45 a.m. and, thereafter, the most recently updated Base Financial Model delivered by the Borrower to the Agent which has been reviewed by the Independent Technical Consultant and the Required Lenders. The Base Financial Model shall be a fully functional Excel-based computer financial model for the Project which is a comprehensive capital and cash flow forecast reflecting the economic terms of the Material Project Documents for the design, construction, engineering, commissioning, start-up, maintenance and operation of the Project, and shall include forecasts and projection of revenues, expenses, maintenance costs, interest, fees and principal repayments arising under the Loan Facility, financial covenant calculations (including demonstrating that the underlying economics of the Material Project Documents are able to satisfy the Debt Service Coverage Ratio for each year therein), and is accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the Base Financial Model.

“**BioAmber**” means BioAmber Inc., existing as a corporation incorporated under the laws of Delaware.

“**BioAmber Competitor**” means any person who is a competitor of BioAmber as set forth on a list delivered by the Borrower to the Agent and consented to in writing by the Agent (after consultation with the Lenders) prior to the Financial Closing Date (as such list may be changed from time to time with the prior written consent of the Agent (after consultation with the Lenders)).

“**BioAmber Guarantee**” means the guarantee by BioAmber in favour of the Agent, in form and substance satisfactory to the Agent (acting on the instructions from the Required Lenders), and pursuant to which BioAmber guarantees 70% of all of the Secured Obligations of the Borrower.

“**BioAmber Luxco**” means BioAmber International S.à r.l., existing as a *société à responsabilité limitée* established under the laws of Luxembourg, having its registered office in L-- 1140 Luxembourg, 49, route d’Arlon, registered with the Trade and Companies Register of Luxembourg under the number B.163728, having a share capital of USD 320,000.00.

“**BioAmber Luxco SPA**” means the securities pledge agreement by BioAmber Luxco in favour of the Agent, in form and substance satisfactory to the Agent (acting on the instructions from the Required Lenders), pursuant to which, *inter alia*, BioAmber Luxco pledges all of the present and future Capital Stock of the Borrower it owns.

“**Blocked Accounts Agreements**” means the blocked accounts agreements and/or account control agreements between the Borrower, the Agent and the Account Bank, in form and substance satisfactory to the Agent (acting on the instructions from the Required Lenders), with respect to each of the Accounts.

“**Borrower**” means BioAmber Sarnia Inc., existing as a corporation incorporated under the federal laws of Canada.

“**Borrower’s Counsel**” means (i) in the Provinces of Ontario and Quebec, Boivin Desbiens Senecal Letendre LLP, with Morrison Brown Sosnovitch LLP as support for Ontario matters (ii) in each other relevant jurisdiction, such local legal counsel of recognized local standing as the Borrower may designate as the Borrower’s legal counsel in that jurisdiction provided that the Borrower promptly notifies the Lender of such designation, and (iii) in each case, such replacement or additional firm of recognized local standing as the Borrower may designate from time to time as the Borrower’s legal counsel provided that the Borrower promptly notifies the Lender of such designation.

“**Business Combination**” means any merger, amalgamation, arrangement, consolidation or other business combination.

“**Business Day**” means a day which is not a Saturday or Sunday on which banks are generally open for commercial lending and foreign exchange business in Toronto, Ontario.

“**Canadian Blocked Person**” means any person that is a “designated person”, “politically exposed foreign person” or “terrorist group” as described in any Canadian Economic Sanctions and Export Control Laws.

“**Canadian Economic Sanctions and Export Control Laws**” means any Canadian laws, regulations or orders governing transactions in controlled goods or technologies or dealings with countries, entities, organizations, or individuals subject to economic sanctions and similar measures, including the *Special Economic Measures Act* (Canada), the *United Nations Act*, (Canada), the *Freezing Assets of Corrupt Foreign Officials Act*, Part II.1 of the Criminal Code, (Canada) and the *Export and Import Permits Act* (Canada), and any related regulations.

“Canadian Pension Plan” means any plan, program or arrangement which is considered to be a pension plan or required to be registered for the purposes of any applicable pension benefits standards or tax statute and/or regulation in Canada or any province or territory thereof established, maintained or contributed to by, or to which there is or may be an obligation to contribute by, the Borrower, its employees or former employees, in each case whether written or oral, funded or unfunded, insured or self-insured, reported or unreported, including any pension benefit plan within the meaning of the *Pension Benefits Act* (Ontario) but excluding any government-sponsored plan (such as the Canada Pension Plan and the Quebec Pension Plan).

“Canadian Prime Rate” on any day means the variable nominal interest rate equal on such day to the percentage rate per annum determined by the Agent (rounded up to two (2) decimal places) to be the greater of (i) the rate of interest which the Reference Lender establishes at that time as the reference rate of interest for determination of the interest rates it will charge for loans made in Dollars in Canada and which it refers to as its prime rate (or its equivalent or analogous such rate) or (ii) the sum of (A) the yearly rate of interest to which the one (1) month CDOR is equivalent plus (B) one percent (1%). For the purposes of this definition “CDOR” on any day means the average (rounded up, if necessary, to be expressed to three (3) decimal places) of the Canadian Interbank Bid BA Rates for Dollar denominated bankers’ acceptances for a period of one month displayed on the appropriate page of the Reuters service as of 10:00 a.m. on that day (or the preceding Business Day if that day is not a Business Day).

“Cancellation Notice” means a notice in the form of or to substantially similar effect as Schedule 4 given to the Agent by the Borrower pursuant to Section 4.4.

“Capital Expenditures” means (without duplication) any expenditure (whether payable in cash or other property or accrued as a liability) made by the Borrower that, in conformity with Applicable Accounting Principles, would be required to be classified as a capital expenditure on the consolidated balance sheet of the Borrower. For certainty, Capital Expenditures includes (i) the cost of assets acquired under capital leases and (ii) expenditures for equipment which is purchased simultaneously with the trade-in of existing equipment owned by the Borrower, to the extent of the net purchase price of the purchased equipment after giving effect to any trade-in. Capital Expenditures, however, excludes (x) expenditures made in connection with the replacement, repair or restoration of buildings, fixtures or equipment to the extent reimbursed or financed from insurance or expropriation proceeds, (y) capital lease payments and (z) the cost of any Acquisition.

“Capital Lease Obligations” means, for any person, the obligations of such person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) any asset which obligations would be required to be classified and accounted for as a capital lease on a balance sheet of such person under Applicable Accounting Principles and, for the purposes hereof the amount of such obligations shall be the capitalized amount thereof, determined in accordance with Applicable Accounting Principles.

“Capital Stock” means common shares, preferred shares or other equivalent equity interests (howsoever designated) of capital stock in a body corporate, partnership, limited partnership, trust or other artificial legal or commercial entity.

“Cash Equivalents” means (i) short-term obligations of, or fully guaranteed by, the government of the United States of America or Canada, or of a State of the United States of America or of a Province of Canada, in each case having an approved credit rating, (ii) demand or current deposit accounts maintained in the ordinary course of business with a Lender or with a financial institution having an approved credit rating and (iii) certificates of deposit issued by and time deposits with a Lender or any commercial bank or trust company (whether domestic or foreign) having an approved credit rating; provided in each case that the same has a term not exceeding six (6) months, provides for payment of both principal and interest (and not principal alone or interest alone) and is not subject to any contingency regarding the payment of principal or interest (and for certainty, the mere passage of time is not a contingency).

“Cash Flow Available for Debt Service” for any period means the amount (if any) for that period by which (a) the sum of Cash Revenues exceeds (b) the sum of (i) the portion of Operating Costs actually paid in cash plus (ii) the portion of Capital Expenditures actually paid in cash plus (iii) Taxes actually paid in cash by the Borrower.

“Cash Management Agreements” means an agreement to which any Lender or an Affiliated Secured Party is party providing for cash management services to the Borrower, including treasury, depository, overdraft, credit or debit card, electronic funds transfers, cash concentration and other cash management services.

“Cash Management Obligations” means the Debt and other obligations of the Borrower owing to each of the Lenders and Affiliated Secured Parties arising under, pursuant to or otherwise in respect of each Cash Management Agreement, including any guarantee thereof or otherwise, and any item or part of any thereof. For certainty, “Cash Management Obligations” shall include interest accruing subsequent to the commencement of, or which would have accrued but for the commencement of, any Insolvency Proceeding in accordance with and at the rate (including the default rate to the extent lawful) specified in an applicable Cash Management Agreement, whether or not such interest is an allowable claim in such Insolvency Proceeding.

“Cash Revenues” means, for any period, the sum, computed without duplication, of all cash payments received by the Borrower during such period from (i) the sale of Product, (ii) investment earnings on Cash Equivalents held in the Project Revenue Account, (iii) refunds of Taxes and (iv) other sources provided such cash payments are received in connection with the Project and in the ordinary course of business.

“Certificate” from any person that is a corporation or other artificial legal or commercial entity means a written certificate of that person signed by a Responsible Officer of that person.

“Change in Control” means any sale, transfer or other disposition by any Sponsor Shareholder, directly or indirectly, of any Capital Stock in the Borrower or any change after the date of this Agreement in the proportion of the Capital Stock in the Borrower owned, directly or indirectly, by any Sponsor Shareholder on the date of this Agreement; provided however that none of following will be deemed to be a Change in Control if effected pursuant to the terms of the Joint Venture Agreement: (i) the sale or transfer of any Capital Stock in the Borrower by Mitsui to BioAmber Luxco, including the payment of the purchase/sale price resulting from any such transaction, (ii) the sale or transfer of any Capital Stock in the Borrower by BioAmber Luxco to Mitsui, including the payment of the purchase/sale price resulting from any such transaction and

(iii) the issuance of Capital Stock in the Borrower to either or both of BioAmber Luxco and Mitsui, in each case provided that the Capital Stock sold, transferred or issued is forthwith pledged to the Agent pursuant to the BioAmber Luxco SPA or the Mitsui SPA, as applicable.

“Change in Law” means any change in, or the coming into effect of, any Applicable Law or order (whether or not having the force of law), or any change in the interpretation, administration or application thereof by any Governmental Authority, or compliance by any Secured Party (or any Holding Entity of any Secured Party) with any Applicable Law or any order of any Governmental Authority (whether or not having the force of law). Notwithstanding the foregoing, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority), the Office of the Superintendent of Financial Institutions or any federal or state banking authority in the United States, in each case pursuant to Basel III, shall, in each case, be treated as a Change in Law regardless of the date enacted, adopted or issued.

“Clean-Up” means the remediation, containment, removal, treatment, neutralization or inactivation of any Contaminant.

“Code” means the United States Internal Revenue Code of 1986, as amended, and the U.S. Treasury Regulations promulgated thereunder.

“Collateral” means all assets in or to which any Obligor now or hereafter has rights and which is subject to (or intended by the express or implied terms of any Loan Document to be subject to) the Security, or any item or part thereof.

“Commercial Operation” means the time when the Agent has provided the Commercial Operation Notice to the Borrower and the Lenders that each of the conditions precedent set out in Section 6.4 has been satisfied and/or waived by the Lenders.

“Commercial Operation Date” or **“COD”** means the date on which Commercial Operation occurs.

“Commercial Operation Notice” has the defined meaning assigned in Section 6.4.

“Commitment” of any Lender means the maximum portion of the Loan Facility which such Lender has agreed to make available to the Borrower as set out opposite its name under **“Commitment”** in Schedule 1 **“Commitments”**, and/or as set forth in any Loan Transfer Agreement, as such amount may be modified from time to time pursuant to the provisions of this Agreement.

“Commitment Fee” means the commitment fee payable under Section 3.2.2(a).

“Compliance Certificate” means a duly completed and signed Certificate of the Borrower substantially in the form attached as Schedule 8 (or in such other form to substantially similar effect as the Agent may accept) setting out, among other things, a statement of the calculations of the financial test set out in Section 9.2.

“Completion Certificates” means, collectively, the completion certificates from the Borrower substantially in the forms set forth in Schedule 18 signed by a Responsible Officer of the Borrower, as reviewed and approved (where applicable) by the Independent Technical Consultant.

“Completion Tests” means the requirements, tests and conditions set forth in Schedule 18 and shall include: (i) mechanical, electrical and software completion tests; (ii) commissioning and testing of all systems and equipment; (iii) Plant performance tests; (iv) environmental tests; and (v) a satisfactory review by the Independent Technical Consultant of test results provided by the Borrower related to tests set out in Clauses (i), (ii), (iii) and (iv).

“Consents” means those acknowledgement and consent agreements referenced in Schedule 13 and any other acknowledgement and consent agreements relating to any Material Project Documents and any New Documents (other than the Supply Agreements and the Government Funding Agreements) required by the Agent hereunder (in each case which shall be in form and substance satisfactory to the Secured Parties) that provide for, among other things, the taking of security over the Material Project Document referenced therein (other than the Supply Agreements and the Government Funding Agreements) and provide the Agent with rights to remedy or cure breaches and defaults of the Borrower under the applicable Material Project Documents (other than the Supply Agreements and the Government Funding Agreements) after the expiry of any cure period’s the Borrower may have, except as may otherwise be consented to in writing by the Secured Parties.

“Constitutional Documents” in relation to any person that is a corporation or other artificial legal or commercial entity means the articles, the articles of incorporation (teikan), any unanimous shareholder agreement, the limited liability, operating or members’ agreement or the partnership agreement, declaration of trust or equivalent documents governing the incorporation or formation, capacity, powers, assets and affairs of that person; together, in each case, with the by-laws or other documents, regulating the organization, Control or internal management of that person.

“Construction Management & Procurement Agreement” has the defined meaning assigned in Schedule 11.

“Construction Period” means the period commencing on the Financial Closing Date and terminating on the earlier of:

- (a) the date upon which the Loan Facility is fully drawn down;
- (b) the day immediately preceding the Commercial Operation Date;
- (c) the Limit Commercial Operation Date; and
- (d) the date that the Loan Facility is terminated and cancelled in its entirety.

“Contaminant” means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them that may (i) impair the quality of the Environment for any use that can be made of it, (ii) injure or damage property or plant or animal life, (iii) harm or materially

discomfort any person, (iv) adversely affect the health of any individual, (v) impair the safety of any individual, (vi) render any property or plant or animal life unfit for use by man, (vii) cause loss of enjoyment of normal use of property or (viii) interfere with the normal course of business, and includes any “contaminant” within the meaning assigned to such term in any Environmental Law.

“**Contested Tax Proceedings**” means proceedings in respect of a Tax claim which are being contested in good faith by an Obligor by appropriate proceedings, in respect of which adequate reserves in accordance with Applicable Accounting Principles have been recorded in the accounts and financial statements of such Obligor and, to the extent required to ensure that no penalties or interest would be charged if such contest is unsuccessful, the amount of Taxes being contested is paid under reserve or protest to the applicable Governmental Authority.

“**Contractor**” means Alberici Constructors, Ltd.

“**Control**” when used with respect to any person other than an individual means the power to direct the management and policies of such person, directly or indirectly, whether through ownership of Voting Capital Stock, by contract or otherwise.

“**Cost Overrun Account**” or “**COA**” means the segregated account established pursuant to Section 5.4, or such other account as may be agreed by the Agent and the Borrower from time to time and notified by the Agent to the Secured Parties.

“**Cost Overrun Reserve Requirement**” means, at any time, the amount of \$2,000,000.

“**Cost Overruns**” means with regard to any particular construction phase or component of construction and start-up of the Project, the amount by which costs in respect of such construction phase or component exceed amounts allocated thereto in the Project Budget, as determined by the Independent Technical Consultant taking into account the contingency amount included in the Project Budget.

“**Costs to Complete**” means, at any time, the aggregate of all remaining Project Costs (including the contingency amount reflected in the Base Financial Model) required to be incurred to achieve Commercial Operation.

“**Costs to Complete Certificate**” means a certificate of a Responsible Officer of the Borrower addressed to the Agent and the Independent Technical Consultant, which is substantially in the form of Schedule 9 which certifies, *inter alia*,

- (a) Project Costs incurred to the date of the certificate;
- (b) the Costs to Complete;
- (c) Project Costs expected to be payable within the thirty (30) days of the certificate or if the certificate accompanies a Drawdown Request, thirty (30) days following the date of the Drawdown requested in such Drawdown Request;
- (d) that no Funding Shortfall exists;

- (e) the expected timing of achieving Commercial Operation;
- (f) that the Project has not been abandoned; and
- (g) that no Default or Event of Default has occurred and is continuing.

“Courts of Primary Jurisdiction” means any of the courts referred to in Section 12.15.1.

“Debt” of any person at any time means obligations of such person to pay (in whole or in part) (i) liabilities which, in accordance with Applicable Accounting Principles, would be classified on the unconsolidated balance sheet of that person prepared as at such time as indebtedness for borrowed money, including bank indebtedness, long-term debt, capital lease obligations and indebtedness to Affiliates and other financial indebtedness, (ii) amounts payable, actual or contingent, primary, secondary or by way of guarantee, matured or unmatured, under, by reason of or otherwise in respect of, any bankers’ acceptance, (iii) amounts payable, actual or contingent, primary, secondary or by way of guarantee, matured or unmatured, under, by reason of or otherwise in respect of any sale of promissory notes, sale of accounts, factoring, securitization or discounting arrangement to the extent recourse to such person or any Affiliate of it exists to recover such amounts payable, (iv) the repurchase amount payable under any repurchase transaction, (v) the deferred purchase price for property acquired or services (excluding trade debt paid and payable in the ordinary course of business on customary trade terms), provided the foregoing shall exclude earn-out obligations except to the extent reflected as a liability on the balance sheet of such person prepared in accordance with Applicable Accounting Principles, (vi) the amount payable under or secured by any Lien over property acquired, whether or not assumed, (excluding any such amount payable if recourse to receive such payment is limited to the property acquired, the terms of payment thereof are customary trade terms and the amount payable is non-interest bearing and not outstanding for more than ninety (90) days, (vii) Out-of-the-Money Derivative Exposure, (viii) amounts payable, actual or contingent, primary, secondary or by way of guarantee, matured or unmatured, under, by reason of or otherwise in respect of, (A) any liability under any financing lease or so-called “synthetic” lease transaction or (B) any obligations arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the unconsolidated balance sheet of such person prepared in accordance with Applicable Accounting Principles, (ix) amounts payable under convertible debentures and other like instruments, whether or not they would, in accordance with Applicable Accounting Principles, be included in equity in the balance sheet of such person, (x) the redemption or retraction price of any Preferred Shares, (xi) all reimbursement or other obligations in respect of letters of credit, (xii) for greater certainty, amounts payable under and the other obligations under the Government Funding Agreements, and (xiii) any amount payable under any direct or indirect guarantee of any amount of the nature described in any of Clauses (i) to (xii) above.

“Debt Service” means, in respect of any period, the sum of (i) the aggregate principal amount of the Loans repaid and scheduled to be repaid pursuant to Section 4.1 during such period plus (ii) the aggregate amount of interest, fees and charges with respect to the Loans paid and required to be paid during such period, plus (iii) the aggregate fee amount paid and scheduled to be paid under or in connection with this Agreement during such period.

“Debt Service Coverage Ratio” means, as at any date of determination which occurs after the end of the first Fiscal Quarter that commences immediately on or after the COD (the **“First Fiscal Quarter”**), the ratio of (i) Cash Flow Available for Debt Service during the Test Period ending immediately prior to such date to (ii) Debt Service during such Test Period; provided that:

- (a) for any date of determination which occurs during the Fiscal Quarter immediately following the end of the First Fiscal Quarter (the **“Second Fiscal Quarter”**), each of the Cash Flow Available for Debt Service and the Debt Service shall be computed for a Test Period consisting only of the First Fiscal Quarter and multiplied by four;
- (b) for any date of determination which occurs during the Fiscal Quarter immediately following the end of the Second Fiscal Quarter (the **“Third Fiscal Quarter”**), each of the Cash Flow Available for Debt Service and the Debt Service shall be computed for a Test Period consisting only of the First Fiscal Quarter and the Second Fiscal Quarter and multiplied by two; and
- (c) for any date of determination which occurs during the Fiscal Quarter immediately following the end of the Third Fiscal Quarter (the **“Fourth Fiscal Quarter”**), each of the Cash Flow Available for Debt Service and the Debt Service shall be computed for a Test Period consisting only of the First Fiscal Quarter, the Second Fiscal Quarter and the Third Fiscal Quarter and multiplied by four and divided by three.

“Debt Service Reserve Account” or **“DSRA”** means the segregated account to be maintained by the Agent for the purposes set forth in Section 5.2 or such other account as may be agreed by the Agent and the Borrower from time to time and notified by the Agent to the Secured Parties.

“Debt Service Reserve Deficiency” means at any time from and after the Commercial Operation Date, the amount, if any, by which the then current outstanding credit balance of the Debt Service Reserve Account is less than the Debt Service Reserve Requirement at such time.

“Debt Service Reserve Requirement” means, as at the Commercial Operation Date and any Scheduled Principal Repayment Date after the Commercial Operation Date and for the six-month period commencing on, but excluding the Commercial Operation Date or such Scheduled Principal Repayment Date (as the case may be), and ending on and including the last day of such six month period, an amount equal to the sum of the Debt Service projected to be payable in the immediately following six (6) months as determined by the Agent.

“Default” means any Event of Default or any default, breach, failure, event, state or condition which, unless remedied or waived, with the lapse of time or giving of notice, or both, would constitute or result in the occurrence of an Event of Default.

“Default Rate” means the percentage rate per annum equal to the sum of (i) the Canadian Prime Rate plus (ii) the Applicable Margin for Loans plus, to the extent permitted by law at any time after an Event of Default has occurred, the Agent (acting on the instructions of the Required

Lenders) has notified the Borrower that the Default Rate increased rate should apply and such Event of Default is continuing, (iii) two percent (2%) per annum.

“Defaulting Lender” means any Lender (i) that has failed to fund its Rateable Share of any Loans required to be made by it hereunder or to purchase any participation required to be purchased by it hereunder or under any other Loan Documents, (ii) that has notified a Borrower, the Agent or any Lender (verbally or in writing) that it does not intend to or is unable to comply with any of its funding obligations under this Agreement or has made a public statement to that effect or to the effect that it does not intend to or is unable to fund advances generally under credit arrangements to which it is a party, (iii) that has failed, within three (3) Business Days after request by the Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund future Loans, (iv) that has otherwise failed to pay over to the Agent or any Lender any other amount required to be paid by it hereunder within three (3) Business Days of the date when due, (v) in respect of which an Insolvency Event has occurred in respect of such Lender or any Holding Entity of it or (vi) that is or any Holding Entity of it is subject to a forced liquidation, merger, sale or other forced change of control supported in whole or in part by guarantees or other support (including the nationalization or assumption of ownership or operating control by the Government of the United States, Canada or any other Governmental Authority) or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Lender or Holding Entity or their respective assets to be, insolvent or bankrupt.

“Defined Benefit Plan” means any Canadian Pension Plan which contains a “defined benefit provision”, as defined in subsection 147.2(1) of the *Income Tax Act* (Canada).

“Derivative” means any transaction or agreement evidencing a transaction that is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit derivative or any other similar transaction or agreement evidencing such transaction (including any option with respect to any of these transactions), and any combination of any of the aforesaid transactions.

“Derivative Exposure” in relation to any person (the “relevant party”) and any counterparty of the relevant party at any time means the amount which is or would be payable by the relevant party to that counterparty, or by that counterparty to the relevant party, as the case may be, pursuant to the agreement governing the Derivatives entered into between them and in effect at that time if those Derivatives have been or were to be terminated at such time. If the Derivative Exposure is payable by the Borrower to any counterparty of the Borrower, it is referred to herein as **“Out-of-the-Money Derivative Exposure”**. If Derivative Exposure is payable by any counterparty of the Borrower to the Borrower, it is referred to herein as **“In-the-Money Derivative Exposure”**.

“Distribution” in relation to any person means (i) the retirement, redemption, retraction, purchase, or other acquisition by such person of any of its Capital Stock, (ii) the declaration or payment of any dividend, return of capital or other distribution (in cash, securities or other property or otherwise, other than solely in Capital Stock of such person) of, on or in respect of, its Capital Stock, (iii) any other payment or distribution (in cash, securities or other property, or

otherwise, other than of Capital Stock of such person) by such person of, on or in respect of any Capital Stock of such person, (iv) all payments (in cash, assets, obligations or otherwise) of principal of, interest on or other amounts with respect to, or other payments on account of, or the setting apart of money for a sinking fund or other analogous fund for, or the purchase, redemption, retirement or other acquisition of Debt owing to any Sponsor or any person that is not an Unrelated Party, (v) any advisory, administration, consulting, licensing or management or service fee or charge or any similar fee or charge or bonus payment paid or payable to any Sponsor or any person that is not an Unrelated Party, (vi) any payment by such person on account of any principal of any loans or advances owed by it to any Sponsor or any person that is not an Unrelated Party, (vii) any loan, advance or other financial assistance provided to any Sponsor or any person that is not an Unrelated Party, (viii) any transfer by a person of any of its assets for consideration of less than the fair market value thereof to any Sponsor or any person that is not an Unrelated Party, and/or (x) any other payment of any nature (but excluding additional capital stock of the Borrower) to any Sponsor or any person that is not an Unrelated Party.

“**Dollars**”, “**CAD**” and “**\$**” means the lawful currency of Canada.

“**Drawdown**” means a new Loan.

“**Drawdown Certificate**” means a duly completed and signed Certificate of the Borrower substantially in the form attached as Schedule 10.

“**Drawdown Date**” means any day on which a Drawdown takes place.

“**Drawdown Request**” means a duly completed and signed notice from the Borrower requesting a Drawdown, in the form of Schedule 3 (or in such other form to substantially the same effect as the Agent may accept) signed by the Borrower.

“**E&C Support Provider**” means AMEC Americas Ltd.

“**Easements**” means any restrictions, covenants, restrictive covenants, easements, rights of way, servitudes or other similar rights in land or immovable property (including rights of way and servitudes for railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved by the Borrower or other persons which, as the case may be, in the aggregate do not materially impair the usefulness, in the operation of the business of such person, of the property subject to such restrictions, easements, rights of way, servitudes or other similar rights.

“**Employee Benefit Plan**” means any employee benefit plan maintained or contributed to by the Borrower that is not a government sponsored pension plan (such as the Canada Pension Plan or the Quebec Pension Plan), including any Pension Plan, group registered retirement savings plan, profit sharing, savings, supplemental retirement, retiring allowance, severance, pension, deferred compensation, welfare, bonus, incentive compensation, phantom stock, legal services, supplementary unemployment benefit plan or arrangement and any life, health, dental and disability plan or arrangement in which the employees or former employees of the Borrower participate or are eligible to participate, in each case whether written or oral, funded or unfunded,

insured or self-insured, reported or unreported, but excluding all stock option or stock purchase plans.

“Employee Benefits Legislation” means the *Canada Pension Plan Act* (Canada), the *Income Tax Act* (Canada), the *Pension Benefits Standards Act 1985* (Canada), the *Employment Insurance Act* (Canada), and any equivalent Canadian federal or provincial legislation including, but not limited to, employee benefit legislations in the Province of Ontario, as amended from time to time.

“Enforcement Event” means any of the following (i) the declaration by the Agent that the Loan Obligations owing by the Borrower are or have become payable on demand or immediately due and payable before the Maturity Date by reason of the occurrence and continuance of any Event of Default, (ii) the cancellation or termination of all of the Commitments of the Lenders pursuant to Section 10.2, (iii) the exercise of any set-off rights by any Secured Party by reason of the occurrence and continuance of any Event of Default, (iv) the commencement by Agent of any enforcement proceedings under or pursuant to any Loan Document or (v) the occurrence of an Insolvency Event relative to any Obligor.

“Engineering & Construction Support Agreement” has the defined meaning assigned in Schedule 11.

“Environment” means the ambient air, all layers of the atmosphere, surface, water, underground water, all land, all living organisms and the interacting natural systems that include components of air, land, water, organic and inorganic matter and living organisms, and includes indoor spaces.

“Environmental Law” means any Applicable Law relating to the Environment, Hazardous Materials or Waste or occupational health or safety which applies to the assets of any particular person.

“Environmental Liabilities” means liabilities and other obligations arising under any Environmental Law or applicable common or civil law.

“Equipment Supply Contracts” has the defined meaning assigned in Schedule 11.

“Equivalent” on any date means the amount in a specified currency which would result from the conversion of a specified amount in another currency at the Spot Rate. For the purposes of this definition, “Spot Rate” as at any date with respect to the conversion of an amount in one currency (the “original currency”) to another currency (the “other currency”) means the Bank of Canada noon rate of exchange on the immediately preceding Business Day for the purchase of such original currency with such other currency (and if neither currency is Dollars, purchasing Dollars first with such other currency and using the Dollars purchased to purchase the original currency).

“Event of Default” has the defined meaning assigned in Section 10.1.

“FATCA” means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more

onerous to comply with) and any current or future regulations or official interpretation thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“**Feedstock Supply Sale Agreements**” means any agreements entered into by the Borrower with respect to the supply of feedstock in connection with the Project.

“**Fees**” means any other fees payable by the Borrower to any of the Agent and the Lenders under or otherwise in respect of this Agreement or the Loan Facility.

“**Finance Related Agreements**” and “**FINANCE RELATED AGREEMENTS**” has the defined meaning assigned to “**FINANCE RELATED AGREEMENTS**” in Section 12.15.1.

“**Financial Closing**” means the time when the Agent has provided the Financial Closing Notice to the Borrower and the Lenders confirming that each of the conditions precedent set out in Section 6.1 has been satisfied and/or waived by the Lenders.

“**Financial Closing Date**” means the date on which Financial Closing occurs.

“**Financial Closing Notice**” has the defined meaning assigned in Section 6.1.

“**Fiscal Quarter**” means one of the four (4) three-month accounting periods of the Borrower comprising a Fiscal Year.

“**Fiscal Year**” means (i) in relation to the Borrower, BioAmber and BioAmber Luxco, the twelve (12) month accounting period of the Borrower and BioAmber which, as at the date hereof, ends on December 31st of each calendar year, and (ii) in relation to Mitsui the twelve (12) month accounting period of Mitsui which, as at the date hereof, ends on March 31st of each calendar year.

“**Force Majeure**” means an act of God, labour dispute and industrial action of any kind (including a strike, interruption, slowdown and other similar action on the part of organized labour), a lockout, act of the public enemy, war (declared or undeclared), civil war, sabotage, blockade, revolution, riot, insurrection, civil disturbance, terrorism, epidemic, cyclone, tidal wave, landslide, lightning, earthquake, flood, storm, fire, adverse weather conditions, expropriation, nationalization, acts of eminent domain, volcanic explosion, explosion, breakage or accident to machinery or equipment or pipe or transmission line or other facility, embargo, inability to obtain or delay in obtaining equipment, materials or transport, or any event whether similar to the foregoing or not which is not within the reasonable control of the Borrower.

“**Fraudulent Conveyances Law**” means the *Assignment and Preferences Act* (Ontario), the *Fraudulent Conveyances Act* (Ontario), or any other like, equivalent or analogous legislation of any jurisdiction, domestic or foreign.

“**Funding Shortfall**” means,

- (a) prior to the Initial Funding Date, at the relevant time, the amount by which the aggregate of, without double-counting,

- (i) amounts remaining available under the Sponsors Contributions provided to the Borrower;
- (ii) the amounts remaining available to the Borrower under the Government Funding Agreements to pay for Project Costs;
- (iii) the cash balance or Cash Equivalents standing to the credit of the Project Revenue Account obtained from Sponsors Contributions or Government Funding;
- (iv) the Total Commitment available to be borrowed by the Borrower;

is less than the Costs to Complete; and

- (b) on and after the Initial Funding Date, at the relevant time, the amount by which the aggregate of, without double-counting,
 - (i) the undrawn balance of the Total Commitment remaining available to be borrowed by the Borrower;
 - (ii) the cash balance or Cash Equivalents standing to the credit of the Project Revenue Account;
 - (iii) the amount of an Investment in the form of equity in the Borrower made by the Sponsors in excess of the Sponsor Contributions; and
 - (iv) the Cost Overrun Reserve Requirement,

is less than the Costs to Complete.

“Future Project Authorizations” means those Project Authorizations which are not required as of the relevant date but are required as of a later date and which are identified in Schedule 14 hereto as Future Project Authorizations.

“Government Funding Agreements” has the defined meaning assigned in Schedule 11.

“Government Funding Debt” means the Debt and other obligations of the Borrower owing to each of the Government Funding Entities arising under, pursuant to or otherwise in respect of each of the Government Funding Agreements, and any item or part of any thereof.

“Government Funding Entities” has the defined meaning assigned in Schedule 11.

“Government Funds” means the amount of money or credit advanced or to be advanced to the Borrower under the Government Funding Agreements by way of loans or grants.

“Governmental Authority” means any national, supranational, union of nations, federal, state, provincial, territorial, regional, municipal or local government, governmental department, court, central bank, monetary authority, regulatory authority, administrative tribunal, commission, board, bureau, agency, other authority, instrumentality or other entity of any union of nations,

nations or any nation, state, province, territory, government or other political subdivision thereof, and any person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to any of the foregoing entities and includes any court, tribunal, grand jury, mediator, arbitrator, referee or other decision-making authority of competent jurisdiction, whether foreign or domestic.

“**Guarantor**” means BioAmber and Mitsui, as the context requires.

“**Hazardous Materials**” means any pollutant or Contaminant, including any hazardous, dangerous, registrable or toxic chemical, material or other substance within the meaning of any Environmental Law, including urea formaldehyde foam type of insulation, asbestos or asbestos containing materials, polychlorinated biphenyls (PCB’s) or PCB contaminated fluids.

“**Holding Entity**” of any person that is a corporation or other artificial legal or commercial entity means another person that Controls that person.

“**IFRS**” means generally accepted accounting principles applied in accordance with International Financial Reporting Standards as adopted by the International Accounting Standards Board and approved by the Canadian Institute of Chartered Accountants (or any successor institute) for application in Canada.

“**Impermissible Qualification**” means, relative to the opinion or report of any independent certified public accountant or any independent chartered accountant as to any financial statement of any Obligor, any qualification or exception to such opinion or report (i) which is of a “going concern” or similar nature, (ii) which relates to any limited scope of examination of matters relevant to such financial statement or (iii) which relates to the treatment or classification of any item in such financial statement and which, as a condition to its removal, would require an adjustment to such item the effect of which would be to cause the Borrower to be in default of any of its obligations under Section 9.2.

“**Income Taxes**” means taxes based on or measured by income or profit of any nature or kind, including Canadian federal, provincial and territorial income taxes, US Federal, State and local income taxes and similar such taxes imposed by any other foreign jurisdiction (including any union of nations).

“**Indemnified Taxes**” means (a) Taxes, other than Secured Party’s Own Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Secured Document and (b) to the extent not otherwise included in (a), Other Taxes.

“**Independent Technical Consultant**” means Jacobs Consultancy Inc. and its successors and permitted assigns.

“**Initial Funding Date**” means the date on which the first Drawdown is made hereunder.

“**Insolvency Event**” means, with respect to any person, that such person does not pay or perform its obligations generally as they become due or admits in writing its inability to pay or perform its debts generally, (including, shiharai funou and shiharai teishi under Japanese law), that such person commits an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*

(Canada), or any Insolvency Proceeding is instituted by or against that person (excluding any Insolvency Proceeding being contested by that person in good faith by appropriate proceedings so long as enforcement remains stayed, none of the relief sought is granted (either on an interim or permanent basis) and such Insolvency Proceeding is dismissed within thirty (30) days of its commencement), or that person takes corporate, partnership or other internal management action to authorize any of the actions set forth above in this definition.

“Insolvency Law” means the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., the *Winding-Up and Restructuring Act* (Canada), the Civil Rehabilitation Act (Japan) (Act No. 225 of 1999), the Corporate Reorganisation Act (Japan) (Act No. 154 of 2002), the Bankruptcy Act (Japan) (Act No. 75 of 2004), the Companies Act (Japan) (Act No. 86 of 2005), the Special Mediation Act (Japan) (Act No. 158 of 1999), any provision of any statute governing the existence of any artificial legal person permitting that legal person to propose an arrangement with respect to any class of its creditors or any other like, equivalent or analogous legislation of any jurisdiction.

“Insolvency Proceeding” means, with respect to any person, any proceeding contemplated by any application, petition, assignment, filing of notice or other means, whether voluntary or involuntary, under any Insolvency Law seeking any moratorium, reorganization, adjustment, composition, proposal, compromise, arrangement, administration or civil rehabilitation proceeding, corporate reorganisation proceeding, bankruptcy proceeding, special liquidation (tokubetsu seisan) or special mediation (tokutei chotei) under Japanese law or other like or similar relief in respect of all or any substantial part of the obligations of such person, seeking the winding up, liquidation or dissolution (including liquidation (seisan) and dissolution (kaisan) under Japanese law) of such person or all or any substantial part of its property, seeking any order, declaring, finding or adjudging such person insolvent or bankrupt, seeking the appointment (provisional, interim or permanent) of any receiver or resulting, by operation of law, in the bankruptcy of such person.

“Insurance Broker’s Certificate” means a certificate from the Borrower’s insurance broker substantially in the form of Schedule 19.

“Insurance Event” means any loss or damage to the assets of the Borrower that gives rise to a claim and payment to the Borrower under any insurance policy maintained by the Borrower (excluding any claim under a business interruption insurance policy).

“Insurance Proceeds” means an amount paid to the Borrower by reason of an Insurance Event (excluding proceeds of business interruption insurance), net of any reasonable out-of-pocket fees, costs and expenses actually paid by the Borrower to an Unrelated Party to recover payment of such amount.

“Intellectual Property Rights” means any and all rights, title and interest, anywhere in the world, in and to: (i) any inventions, all applications therefor and all patents which may be issued out of such applications and any reissues, divisions, continuations, continuations-in-part, renewals and extensions; (ii) any trade names, trademarks, proposed trademarks, certification marks, distinguishing marks and guises, logos, insignias, slogans, trade styles, business identifiers, corporate names, company names, business names, whether or not registered or

registerable, and the trade-mark registrations and applications therefor, together with all the goodwill related to any of the foregoing, and any domain names and registrations therefor; (iii) any copyright whether or not registered or registrable, moral rights, copyright registrations and applications therefor, including translations, derivatives, and modifications of any of the foregoing; (iv) any industrial designs whether or not registered or registrable, industrial design registrations and applications therefor, and any reissues, divisions, continuations, continuations-in-part and renewals; (v) trade secrets, confidential information, know-how, formulas and processes; and (vi) any other industrial or intellectual property rights, whether or not registered or registrable, including any reissues, divisions, continuations, continuations-in-part, renewals, translations, derivatives, modifications and extensions of any of the foregoing.

“Intercreditor Agreement” means an agreement amongst the Agent, each applicable Obligor and each holder (or a trustee under a related trust indenture) of secured Debt pursuant to which, *inter alia*, the priority of the Security and the Liens securing such secured Debt over the Collateral are regulated and includes the SJIF Intercreditor Agreement.

“Interest Payment Date” means with respect to Loan, the last day of each Interest Period applicable to it.

“Interest Period” means, with respect to any Loan, (i) the period of three (3) months commencing on the Drawdown Date of that Loan and (ii) thereafter, each three (3) month period commencing on the last day of the immediately preceding Interest Period for such Loan, provided that no Interest Period shall end on a date falling after the Maturity Date.

“Investment” means any loan, advance (other than commission, travel and similar advances to officers and employees made in the ordinary course of business), extension of credit (other than accounts receivable arising in the ordinary course of business) or contribution of capital to any other person or any acquisition of Capital Stock, deposit accounts, certificates of deposit, mutual funds, bonds, notes, debentures or other securities of any other person or any structured notes or Derivatives.

“IP License” means a license of a right to use Intellectual Property Rights.

“Joint Venture Agreement” has the defined meaning assigned in Schedule 11.

“Land Purchase Agreement” has the defined meaning assigned in Schedule 11.

“Lanxess Subordination Agreement” means the subordination and postponement agreement among Lanxess Inc., the Borrower and the Agent, in form and substance acceptable to the Agent (acting on the instructions of the Required Lenders).

“Lender” means (i) each person listed in Schedule 1 with a Commitment, (ii) each Transferee of each person referred to in Clause (i) of this definition relative to its rights and obligations under the Loan Facility and (iii) any immediate or subsequent Transferee of any such Transferee relative to such rights or obligations.

“Lender Affiliate Joinder Agreement” means an agreement in the form of Schedule 26 (or in such other form to substantially the same effect as the Agent may accept) duly completed and executed by the Borrower and an affiliate of a Lender and delivered to the Agent.

“Lenders’ Counsel” means (i) in the Province of Ontario, Fasken Martineau DuMoulin LLP, (ii) in each other relevant jurisdiction, such local legal counsel as the Lender may designate as the Lenders’ legal counsel in that jurisdiction, and (iii) in each case, such replacement or additional firm as the Lender may designate from time to time as the Lender’s legal counsel.

“Lending Office” of a Lender means the office of that Lender which that Lender notifies to the Agent from time to time as being the office to and from which notices and payments to and by it under the Loan Facility are to be made pursuant to this Agreement.

“License Agreement” means the amended and restated process and technology license agreement dated as of January 24, 2014 among the Borrower, as licensee, BioAmber Luxco and BioAmber.

“Lien” means (i) any right of set-off intended to secure the payment or performance of an obligation, (ii) any interest in property created by way of mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, hire purchase agreement, conditional sale agreement, deposit arrangement, title retention, capital lease or discount, factoring or securitization arrangement on recourse terms, (iii) any statutory deemed trust or lien, (iv) any preference, priority, adverse claim, levy, execution, seizure, attachment, garnishment or other encumbrance which binds property, and (v) any agreement to grant any of the rights or interests described in Clauses (i) to (iii) of this definition.

“Limit Commercial Operation Date” means (a) the earlier to occur of (i) the date which falls 18 months after the Financial Closing Date and (ii) September 30, 2015 or (b) such other date consented to by the Required Lenders.

“Loan” means any amount of money or credit advanced, deemed advanced or to be advanced (as the context requires) by the Lenders to the Borrower pursuant to this Agreement under the Loan Facility by way of loan in Dollars upon which interest shall be calculated in accordance with the applicable provisions of this Agreement with reference to the Canadian Prime Rate.

“Loan Documents” at any time means, collectively, this Agreement, the SJIF Intercreditor Agreement, each other Intercreditor Agreement, the Security Documents, the Lanxess Subordination Agreement, each Consent and each document delivered to or for the benefit of the Agent and the Lenders pursuant to or otherwise in connection with any of the foregoing agreements.

“Loan Facility” means the non-revolving term loan facility established by the Lenders under Section 2.1.

“Loan Obligations” means the Debt and other obligations of each Obligor owing to each of the Agent and the Lenders incurred under or pursuant to this Agreement or any other Loan Document, and any item or part of any thereof. For certainty, **“Loan Obligations”** shall include interest accruing subsequent to the commencement of, or which would have accrued but for the

commencement of, any Insolvency Proceeding in accordance with and at the rate (including the Default Rate to the extent lawful) specified herein or in another applicable Loan Document, whether or not such interest is an allowable claim in such Insolvency Proceeding.

“**Loan Transfer Agreement**” has the defined meaning assigned in Section 12.10.4.

“**Maintenance Reserve Account**” or “**MRA**” means the segregated account established pursuant to Section 5.3, or such other account as may be agreed by the Agent and the Borrower from time to time and notified by the Agent to the Secured Parties.

“**Maintenance Reserve Requirement**” means, at any time, the amount which is equivalent to the Project’s six (6) month projected maintenance costs as confirmed by the Independent Technical Consultant.

“**Maintenance Reserve Deficiency**” means at any time from and after Commercial Operation Date, the amount, if any, by which the then current outstanding credit balance of the Maintenance Reserve Account is less than the Maintenance Reserve Requirement at such time.

“**Major Project Party**” means each Obligor, the Contractor, the E&C Support Provider and any other parties which the Borrower and the Lenders agree in writing to be named as a Major Project Party.

“**Majority Lenders**” means (a) at any time there are three (3) or more Lenders, at least two (2) Lenders that are not Affiliates of one another whose Commitments collectively amount to (i) at least sixty-six and two thirds percent (66-2/3%) of the Total Commitment if no Enforcement Event has occurred or (ii) at least sixty-six and two thirds percent (66-2/3%) of the Total Commitment immediately before the time the Enforcement Event occurs if an Enforcement Event has occurred and (b) at any time there are less than three (3) Lenders, all of the Lenders.

“**Material Adverse Change**” means any circumstance, occurrence, fact, condition (financial or otherwise) or change (including a change in Applicable Law, event, development or effect) that, individually or in the aggregate, has, or is reasonably likely to have, in the opinion of the Required Lenders, acting reasonably, a Material Adverse Effect.

“**Material Adverse Effect**” means (i) a material adverse effect (or a series of adverse effects, none of which is material in and of itself but which, cumulatively, result in a material adverse effect) on the business, operations, affairs, performance, properties, prospects, revenues, assets, liabilities (including contingent liabilities), obligations, capitalization, results of operations (financial or otherwise), cash flows or condition (financial or otherwise) of any Obligor, any Major Project Party and/or the Project, (ii) any material impairment of any Obligor’s ability to exercise its rights or perform any of its obligations under any Material Transaction Document or (iii) any prejudice to, restriction on or rendering unenforceable or ineffective, any obligation under any Material Transaction Document or any Security over any material asset or any right intended or purported to be granted under or pursuant to any Loan Document to or for the benefit of the Secured Parties. The final determination as to whether a Material Adverse Effect has occurred will be made by the Required Lenders acting reasonably.

“**Material Project Documents**” means collectively, the agreements listed in Schedule 11 and, after the execution and delivery thereof, each Additional Project Document and any replacement of any thereof.

“**Material Transaction Documents**” means the Loan Documents and the Material Project Documents.

“**Maturity Date**” means June 30, 2022, or the preceding Business Day if such date is not a Business Day.

“**Mitsui**” means Mitsui & Co., Ltd., existing as a corporation incorporated under the laws of Japan.

“**Mitsui Guarantee**” means the guarantee by Mitsui in favour of the Agent, in form and substance satisfactory to the Agent (acting on the instructions from the Required Lenders), and pursuant to which Mitsui guarantees 30 % of all of the Secured Obligations of Borrower; provided however that such guarantee shall be limited to \$6,000,000 plus all accrued interest on the Secured Obligations, fees and expenses as set out therein.

“**Mitsui SPA**” means the securities pledge agreement by Mitsui in favour of the Agent, in form and substance acceptable to the Agent (acting on the instructions from the Required Lenders), pursuant to which, *inter alia*, Mitsui pledges all of the present and future Capital Stock of the Borrower it owns.

“**Mortgage**” has the defined meaning assigned in Schedule 12.

“**Net Disposal Amount**” with respect to any Asset Disposal by the Borrower means an amount equal to the difference between (i) the aggregate amount of cash consideration and/or non-cash consideration (valued at the fair market value thereof by the board of directors of the Borrower in good faith) received by the Borrower in respect of such Asset Disposal minus (ii) the sum of (A) all reasonable out-of-pocket fees, costs and expenses actually paid by the Borrower to Unrelated Parties in connection with such Asset Disposal plus (B) all income taxes payable in cash in respect of the Fiscal Year in which such Asset Disposal occurred directly attributable to such Asset Disposal plus (C) the net amount of any Sales Taxes included in Clause (i) above to the extent the Borrower is obliged to remit such taxes to an applicable Governmental Authority plus (D) the amount required to be paid to discharge any Permitted Lien on the asset disposed if such discharge is a condition of such Asset Disposal.

“**New Document**” has the defined meaning assigned in Section 9.3.16(a).

“**Note**” means any promissory note issued at the request of a Lender pursuant to Section 12.7.2.

“**Obligor**” means the Borrower, BioAmber, Mitsui and BioAmber Luxco, as the context requires.

“**OFAC**” means the U.S. Department of Treasury Office of Foreign Assets Control.

“**OMC Budget**” has the defined meaning assigned in Section 9.1.1(d).

“Operating Costs” means, for any period, the sum, computed without duplication, of all costs and expenses paid by the Borrower in cash during such period (or, in the case of any future period, projected to be paid or payable in cash during such period) in connection with the operation, maintenance and administration of the Project, including (i) costs of operating and administering the Project and of maintaining it in good repair and operating condition, (ii) costs of feedstocks, fuel, chemicals and other consumables, (iii) labour costs, (iv) costs of insurance, (v) Taxes and royalties, (vi) costs of utilities, supplies and other services acquired in connection with the operation and maintenance of the Project, (vii) costs of shipping and transporting Product, (viii) costs and fees in respect of the obtaining and maintaining in effect the Authorizations relating to the Project, (ix) legal, accounting and other professional fees in respect of any of the foregoing (including payments to the Agent and the Independent Technical Consultant), (x) net amounts payable on a scheduled basis under Permitted Derivatives and (xi) costs of marketing the Product.

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing, property or excise or similar Taxes that arise from any payment made hereunder or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under or otherwise with respect to, this Agreement or any other Secured Document, except any such Taxes that are imposed with respect to an assignment (other than an assignment made pursuant to Section 12.10.10) as a result of a present or former connection between the Secured Party and the jurisdiction imposing such Tax (other than connections arising from such Secured Party having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Secured Document, or sold or assigned an interest in any Loan or Secured Document).

“Participant” has the defined meaning assigned in Section 12.10.3.

“Pension Event” means, (i) the failure of the Borrower to make or remit any employer or employee contributions with respect to any Pension Plan required by Applicable Law or by the terms of such Pension Plan; (ii) the revocation of registration by applicable regulatory authorities of a Defined Benefit Plan; (iii) the failure of a Pension Plan to comply with any material provisions of Applicable Law or with the material terms of such Pension Plan; (iv) (A) the filing of a notice with a Governmental Authority to, (B) the institution of proceedings by any Governmental Authority to, or (C) the actual, termination or wind up of all or a Defined Benefit Plan; (v) a trustee is appointed to administer a Defined Benefit Plan; or (vi) the aggregate Unfunded Liability under all Pension Plans exceeds in the aggregate the Threshold Amount.

“Pension Plan” means (i) a Canadian Pension Plan or (ii) any other pension plan, pension benefit plan or similar arrangement applicable to employees of the Borrower and in respect of which the Borrower is obligated to fund under any Applicable Law (excluding any (A) such plan or plans that are funded solely from the general assets of the Borrower and (B) any Canadian group registered retirement plan).

“Permitted Derivative Obligations” means (without duplication) the Debt and other obligations of the Borrower owing to each of the Secured Parties incurred under, pursuant to or otherwise in respect of Permitted Derivatives, and any item or part of any thereof. For certainty, “Permitted Derivatives Obligations” shall include interest accruing subsequent to the commencement of, or

which would have accrued but for the commencement of, any Insolvency Proceeding, in accordance with and at the rate (including any applicable default rate to the extent lawful) specified herein or in another applicable Secured Document, whether or not such interest is an allowable claim in such Insolvency Proceeding.

“Permitted Derivatives” means Derivatives which are entered into by the Borrower with a Lender, an Affiliated Secured Party or on an unsecured non-credit enhanced basis with any other bank as a *bona fide* hedge (and not for speculation) against fluctuations in interest rates relating to not more than 90% of the outstanding Loans. For the purposes of this Agreement, a Derivative entered into by a Lender or Affiliated Secured Party with the Borrower shall be deemed to be a Permitted Derivative if that Lender or Affiliated Secured Party had no knowledge, at the time such Derivative was entered into, that it was prohibited by the terms of this Agreement.

“Permitted Distribution” in relation to the Borrower means (i) a Distribution to the Sponsors in respect of the Capital Stock of the Borrower and (ii) any management or service fees or bonus payments paid by the Borrower to the Sponsors pursuant to the Joint Venture Agreement provided that such fees and payments are expensed in accordance with Applicable Accounting Principles.

“Permitted Distribution Conditions” has the defined meaning assigned in Section 9.4.16(a).

“Permitted Distribution Date” has the defined meaning assigned in Section 9.4.16(a).

“Permitted Investment” means an Investment permitted to be made by the Borrower pursuant to Section 9.4.12.

“Permitted Liens” means a Lien permitted to exist pursuant to Section 9.4.8.

“Permitted Royalty Payment” has the defined meaning assigned in Section 5.6.3(j).

“Plant” means the 30,000 metric tonnes per year bio-succinic acid plant which is currently being constructed on the Site Lands and all buildings and other facilities relating to or used in connection with the plant.

“PPSA” means the *Personal Property Security Act* (Ontario).

“Preferred Shares” means Capital Stock of the Borrower which the Borrower is required, or may at the option of the holder be required, to purchase, redeem or otherwise acquire therein, before the earlier of payment in full of the Secured Obligations or twelve (12) months after the Maturity Date.

“Priority of Payments” has the defined meaning assigned in Section 5.6.3.

“Product” means bio-succinic acid produced at the Plant by the Borrower.

“Project” means the design, engineering, equipment procurement, construction, commissioning, start-up, operation, maintenance and management of the Plant on the Site Lands, and the production and sale of Product to customers in a variety of chemical markets.

“Project Budget” means the final budget for the Project Costs set out in the Base Financial Model as the Financial Closing Date.

“Project Assets” means, collectively, all present and future assets and rights, whether owned or leased, by or for the benefit of the Borrower, directly or indirectly, relating to or used or intended to be used in connection with the Project or the design, engineering, construction, commissioning, start-up, operation, maintenance or management of the Project or forming part of the Project, including (i) the Plant, (ii) the Real Property Interests, (iii) the Project Machinery and Equipment, (iv) the Project Documents, (v) the Project Authorization, (vi) all Project IP Rights, (vii) the Accounts, (viii) all Cash Revenues, (ix) all proceeds of insurance maintained by or on behalf of the Borrower with respect to the Project, (x) all expansions, additions, improvements and modifications made from time to time to any of the foregoing; and (xi) all proceeds from any of the foregoing.

“Project Authorizations” means, as of the relevant date, collectively, the Authorizations then required for the design, equipment procuring, engineering, construction, commissioning, start-up, operation, maintenance, management and financing of the Project and the production, processing, transportation and sale of Product produced at the Project, including, the Authorizations listed in Schedule 14 hereto and any replacement of any thereof.

“Project Costs” means, collectively, but without duplication, all hard and soft costs and expenditures in respect of the design, engineering, equipment procurement, construction, commissioning, start-up, and operations of the Project which are reflected in the Base Financial Model, and which are incurred or to be incurred by the Borrower in connection with the Project and including Capital Expenditures and Operating Costs related to the Project, and including (i) payments under the Construction Management & Procurement Agreement and the Engineering & Construction Support Agreement, (ii) other ancillary construction costs outside the scope of the Construction Management & Procurement Agreement and the Engineering & Construction Support Agreement, (iii) payments under the Equipment Supply Contracts, (iv) Project commissioning costs, (v) pre-construction and development costs for permitting, legal, preliminary engineering and feasibility analysis, (vi) financing costs, (vii) interest, upfront fees and standby commitment fees incurred or earned and payable prior to the Commercial Operation Date, (viii) initial working capital required prior to the Commercial Operation Date, (ix) the Borrower’s engineering costs, (x) costs of any consultants including the Independent Technical Consultant payable prior to the Commercial Operation Date, (xi) development charges and fees, (xii) the Cost Overrun Reserve Requirement, Debt Service Reserve Requirement and the Maintenance Reserve Requirement, (xiii) land lease payments; and (xiv) the overall Project contingency allocation (with such contingency allocation being adjusted based on consultation with the Independent Technical Consultant).

“Project Documents” means, collectively, each Material Project Document and all other agreements entered into from time to time by the Borrower in connection with the Project.

“Project IP Rights” means, collectively, all Intellectual Property Rights relating to or used or intended to be used in connection with the Project, including the IP License under the License Agreement.

“Project Machinery and Equipment” means, collectively, all equipment (within the meaning ascribed to that term under the PPSA or Applicable Accounting Principles) in which the Borrower now or hereafter has rights relating to or used or intended to be used in connection with the Project or located at any time on the Site Lands.

“Project Revenue Account” means the account opened at the Agent in the name of the Borrower and maintained at the sole expense of the Borrower, subject to the Security in favour of the Agent (including the Blocked Accounts Agreement) and into which, *inter alia*, shall be deposited the proceeds of all Loans and which account shall operate pursuant to, and in accordance with, this Agreement.

“Project Schedule” means the schedule for construction and completion of the Project as set forth as an attachment to the Base Financial Model.

“Proof of Capacity” means the time when the Agent has provided the Proof of Capacity Notice to the Borrower and the Lenders that each of the conditions precedent set out in Section 6.5 has been satisfied and/or waived by the Lenders.

“Proof of Capacity Certificate” means a Certificate of the Independent Technical Consultant, in form and substance satisfactory to the Lenders, stating that the data Borrower run data received and reviewed by the Independent Technical Consultant indicates that the Plant has produced sixty-six (66) metric tonnes of Product per day for five (5) consecutive days.

“Proof of Capacity Date” means the date on which Proof of Capacity occurs.

“Proof of Capacity Notice” has the defined meaning assigned in Section 6.5.

“Property Reinvestment Application” means, with respect to any Asset Disposal, the application of an amount equal to the Net Disposal Amount (or a portion thereof) with respect to such Asset Disposal to the acquisition by the Borrower of capital assets from an Unrelated Party to be used in the business of the Borrower (in which event the Property Reinvestment Application shall be limited to the fair market value of such acquired operating assets).

“Proposed OMC Budget” has the defined meaning assigned in Section 9.1.1(d).

“Punch List Amount” means an amount equal to the amount certified by the Borrower and confirmed by the Independent Technical Consultant and Agent, as an estimate of the amount of the costs to complete the Punch List Items.

“Punch List Items” means the list of punch list items (also known as items of work) remaining to be performed or corrected after the Commercial Operation Date under or in connection with the Project Documents prepared by the Borrower and confirmed by the Independent Technical Consultant and Agent.

“Punch List Reserve Sub-Account” has the defined meaning assigned in Section 5.5(a).

“Quarterly Date” means the last Business Day of each of March, June, September and December in each year, the first of which shall be the first such day after the date of this Agreement.

“Rateable Share” of any Lender means (i) in relation to any outstanding Loan, the proportion borne by such Lender’s share of that Loan to the full amount of that Loan and (ii) in relation to the Loan Facility and any other matter, the proportion borne by such Lender’s Commitment to the Total Commitment.

“Real Property Interests” means the interests of the Borrower in the Site Lands together with the Easements listed in Schedule 16 and any other Easements required for access in, on, under and across the Project and the Site Lands and for the construction, operation or maintenance of the Plant.

“Reference Lender” means the Agent (or any Affiliate designated by it) acting in its capacity as a reference bank under this Agreement with respect to the Loan Facility or any replacement of such reference bank appointed pursuant to Section 11.15.2.

“Relevant” when used in relation to any Drawdown or Lender means the applicable one of them, as the context requires.

“Repayment Notice” means a duly completed notice in the form of Schedule 5 signed by the Borrower and delivered to the Agent pursuant to Section 4.3.

“Replacement Lender” shall have the meaning ascribed to such term in Section 12.10.10.

“Required Lenders” means the Majority Lenders, except for those matters specified in Sections 11.18.2, 11.18.3 and 11.18.4 in which case it means those of the Agent and Lenders stipulated in those Sections.

“Responsible Officer” of an Obligor means the president, chief executive officer, chief operating officer, chief financial officer, treasurer, an executive vice-president, a senior vice-president or other senior executive officer of that Obligor.

“Sales Taxes” means sales, transfer, turnover or value added taxes of any nature or kind, including Canadian goods and services and harmonized sales taxes and U.S. and Canadian federal, state, provincial and local sales and excise taxes.

“Sanctioned Activities” means business activities that are subject to sanctions/embargos imposed by Canada, by the Swiss State Secretariat for Economic Affairs, the United Nations, the European Union and/or the United States Office of Foreign Assets Control, and includes any Canadian Economic Sanctions and Export Control Laws.

“Sanctioned Countries” means Iran, Myanmar (Burma), North Korea, Sudan, South Sudan and Syria or other countries that are subject to economic and trade sanctions as communicated by the Agent to the Borrower.

“Sanctioned Persons” means persons named on any sanctions lists issued by one of the Swiss State Secretariat for Economic Affairs, the United Nations Security Council, the European Union, the United States Office of Foreign Assets Control and/or the United States Department of the Treasury, and includes any Canadian Blocked Person.

“Scheduled Commercial Operation Date” means June 30, 2015 or such other date as the consented to by the Required Lenders.

“Scheduled Principal Repayment Commencement Date” means the date which falls three months after the earlier of (a) the Commercial Operation Date and (b) the Scheduled Commercial Operation Date.

“Scheduled Principal Repayment Date” means the Scheduled Principal Repayment Commencement Date and each day that falls every three (3) months after the Scheduled Principal Repayment Commencement Date, through and including the Maturity Date.

“Scheduled Principal Repayment Instalment” on any Scheduled Principal Repayment Date means the aggregate principal amount of Loans required to be repaid on such Scheduled Principal Repayment Date pursuant to Section 4.1, as same may be reduced from time to time pursuant to Section 4.2.8.

“Secured Documents” at any time means the Cash Management Agreements, Loan Documents and Permitted Derivatives entered into with a Secured Party in effect at that time.

“Secured Obligations” means Cash Management Obligations, Loan Obligations and Permitted Derivative Obligations, and any item or part of any thereof.

“Secured Parties” means the Agent, the Lenders and each Affiliated Secured Party, and (as the context so admits) each and any of them.

“Secured Party’s Own Taxes” means Taxes imposed on or measured by net income (however denominated), franchise taxes, and branch profits taxes, in each case, imposed on a Secured Party by a Governmental Authority of a jurisdiction in which the Secured Party is subject to taxation by reason of the fact that the Secured Party is organized under the laws of or has its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or a political subdivision thereof); but excluding, for greater certainty, Taxes levied only by reason of the fact that the Secured Party has executed, delivered, become party to or performed its obligations under, has received or is entitled to receive payments under, or has enforced or perfected a security interest under any Secured Document, or sold or assigned an interest in any Loan or Secured Document.

“Security” at any time means the Liens created (or intended by their express or implied terms to be created) in favour of each of the Agent, the Lenders and each Affiliated Secured Party by any of the Security Documents.

“Security Documents” at any time means the documents delivered or required to be delivered (as the case may be) pursuant to this Agreement to or for the benefit of the Secured Parties at or before such time to guarantee or secure the payment or performance of any of the Secured Obligations, such documents to be in form and substance satisfactory to the Agent (acting on the instructions from the Required Lenders), and to include the documents described in Schedule 12, including the Sponsor Guarantees.

“**Site Lands**” means the real property and interest therein owned by the Borrower pursuant to the agreement of purchase and sale dated as of May 25, 2012 between Lanxess Inc. and the Borrower, located in the City of Sarnia, Province of Ontario, having an area of approximately 11 acres and having the legal description set out in Schedule 16.

“**SJIF Intercreditor Agreement**” means the agreement amongst the Agent, each applicable Obligor and the SJIF Lender pursuant to which, *inter alia*, the priority of the Security and the SJIF Security are regulated.

“**SJIF Lender**” means the Her Majesty The Queen In Right of the Province of Ontario, as represented by the Minister of Economic Development and Innovation (formerly known as the Minister of Economic Development and Trade).

“**SJIF Loan Agreement**” means the loan agreement dated September 30, 2011 between the SJIF Lender and the Borrower, as amended by the consent and amendments to loan agreement dated September 27, 2012, as further amended by the second amending agreement dated August 30, 2013, and as further amended by the amending agreement no. 3 dated March 3, 2014.

“**SJIF Loan Documents**” means the SJIF Loan Agreement, the SJIF Security Documents and each document delivered to or for the benefit of the SJIF Lender pursuant to or otherwise in connection with any of the foregoing agreements.

“**SJIF Security**” at any time means the Liens created (or intended by their express or implied terms to be created) in favour of the SJIF Lender by any of the SJIF Security Documents.

“**SJIF Security Documents**” at any time means the documents delivered or required to be delivered (as the case may be) pursuant to the SJIF Loan Agreement to or for the benefit of the SJIF Lender at or before such time to secure the payment or performance of any of the obligations under such documents and the other SJIF Loan Documents, and include the documents described in Schedule 25.

“**Solvent**” at any time when used with respect to a person means that:

- (a) if that person is formed under the federal laws of Canada or the laws of any Province thereof, that at such time (i) such person is not for any reason unable to meet its obligations as they generally become due, (ii) such person has not ceased paying its current obligations in the ordinary course of business as they generally become due and (iii) the aggregate property of such person is, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would be sufficient, to enable payment of all its obligations, due and accruing due; and
- (b) if that person is not formed under the federal laws of Canada or the laws of any Province thereof, that at such time (i) the present fair saleable value of the assets of such person is greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured (including *saimu chouka* under Japanese law) (where “fair saleable value” means the fair market value of the property as a going concern in the context of an arm’s length sale and

the valuation of contingent obligations being computed in light of all the facts and circumstances existing on the date hereof that can reasonably be expected to become an actual or matured liability); (ii) such person is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become matured in the ordinary course of business (the valuation of contingent obligations being computed in light of all the facts and circumstances existing on the date hereof that can reasonably be expected to become an actual or matured liability); (iii) such person (individually and on a consolidated basis with its Subsidiaries) does not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the date of this Agreement; (iv) such person does not intend to or believe that it will incur debts beyond its ability to generally pay such debts as they mature (taking into account the timing and amounts of cash to be received by it and the amounts to be payable on or in respect of its obligations); and (v) such person does not intend to hinder, delay or defraud either present or future creditors.

“**Sponsor**” means BioAmber, Mitsui or BioAmber Luxco, as the context requires.

“**Sponsor Guarantee**” means the BioAmber Guarantee or the Mitsui Guarantee, as the context requires.

“**Sponsor Shareholder**” means BioAmber Luxco or Mitsui, as the context requires.

“**Sponsors Consent Agreement**” means the consent agreement among BioAmber, Mitsui and the Agent, in form and substance satisfactory to the Agent (acting on instructions from the Required Lenders), pursuant to which BioAmber and Mitsui consent to the transactions contemplated by the Secured Documents.

“**Sponsors Contributions**” means an aggregate amount equal to \$93,307,000.

“**Sponsors Security Documents**” means the BioAmber Luxco SPA, the Mitsui SPA, the Sponsor Guarantees and the Subordination Agreements to which each of BioAmber, BioAmber Luxco and Mitsui is or will be a party.

“**STA**” shall mean the *Securities Transfer Act* (Ontario).

“**Statutory Prior Claims**” means claims for any unpaid wages, vacation pay, worker’s compensation, unemployment insurance, pension plan contributions, Unfunded Liability, employee or non-resident withholding tax source deductions, unremitted Sales Taxes, realty taxes (including utility charges and business taxes which are collectable like realty taxes), customs duties or similar statutory obligations secured by a Lien on the Borrower’s assets.

“**Subordinated Debt**” means any Debt of the Borrower which is (i) subject to terms and conditions satisfactory to the Agent (acting on the instructions from the Required Lenders) and (ii) subordinated and postponed to the prior payment in full of the Secured Obligations in a manner and in form and substance acceptable to the Required Lenders.

“Subordination Agreement” means an agreement amongst the Agent, the Borrower and each holder (or a trustee under a related trust indenture) of Subordinated Debt pursuant to which such Subordinated Debt is subordinated and postponed to the prior payment in full of the Secured Obligations in a manner and in form and substance acceptable to the Agent (acting on the instructions from the Required Lenders).

“Subsidiary” of any person (the “relevant party”) at any time means and includes (i) any body corporate that is Controlled by the relevant party or a majority of whose Voting Capital Stock is at that time owned by the relevant party directly or indirectly through Subsidiaries of the relevant party and (ii) any limited or general partnership, association, joint venture or other entity Controlled by the relevant party and in which the relevant party directly or indirectly through Subsidiaries has a majority of the equity or participating interests at the time and (iii) any other body corporate, limited or general partnership, joint venture or other entity (A) the accounts of which are consolidated with those of the relevant party in the relevant party’s consolidated financial statements prepared in accordance with Applicable Accounting Principles and (B) that is Controlled by the relevant party. A person shall be deemed to be a Subsidiary of another person if it is a Subsidiary of a person that is that other’s Subsidiary. Unless otherwise expressly provided, all references herein to a **“Subsidiary”** shall mean a Subsidiary of the Borrower.

“Supply Agreements” means any supply, distribution, agency or offtake agreements entered into by or assigned to the Borrower relating to the sale of Products.

“Taxes” means all taxes, charges, levies, imposts and other assessments of any kind or nature whatsoever including capital taxes, realty taxes, business taxes, property transfer taxes, Income Taxes, Sales Taxes, customs duties, payroll taxes, stamp taxes, royalties, duties, imposts and all fees, deductions (compulsory loans) and withholdings (including backup withholding) imposed, levied, collected, withheld or assessed as of the date hereof or at any time in the future, by any Governmental Authority of or within Canada or any other jurisdiction whatsoever having power to tax, together with instalments, penalties, fines, additions to tax and interest thereon.

“Test Period” at any time means the period of four (4) consecutive Fiscal Quarters most recently ended.

“Threshold Amount” at any time means \$200,000 (or the Equivalent in other currency).

“Total Commitment” means the total sum of the Commitments of the Lenders.

“Total Exposure” means, with respect to a particular Secured Party at a particular time, the total amount of the Secured Obligations owing to that Secured Party at that time determined by that Secured Party and approved by the Agent. For this purpose, the amount of Cash Management Obligations shall be determined as the amount thereof notified by that Secured Party to the Agent.

“Transaction Documents” means the Secured Documents and the Project Documents.

“Transferee” has the defined meaning assigned in Section 12.10.4.

“**Unfunded Liability**” means the amount (if any) by which the present value of all vested and unvested accrued benefits under a Pension Plan exceeds the fair market value of assets allocable to such benefits, all determined as of the then most recent actuarial valuation date for such Pension Plan required under Applicable Law using the assumptions and methodologies applied under generally accepted actuarial principles and/or Applicable Law.

“**Unrelated Party**” in relation to any person (the “relevant party”) means another person that deals at arm’s length with the relevant party and is not (i) an Affiliate of the relevant party, (ii) a director or Responsible Officer of the relevant party or any Affiliate of the relevant party, or (iii) a person that does not deal at arm’s length with any person referred to in Clause (i) or (ii) of this definition.

“**United States**” means the United States of America.

“**US Executive order No. 13224**” means that certain United States Executive order No. 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism (66 Fed. Reg. 49079 (2001)), effective September 24, 2001.

“**USA Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), as amended, and any regulations (including the regulations contained in 31 CFR 103.121) or guidelines promulgated thereunder.

“**Voting Capital Stock**” means Capital Stock of a person that is a corporation or other artificial legal or commercial entity which carries voting rights or the right to Control such person under any circumstances; provided that Capital Stock which carries the right to vote or Control conditionally upon the happening of an event shall not be considered Voting Capital Stock until the occurrence of such event and then only during the continuance of such right to vote or Control.

“**Waste**” means ashes, garbage and refuse and includes domestic waste, industrial waste, municipal refuse or such other wastes as are designated as such under any Environmental Law.

1.2 Extended Meanings

To the extent the context so admits, in this Agreement the following words and expressions shall be given the following corresponding extended meanings set out opposite them:

an “**agreement**” – any agreement, oral or written, any simple contract, deed or specialty, and includes any bond, bill of exchange, indenture, instrument or undertaking.

an “**approved credit rating**” – a rating at or above the following rating categories issued by at least two (2) of the following credit rating organizations (or their respective successors) for the category of commercial paper/short term debt (or any replacement such rating category), namely (i) R-1 (low) issued by DBRS Limited, (ii) F1 issued by Fitch Ratings, (iii) P-1 issued by Moody’s Investors Service or (iv) A-1 (Low) issued by Standard & Poor’s.

“arm’s length” – the meaning attributed thereto under the *Income Tax Act* (Canada).

an **“asset”** – any undertaking, business, property (real, personal or mixed, tangible or intangible) or other asset.

an **“authorization”** – any authorization, approval, consent, exemption, licence, permit, franchise, quota, privilege or no-action letter from any Governmental Authority or from any person in connection with any easements or contractual rights.

“change” – change, modify, alter, adjust, vary, amend, restate, amend and restate, supplement, extend, renew, compromise, novate, replace, terminate (excluding, for clarity, termination in accordance with the express terms of an applicable agreement, but not resulting from any breach, default or other equivalent or analogous cause), release, discharge, cancel, suspend or waive.

“claim” – claim, claim over, counter-claim, cross-claim, defence, demand or liability (actual or contingent, now existing or arising hereafter), whether arising by agreement or statute, at law or in equity or otherwise, or any proceeding, judgment or order of any court or other Governmental Authority or arbitrator.

“dispose”, “disposal” and “disposition” – lease, sell, transfer, licence (other than a licence that is not a permanent-user licence and is granted in the ordinary course of conducting day-to-day business) or otherwise dispose of any property, or the commercial benefits of use or ownership of any property, including the right to profit or gain therefrom, whether in a single transaction or in a series of related transactions (other than the payment of money).

a **“document”** – a written agreement, consent, waiver, certificate, notice or other written document or instrument.

“fair market value” – the highest price, expressed in terms of money and money’s worth, available in an open and unrestricted market between informed and prudent parties, each acting at arm’s length, where neither party is under any compulsion to act.

a **“final judgment”** – a judgment, order, declaration or award of a court, other Governmental Authority, arbitrator or other alternative dispute resolution authority of competent jurisdiction from which no appeal may be made or from which all rights of appeal have expired or been exhausted.

a **“government”** – (i) the Crown in right of Canada or in the right of any Province of Canada, (ii) the government of a Territory in Canada, (iii) a municipality in Canada or (iv) the government of a foreign country or any political subdivision of it.

“guarantee” – any guarantee, indemnity, letter of comfort or other assurance made in respect of any Debt or any other obligation or financial condition of another, including (i) any purchase or repurchase agreement, (ii) any obligation to supply funds or invest in such other, (iii) any keep-well, take-or-pay, through-put or other arrangement having the effect of assuring or holding harmless another against financial loss, or maintaining another’s solvency or financial viability or (iv) any obligation under any credit Derivative; but shall exclude endorsements on notes, bills and cheques presented to financial institutions for collection or deposit in the ordinary course of

business. Whenever in this Agreement the amount of any guarantee is required to be determined or measured, such amount shall be an amount equal to the stated or determinable amount of the Debt in respect of which such guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming the guarantor is required to perform thereunder) as determined by the guarantor in good faith or, if the guarantee is expressly limited to a specified amount, such specified amount.

“include” – include without limitation and such term shall not be construed to limit any word or statement which it follows to the specific items or matters immediately following it or similar terms or matters.

“knowledge” – to the best of a person’s knowledge, information and belief after reasonable enquiry.

“losses and expenses” – losses, costs, expenses, damages, penalties, orders, orders, proceedings, claims, claims over, demands and liabilities, including any applicable court costs and legal fees and disbursements on a full indemnity basis.

“obligations” – indebtedness, obligations, promises, covenants, responsibilities, duties and liabilities (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise.

“order” – any order, award, directive, direction or request of any Governmental Authority, arbitrator or other decision-making authority of competent jurisdiction.

“paid in full” and **“repaid in full”** in relation to any payment obligation owing to any person (the “payee”) – permanent and irrevocable payment in cash (or other freely available funds transfer as may be expressly provided for in the applicable document creating or evidencing such payment obligation) to that payee in full of such payment obligation in accordance with the express provisions of the applicable document creating or evidencing such payment obligation, without regard to any compromise, reduction or disallowance of all or any item or part thereof by virtue of the application of any Insolvency Law, Fraudulent Conveyance Law, or other similar such laws, any law affecting creditors’ rights generally or general principles of equity, and, if applicable, the cancellation or expiry of any commitment of that payee to lend or otherwise extend credit.

a **“person”** – an individual, including an individual in his or her capacity as trustee, executor, administrator or other representative, a sole proprietorship, a partnership, an unincorporated association, an unincorporated syndicate, an unincorporated organization, a trust, including a business trust, a body corporate organized under the laws of any jurisdiction, a government or agency of a government or any other artificial legal or commercial entity.

a **“proceeding”** – any proceeding, legal action, lawsuit, arbitration, mediation, alternative dispute resolution proceeding or other proceeding.

a **“rate of exchange”** – the rate of exchange, including any premiums or costs payable in connection with any currency conversion being effected.

a **“receiver”** – a privately appointed or court appointed receiver or receiver and manager, interim receiver, liquidator, trustee-in-bankruptcy, administrator, administrative receiver and any other like or similar official.

“register” – register, file or record with an applicable Governmental Authority.

a **“representative”** – any person empowered to act for another, including an agent, an officer or other employee of a body corporate or association and a trustee, executor or administrator of an estate.

“rights” – rights, titles, benefits, interests, powers, authorities, discretions, privileges, immunities and remedies (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise.

“set-off” – any right or obligation of set-off, compensation, offset, combination of accounts, netting, retention, withholding, reduction, abatement, deduction, counter-claim or any similar right or obligation, or (as the context requires) any exercise of any such right or performance of such obligation.

“successor” of a person (the “relevant party”) – (i) any amalgamated or other body corporate of which the relevant party or any of its successors is one of the amalgamating or merging body corporates, (ii) any person resulting from any court approved arrangement of which the relevant party or any of its successors is party, (iii) any person to whom all or substantially all the assets of the relevant party is transferred, (iv) any body corporate resulting from the continuance of the relevant party or any successor of it under the laws of another jurisdiction of incorporation and (v) any successor (determined as aforesaid or in any similar or comparable procedure under the laws of any other jurisdiction) of any person referred to in Clause (i), (ii), (iii) or (iv) of this definition. Each reference in this Agreement to any party hereto or any other person shall (where the context so admits) include its successors.

“written” and **“in writing”** – an original writing, a pdf or facsimile copy of a writing or an e-mail.

1.3 References to Agreements and Documents

Unless the context otherwise requires, each reference in this Agreement to any agreement or document (including this Agreement and any other defined term that is an agreement or document) at any time shall be construed so as to include such agreement or document (including any attached schedules, appendices and exhibits) and each change thereof made at or before that time; provided that (i) no change of this Agreement shall be effective unless it is made in compliance with Section 12.19 and (ii) any change to any agreement or document which is not made in compliance with the Loan Documents shall be disregarded for the purposes of determining whether or not the Obligor party thereto is in compliance with its obligations relative thereto under the Loan Documents (save for any obligations not to change such agreement or document contained in any Loan Document).

1.4 Reference to Statutes

Unless the context otherwise requires, each reference in this Agreement to any code, statute, regulation, official interpretation, directive or other legislative enactment of Canada, the United States of America, Japan, Luxembourg or any political subdivision of either thereof or any other foreign jurisdiction (including any political subdivision thereof) at any time shall be construed so as to include such code, statute, regulation, official interpretation, directive or enactment and each amendment, re-enactment, reissuance or replacement thereof made at or before that time.

1.5 Headings and Schedules

The division of this Agreement into Articles, Sections and Subsections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section, Subsection, paragraph, subparagraph, Clause or other portion of this Agreement. Each and every one of the Schedules which is referred to in this Agreement and attached to this Agreement shall form an integral part of this Agreement.

1.6 Grammatical Variations

In this Agreement, unless the context otherwise requires, (i) words and expressions (including words and expressions (capitalized or not) defined or given extended meanings) in the singular include the plural and vice versa (the necessary changes being made to fit the context), (ii) words in one gender include all genders and (iii) grammatical variations of words and expressions (capitalized or not) which are defined, given extended meanings or incorporated by reference in this Agreement shall be construed in like manner.

1.7 Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made, for the purposes of this Agreement, including the contents of any certificate to be delivered hereunder, such determination, consolidation or computation shall, unless the parties otherwise agree or the context otherwise requires, be made in accordance with Applicable Accounting Principles applied on a consistent basis. The parties hereto confirm that the definitions of financial terms and the levels of financial tests set out in this Agreement were based upon Applicable Accounting Principles adopted by the Borrower (“**Historical Applicable Accounting Principles**”). If at any time the Borrower changes how it applies Applicable Accounting Principles or Applicable Accounting Principles change and such change is reflected in any subsequently prepared financial statements of the Borrower, then the Borrower or the Required Lenders may request the other parties hereto to agree upon amendments to the definitions of financial terms and/or to the levels of financial tests set out in this Agreement if the requesting party reasonably believes that such amendment is required to reflect substantially the same commercial or financial determination, consolidation, computation or financial measure under Applicable Accounting Principles, as applied under Historical Applicable Accounting Principles. Until such amendments are agreed upon, or the requesting party withdraws such

request for amendments, all such financial terms, determinations, consolidations and computations shall be made in accordance with Historical Applicable Accounting Principles and the Borrower shall provide the Lenders a reconciliation of Applicable Accounting Principles, as so changed and applied, to Historical Applicable Accounting Principles treatment with every Compliance Certificate provided to the Lenders pursuant hereto.

1.8 Permitted Liens

The inclusion of reference to Permitted Liens in any Loan Document is not intended to subordinate and will not subordinate, any Security to any Permitted Lien.

1.9 References to Time

Each reference in this Agreement to any time of the day shall, unless otherwise stated, be construed as a reference to Toronto time.

1.10 Day Not a Business Day

In the event that any day on which any action is required to be taken or payment made hereunder is not a Business Day, then such action will be required to be taken or payment made on or before the requisite time on the first (1st) Business Day immediately following thereafter, unless the first (1st) following Business Day is in the next calendar month, in which case the date will be the first preceding day that is a Business Day, provided that, if interest or any fees or any other amount is payable on a day that is not a Business Day, such interest or fees or other amount shall be payable on the first (1st) Business Day immediately following thereafter, unless the first (1st) following Business Day is in the next calendar month, in which case the date will be the first (1st) preceding day that is a Business Day, and shall continue to accrue at the rate provided for in this Agreement until such payment.

1.11 Lawful Interest Rate

In the event that for any reason the interest rates and other charges or amounts payable under this Agreement or any other Loan Document are found to exceed the limit allowed under Applicable Law, as determined in a final judgement, the obligation to pay any such interest, other charges or amounts shall automatically be reduced to such limit and any amounts paid in excess of such limit shall be refunded. Without limiting the generality of the foregoing, in no event will the aggregate “interest” (as defined in Section 347 of the Criminal Code (Canada)) payable under this Agreement or any other Loan Document exceed the maximum effective annual rate of interest on the “credit advanced” (as defined in that Section 347) permitted under that Section 347 and, if any payment, collection or demand pursuant to this Agreement or any other Loan Document in respect of such “interest” (as defined in that Section 347) is determined to be contrary to the provisions of that Section 347, such payment, collection or demand to the extent it exceeds the amount permitted by the highest lawful rate permitted by Applicable Law (the “Excess”) will be deemed to have been made by mutual mistake of the Borrower and the Secured Parties and the amount of such Excess payment or collection will be refunded to the Borrower. For purposes of this Agreement or any other Loan Document, the effective annual rate of interest will be determined in accordance with generally accepted actuarial practices and principles over the term of the obligation on the basis of annual

compounding of the lawfully permitted rate of interest and, in the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Agent will be *prima facie* evidence, for the purposes of such determination.

1.12 Rounding

Unless otherwise stated, (a) all currency amounts determined pursuant to this Agreement shall be rounded up, if necessary to be expressed in a whole number of cents, to the nearest cent and (b) all financial ratios required to be determined hereunder shall be truncated after five (5) decimal places without rounding.

ARTICLE 2 LOANS

2.1 Grant of Loan Facility

Upon and subject to the terms and conditions of this Agreement, the Lenders hereby establish a committed non-revolving term loan facility in favour of the Borrower. Each Lender severally (and not jointly) agrees to make its share available in each Drawdown to be made in accordance with its Rateable Share of the Loan Facility.

2.2 Loan Facility Limit

The outstanding principal amount of all Loans shall not exceed the Total Commitment.

2.3 Cancellation of Undrawn Amount

The Total Commitment shall be cancelled and permanently reduced at the close of business on the last day of the Construction Period by the amount, if any, which (a) the Total Commitment at the close of business on the last day of the Construction Period exceeds (b) the total principal amount of all Loans outstanding at the close of business on the last day of the Construction Period.

2.4 Reductions

The Total Commitment shall reduce by the amount of each reduction in the Total Commitment made pursuant to Article 4 and accordingly the Commitment of each Lender shall reduce by the proportion of such reduction which such Lender's Commitment bears to the Total Commitment. Each Affected Lender's Commitment shall reduce to the extent required pursuant to Section 4.6.

2.5 Availability

Upon and subject to the terms and conditions of this Agreement, the Borrower may request one Drawdown per month during the Construction Period on a non-revolving basis.

2.6 Drawdown Request

The Borrower must deliver a Drawdown Request to the Agent to obtain a Drawdown before noon on at least three (3) Business Days' prior notice and specifying the principal amount (which must be \$1,000,000 or a whole number multiple of \$100,000 in excess thereof) and the Drawdown Date (which must be a Business Day falling within the Construction Period). Each Drawdown Request delivered by the Borrower to the Agent shall be accompanied by a Costs to Complete Certificate and Drawdown Certificate, each bearing the same date as the Drawdown Request.

ARTICLE 3 INTEREST AND FEE CALCULATIONS AND CHANGES IN CIRCUMSTANCES

3.1 Interest

3.1.1 *Loans* □ The Borrower shall pay interest on the outstanding principal amount of each Loan calculated and payable from the Drawdown Date of such Loan until the date due to be repaid hereunder at a percentage rate per annum equal to the sum of (a) the Canadian Prime Rate plus (b) the Applicable Margin.

3.1.2 *Overdue Amounts* □ If any sum payable by the Borrower under any provision of this Agreement is not paid when due and payable hereunder (whether on its stipulated due date, on demand, on acceleration or otherwise), the Borrower shall pay interest to the Lenders entitled to payment of such overdue sum on the outstanding balance thereof calculated and payable from the date such sum was first so due and payable until the date it is paid in full in accordance with the provisions hereof at the Default Rate.

3.2 Fees

3.2.1 *Upfront Fee* □ The Borrower shall pay to the Agent for the account of each Lender an upfront fee equal to 2.50% of the Total Commitment (before any reduction thereto) due and payable concurrently with the first to occur of (a) the Initial Drawdown Date and (b) thirty (30) days after the date of this Agreement.

3.2.2 *Commitment Fee* □

- (a) *Calculation.* The Borrower shall pay to the Agent for the account of the Lenders a commitment fee in relation to their respective Commitments based on the unused portion of the Loan Facility payable in Dollars which shall be in the amount determined by the Agent to be equal to the sum of the products for each day commencing on the date of this Agreement and ending on the Maturity Date of (a) the amount by which the Total Commitment exceeds the aggregate outstanding principal amount of all Loans at the end of that day multiplied by (b) the quotient of (i) 1.00% divided by (ii) 365.
- (b) *Payment Dates.* The Borrower shall pay the Commitment Fee quarterly in arrears for each calendar quarter on the third (3rd) Business Day of each calendar quarter.

The final payment of the Commitment Fee will be made on the Maturity Date or any earlier date of termination of the Loan Facility.

3.2.3 *Agent Fee* □ The Borrower shall pay the Agent an annual fee equal to the sum of \$30,000, such fee to be payable on the Financial Closing Date and each anniversary thereof until the date on which all Secured Obligations are paid in full.

3.2.4 *Payment of Fees Generally* □ The fees or any part thereof payable hereunder by the Borrower shall not be refundable under any circumstances, regardless of whether any Drawdowns are requested by the Borrower or any other circumstance. All fees payable hereunder by the Borrower shall be paid in immediately available funds and shall be in addition to reimbursement of the Agent's and Lenders' out-of-pocket expenses.

3.3 Interest and Fee Calculations and Payments

3.3.1 *General* □ Interest payable on any amount payable under this Agreement shall be (a) calculated upon the daily outstanding balance of such amount from (and including) the date it is first outstanding or advanced until (but excluding) the date it is repaid in full to the Lenders entitled thereto, (b) paid in Dollars and (c) payable in arrears on each Interest Payment Date relative thereto and (if any relevant portion of the Total Commitment has been cancelled or otherwise reduced to nil) on the date the final principal amount thereof is paid in full based upon the actual number of days elapsed in the relevant period of calculation. Interest payable on each such amount shall be payable both before and after demand, default and judgment at the applicable rate set out in Section 3.1 with interest on overdue interest at the same rate (except to the extent provided otherwise in Section 3.1.2).

3.3.2 *Rate Based on Years of 365/366 Days* □ The rates of interest per annum payable on or in respect of Loans are expressed on the basis of a three hundred and sixty-five (365) day year or three hundred and sixty-six (366) day year in the case of a leap year. The Commitment Fees payable in respect of the Loan Facility are expressed at a rate per annum based on a 365 day year.

3.3.3 *Interest Act Compliance* □ For the purposes of the *Interest Act* (Canada), any rate of interest made payable under the terms of this Agreement at a rate or percentage (the "**Contract Rate**") for any period that is less than a consecutive twelve (12) month period, such as a 365 day basis, (the "**Contract Rate Basis**") is equivalent to the yearly rate or percentage of interest determined by multiplying the Contract Rate by a fraction, the numerator of which is the number of days in the consecutive twelve (12) month period commencing on the date such equivalent rate or percentage is being determined and the denominator of which is the number of days in the Contract Rate Basis.

3.3.4 *No Deemed Reinvestment* □ The principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement.

3.3.5 *Rates are Nominal Rates* □ The rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

3.3.6 *Changes in the Canadian Prime Rate* ☐ Changes in the Canadian Prime Rate will cause an immediate adjustment of interest payable on or in respect of the corresponding Loans outstanding from time to time, without the necessity of any notice to the Borrower.

3.4 Increased Costs

3.4.1 *Change in Law* ☐

If any Change in Law:

- (a) subjects any Lender (or its Holding Entity) to, or causes the withdrawal or termination of a previously available exemption with respect to, any Taxes or changes the basis of taxation of payments due to any Lender or increases any Taxes payable by any Lender (or its Holding Entity) on or in respect of payments of principal, interest, fees or other amounts payable by the Borrower to that Lender under this Agreement or any other Secured Document provided that the foregoing does not apply to or in respect of:
 - (i) Indemnified Taxes provided for under Section 3.6; and
 - (ii) Taxes imposed as a result of a present or former connection between the Secured Party and the jurisdiction imposing such Tax (other than connections arising from such Secured Party having executed, delivered, become a party to, performed its obligations under, engaged in any other transaction pursuant to or enforced any Secured Document) and that are imposed on or measured by net income (however denominated) or that are franchise or branch profits taxes;
- (b) imposes, modifies or deems applicable any reserve, liquidity, cash margin, special deposit, deposit insurance or assessment, or any other regulatory or similar requirement against assets held by, or deposits with or for the account of, or loans or commitments by, or any other acquisition of funds for loans by, any Lender (or its Holding Entity), or on any unutilized portion of the Loan Facility, or on any obligation of any Lender under any Secured Document;
- (c) imposes on any Lender (or its Holding Entity) any Taxes on reserves or deemed reserves in respect of the undrawn portion of the Loan Facility or any “transaction tax” that is not based on such Lender’s net income;
- (d) requires any Lender (or its Holding Entity) to maintain any capital adequacy or additional capital requirement (including a requirement which affects that Lender’s (or its Holding Entity’s) allocation of capital resources to its obligations) in respect of the Loan Facility, its Rateable Share in any Loan, this Agreement or that Lender’s obligations hereunder or under any other Secured Document, or imposes any other condition or requirement with respect to the maintenance by any Lender (or its Holding Entity) of a contingent liability with respect to the Loan Facility, its Rateable Share in any Loan; or

- (e) imposes on any Lender (or its Holding Entity) any other condition or requirement with respect to this Agreement, any other Secured Document, the Loan Facility,

and such Lender (the “**Affected Lender**”), acting reasonably, determines (which determination shall be conclusive absent manifest error and bind the Borrower) that such occurrence has the effect of:

- (f) increasing the cost to the Affected Lender (or its Holding Entity) of agreeing to make or making, maintaining or funding its Rateable Share in any Loan or any portion of any thereof;
- (g) reducing the net income received by the Affected Lender (or its Holding Entity) in respect of this Agreement, the Loan Facility, its Rateable Share in any Loan or any portion of any thereof;
- (h) directly or indirectly reducing the effective return to the Affected Lender (or its Holding Entity) under any Secured Document on its overall capital as a result of the Affected Lender entering into such Secured Document or as a result of any of the transactions or obligations contemplated by such Secured Document; or
- (i) causing the Affected Lender to make any payment or to forego any interest, fees or other return on or calculated by reference to any sum received or receivable by that Lender under any Secured Document,

then, within seven (7) days of demand from time to time being made to the Borrower by the Agent on behalf of the Affected Lender accompanied in each case by a certificate of the Affected Lender documenting the relevant calculations of the compensation being claimed by the Affected Lender, the Borrower shall forthwith pay to the Affected Lender such additional amounts as are set out in each such certificate in order to fully compensate the Affected Lender (or its Holding Entity) for such additional cost, reduction, payment, foregone interest or other return; provided that no Affected Lender shall be entitled to compensation for any such additional cost, reduction, payment, foregone interest or other return for any period of time occurring more than one hundred and eighty (180) days prior to the date of request therefor, unless the Change in Law has retroactive effect, in which case an Affected Lender shall also be entitled to compensation for any portion of such period of retroactive effect.

3.4.2 *Exclusions* □ Section 3.4.1 does not apply to the extent the additional cost, reduction, payment, foregone interest or other return is attributable to a Tax deduction for which right or entitlement to compensation is adequately provided for in Section 3.6.

3.5 Illegality

If at any time any Lender, acting reasonably, determines (which determination shall be conclusive and bind the Borrower) that any Change in Law has made it unlawful or impossible for that Lender (the “**Affected Lender**”) to make, fund or maintain any Loan or its Rateable Share in any Loan or to give effect to its obligations in respect of such Loan (an “**Affected Loan**”), the Affected Lender will promptly notify the Agent which shall promptly notify the Borrower. Upon giving such notice the Borrower shall forthwith prepay the Affected

Lender's Rateable Share of such Affected Loan and the Affected Lender shall not be required to make any such Affected Loan or its Rateable Share of such Affected Loan available in any manner. Thereafter and until the Agent notifies the Borrower otherwise, the Borrower shall not have the right to require such Affected Lender to make any Loan or its Rateable Share of such Affected Loan available in any manner requested.

3.6 Taxes Generally

3.6.1 *No Withholding; Gross-Up Requirement* □ Each payment required to be made by the Borrower under each Secured Document shall be made without set-off or counterclaim, free and clear of, and without deduction or withholding for or on account of, any present or future Taxes, except to the extent such deduction or withholding is required by any Applicable Law then in effect (as determined in the good faith discretion of the Borrower or the Agent). To the extent and each time that the Borrower is so required to deduct or withhold Taxes from any such payment to or for the account of any Secured Party (the "**Affected Secured Party**"), then the Borrower will (a) promptly notify the Agent of such requirement, (b) promptly pay when due to the relevant Governmental Authority the full amount required to be deducted or withheld (including the full amount of Taxes required to be deducted or withheld from any additional amount paid by the Borrower to or for the account of the Affected Secured Party under this Section 3.6.1), (c) promptly forward to the Affected Secured Party an official receipt (or a certified copy), or other evidence reasonably acceptable to the Agent, evidencing such payment to such Governmental Authority and (d) with respect to Indemnified Taxes of the Affected Secured Party, forthwith pay to the Affected Secured Party, in addition to the payment to which the Affected Secured Party is otherwise entitled under such Secured Document, such additional amount as is necessary to ensure that the net amount actually received by the Affected Secured Party (free and clear of Indemnified Taxes and free and clear of deductions and withholdings applicable to additional sums payable under this Section 3.6, whether assessed against the Borrower or the Affected Secured Party) will equal the full amount the Affected Secured Party would have received had no such deduction or withholding been required.

3.6.2 *Indemnity* □ If the Borrower fails to pay to the relevant Governmental Authority when due any Taxes that it was required to deduct or withhold under Section 3.6.1 in respect of any payment to or for the benefit of any Affected Secured Party under any Secured Document or fails to promptly furnish the Agent with the documentation referred to in Section 3.6.1(c), the Borrower shall forthwith within seven (7) days of demand fully indemnify the Affected Secured Party on a full indemnity after-Taxes basis from and against any Taxes (including interest and penalties), losses and expenses which the Affected Secured Party may suffer or incur as a result of such failure. Notwithstanding any other provision of this Agreement, the Agent shall be entitled to make a deduction or withholding from any payment which it makes under this Agreement for or on account of any present or future taxes, duties, assessments or government charges if and to the extent so required by Applicable Law, in which event the Agent shall make such payment after such withholding or deduction has been made and shall account to the relevant authorities for the amount so withheld or deducted.

3.6.3 *General Tax Indemnity* □ Without duplication of any other indemnity under this Agreement, and notwithstanding any provision of this Agreement to the contrary, the Borrower agrees to indemnify the Secured Parties (including their direct or indirect beneficial owners) for the full amount of any Indemnified Taxes imposed by any jurisdiction on amounts payable under

any Secured Document, including any liability (including penalties, interest and expenses) arising thereon or with respect thereto. Amounts payable by the Borrower under the indemnity set forth in this Section 3.6.3 shall be paid within seven (7) days from the date on which the party seeking indemnification hereunder makes written demand therefor, which demand shall be conclusive as to the amount of such indemnity absent manifest error.

3.6.4 *Indemnity for Additional Income Tax*—The Borrower shall also indemnify each Affected Secured Party, on a full indemnity after-Taxes basis, for any additional Indemnified Taxes on net income that such Affected Secured Party may be obliged to pay as a result of the payment by the Borrower of any amount under this Section 3.6.

3.6.5 *Other Taxes*—The Borrower shall pay, and shall indemnify and hold each Lender harmless from (on a full indemnity (after Taxes) basis) Other Taxes.

3.6.6 None of Agent nor any Lender shall be obligated to disclose any information regarding its tax affairs or computations to the Borrower or any other Person in connection with Section 3.4 or 3.6.

3.7 FATCA

If a payment made to a Lender under any Loan Document would be subject to U.S. federal deduction or withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 3.7, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

ARTICLE 4 REPAYMENT AND PREPAYMENT

4.1 Scheduled Repayments of Loan Facility

Subject to Section 10.1.29, the Borrower shall repay to the Lenders each outstanding Loan in 26 equal quarterly instalments commencing on the Scheduled Principal Repayment Commencement Date and on each Scheduled Principal Repayment Date thereafter (or the immediately preceding Business Day for each such Scheduled Principal Repayment Date that is not a Business Day). Each such quarterly instalment shall be in the amount determined as (a) the original principal amount of the Loan made multiplied by (b) the quotient of (i) 1 divided by (ii) 26. The Total Commitment shall be permanently cancelled and reduce on each such repayment date by the amount of each such required repayment instalment. The Borrower shall repay to the Lenders any remaining balance of the outstanding Loans, if any, on the Maturity Date. The Borrower shall also pay to the Lenders on the Maturity Date all accrued and unpaid

interest under the Loan Facility and all unpaid fees with respect thereto. Any amounts repaid pursuant to this Section 4.1 may not be reborrowed.

4.2 Mandatory Prepayments

4.2.1 *Termination of Project* □ Contemporaneously with the termination, cancellation or abandonment of the Project the Borrower shall prepay all outstanding Loans (together with all accrued and unpaid interest thereon).

4.2.2 *Change in Control* □ Contemporaneously with the occurrence of a Change in Control the Borrower shall prepay all outstanding Loans (together with all accrued and unpaid interest thereon).

4.2.3 *Excess Cash Flow* □ The Borrower shall prepay Loans outstanding in the outstanding principal amount equal to the amount of each payment made pursuant to Sections 5.6.3(k) and 5.6.3(l).

4.2.4 *Asset Disposals* □ Except to the extent the Borrower is relieved of this obligation pursuant to Section 4.2.7, the Borrower shall prepay Loans outstanding in the outstanding principal amount equal to the lesser of (a) the Net Disposal Amount from any Asset Disposal to the extent it is not applied or committed to being applied (and in fact is so applied within the ensuing six (6) months of such commitment being made) to a Property Reinvestment Application within six (6) months after such Asset Disposal and (b) the total outstanding principal amount of all Loans then outstanding. Such prepayment shall be made on the fifth (5th) Business Day after the six (6) month anniversary of such Asset Disposal or, if committed to be reapplied within such six (6) month period, but not reinvested in the immediately following six (6) month period, on the fifth (5th) Business Day after the anniversary of such Asset Disposal.

4.2.5 *Comprehensive Insurance Proceeds* □ Except to the extent the Borrower is relieved of this obligation pursuant to Section 4.2.7, the Borrower shall prepay Loans outstanding in the outstanding principal amount equal to the lesser of (a) the total outstanding principal amount of all Loans then outstanding and (b) the Insurance Proceeds from any Insurance Event to the extent such Insurance Proceeds are not applied or committed to being applied (and in fact is so applied within the ensuing six (6) months of such commitment being made) to repair or replace the property compensated for within six (6) months of receipt of such Insurance Proceeds or, if committed to be reapplied within such six (6) month period, but not reinvested in the immediately following six (6) month period, on the tenth (10th) Business Day after the anniversary of receipt of such Insurance Proceeds.

4.2.6 *Extraordinary Receipts* □ Each time the Borrower receives any Extraordinary Receipt, the Borrower shall promptly notify the Agent of the amount of such Extraordinary Receipt (after deducting all reasonable out-of-pocket fees, costs and expenses paid to Unrelated Parties in connection with recovering such Extraordinary Receipt) and, except to the extent the Borrower is relieved of this obligation pursuant to Section 4.2.7 the Borrower shall prepay Loans outstanding within five (5) Business Days of the day such Extraordinary Receipt is so received to the extent of the outstanding principal amount of Loans equal to the amount (or Equivalent in Dollars) of such Extraordinary Receipt so received. For the purposes of this Section 4.2.6, “**Extraordinary Receipt**” means any tax refund, indemnification payment or condemnation

award, excluding any indemnification payment to the extent such indemnification payment is a reimbursement or will be used to pay any loss, cost or expense incurred giving rise to such right of indemnification.

4.2.7 *Exemption* □ The Borrower shall be relieved of its obligations to prepay Loans pursuant to Section 4.2.4, 4.2.5 or 4.2.6 in respect of the events described therein occurring during any Test Period until the aggregate total amount otherwise payable pursuant to any such Section exceeds \$2,000,000 in that Test Period, and thereafter the Borrower shall have to prepay Loans pursuant to Section 4.2.4, 4.2.5 and 4.2.6 only for any amount exceeding such amount of \$2,000,000.

4.2.8 *Application of Repayments* □ Each prepayment made pursuant to this Section 4.2 shall be applied until the Loan Facility is repaid in full, to (a) repay Loans outstanding, (b) permanently cancel and reduce the Total Commitment to the extent of the amount of such prepayment and (c) satisfy, to the extent of the amount of such prepayment, the Borrower repayment obligations under Section 4.1 in inverse chronological order. All amounts prepaid may not be reborrowed.

4.3 Voluntary Repayments before the Maturity Date

On and after the date of the first principal repayment pursuant to Section 4.1 and subject to the terms and conditions of this Section 4.3, the Borrower shall have the right at any time and from time to time to prepay all or any portion of each Loan without penalty. Such right may only be exercised if the Borrower delivers a Repayment Notice to the Agent specifying the proposed repayment date (which Repayment Notice must be received by the Agent before noon on the 30th day before the specified repayment date to be effective) and the amount of such Loan to be repaid (which must be in a principal amount of \$2,000,000 or a whole number multiplier of \$100,000 in excess thereof), provided that in the case of any prepayment of less than all outstanding Loans, no such prepayment shall be effective unless the Borrower delivers to the Agent a Costs to Complete Certificate and the Lenders are satisfied, and have received confirmation from the Independent Technical Consultant, that upon giving effect to such repayment, (a) no Funding Shortfall will exist or would arise therefrom which has not been cured and (b) such prepayment would not result in the Commercial Operation Date occurring on a date which is later than the Scheduled Commercial Operation Date. The Borrower shall repay such Loan on such repayment date to the extent specified in such Repayment Notice. Any voluntary repayment of any Loan shall be applied in the same manner as a mandatory prepayment under Section 4.2.8.

4.4 Voluntary Reductions of Loan Facility

The Borrower shall have the right at any time and from time to time to permanently cancel all or any unused portion of the Total Commitment; provided that no Default or Event of Default has occurred and is continuing or will result therefrom. Such right may only be exercised by the Borrower delivering a Cancellation Notice to the Agent specifying the proposed effective date of cancellation (which must be no less than seven (7) days thereafter) and the amount of the Total Commitment to be cancelled (which must be in a principal amount of \$2,000,000 or a multiple of \$100,000 in excess thereof), provided that in the case of any cancellation of less than all of the Loan Facility, no such cancellation shall be effective unless

the Borrower delivers to the Agent a Costs to Complete Certificate and the Lenders are satisfied, and have received confirmation from the Independent Technical Consultant, that upon giving effect to such cancellation, (a) no Funding Shortfall will exist or would arise therefrom which has not been cured and (b) such cancellation would not result in the Commercial Operation Date occurring on a date which is later than the Scheduled Commercial Operation Date. The Total Commitment (and each component thereof affected by the cancellation) shall permanently reduce on the effective date of each such cancellation in the amount so cancelled. Each reduction in Commitments under the Loan Facility pursuant to this Section 4.4 shall rateably reduce each Lender's Commitment comprised therein based on such Lender's Rateable Share.

4.5 Mandatory Repayments of Loan Facility

On the date of each reduction of each Lender's Commitment pursuant to Section 4.1, 4.2, 4.3, 4.4 or 4.6, the Borrower shall repay to the Agent for the account of such Lender such amount on account of such Lender's Rateable Share of Loans as may be required to ensure that the outstanding amount of such Lender's Rateable Share of all Loans does not exceed its Commitment at that time after giving effect to that reduction. Such Lender shall apply any such amount so repaid to repay its Rateable Share of any Loans outstanding.

4.6 Prepayment of Affected Lenders

The Borrower shall have the right to permanently cancel without premium or penalty all, but not part, of each Commitment of each Affected Lender; provided that no Default or Event of Default has occurred and is continuing or will result therefrom. Such right may only be exercised by the Borrower delivering a notice to the Agent advising of such cancellation and specifying the effective date of cancellation which must be no less than five (5) Business Days after and no later than ninety (90) days after the Relevant Lender became an Affected Lender. The Borrower shall prepay the Affected Lender's Rateable Share of all outstanding Loans on such effective date of cancellation, the Affected Lender's Commitments shall be reduced to nil and such Affected Lender shall be released from its obligations to lend hereunder. Unless such Affected Lender is replaced pursuant to Section 12.10.10, the Total Commitment shall reduce by the amount of the reduction in such Affected Lender's Commitment.

4.7 Place of Payment of Principal, Interest and Fees

4.7.1 *Payments to Agent and the Lenders Generally* □ Each payment of principal of, or interest or Fees computed on, any Loan and each other amount owing by the Borrower under or otherwise in respect of any Loan Document shall be made by the Borrower to the Agent for the account of the Agent and the Lenders entitled thereto in Dollars no later than 11:00 a.m. in immediately available, freely transferable, cleared funds for value on the due date to the credit of the Agent's Accounts.

ARTICLE 5 ACCOUNTS

5.1 Project Revenue Account

- (a) Prior to the Initial Funding Date the Borrower shall establish and maintain with the Agent, at the Borrower's sole expense, a Project Revenue Account which shall be opened in the name of the Borrower. The Project Revenue Account shall be subject to the Security in favour of the Agent, for its own benefit and for the benefit of the Secured Parties. The Project Revenue Account shall at all times be subject to the Blocked Accounts Agreement and, prior to the Initial Funding Date, subject to control of the Borrower (subject to the terms of this Agreement and the Blocked Accounts Agreement), except upon the occurrence, and during the continuance, of a Default or an Event of Default when the Project Revenue Account shall be subject to the control of the Agent. In order to give effect to the purpose and intent of the Blocked Accounts Agreement, the Borrower authorizes and directs the Agent to deliver an activation notice under the Blocked Accounts Agreement upon the occurrence of a Default or an Event of Default. On and after the Initial Funding Date the Borrower shall cease to have control over the Project Revenue Account and the Project Revenue Account shall at all times thereafter be subject to the control of the Agent, both before and after a Default or an Event of Default.

- (b) Prior to the Initial Funding Date, the Borrower shall deposit or cause to be deposited directly upon receipt into the Project Revenue Account:
 - (i) the proceeds of the Sponsors Contributions and any other capital contributions made by the Sponsors (directly or indirectly);
 - (ii) the proceeds of all Government Funds remaining available to the Borrower;
 - (iii) all Cash Revenues;
 - (iv) all amounts under any Project Document;
 - (v) all Net Disposal Amounts of any asset of the Borrower;
 - (vi) all Net Disposal Amounts or other enforcement action (net of the costs and expenses of such action) taken pursuant to Article 10; and
 - (vii) all other funds and amounts of any kind received by or on behalf of the Borrower from any source, including amounts pursuant to an equity contribution by the Sponsors, Insurance Proceeds and amounts in respect of warranty proceeds received by the Borrower,

- (c) On and after the date of the Initial Funding Date, the proceeds of each Drawdown shall, subject to Article 6, be advanced by the Agent to the Borrower by bank transfer to the credit of the Project Revenue Account.

5.2 Debt Service Reserve Account (DSRA)

- (a) The Borrower shall create on or prior to the Initial Funding Date a segregated account with the Agent which shall be designated the debt service reserve account (the “**Debt Service Reserve Account**” or “**DSRA**”). The DSRA shall be subject to the control of the Agent under the Blocked Accounts Agreement or another blocked account agreement which shall be substantially in the form of the Blocked Accounts Agreement and which shall be delivered to the Agent along with such legal opinions and corporate and other supporting documents in connection therewith as the Agent may require, acting reasonably, both before and after a Default or an Event of Default and shall be subject to the Security in favour of the Agent.
- (b) On or prior to the earlier to occur of (i) the Commercial Operation Date and (ii) the Scheduled Commercial Operation Date, the Borrower shall deposit into the DSRA an amount in cash representing the then applicable Debt Service Reserve Requirement. Thereafter, the Borrower shall fund the DSRA from the Project Revenue Account in accordance with the Priority of Payments. The Borrower shall at all times from and including the Commercial Operation Date until payment in full of all the Secured Obligations, maintain the balance in the Debt Service Reserve Account in cash equal to or greater than the Debt Service Reserve Requirement.
- (c) If the amount deposited in the DSRA pursuant to this Section 5.2 exceeds the then applicable Debt Service Reserve Requirement, the excess shall be transferred to the Project Revenue Account and disbursed in accordance with the Priority of Payments.
- (d) The Debt Service Reserve Account will be used exclusively for Debt Service in respect of the Loan Facility and for partial prepayment of the Loan Facility upon a non-cured Default. The Agent may from time to time apply any monies in the Debt Service Reserve Account to a payment of interest, fees, charges or principal under the Loan Documents that is then due or overdue.

5.3 Maintenance Reserve Account (MRA)

- (a) The Borrower shall create on or prior to the Initial Funding Date a segregated account with the Agent which shall be designated the maintenance reserve account (the “**MRA**” or “**Maintenance Reserve Account**”). The MRA shall be subject to the control of the Agent under the Blocked Accounts Agreement or another blocked account agreement which shall be substantially in the form of the Blocked Accounts Agreement and which shall be delivered to the Agent along with such legal opinions and corporate and other supporting documents in connection therewith as the Agent may require, acting reasonably, both before

and after a Default or an Event of Default and shall be subject to the Security in favour of the Agent.

- (b) The Borrower shall commence funding of the Maintenance Reserve Requirement on and after the Commercial Operation Date by depositing cash into the MRA provided that on or before the date which falls six (6) months after the Commercial Operation Date the Borrower shall have deposited into the MRA an amount in cash representing the then applicable Maintenance Reserve Requirement. Thereafter the Borrower shall fund the MRA from the Project Revenue Account in accordance with the Priority of Payments. The Borrower shall at all times from and including the date which falls six (6) months after the Commercial Operation Date until payment in full of all the Secured Obligations, maintain the balance in the Maintenance Reserve Account in cash equal to or greater than the Maintenance Reserve Requirement.
- (c) Subject to (i), the Borrower providing the Agent and the Independent Technical Consultant with prior written notice of its intention to withdraw amounts from the MRA for the purpose of funding normal and routine operation and maintenance expenditures and/or major maintenance expenditures of the Project, (ii) receipt by the Agent of a confirmation from the Independent Technical Consultant with respect to any notice to withdraw amounts regarding major maintenance expenditures of the Project that such amounts are required for that purpose and such withdrawal request is in a form satisfactory to the Agent, and (iii) no Default or Event of Default has occurred and is continuing or would result as a consequence of such withdrawal, the Borrower may withdraw amounts from the MRA to pay for costs, fees and other amounts due in connection with normal and routine operation and maintenance expenditures and/or major maintenance expenditures of the Project, as applicable which exceed the amount otherwise budgeted therefor to be paid from Project Revenues.
- (d) To the extent the Borrower maintains a service and maintenance agreement which is in full force and effect and in form and substance acceptable to the Agent, as confirmed by the Independent Technical Consultant from time to time, such agreement will be taken into account by the Independent Technical Consultant in determining the Maintenance Reserve Requirement.
- (e) To the extent from time to time amounts on deposit in the MRA exceed the then applicable Maintenance Reserve Requirement, such excess shall be released to the Project Revenue Account.

5.4 Cost Overrun Account

- (a) The Borrower shall create on or prior to the Initial Funding Date a segregated account with the Agent which shall be designated the cost overrun reserve account (the “COA” or “**Cost Overrun Account**”). The COA shall be subject to the control of the Agent under the Blocked Accounts Agreement or another blocked account agreement which shall be substantially in the form of the Blocked Accounts Agreement and which shall be delivered to the Agent along

with such legal opinions and corporate and other supporting documents in connection therewith as the Agent may require, acting reasonably, both before and after an Event of Default and shall be subject to the Security in favour of the Agent.

- (b) On or prior to the Initial Funding Date the Borrower shall deposit into the COA, an amount in cash representing the Cost Overrun Reserve Requirement.
- (c) Unless a Default or Event of Default has occurred and is continuing or would result therefrom, the Borrower shall, prior to the Commercial Operation Date, be entitled to withdraw amounts from the COA in connection with any Drawdown and subject to the satisfaction of the conditions set out in Section 6.2 or Section 6.3, as applicable, to (i) satisfy Project Costs that are scheduled to be incurred prior to the Commercial Operation Date and that represent Cost Overruns provided that the Independent Technical Consultant has previously verified that the Cost Overruns in question are required at that time or (ii) cure a Funding Shortfall that exists after the Initial Funding Date provided that such amounts are forthwith applied towards curing the Funding Shortfall.
- (d) Unless a Default or Event of Default has occurred and is continuing or would result therefrom the Borrower shall, on a Business Day that is not less than five (5) Business Days after the Proof of Capacity Date, direct the Agent to transfer from the COA to the Project Revenue Account all amounts then standing to the credit of the COA.

5.5 Punch List Reserve Sub-Account

- (a) The Borrower shall create on or prior to the Commercial Operation Date a segregated sub-account of the Project Revenue Account which shall be designated the punch list reserve sub-account (“**Punch List Reserve Sub-Account**”). The Punch List Reserve Sub-Account shall be subject to the control of the Agent under the Blocked Accounts Agreement or another blocked account agreement which shall be substantially in the form of the Blocked Accounts Agreement and which shall be delivered to the Agent along with such legal opinions and corporate and other supporting documents in connection therewith as the Agent may require, acting reasonably, both before and after a Default or an Event of Default and shall be subject to the Security in favour of the Agent.
- (b) On the Commercial Operation Date, the Borrower shall deliver a Certificate to the Agent certifying the Punch List Amount and directing the Agent to transfer such Punch List Amount from the Project Revenue Account to the Punch List Reserve Sub-Account. Upon payment in full of the Punch List Items as certified by the Borrower to the Agent and the Independent Technical Consultant and approved by the Independent Technical Consultant, any amounts remaining in the Punch List Reserve Sub-Account shall be transferred by the Agent to the Project Revenue Account.

5.6 Withdrawals from Project Revenue Account

5.6.1 *Withdrawals Prior to Initial Funding Date*—Prior to the Initial Funding Date any and all amounts standing to the credit of the Project Revenue Account may be withdrawn at the sole and absolute discretion of the Borrower to fund Project Costs.

5.6.2 *Withdrawals After Initial Funding Date and Prior to Commercial Operation Date*—On and after the date of Initial Funding Date and prior to the Commercial Operation Date, no withdrawals may be made from the Project Revenue Account except for the withdrawal of amounts required for the sole purpose to pay the items set out in paragraphs (a), (b), (c), (d) and (f) of Section 5.6.3 and in the order or priority set out therein (and no payment at any such priority level shall be made on any day if any payment remains to be made on such day at any higher priority level provided that no Default or Event of Default has occurred and is continuing or would result therefrom).

5.6.3 *Withdrawals After Commercial Operation Date - Priority of Payments*—On and after the date of Commercial Operation Date, no withdrawals may be made from the Project Revenue Account except to pay the items set out in the payment waterfall outlined below (the “**Priority of Payments**”), provided that no Default or Event of Default has occurred and is continuing or would result therefrom. On and after the Commercial Operation Date, the Borrower shall pay or cause to be paid, on each date which the applicable Priority of Payments set forth below are due and payable, from the cash held in the Project Revenue Accounts all amounts from time to time due and payable by the Borrower in the following order of priority (and no payment at any such priority level shall be made on any day if any payment remains to be made on such day at any higher priority level):

- (a) first, Approved Operating Costs (excluding (i) management or service fees and bonus payments and other payments under the Joint Venture Agreement and (ii) royalties payable to BioAmber Luxco pursuant to the License Agreement) then due and payable or anticipated to become due and payable within the following thirty (30) days, as certified to such effect by the Borrower;
- (b) second, Approved Capital Expenditures relating to normal and routine maintenance expenditures (excluding for greater certainty capital expenditures described in Section 5.6.3(i)) then due and payable or anticipated to become due and payable within the following thirty (30) days, as the case may be), as certified to such effect by the Borrower;
- (c) third, fees, costs, charges and expenses payable or anticipated to become due and payable within thirty (30) days to the Agent and the Independent Technical Consultant under or otherwise in connection with any of the Transaction Documents, as certified to such effect by the Agent and Independent Technical Consultant;
- (d) fourth, interest (including interest on overdue interest and on other amounts), fees, costs and expenses, and any other amount (other than principal payments, mandatory prepayments or fees and costs and expenses paid under paragraph (c) above) then due and payable under or in connection with the Loan Facility;

- (e) fifth, scheduled principal repayments under the Loan Facility then due and payable;
- (f) sixth, scheduled principal repayments and interest payments under the Government Funding Agreements then due and payable, such amount then due and payable or anticipated to become due and payable (or payable, as the case may be), as certified to such effect by the Borrower;
- (g) seventh, on and after the Commercial Operation Date, in accordance with Section 5.2 to the Debt Service Reserve Account, the amount of any Debt Service Reserve Deficiency;
- (h) eighth, on and after the Commercial Operation Date, in accordance with Section 5.3 to the Maintenance Reserve Account, the amount of any Maintenance Reserve Deficiency;
- (i) ninth, major capital expenditures for work associated with the upgrading and improvement of the Project identified in the Base Financial Model as approved by the Lenders annually;
- (j) tenth, the royalties then due and payable or anticipated to become due and payable within the following thirty (30) days to BioAmber Luxco pursuant to the License Agreement, as certified to such effect by the Borrower provided that the aggregate amount of such royalties shall not exceed the amount payable under the License Agreement in any Fiscal Year (a “**Permitted Royalty Payment**”);
- (k) eleventh, at any time any of the Permitted Distribution Conditions are not met, the Borrower shall apply the balance of the funds in the Project Revenue Account towards prepayment of the outstanding Loans pursuant to Section 4.2.3;
- (l) twelfth, at any time all of the Permitted Distribution Conditions are met, the Borrower shall on each applicable Quarterly Date apply the balance of the funds in the Project Revenue Account as follows:
 - (i) during the period commencing on the Commercial Operation Date and ending on the second anniversary thereof (A) 50% of the balance of the funds in the Project Revenue Account shall be applied towards prepayment of the outstanding Loans pursuant to Section 4.2.3; and (B) 50% of the balance of the funds in the Project Revenue Account may be applied towards payment of Permitted Distributions; and
 - (ii) at any time after the second anniversary date of the Commercial Operation Date (A) 20% of the balance of the funds in the Project Revenue Account shall be applied towards prepayment of the outstanding Loans pursuant to Section 4.2.3; and (B) 80% of the balance of the funds in the Project Revenue Account may be applied towards payment of Permitted Distributions.

Amounts not allocated, or not permitted to be distributed pursuant to the Priority of Payments shall be retained in the Project Revenue Account and shall be disbursed or retained in accordance with the Priority of Payments on the next application of the Priority of Payments.

5.7 Accounts Generally

- (a) Each Account shall form part of a segregated securities account, and each separately established and maintained by the Borrower with the Agent and in the name of the Borrower. The Agent shall act as securities intermediary with respect to each Account. Words and expressions defined in the STA shall have the same respective defined meanings attributed to them in the STA where used in this Article 5.
- (b) All credit balances, Cash Equivalents and other assets credited to or carried in the Accounts shall be financial assets held by the Agent in trust for the benefit of the Secured Parties and the Borrower for the purpose of making payments therefrom in accordance with this Agreement; and, except as otherwise specifically provided for hereunder, only the Agent shall have the right to make withdrawals and payments therefrom, upon instruction or direction, as provided in this Agreement. Each Account (including all security entitlements relating thereto) shall be governed by the laws of the Province of Ontario, including the federal laws of Canada applicable therein, but excluding conflict of law rules. Regardless of any provision in any other agreement, for purposes of the STA, the securities intermediary's jurisdiction with respect to the Accounts shall be the Province of Ontario.
- (c) The Borrower hereby agrees with and confirms to each of the Agent and the Lenders that (i) the Agent for the benefit of the Secured Parties will be the sole and exclusive person entitled to give entitlement orders to the Agent (except with respect to the Project Revenue Account, for which the Borrower shall also be entitled to give entitlement orders to the Agent in accordance with the terms and conditions of this Agreement prior to the occurrence of a Default or Event of Default) in respect of the financial assets credited to the Accounts and any instruction or direction from the Agent with respect to the Accounts as described in this Article 5 or elsewhere in this Agreement shall constitute an entitlement order without further consent of the Borrower, (ii) all assets delivered to the Agent (in such capacity) pursuant to this Agreement or any other Loan Document for deposit in the Accounts will be held by the Agent and promptly credited to an Account by an appropriate entry in its records in accordance with this Agreement, (iii) all financial assets in registered form or payable to or to the order of and credited to any such Account shall be registered in the name of, payable to or to the order of, or endorsed to, the Agent or in blank, or credited to another securities account maintained in the name of the Agent, and in no case will any financial asset credited to any such Account be registered in the name of, payable to or to the order of, or endorsed to, the Borrower, except to the extent the foregoing has been subsequently endorsed by the Borrower to the Agent or in blank, and (iv) each asset (including any security or other asset whatsoever) credited to any

Account shall be a financial asset and the right to them shall constitute a security entitlement.

5.8 Transfers from Accounts After a Default

- (a) At any time that a Default or Event of Default has occurred and is continuing, the Agent may not and at the direction of the Required Lenders shall not accept the direction of the Borrower for the transfer or withdrawal of funds or investments in the Accounts.
- (b) At any time that a Default or Event of Default has occurred and is continuing, the Agent may and at the direction of the Required Lenders shall transfer (or cause to be transferred) and apply (or cause to be applied) the then current aggregate outstanding credit balances of the Accounts in the manner and the order prescribed by this Agreement.
- (c) At any time that a Default or Event of Default has occurred and is continuing, the Agent shall thereafter make transfers (or shall cause to be transferred) from the then current outstanding credit balance of the Debt Service Reserve Account only as the Required Lenders shall direct.

5.9 Directions for Withdrawal and Transfer

Notwithstanding Section 12.8, any direction or instruction required or authorized to be given hereunder to the Agent for the withdrawal or transfer of moneys in or to an Account shall be given in writing, by facsimile or other form of written communication signed by an authorized officer of the Borrower, and in any other manner that the Agent may agree to accept (subject to normal and customary verification requirements), in each case from persons designated and identified to the Agent by the Borrower for such purpose (under reasonable procedures and conditions established from time to time by the Agent).

5.10 Investment of Funds in Accounts

- (a) Unless a Default or an Event of Default has occurred and is continuing, the Agent shall invest the funds, cash or cash equivalents credited to each Account (and vary and redeem such investments) in the name of the Agent, as directed by the Borrower; provided that, in each case that the designated investment is a Cash Equivalent. After the occurrence and during the continuance of a Default or Event of Default, investments in Cash Equivalents shall be made solely as directed by the Agent. It is understood and agreed that the Agent and its affiliates are permitted to receive additional compensation from third parties that could be deemed to be in the respective economic self-interest of the Agent for (i) serving as investment adviser, administrator, shareholder servicing agent, custodian or sub-custodian with respect to certain of the investments, (ii) using affiliates to effect transactions in certain investments and (iii) effecting transactions in investments.

- (b) Whenever the Agent is directed or authorized in accordance with the terms hereof to make a transfer of funds from the Accounts, if, after application of all other available funds, liquidation of Cash Equivalents is necessary to make any such transfer, the Agent is authorized to liquidate such Cash Equivalents. The Agent shall liquidate all those Cash Equivalents which can be liquidated without interest costs or penalty before it shall liquidate any Cash Equivalents the liquidation of which would involve an interest cost or penalty. The Agent shall have no liability with respect to any interest cost or penalty on the liquidation of any Cash Equivalents pursuant to this Section 5.10(b).
- (c) The Agent shall have no liability with respect to Cash Equivalents (or any losses resulting therefrom) made at the direction of the Borrower pursuant to clause (a) or (b) of this Section 5.10. All investment of funds in the Accounts shall be made in the name of and on behalf of the Agent and shall be reflected as such on the books and records of the Agent at the expense of the Borrower.
- (d) All references in this Agreement to the Accounts and to cash, Cash Equivalents, monies or funds therein or balances thereof shall include the investments in which such monies are then invested.

5.11 Interest

Any interest or other earnings accrued on any balances in any Account, or on any investment thereof, shall be credited to and accumulated in such Account and thereafter be applied without differentiation from other funds in such Account; provided, however, that in the event that the funds in the Debt Service Reserve Account are not sufficient to meet the required balances in accordance with Section 5.2, then the Agent may transfer (or cause to be transferred) and apply the interest or other earnings accrued in any of the Accounts to such shortfall.

5.12 Borrower Direction

Each time the Borrower requests or directs that a transfer or withdrawal be made from an Account, the Borrower will be deemed to represent and warrant for the benefit of the Secured Parties that such transfer or withdrawal is being made in an amount, and will be applied solely for the purposes permitted by this Article 5.

5.13 Books and Records

The Agent shall maintain all such accounts, books and records as may be necessary properly to record all transactions carried out by it under this Agreement. The Agent shall permit the Borrower and each Lender to examine such accounts, books and records; provided that, any such examination shall occur upon reasonable notice and during normal business hours.

ARTICLE 6
CONDITIONS PRECEDENT

6.1 Conditions Precedent to the Financial Closing

The Borrower agrees to satisfy each of the following conditions precedent to Financial Closing on or before the Financial Closing Date. Financial Closing shall not occur, unless and until the Agent provides written notice to the Borrower and the Lenders (a “**Financial Closing Notice**”) that each of the following conditions precedent to Financial Closing has been satisfied or waived by the Lenders:

- (a) The Agent has received each of the following in form and substance satisfactory to the Secured Parties (in original or, at the Agent’s discretion, pdf, facsimile or other copy):
 - (i) a Certificate of each Obligor (A) attaching true copies of (I) such Obligor’s Constitutional Documents and in addition, in respect of Mitsui the Board Regulations (torishimariyakukai kisoku) (or any equivalent thereof) and (II) documents evidencing all necessary internal corporate and/or other management action taken by such Obligor to authorize the execution, delivery and performance by it of each Secured Document to which it is a party and the consummation of the transactions contemplated thereby and (B) certifying (I) as to incumbency and true signatures of its Responsible Officers signatory to the Loan Documents, (II) no Material Adverse Change has occurred since January 31, 2014, (III) in the case of the Borrower only, each of the representations and warranties under Section 8.1 is true and correct in all material respects (except to the extent any such representation or warranty is already qualified by materiality, in which case it must be true and correct in all respects) as of the Financial Closing Date, and (IV) no Default or Material Adverse Change exists on the Financial Closing Date;
 - (ii) an original certificate of good standing, or equivalent, with respect to each Obligor (other than Mitsui) for its jurisdiction of incorporation and in respect of the Borrower a certified corporate profile report from the Province of Ontario and in respect of Mitsui an original certificate of the commercial registration (rireki jikou zenbu shomeisho) and an original certificate of the seal impression of the registered seal (inkan shomeisho);
 - (iii) each of the Secured Documents to which each Obligor is party duly executed by each party thereto;
 - (iv) the SJIF Intercreditor Agreement duly executed by each party thereto;
 - (v) the Lanxess Subordination Agreement duly executed by each party thereto;
 - (vi) the Sponsors Consent Agreement duly executed by each party thereto;

- (vii) an amendment agreement executed by Luxco, the Borrower and BioAmber relating to the IP License Agreement, in form and substance satisfactory to the Agent (acting on instructions from the Required Lenders);
 - (viii) the Government Funding Agreements duly executed by each party thereto;
 - (ix) all Consents relating to the Material Project Documents listed in Schedule 13 duly executed by each party thereto;
 - (x) [Intentionally deleted];
 - (xi) all documentation and other information for each Obligor, required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations or other checks, including the USA Patriot Act; and
 - (xii) such other agreements, documents and instruments as any of the Agent and the Lenders may, in their judgment, require.
- (b) The Agent and Lenders shall have received a duly completed Costs to Complete Certificate, which, *inter alia*, certifies that there is no Funding Shortfall.
- (c) The sources and uses of funds necessary to achieve Commercial Operation are set out in Schedule 24.
- (d) All registrations, filings or recordings necessary or desirable to preserve, protect or perfect the enforceability and first priority of the Liens created by the Security (subject only to Permitted Liens) shall have been completed, all satisfactory in form and substance to the Agent and the Lenders’ Counsel and in connection therewith, the Agent shall have received evidence satisfactory to it of each such registration, filing or recording and that any registration, filing or recording fees have been paid in full, and all such Security shall be acknowledged and consented to (with appropriate covenants) by contract counterparties and third parties as determined to be necessary by the Agent and the Lenders’ Counsel. Any other actions necessary or desirable to preserve, protect or perfect the enforceability and first priority of the Liens created by the Security (subject only to Permitted Liens) shall have been taken and evidence thereof provided to the Agent.
- (e) The Agent and Lenders shall have received the final report satisfactory to the Lenders, of the Independent Technical Consultant, with respect to technical and commercial viability matters, confirming Project compliance with good engineering and operating practices, the Material Project Documents and the Loan Documents.
- (f) The Agent and the Lenders shall have received the Base Financial Model. The Base Financial Model (including the accuracy of the financial inputs and assumptions), shall be acceptable to the Lenders. The Base Financial Model shall

demonstrate that the underlying economics of the Material Project Documents are able to satisfy at all times on and after the Commercial Operation Date a Debt Service Coverage Ratio equal to or greater than 1.90:1.

- (g) All insurance required to be maintained pursuant to this Agreement including all insurance required to be maintained pursuant to the Material Project Documents, shall be in place and in full force and effect and the Agent shall have received, all in form and substance satisfactory to the Lenders:
 - (i) the Insurance Broker's Certificate attaching true and complete copies of the certificates of insurance evidencing all such insurance;
 - (ii) confirmation and a copy of a waiver of subrogation from the various insurers in favour of the Secured Parties;
 - (iii) evidence of clauses within and/or endorsements to the applicable policies evidencing the applicable insurance establishing the Secured Parties any other additional insured, as applicable, required by the Material Transaction Documents, as additional insureds and for all policies covering real property including any time element insurance and any marine transit insurance, as sole loss payee, accompanied with a satisfactory mortgagee clause and/or provisions; and
 - (iv) all such other evidence as may be required by the Agent and the Lenders, including all such evidence in respect of insurance not placed by the Borrower's insurance broker.

- (h) The Agent shall have received a Certificate of the Borrower, in form and substance satisfactory to the Lenders, certifying that the Borrower has good, valid, marketable and freehold title to the Project Assets not subject to any Lien, other than Permitted Liens, and all Easements, rights of way and other real property rights required for legal access to and from the Project Assets and for the construction and operation of the Project shall be in place and:
 - (i) the Agent shall have received the final and binding commitment of the title insurer, FCT Insurance Company Ltd. and First American Title Insurance Company, to issue a title insurance policy together with endorsements, satisfactory in form and substance to all of the Lenders, insuring the Mortgage as a valid first Lien, together with an undertaking from the Borrower to pay all title insurance premiums thereunder and provide satisfactory evidence of payment of same to the Agent, in each case, within 10 days following registration of the Mortgage;
 - (ii) the Borrower shall have delivered to the Agent an up to date site survey with respect to the Site Lands together with any licence agreements and/or use agreements and such licence agreements and/or use agreements shall be valid and in full force and effect;

- (iii) the Borrower shall have delivered evidence in form and substance satisfactory to the Agent that all Taxes and utilities in respect of the Site Lands, the Project and Project Assets are paid;
- (iv) the Borrower shall have delivered a statutory declaration to the Agent in support of the title insurance policy and with respect to certain Permitted Liens for which compliance responses have not been obtained from the requisite Governmental Authority or other relevant party, along with off-title responses from those Governmental Authorities and public offices that the Agent deems necessary or advisable, acting reasonably;
- (v) the Borrower shall have delivered a receipted copy of a registered Application (General) deleting reference to Instrument No. LA112249 from title to the Site Lands by reason of its expiry; and
- (vi) the Agent shall have received the following registrations:
 - (A) Postponement of Interest by Lanxess Inc. whereby it postpones its interest in Notice of Option to Purchase No. LA112242 in favour of the Mortgage to be registered against title to the Site Lands in favour of the Agent; and
 - (B) Postponement of Interest by Her Majesty the Queen in Right of the Province of Ontario, as Represented by the Ministry of Economic Development and Innovation whereby it postpones its interest in Charge No. LA112243 and Notice of Assignment of Rents-General No. LA112244 in favour of the Mortgage to be registered against title to the Site Lands in favour of the Agent.
- (i) The Lenders shall have completed, to their satisfaction and in their sole discretion, a due diligence investigation of the Project, the Borrower and the Sponsors, such investigation being in scope, and with results, satisfactory to each of the Lenders in all respects and without limiting the generality of the foregoing, technical, financial, environmental and insurance matters, the business and Project Assets of the Borrower, the Material Project Documents and the Base Financial Model, and the Lenders shall have received such technical, financial, environmental, insurance, business and other information regarding the Project and the Obligors as the Lenders or the Independent Technical Consultant shall have requested.
- (j) With respect to each Material Project Document (i) the Borrower shall have delivered to the Agent (A) certified true and complete copies of each such Material Project Document and (B) a certificate of the Borrower in form and substance satisfactory to the Agent (I) certifying that each such Material Project Document is valid and in full force and effect, (II) certifying that no default or dispute exists or adverse notice has been delivered under each such Material Project Document and (III) confirming that all Material Project Documents which are required under the Transaction Documents and/or Applicable Law to be in effect after the Financial Closing Date will be entered and obtained in the normal

course by the applicable date in accordance with the Transaction Documents and/or Applicable Law, and (ii) the Lenders have confirmed to the Borrower they are satisfied with such Material Project Documents in all respects.

- (k) Confirmation from the Lenders that they are satisfied (i) with the form and substance of the Material Project Documents being required to be executed and delivered only as a condition precedent to the first Drawdown (as previously furnished by the Borrower to the Lenders), (ii) all requisite Consents and tripartite agreements with counterparties to such Material Project Documents for the purpose of obtaining the consent of such parties to the Obligors' grant of security (as otherwise specified herein) in its rights and benefits under such Material Project Documents and to provide for such third parties to make all payments payable to the Obligors pursuant to such Material Project Documents directly to the Project Revenue Account and (iii) Intercreditor Agreements, subordination agreements and/or standstill agreements reasonably required by the Lenders.
- (l) (i) With respect to each Project Authorization set out in Part A of Schedule 14 or required under the Transaction Documents and/or Applicable law to be in effect on the Financial Closing Date (A) the Borrower shall have delivered to the Agent (I) certified true and complete copies of each such Project Authorization and (II) a certificate of the Borrower in form and substance satisfactory to the Agent and the Independent Technical Consultant (x) certifying that each such Project Authorization is valid and in full force and effect, and the Borrower is in compliance with each such Project Authorization in all material respects and (B) the Lenders have confirmed to the Borrower they are satisfied with such Project Authorizations in all respects. (ii) With respect to each Future Project Authorization, the Borrower shall have delivered to the Agent a certificate of the Borrower in form and substance satisfactory to the Agent and the Independent Technical Consultant confirming that each Future Project Authorization is expected to be obtained in the normal course by the time it is required under the Transaction Documents and/or Applicable Law. (iii) Evidence that all filing, recordation, subscription and inscription fees and all recording and other similar fees, and all recording, stamp and other taxes and other expenses related to such filings, registrations and recordings necessary for the Project Authorizations have been paid in full (to the extent the obligation to make such payment then exists) by or on behalf of the Borrower.
- (m) [Intentionally deleted].
- (n) The Lenders shall be satisfied that the Project is in conformance with all Environmental Laws.
- (o) Each of the representations and warranties made under Section 8.1 is true, accurate and complete in all material respects (except to the extent any such representation or warranty is already qualified by materiality, in which case it must be true and correct in all respects).
- (p) No Default or Event of Default has occurred and is continuing.

- (q) There shall not exist on the Financial Closing Date any injunction or temporary restraining order which, in the judgment of the Agent and the Lenders, would prohibit the extension of the Loans or the transactions contemplated under any of the Transaction Documents, or any litigation, proceedings or investigations against the Project or any Obligor which would reasonably be expected to result in a Material Adverse Effect and the Agent shall have received a certificate of the Borrower so certifying to the Secured Parties.
- (r) No Material Adverse Change shall have occurred since January 31, 2014.
- (s) A certified copy of the most recent audited financial statements of each of BioAmber and Mitsui and the most recent unaudited financial statements of each of the Borrower and BioAmber Luxco.
- (t) An up-to-date corporate organization chart of the Borrower.
- (u) The following legal opinions, each dated the Financial Closing Date:
 - (i) opinions from the Borrower's Counsel addressed to the Secured Parties and the Lenders' Counsel, in respect of the laws of such applicable jurisdictions, the Secured Documents, and as to such matters and in such form as the Agent (acting on the advice of Lenders' Counsel) may reasonably require, including that no authorizations are required to enable each Obligor to execute, deliver, incur and perform its obligations under each Secured Document to which it is a party and to incur the obligations and consummate the transactions contemplated thereby;
 - (ii) if requested by the Agent, opinions from counsel to the counterparties to the Material Project Documents addressed to the Secured Parties and the Lenders' Counsel as to such matters and in such form as the Agent (acting on the advice of Lenders' Counsel) may reasonably require; and
 - (iii) opinions from Lenders' Counsel addressed to the Secured Parties relating to such matters as the Secured Parties may reasonably require.
- (v) The Agent and Lenders shall have received a final report, in form and substance satisfactory to the Agent and Lenders, of the Lenders' Counsel, with respect to certain legal matters.
- (w) The Borrower shall have paid (or made arrangements satisfactory to the Agent) to pay to the Agents and the Lenders all fees and expenses (including, reasonable and documented fees of Lenders' Counsel and fees and expenses of the Independent Technical Consultant required to be paid on or before the Financial Closing Date.
- (x) The Lenders shall be satisfied with the third party contractors party to the Material Project Documents.

- (y) A Certificate of the Borrower, in form and substance satisfactory to the Lenders, dated the Financial Closing Date addressed to the Agent and the Lenders certifying certain matters set out in this Section 6.1 and confirming that each of the conditions precedent set out in this Section 6.1 have been satisfied or waived.

6.2 Conditions Precedent to First Drawdown

The Lenders shall not be obliged to make or allow, and the Borrower shall not be entitled to request or receive the first Drawdown unless the conditions precedent set out below in respect of such first Drawdown have been and remain satisfied (or waived by the Required Lenders to permit such first Drawdown to take place):

- (a) The conditions precedent set forth in Sections 6.1 and 6.3 have been satisfied or waived.
- (b) The Agent and the Lenders shall be satisfied that (i) each of the Project Revenue Account has been established, (ii) the Cost Overrun Account has been established and is fully funded in cash with the required Cost Overrun Reserve Requirement and (iii) the Maintenance Reserve Account has been established.
- (c) (i) The Sponsors Contributions shall have been made in their entirety and the proceeds of the Sponsors Contributions shall have been either (A) spent to fund Project Costs in accordance with the Base Financial Model or (B) deposited into and standing to the credit of the Project Revenue Account. (ii) The Agent shall have received a written report from the Borrower with respect to the matters set out in Clause (i) above in form and substance satisfactory to the Lenders and verified and certified by the Independent Technical Consultant.
- (d) (i) All Government Funds have been received by the Borrower and shall have been either (A) spent to fund Project Costs in accordance with the Base Financial Model or (B) deposited into and standing to the credit of the Project Revenue Account. (ii) The Agent shall have received a written report from the Borrower with respect to the matters set out in Clause (i) above in form and substance satisfactory to the Lenders and verified and certified by the Independent Technical Consultant.
- (e) In the event that, prior to the first Drawdown there exists a Funding Shortfall, then, immediately prior to any request for such Drawdown, the Borrower shall have caused such Funding Shortfall to be cured solely with the proceeds of additional capital contributions from the Sponsors, such cure to be deemed effected by a deposit into the Project Revenue Account of an amount equal to or greater than the amount of such Funding Shortfall and any such monies so deposited shall be deployed pursuant to Section 5.6.2 prior to the first Drawdown being disbursed.
- (f) The Agent has received certified true copies of the Feed Stock Supply Agreements duly executed by each party thereto, each in form and substance satisfactory to the Required Lenders, together with certified true copies of the

Consents in respect of such Feed Stock Supply Agreements duly executed by each party thereto, each in form and substance satisfactory to the Required Lenders.

- (g) Satisfactory appraisal of the Plant to be completed by the Independent Technical Consultant. Estimated sale value as an operating facility to be a minimum of \$25,000,000 prior to first Drawdown.
- (h) The Agent shall have received the results of searches of public record by the Borrower's Counsel under Applicable Laws of such jurisdictions which the Agent deems appropriate, relating to Lien filings and registrations which may have been made with respect to the Borrower and the Project Assets and the results of such searches shall be as current to the date of the first Drawdown as reasonably practicable (other than the updated subsearch of title and executions, which must be current to the date of the first Drawdown) and shall reveal no Liens other than Permitted Liens and Liens for which releases and discharges are referred to in Section 6.2(i), together with a clear Execution Certificate against the Borrower and evidence of payment of realty taxes in full as of the first Drawdown.
- (i) The Agent shall have received evidence, in form and substance satisfactory to all of the Lenders, that concurrently with the making of the first Drawdown hereunder, it shall receive releases and discharges, registered or filed, as the case may be, with respect to all Liens, other than Permitted Liens, affecting the Borrower or the Project Assets, duly executed by all persons who benefit from such Liens or have been granted security on the Project Assets.
- (j) A certificate from the Borrower, in form and substance satisfactory to the Lenders, dated the date of the first Drawdown addressed to the Agent and the Lenders certifying certain matters set out in this Section 6.2 and confirming that each of the conditions precedent set out in this Section 6.2 have been satisfied or waived.

6.3 Conditions Precedent to Each Disbursement of Loans

The Lenders shall not be obliged to make or allow, and the Borrower shall not be entitled to request or receive any Drawdown unless the conditions precedent set out below in respect of such Drawdown have been and remain satisfied (or waived by the Required Lenders to permit such Drawdown to take place):

- (a) The conditions precedent set out in Sections 6.1 and 6.2 have been satisfied or waived.
- (b) The Agent has received a duly completed Drawdown Request for such Drawdown complying with the applicable provisions of Article 2 together with a duly completed Drawdown Certificate and Costs to Complete Certificate each bearing the same date as the Drawdown Request.
- (c) Each of the representations and warranties under Section 8.1 and set out in each of the other Secured Documents is true and correct in all material respects (except

to the extent any such representation or warranty is already qualified by materiality, in which case it must be true and correct in all respects) as of the date such Drawdown is requested and as of the proposed Drawdown Date as though made on and as of each such date.

- (d) No Default or Event of Default or Material Adverse Change has occurred that is continuing on the date such Drawdown is requested or on the proposed Drawdown Date, nor would any Default or Event of Default or Material Adverse Change result after giving effect to the requested Drawdown.
- (e) In the event that, subsequent to the Initial Drawdown Date there exists a Funding Shortfall, then, immediately prior to any request for such a Drawdown, the Borrower shall have caused such Funding Shortfall to be cured either with (i) the proceeds of additional capital contributions from the Sponsors or (ii) proceeds transferred from the Cost Overrun Account, such cure to be deemed effected by a deposit into the Project Revenue Account of an amount equal to or greater than the amount of such Funding Shortfall and any such monies so deposited shall be deployed pursuant to Section 5.6.2 prior to such Drawdown being disbursed.
- (f) The Borrower shall have delivered to the Agent and the Independent Technical Consultant a Costs to Complete Certificate, bearing the same date as the Drawdown Request, certifying, *inter alia*, that no Funding Shortfall exists.
- (g) The Lenders and the Independent Technical Consultant shall have had the opportunity to physically inspect the Project if requested by the Lenders and/or the Independent Technical Consultant.
- (h) With respect to each Material Project Document (i) the Borrower shall have delivered to the Agent (A) without duplication of any item already received hereunder, certified true and complete copies of each such Material Project Document and (B) a certificate of the Borrower in form and substance satisfactory to the Agent and the Independent Technical Consultant (I) certifying that each such Material Project Document is valid and in full force and effect, (II) certifying that no default or dispute exists or adverse notice has been delivered under each such Material Project Document and (III) confirming that all Material Project Documents which are required under the Transaction Documents to be in effect after the date of the applicable Drawdown will be entered and obtained in the normal course by the applicable date in accordance with the Transaction Documents and/or Applicable Law, and (ii) the Lenders have confirmed to the Borrower they are satisfied with such Material Project Documents in all respects.
- (i) (i) With respect to each Project Authorization set out in Part A of Schedule 14 or required under the Transaction Documents and/or Applicable law to then be in effect (A) the Borrower shall have delivered to the Agent (I) without duplication of any item already received hereunder, certified true and complete copies of each such Project Authorization and (II) a certificate of the Borrower in form and substance satisfactory to the Agent and the Independent Technical Consultant certifying that each such Project Authorization is valid and in full force and effect

and the Borrower is in compliance with each such Project Authorization in all material respects and (B) the Lenders have confirmed to the Borrower they are satisfied with such Project Authorizations in all respects. (ii) With respect to each Future Project Authorization, the Borrower shall have delivered to the Agent a certificate of the Borrower in form and substance satisfactory to the Agent and the Independent Technical Consultant confirming that each Future Project Authorization is expected to be obtained in the normal course by the time it is required under the Transaction Documents and/or Applicable Law. (iii) Evidence that all filing, recordation, subscription and inscription fees and all recording and other similar fees, and all recording, stamp and other taxes and other expenses related to such filings, registrations and recordings necessary for the Project Authorizations have been paid in full (to the extent the obligation to make such payment then exists) by or on behalf of the Borrower.

- (j) The Drawdown Certificate shall be in form and substance satisfactory to the Lenders, and shall certify and confirm the matters stated therein, including the following:
 - (i) a summary of the Project Costs incurred or to be incurred by the Borrower which will be funded (within thirty (30) days) from proceeds of the Drawdown Request, including, identification of the holdback amounts required under the *Construction Lien Act* (Ontario) for such Project Costs;
 - (ii) identification of any holdback amount which, pursuant to Applicable Law, may be released and paid to the applicable contractors or subcontractors;
 - (iii) confirmation that any holdback amounts required under Applicable Law or under Material Project Contracts to be held back by the Borrower have in fact been held back by the Borrower;
 - (iv) confirmation that the full amount of the immediately preceding Drawdown (if any) received by the Borrower has been applied in respect of payment of Project Costs; and
 - (v) a search report and title subsearch indicating that no Liens or encumbrances (other than customary Permitted Liens) have been registered against the Project Assets, the Collateral or the Site Lands forming part of the Borrower's assets, except where any such Liens have been vacated or discharged.

- (k) The Independent Technical Consultant will review each Drawdown Certificate and each Costs to Complete Certificate and as a condition to the Drawdown relating to such Drawdown Certificate and Costs to Complete Certificate, deliver a Certificate of the Independent Technical Consultant to the Agent, in form and substance satisfactory to the Agent, certifying the matters addressed therein based on its periodic review of the progress of construction of the Project (including site visits and documentation furnished to the Independent Technical Consultant by the Borrower and the Contractor to support milestone payments).

- (l) (i) Each Drawdown Request, Drawdown Certificate and Costs to Complete Certificate shall be provided to the Agent and the Independent Technical Consultant at least five (5) Business Days prior to the requested Drawdown date and the Agent shall provide a copy of such Drawdown Request, Drawdown Certificate and Costs to Complete Certificate to each Lender at least three (3) Business Days' prior to the requested date for Drawdown under the applicable Drawdown Request. (ii) On or before 12:00 noon on the Business Day after the Drawdown Certificate and Costs to Complete Certificate has been provided, the Independent Technical Consultant will confirm that it has received the Drawdown Certificate and Costs to Complete Certificate in the absence of such confirmation, the Borrower will notify the Agent and they will both use reasonable efforts to contact the Independent Technical Consultant to attempt to obtain confirmation of receipt of the Drawdown Certificate and Costs to Complete Certificate by the Independent Technical Consultant. (iii) The Independent Technical Consultant will advise the Borrower and the Agent on or before 12:00 noon on the second Business Day following receipt of the Drawdown Certificate and Costs to Complete Certificate, if such Drawdown Certificate and Costs to Complete Certificate, including all supporting documentation reasonably requested by the Independent Technical Consultant, is complete, and, if not, what is missing from such Drawdown Certificate and Costs to Complete Certificate. (iv) On or before 12:00 noon on the third Business Day following receipt of the Drawdown Certificate and Costs to Complete Certificate, the Independent Technical Consultant will, if pursuant to clause (iii) above, it has advised the Lenders that the documents referred to therein are complete, advise the Agent and the Borrower of its opinion as to whether the requirements of Section 6.3(k) have been met; and if such conditions have not been met it will provide reasonable details of such deficiencies and of the basis for its determination.
- (m) No Liens have been registered in accordance with the *Construction Lien Act* (Ontario) against any of the Project Assets, the Real Property Interests, the Collateral or the Site Lands forming part of the Borrower's assets by any person who is a contractor or supplier of equipment, property or services in connection with the construction of the Project, which have not been discharged or vacated nor has the Borrower received notice of a claim for lien in accordance with the *Construction Lien Act* (Ontario) against any of the Project Assets, the Collateral or the Site Lands forming part of the Borrower's assets.
- (n) All registrations, filings or recordings necessary or desirable to preserve, protect or perfect the enforceability and first priority of the Liens created by the Security (subject only to Permitted Liens) shall have been completed and remain in effect.
- (o) The Agent shall have received an opinion of the Borrower's Counsel of a time and date satisfactory to the Lenders (including updated searches) confirming continued registration of the Security, that no Liens, other than Permitted Liens, are registered against or charge the Project Assets, the Collateral or the Site Lands, that there are no executions filed against the Borrower in the jurisdiction where the Site Lands are located, that all realty taxes have been fully paid to the

due date and confirming that any information required in order for the title insurer, FCT Insurance Company Ltd. and First American Title Insurance Company, to move the date of the title insurance policy forward has been delivered to FCT Insurance Company Ltd. and First American Title Insurance Company.

- (p) Arrangements satisfactory to the Agent have been made to ensure that (i) all fees then due and owing to the Agent and the Lenders under or in connection with any Loan Document have been or will contemporaneously with the Drawdown be paid in full and (ii) all reasonable out-of-pocket fees, costs and expenses incurred by the Agent and the Lenders (including those payable to the Lenders' Counsel and the Independent Technical Consultant and) reimbursable hereunder have been or will contemporaneously with the Drawdown.
- (q) Each of the other terms and conditions applicable to such Drawdown contained in this Agreement shall have been fully complied with in all material respects.
- (r) A Certificate of the Borrower, in form and substance satisfactory to the Lenders, dated the date of the Drawdown Request addressed to the Agent and the Lenders certifying certain matters set out in this Section 6.3 and confirming that each of the conditions precedent set out in this Section 6.3 have been satisfied or waived.

6.4 Conditions Precedent to Commercial Operation

The Borrower agrees to satisfy each of the following conditions precedent to Commercial Operation on or before the Commercial Operation Date. Commercial Operation shall not occur unless and until the Agent provides written notice to the Borrower and the Lenders (a "**Commercial Operation Notice**") that each of the following conditions precedent to Commercial Operation has been satisfied or waived by the Lenders:

- (a) The conditions precedent set out in Sections 6.1 and 6.2 have been satisfied or waived.
- (b) The Completion Tests have been successfully achieved and the receipt by the Lenders of a Certificate of the Independent Technical Consultant confirming the Independent Technical Consultant's satisfaction with the achievement of the Completion Tests.
- (c) The Completion Certificates have been delivered to the Agent and the Independent Technical Consultant in the manner set forth in Schedule 18 and confirmed by the Independent Technical Consultant and approved and accepted by all the Lenders.
- (d) The successful completion of the design, development, construction, commissioning, start-up and operation of the Project under and in compliance in all material respects with all of the Material Project Documents, and in accordance with Applicable Law and good industry practices, as certified by the Independent Technical Consultant.

- (e) The Consultant (as defined in the Construction Management & Procurement Agreement) has certified that Contractor's application for final payment is valid and the Consultant has issued a final certificate for payment in accordance with clause 5.8.3 of the Construction Management & Procurement Agreement.
- (f) The Borrower shall have delivered to the Agent an updated Base Financial Model (reflecting the results of the Completion Tests) reviewed and approved by the Lenders and demonstrating compliance with the Debt Service Coverage Ratio equal to or greater than 1.90:1. The updated Base Financial Model shall be adjusted for any performance shortfalls as demonstrated by the applicable performance test results, and the actual annualized operating expenses incurred, including the updated estimate for all Taxes, if any, and forecasted major maintenance requirements which will be based on that actual operating availability through the commissioning period as confirmed by the Independent Technical Consultant.
- (g) All Project Costs have been paid in full and the Project and Project Assets shall be free and clear of any Lien, other than Permitted Liens.
- (h) The Borrower shall have delivered to the Agent a Certificate of the Borrower in form and substance satisfactory to the Agent and the Independent Technical Consultant certifying that (i) each Material Project Document is valid and in full force and effect and (ii) no default or dispute exists or adverse notice has been delivered under any Material Project Document.
- (i) (i) All Project Authorisations necessary or required, whether set out in Schedule 14 or under the Transaction Documents or Applicable Law, to permit the Project to commence operation and for the continuous operation of the Project, have been obtained, (ii) the Borrower shall have delivered to the Agent (A) without duplication of any item already received hereunder, certified true and complete copies of each such Project Authorization and (B) a certificate of the Borrower in form and substance satisfactory to the Agent and the Independent Technical Consultant certifying that each such Project Authorization has been obtained and is valid and in full force and effect and the Borrower is in compliance with each such Project Authorization in all material respects and (iii) the Lenders have confirmed to the Borrower they are satisfied with such Project Authorizations in all respects. The Borrower shall have provided to the Agent evidence that all filing, recordation, subscription and inscription fees and all recording and other similar fees, and all recording, stamp and other taxes and other expenses related to such filings, registrations and recordings necessary for the Project Authorizations have been paid in full (to the extent the obligation to make such payment then exists) by or on behalf of the Borrower.
- (j) No Material Adverse Change has occurred.
- (k) No Default or Event of Default has occurred and is continuing at the Commercial Operation Date.

- (l) Each of the representations and warranties made under Section 8.1 and set out in each of the other Secured Documents is true, accurate and complete in all material respects (except to the extent any such representation or warranty is already qualified by materiality, in which case it must be true and correct in all respects).
- (m) Arrangements satisfactory to the Required Lenders are in effect to ensure that all Project revenues are directly deposited into the Project Revenue Account.
- (n) The Debt Service Reserve Account has been fully funded in the amount of the Debt Service Reserve Requirement.
- (o) A Certificate of the Borrower, in form and substance satisfactory to the Lenders, attesting, *inter alia*:
 - (i) Cost Overruns, if any;
 - (ii) that the Project has been constructed in accordance with Project plans and good industry practice;
 - (iii) all Project Costs have been paid or, if not paid, sufficient funds have been set aside for the payment of such Project Costs in the Project Revenue Account;
 - (iv) the Project is serviced with all utilities necessary to permit the Project to operate in the manner contemplated by the Material Project Documents and the Base Financial Model; and
 - (v) the Borrower has not received notice of any claims asserted by any party against the Borrower which remain unresolved and which could reasonably be expected to have a Material Adverse Effect and no such claims have been threatened,

and shall be accompanied with all such supporting documentation and information as will permit the Lenders and the Independent Technical Consultant, in their judgement, to verify the information and calculations given and made in such certificate.

- (p) A Certificate of the Independent Technical Consultant, in form and substance satisfactory to the Lenders, certifying, *inter alia*, that (i) the Completion Tests have been successfully achieved and (ii) providing its opinion that Commercial Operation has been achieved.
- (q) The Agent shall have received satisfactory subsearch and execution search reports of the Borrower's Counsel addressed, *inter alia*, to the Lenders, the Agent and the Lenders' Counsel which shall indicate, among other things, that since the effective date of the most recent title subsearch report delivered hereunder no Liens other than Permitted Liens have been registered against the Project Assets, the Collateral or the Site Lands, confirming continued registration of the Security

along with written confirmation or such other evidence, in form and substance satisfactory to the Lenders, that all realty taxes have been fully paid to the due date therefor as well as confirming that any information required in order for the title insurer, FCT Insurance Company Ltd. and First American Title Insurance Company, to move the date of the title insurance policy forward has been delivered to FCT Insurance Company Ltd. and First American Title Insurance Company.

- (r) Evidence that all contractors and subcontractors and other persons working on the construction or towards the Completion of the Project have been paid in all amounts owing to them other than Punch List Items have been paid in full.
- (s) All insurance required to be maintained pursuant to this Agreement including all insurance required to be maintained pursuant to the Material Project Documents shall be in place and in full force and effect and the Agent shall have received, all in form and substance satisfactory to the Agent:
 - (i) the Insurance Broker's Certificate attaching true and complete copies of the certificates of insurance evidencing all such insurance;
 - (ii) confirmation and a copy of a waiver of subrogation from the various insurers in favour of the Secured Parties;
 - (iii) evidence of clauses within and/or endorsements to the applicable policies evidencing the applicable insurance establishing the Secured Parties and any other additional insured, as applicable, required by this Agreement and other Material Project Documents, as additional insureds and for all policies covering real property including any time element insurance and any marine transit insurance, as sole loss payee, accompanied with a satisfactory mortgagee clause and/or provisions; and
 - (iv) all such other evidence as may be required by the Secured Parties, acting reasonably, including all such evidence in respect of insurance not placed by the Borrower's insurance broker.
- (t) Evidence satisfactory to the Lenders that all work on the Project requiring inspection as of such date by any Governmental Authority having jurisdiction has been duly inspected and approved by such authorities and that any certificates or notices required to be issued in connection (including occupancy permits) therewith have been issued by such Governmental Authorities, that all parties performing such work have been or will be paid for such work and that no Liens or application therefor have been filed.
- (u) The Permitted Liens are complied with and the Borrower has not received notice that it or the Project, the Site Lands or Project Assets are in breach of the Permitted Liens, and the Agent shall have received a certificate of a Responsible Officer of the Borrower, in form and substance satisfactory to the Secured Parties, certifying the foregoing.

- (v) Without duplication of any item already received hereunder, a certified true copy of Material Project Documents listed in Schedule 11 and evidence that each such Material Project Document is in full force and effect (which contracts are certified by the Borrower as being in material conformity with the description of such Material Project Document Schedule 11 and if prior drafts of same were provided to the Secured Parties, they are in material conformity with such drafts) and any of the Secured Parties unresolved comments thereon have been resolved to the satisfaction of the Secured Parties, acting reasonably.
- (w) All Consents in respect of Material Project Documents required by the Agent have been obtained in form and substance satisfactory to the Agent and without duplication of any item already received hereunder, a certified true copy of each such Consent shall have been delivered to the Agent.
- (x) Without duplication of any item already received hereunder, the Agent and the Lenders shall have received payment of all fees which each of them is entitled to receive on or prior to the Commercial Operation Date under any agreement with the Borrower entered into in connection herewith, including any Secured Document, together with reimbursement of all expenses and costs (including reasonable fees, costs and expenses of Lenders' Counsel and the Independent Technical Consultant) which the Lenders and/or the Agent have incurred up to and on the Commercial Operation Date in connection with this Agreement and the other Secured Documents and the transactions contemplated thereunder.
- (y) Without duplication of any item already received hereunder, the Agent shall have received a certificate of compliance issued by the Workplace Safety and Insurance Board certifying compliance with the *Workplace Safety and Insurance Act* (Ontario) including payments due, if any, thereunder.
- (z) Evidence all of the Material Project Documents (or any permitted replacement thereof) set out in Schedule 11 in accordance herewith continue to be in full force and effect (except where fully performed in accordance with the terms thereof) and no default has occurred and is continuing, dispute under any such other Material Project Document (or any permitted replacement thereof) which could reasonably be expected to have a Material Adverse Effect.
- (aa) No Liens have been registered in accordance with the *Construction Lien Act* (Ontario) against any of the Project Assets, the Real Property Interests, the Collateral or the Site Lands forming part of the Borrower's assets by any person who is a contractor or supplier of equipment, property or services in connection with the construction of the Project, which have not been discharged or vacated nor has the Borrower received notice of a claim for lien in accordance with the *Construction Lien Act* (Ontario) against any of the Project Assets, the Collateral or the Site Lands forming part of the Borrower's assets.
- (bb) The Agent and the Lenders shall be satisfied that the Punch List Reserve Sub-Account has been established and is fully funded in cash with the required Punch List Amount.

- (cc) A Certificate of the Borrower, in form and substance satisfactory to the Lenders, dated the Commercial Operation Date addressed to the Agent and the Lenders certifying certain matters set out in this Section 6.4 and confirming that each of the conditions precedent set out in this Section 6.4 have been satisfied or waived.

6.5 Conditions Precedent to Proof of Capacity

The Borrower agrees to satisfy each of the following conditions precedent to Proof of Capacity on or before the Proof of Capacity Date. Proof of Capacity shall not occur unless and until the Agent provides written notice to the Borrower and the Lenders (a “**Proof of Capacity Notice**”) that each of the following conditions precedent to Proof of Capacity has been satisfied or waived by the Lenders

- (a) The conditions precedent set out in Sections 6.1, 6.2 and 6.4 have been satisfied or waived.
- (b) The Proof of Capacity Certificate has been delivered to the Agent and the Lenders and approved and accepted by all the Lenders.

ARTICLE 7 SECURITY

7.1 Security

As continuing collateral security for the payment and performance of the Secured Obligations, there shall be executed and delivered to the Agent the documents listed on Schedule 12, each of which documents shall be in form and substance satisfactory to the Secured Parties.

7.2 Continued Perfection of Security

The Borrower shall take such action and execute and deliver to the Agent such agreements, conveyances, deeds and other documents and instruments as the Agent shall reasonably request for the purpose of establishing, perfecting, preserving and protecting the Security and the Liens of the Security, in each case promptly upon request therefor by the Agent and in form and substance satisfactory to the Secured Parties acting reasonably.

7.3 Registration

Unless the Agent notifies the Borrower otherwise, the Borrower shall cause the Borrower’s Counsel and their respective agents to register the Security (or a financing statement, notice or other document in respect thereof) on behalf of the Agent in all offices where (a) such registration is necessary to create, preserve, protect and perfect the Security and its validity, effect, priority and perfection at all times, including any land registry or land titles office and/or (b) the Agent or the Lenders’ Counsel specifically requests.

7.4 Extensions, Etc.

The Secured Parties may grant extensions, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Borrower or any other persons, sureties or securities as the Secured Parties, in their sole discretion, may see fit, all without prejudice to the liability of the Borrower under the Secured Documents or the rights of the Secured Parties or the Agent under the Secured Documents.

7.5 Security Effective Notwithstanding Date of Loan

The Liens constituted by any of the Security or required to be created hereby or thereby shall be effective, and the undertakings as to Liens herein or in any other Loan Document shall be continuing, whether the monies and other credit hereby or thereby secured or any part thereof shall be advanced before or after or at the same time as the creation of any such Liens or before or after or upon the date of execution of this Agreement, and shall not be affected by the Secured Obligations fluctuating from time to time or the accounts established by the Agent ceasing to be in debit balance.

7.6 No Merger

The taking of any Liens as provided under this Agreement or any other Secured Document shall not operate by way of merger of any of the obligations of the Borrower or any successor of the Borrower under this Agreement or any other Secured Document, or of any Lien, guarantee, indemnity, contract, promissory note, bill of exchange or security in any other form, whether or not similar to the foregoing, and no judgment recovered by the Secured Parties shall operate by way of merger or in any way affect the Liens provided for in this Agreement and the other Secured Documents, which shall be in addition to and not in substitution for any other security now or hereafter held by the Secured Parties whether for Secured Obligations hereunder or under any other Secured Document. For greater certainty, no judgment recovered by the Secured Parties shall operate by way of merger or in any way affect the obligation of the Borrower to pay interest, fees and other amounts at the rates, times and manner as provided in this Agreement.

7.7 Survival of Security

The Borrower and the Agent hereby acknowledge and agree that, notwithstanding the repayment of the Loan Facility, none of the Liens created pursuant to the Security shall be released until all the Borrower's Secured Obligations have been irrevocably and unconditionally paid in full provided that the Agent shall at the sole cost and expense of the Borrower and without recourse to or any representation or warranty of any kind by the Agent release the Sponsors Security Documents as soon as practicable after the Commercial Operation Date.

7.8 Lien Matters

If a Lien is registered against any of the Project Assets and is not discharged within ten (10) Business Days thereafter, the Secured Parties (directly or through the Agent) shall be entitled, in their sole discretion, to pay into court the amount required to effect removal of such Lien out of the Project Revenue Account or, if such account has not been funded, as an

Drawdown and the amount so paid (or, if such payment is made in a currency other than Dollars, the Equivalent Amount in Dollars) shall be treated in like manner as amounts paid by the Agent under Section 9.5.

7.9 Security Further Assurances

The Borrower shall, forthwith and from time to time on request from the Agent, execute or cause to be executed, all such documents (including any change to any Secured Document) and do or cause to be done all such other matters and things which in the reasonable opinion of the Agent or the Lenders' Counsel may be necessary or of advantage to give the Secured Parties (so far as may be possible under any Applicable Law) the Liens and priority intended to be created by the Secured Documents or, upon the occurrence and during the continuation of an Event of Default, to facilitate realization under such Liens. It is the intention of the parties that the Secured Parties will, among other things, have (a) a first priority Lien, subject to Permitted Liens, over all assets of the Borrower comprised of personal property and real property, (b) a first priority Lien, subject only to Permitted Liens referred to in paragraph (a) of Section 9.4.8, over all Capital Stock of the Borrower owned (directly or indirectly) by each Sponsor Shareholder and (c) such other Liens over the assets of the Borrower that are consistent with the Liens described in Clauses (a) and (b) above as the Required Lenders may from time to time reasonably require.

7.10 Termination of Sponsor Guarantees

On and after the Proof of Capacity Date, the Agent shall promptly (and the Required Lenders hereby authorize the Agent to) take such action and execute any such documents as may be reasonably requested by the Borrower and at the Borrower's expense to terminate each Guarantor's obligations under its Sponsor Guarantee provided that: (a) no Default or Event of Default is continuing or would result from the termination of the Sponsor Guarantees and (b) no payment is due from the Guarantors under either of the Sponsor Guarantees.

ARTICLE 8 REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of the Borrower

To induce the Lenders and the Agent to enter into this Agreement and to induce the Secured Parties to extend credit hereunder and under the other Loan Documents, the Borrower hereby represents and warrants for and on its own behalf and on behalf of each other Obligor to the Secured Parties, as follows and acknowledges and confirms that the Secured Parties are relying upon such representations and warranties in entering into this Agreement and in extending credit hereunder and under the other Loan Documents:

8.1.1 *Existence and Good Standing.*□ The Borrower has been incorporated and is existing under the *Canada Business Corporations Act*. Each Sponsor is a corporation duly and validly incorporated or formed, organized and existing under the laws of its jurisdiction of incorporation or formation. Each Obligor has the legal capacity and right to own its assets and to carry on its business in each jurisdiction in which its assets are located or it carries on business excluding jurisdictions (other than the Province of Ontario) in which the failure to have such

legal capacity would not have or be reasonably likely to have a Material Adverse Effect. The Borrower has all requisite capacity (corporate or otherwise), power and authority to own, hold under licence or lease its assets, including the Project Assets, to develop, construct, own and operate the Project, to carry on the business of the Project and to otherwise enter into, and carry out the transactions contemplated by, the Transaction Documents to which it is a party. Each Sponsor has all requisite capacity (corporate or otherwise), power and authority to own, hold under licence or lease its assets, to carry on its business and to otherwise enter into, and carry out the transactions contemplated by, the Transaction Documents to which it is a party.

8.1.2 *Authority* □ Each Obligor has the legal capacity and right to enter into each Transaction Document to which it is a party and do all acts and things and execute and deliver all documents as are required thereunder to be done, observed or performed by it in accordance with the terms and conditions thereof.

8.1.3 *Due Authorization* □ Each Obligor has taken all necessary action to authorize the execution and delivery of each Transaction Document to which it is a party, the creation and performance of its obligations thereunder and the creation of the Liens over its assets and the consummation of the transactions contemplated thereby.

8.1.4 *Due Execution* □ Each Obligor has duly executed and delivered each Transaction Document to which it is a party.

8.1.5 *Validity of Transaction Documents - Non-Conflict* □ None of the authorization, execution, delivery or performance of the Transaction Documents to which it is a party, nor the creation of any Liens over the assets of any Obligor nor the consummation of any of the transactions contemplated thereby (a) requires any Authorization to be obtained or registration to be made (except such as have already been obtained or made and are now in full force and effect and each Obligor is in compliance with the requirements of all such Authorizations and no event has occurred, and no state or condition exists, which could reasonably be expected to result in the revocation, cancellation, suspension or any adverse modification of any such Authorizations), (b) conflicts with, contravenes or gives rise to any default under (i) any of the Constitutional Documents or internal corporate, partnership, trust and/or other management resolutions of any Obligor, (ii) the provisions of any indenture, instrument, agreement or undertaking to which any Obligor is a party or by which any Obligor or any of its assets is or may become bound the consequences of which could be material or affect the legality, validity, effect, perfection or priority of the Security or (iii) any Applicable Law or (c) has resulted or will result in the creation or imposition of any Lien (other than Permitted Liens) upon any of the Collateral except as contemplated herein.

8.1.6 *Enforceability* □ Each Transaction Document to which each Obligor is a party constitutes a valid and legally binding obligation enforceable against it in accordance with its terms, subject only to bankruptcy, insolvency, winding-up, dissolution, administration reorganization, arrangement or other statutes or judicial decisions affecting the enforcement of creditors' rights in general and to general principles of equity under which specific performance and injunctive relief may be refused by a court in its discretion.

8.1.7 *Absence of proceeding* □ There is no existing, pending or, to its knowledge, threatened proceeding against any Obligor or its respective assets, including the Project Assets or

the Project, which, if adversely determined to any Obligor or the Secured Parties, could reasonably be expected to result in a Material Adverse Effect or, except for any proceeding notified to the Agent pursuant to Section 9.1, could reasonably be expected to result in any one or more judgments, orders or awards ordering any Obligor to pay more than the Threshold Amount. No event has occurred, and no state or condition exists, which could reasonably be expected to give rise to any such proceeding, except for the subject matter of any proceeding notified to the Agent pursuant to Section 9.1, and there is no judgment, order or award outstanding against any Obligor, the Project or the Project Assets which could reasonably be expected to have a Material Adverse Effect.

8.1.8 *Financial Statements* □ Each financial report and financial statement of each Obligor delivered to the Lenders pursuant to or in connection with this Agreement have been prepared in accordance with Applicable Accounting Principles (subject to year-end audit adjustments and the absence of notes, where applicable), does not contain (or, if audited, would not contain) any Impermissible Qualification and fairly and accurately presents in all material respects the financial information and the financial condition and results of operations of such person contained therein as at their respective preparation dates. Except to the extent fully disclosed or reserved against in accordance with Applicable Accounting Principles in the financial statements delivered to the Lenders pursuant to this Agreement, as of the date of such financial statements, no Obligor has any outstanding liabilities or obligations (whether accrued, absolute, contingent or otherwise) of any material nature.

8.1.9 *Base Financial Model* □

- (a) The most recent Base Financial Model delivered to the Lenders has been prepared in accordance and compliance with the requirements of this Agreement. The statements of opinion or belief, projections and forecasts in the Base Financial Model, and the assumptions on which they are based and the values given to those assumptions, were arrived at in good faith by the Borrower, after due and careful consideration and enquiry and based on reasonable grounds consistent with the proposal submitted by or on behalf of the Borrower to the Lenders in respect of the Project, and were fair and reasonable in the circumstances prevailing at the time of preparation.
- (b) No Obligor is aware of any fact, event or circumstance the inclusion or omission of which makes or would be reasonably expected to make the Base Financial Model inaccurate or misleading in any material respect.
- (c) The Base Financial Model takes into account all the provisions of the Transaction Documents and contains the Borrower's reasonable estimate of the projected receipts and expenditures and costs required to achieve Commercial Operation.
- (d) To the best of the Borrower's knowledge and belief, there are no errors in the Base Financial Model which would materially adversely affect the estimate operating results and cash flows set out in the Base Financial Model.

8.1.10 *Material Project Documents* □ The Material Project Documents represent all of the agreements and documents material and necessary to own, design, develop, construct,

commission, start-up, operate, maintain and carry out the Project and to fully perform all obligations of each of the Major Project Parties under the Material Project Documents (other than financing the Project), including, the construction of the Plant; there are no other agreements or documents in existence which replace or relate to any Material Project Documents which would materially affect the interpretation or application of, or which waive or release any rights or obligations under, any such Material Project Documents and, upon the execution and delivery of enforceable Consents that are contemplated hereunder, there are no provisions within the corresponding Material Project Documents restricting assignment thereof to the Agent. Each of the Material Project Documents is in full force and effect, and except as disclosed to the Agent, no written notice or claim of a default or breach thereunder, or of the occurrence of any condition entitling any party to terminate its obligations thereunder, has been delivered to any of the Major Project Parties. Except as disclosed to the Agent, no default or event which, with the passing of time or the giving of notice (or both) or a determination being made under the relevant provision would constitute an event of default on the part of any Major Project Party exists under any of the Material Project Documents. Except as disclosed to the Agent, to the best of the knowledge of the Borrower after due enquiry, no default or event which with the passing of time and/or giving of notice (or both) and/or a determination being made under the relevant provision would constitute an event of default on the part of any of the other contracting parties to any of the Material Project Documents exists under any of the Material Project Documents. As of the date of this Agreement, all conditions to be satisfied by each Major Project Party under or pursuant to each Material Project Document to which it is a party prior to Financial Closing have been satisfied and fulfilled by the Major Project Parties or waived. There are no material agreements to which any Major Project Party is a party which relate to the Project or the Secured Property, true and complete copies of which have not been delivered to the Agent. As of the date hereof, Schedule 11 constitutes an accurate list of all Material Project Documents. All Additional Project Documents are expected to be obtained in the normal course (without the expenditure of previously non-budgeted amounts) by the date such Additional Project Documents are required for the Project.

8.1.11 *Project Authorizations* □ All Project Authorizations (other than Future Project Authorizations) have been obtained and are in full force and effect and the Future Project Authorizations will be obtained when required and/or necessary and will be in full force and effect at such time, except, in each case, where failure to obtain individually or in the aggregate, would not, now or at any time while any Loan is outstanding, reasonably be expected to have a material adverse effect on the design, development, engineering construction, commissioning, start-up, management or operation of the Project. The Project and Project Assets comply in all material respects with the specifications, plans and drawings submitted to obtain the Project Authorizations except, in each case, where failure to obtain individually or in the aggregate, would not, now or at any time while any Loan is outstanding hereunder, reasonably be expected to have a material adverse effect on the Project Assets or the design, development, engineering, construction, commissioning, start-up, management or operation of the Project. No Obligor has received any written notification, of any pending or threatened non-issuance, non-renewal, revocation, cancellation, suspension, adverse change or refusal of, or taken any steps for, and no event has occurred, and no state or condition exists, which could reasonably be expected to result in, the non-issuance, non-renewal, revocation, cancellation, suspension, adverse change or refusal of any Project Authorizations (except to the extent that any such non-issuance, non-renewal, revocation, cancellation, suspension, adverse change or refusal would not reasonably be

expected to have a material adverse effect on the design, development, engineering, construction, commission, start-up, management or operation of the Project). Each Obligor is in compliance with all Project Authorizations then required for the Project and with all Applicable Laws and the performance of their respective obligations under the Loan Documents to which they are a party, in each case except to the extent non-compliance would not reasonably be expected to have a Material Adverse Effect.

8.1.12 *Other Authorizations* □ All Authorizations and registrations necessary to permit each Obligor to execute, deliver and perform each Transaction Document to which it is party, grant any Security and consummate the transactions contemplated thereby and own its assets and carry on its business have been obtained or effected and are in full force and effect, save and except for those authorizations that have not been obtained and could not reasonably be expected to have a Material Adverse Effect. The Borrower is in compliance with the requirements of all such Authorizations and registrations and there is no judgment, order or award outstanding or proceeding existing, pending or, to its knowledge, threatened which could reasonably be expected to result in the non-issuance, non-renewal, revocation, cancellation, suspension, adverse change or refusal of any of such Authorizations and registrations, except for any such authorization or registration the absence of which could not reasonably be expected to have a Material Adverse Effect.

8.1.13 *Easements* □ All Easements and rights-of-way required by the Project and Project Assets pursuant to Applicable Law and all Easements and rights-of-way required to own, develop, construct, operate, legally access and maintain the Project Assets:

- (a) have been obtained and are in full force and effect if they are in Part I of Schedule 15;
- (b) are expected to be obtained in the normal course by the applicable date required by the Transaction Documents and/or Applicable Law if they are in Part II of Schedule 15;
- (c) have been obtained if they are in Part II of Schedule 15 and were to be obtained by the applicable date required by the Transaction Documents and/or Applicable Law where such date has passed; and
- (d) if not yet obtained (in respect of material Easements), are expected to be obtained in the normal course (without the expenditure of previously non-budgeted amounts).

8.1.14 *Utilities* □ All utility services necessary for the construction and the operation of the Project for its intended purposes are available or will be so available as and when required upon commercially reasonable terms.

8.1.15 *Title to Assets* □ The Borrower owns or will acquire in the ordinary course all assets, property and property rights (real or personal, tangible or intangible) necessary to complete, operate and maintain the Project as contemplated by the Transaction Documents. The Borrower is the legal and beneficial owner of the Site Lands, Project Assets, Collateral and Real Property Interests and has good, valid, marketable and freehold title to the Site Lands, Project

Assets, Collateral and Real Property Interests and has or will have good title to all other Project Assets necessary to complete, operate and maintain the Project as contemplated by the Transaction Documents and the Base Financial Model, as applicable, in each case subject only to Permitted Liens. The Site Lands are the only real property owned by the Borrower.

8.1.16 *Sufficiency of Rights* □

- (a) The services to be performed, the materials to be supplied and the property interests and contractual rights (including rights of way and licences of occupation) and other rights granted to or held by the Borrower pursuant to the Material Project Documents, the Real Property Interests and the Project Authorizations:
 - (i) comprise all of the property interests and contractual rights necessary or desirable to continue the construction, installation, ownership, operation and maintenance of the Project by or for the Borrower as contemplated by the Material Project Documents and the Base Financial Model; and
 - (ii) provide adequate ingress and egress from and to the Project for any reasonable purpose in connection with the construction, installation, ownership, operation or maintenance of the Project by or for the Borrower, as contemplated by the Material Project Documents and the Base Financial Model.
- (b) There are no material services, materials or rights which may reasonably be expected to be required for the construction, installation, ownership, operation and maintenance of the Project by or for the Borrower, as contemplated by the Material Project Documents and the Base Financial Model, as applicable, other than those granted by, or to be provided through, the Material Project Documents.

8.1.17 *Location of the Borrower and Tangible Assets* □ The registered office, places of business, chief executive office, principal place of residence and location of the Borrower (within the meaning assigned in Section 7(3) of the PPSA and regulations issued thereunder) is 1086 Modeland Road, 1010 Building, Room 251, Sarnia, Ontario, Canada N7S 6L2. The locations of the Project Assets are on or within the Site Lands and all tangible Project Assets have been constructed and are being constructed within the Site Lands or, in the case of incidental pipes, lines, wires and related equipment only, within the boundaries of municipal rights of way or Easements benefiting the Site Lands.

8.1.18 *Intellectual Property* □

- (a) Ownership.
 - (i) The Borrower is the sole legal and beneficial owner of the applied for or registered Intellectual Property Rights listed in Schedule 27 (the “**Borrower IP**”) free and clear of all Liens whatsoever, except for Permitted Liens.

- (ii) The Borrower IP is valid and subsisting, and is in good standing, all required filings with any relevant governmental intellectual property office have been made and all required filing fees have been paid.
 - (iii) The Borrower has used the Borrower IP in such manner as to preserve its rights therein including the use of proper notices indicating ownership of and/or rights to use the Borrower IP, to the extent reasonably necessary for the protection of the Borrower IP.
 - (iv) The Borrower is not aware of any claim having been made that the use of any Intellectual Property Rights of the Borrower, the use of any Intellectual Property Rights used by the Borrower in the Project or the sale or licensing of any of the products produced by the Borrower does or may violate the rights of any other person, which, if determined adversely to the Borrower could reasonably be expected to result in a Material Adverse Effect.
 - (v) There is no proceeding in progress or, to the knowledge of the Borrower, pending or threatened in writing against or relating to the Borrower or affecting the Intellectual Property Rights of the Borrower or the Intellectual Property Rights used by the Borrower in the Project which, if determined adversely to the Borrower, could reasonably be expected to result in a Material Adverse Effect.
 - (vi) The Borrower is not aware of any third-party presently infringing the Borrower IP or that has infringed the Borrower IP in the past three years.
- (b) Licensing. All IP Licences relating to or used or intended to be used for the Project, including the IP Licence under the License Agreement, are in full force and effect, the Borrower has duly observed and performed in all material respects all of its covenants and obligations under all such IP Licenses and, to the knowledge of the Borrower, there has not been any default under or breach of any of such IP Licenses by the other parties thereto.

8.1.19 *Insurance* □ Each policy of insurance required to be maintained by the Borrower pursuant to Section 9.3.24 has been obtained and is in full force and effect and all premiums due and payable in relation thereto have been paid.

8.1.20 *Taxes* □ The Borrower has (a) delivered or caused to be delivered all Tax returns which are now due to the appropriate Governmental Authority, (b) paid and discharged all Taxes payable by it when due, (c) made provision for appropriate amounts in respect of any Taxes likely to be exigible in accordance with Applicable Accounting Principles, (d) withheld and collected all Taxes required to be withheld and collected by it and remitted such Taxes to the appropriate Governmental Authority when due and (e) paid and discharged all Statutory Prior Claims when due; and no assessment or appeal is, to its knowledge, being asserted or processed with respect to such returns, Taxes or Statutory Prior Claims, except for (i) those subject to Contested Tax Proceedings respecting an aggregate Tax liability for the Borrower not exceeding the Threshold Amount after the date of this Agreement and (ii) those which could not reasonably

be expected to result in any sale, forfeiture or loss of the Project, Site Lands, the Project Assets or the other Collateral.

8.1.21 *No Material Adverse Change*□ Since January 31, 2014, no Material Adverse Change has occurred.

8.1.22 *No Default*□ No Default or Event of Default has occurred which has not been either remedied (or otherwise ceased to be continuing) or expressly waived by the Lenders in writing.

8.1.23 *Compliance with Laws*□

- (a) The Borrower is in compliance with all Applicable Laws, save (except in the case of Applicable Laws relating to bribery and corruption) for non-compliance which could not reasonably be expected to have a Material Adverse Effect.
- (b) The Borrower is in compliance with all requirements of Employee Benefits Legislation and health and safety, workers compensation, employment standards, labor relations, health insurance, employment insurance, protection of personal information, human rights laws and any Canadian federal, provincial or local counterparts or equivalents in each case, as applicable to the employees of the Borrower and as amended from time to time, save for non-compliance which could not reasonably be expected to have a Material Adverse Effect.

8.1.24 *Contracts*□ The Borrower is in compliance with all agreements material to its business, save for non-compliance which could not reasonably be expected to have a Material Adverse Effect.

8.1.25 *Type of Business*□ The business activity directly relating to the Project is the only business activity in which the Borrower engages and the Borrower does not engage in any other business activity. The Borrower does not own, lease or otherwise hold any assets other than the Project Assets which are used or intended to be used in connection with the Project. The Borrower does not engage in any business activity that relates to Sanctioned Activities.

8.1.26 *Name, Entity and Group Organization*□ The full correct legal name of the Borrower is BioAmber Sarnia Inc. and the Borrower has not adopted a French form of name, a combined English and French form of name or a combined French and English form of name. The Borrower is a single purpose entity and does not have any Subsidiaries. The Borrower is not, directly or indirectly, a member of or a participant in any partnership, joint venture or syndicate. As of the date hereof, the owners, beneficially and of record, of the issued Capital Stock of the Borrower and, the issued Capital Stock of any person other than the Sponsors who owns, beneficially and of record, directly or indirectly, the issued Capital Stock of the Borrower are depicted in the organization chart set out in Schedule 17. No person other than Mitsui and BioAmber Luxco has any option or right to acquire any Capital Stock in the Borrower. The Borrower shall promptly deliver to the Agent an updated organization chart set out in Schedule 17 following any sale, transfer or issue of shares permitted under this Agreement.

8.1.27 *Solvency* □ No Insolvency Event has occurred in respect of any Obligor. Each Obligor is Solvent.

8.1.28 *General Environmental Representations and Warranties* □ With respect to the Environment (a) Project Assets, including the Plant and the Site Lands (including the buildings, erections and facilities constructed thereon) and appurtenances comprising or used in connection therewith, are and have at all times been owned, leased, managed, controlled or operated in compliance with all Environmental Laws for the period they have been owned, leased, managed, controlled or operated by the Borrower (including its predecessors by amalgamation or merger) and (b) (to the knowledge of the Borrower) all real estate (including the buildings, erections and facilities constructed thereon) and appurtenances comprising or used in connection therewith were at all times owned, leased, managed, controlled or operated by the predecessors in title to such real estate in compliance with all Environmental Laws; with the exception of any non-compliance referred to in Clauses (a) and (b) above (i) which could not reasonably be expected to result in Environmental Liabilities of the Borrower in an aggregate amount for the Borrower exceeding the Threshold Amount on the date of this Agreement and the Threshold Amount thereafter and (ii) those which could not reasonably be expected to give rise to a Material Adverse Effect. The Borrower has not been convicted of an offence for non-compliance with any Environmental Law or has been fined or otherwise sentenced or settled a prosecution in respect of such an offence short of conviction. The Borrower has provided full details to the Independent Technical Consultant and the Agent of all inspections, investigations, studies, audits, tests, reviews and other analyses carried out by it, or on its behalf, in relation to any environmental matters pursuant to any Environmental Laws in respect of the Project Assets and the Site Lands or any adjoining property over which the Site Lands enjoy any rights or amenities.

8.1.29 *Specific Environmental Representations and Warranties* □ Without limiting the generality of Section 8.1.28, with respect to the Environment: (a) there are no existing, pending or (to the knowledge of the Borrower) threatened in writing: (i) claims, complaints, notices or requests for information received by it or of which it has knowledge with respect to any alleged violation by it of or alleged Environmental Liability relating to any of the Project Assets, Plant, the Site Lands, the Project or any operations on the Site Lands, or (ii) governmental or court orders, including stop, Clean-Up or preventative orders, directions or action requests which have been received by it relating to the Environment requiring any works, repairs, remediation, Clean-Up, construction or capital expenditures by it with respect to any of the Project Assets which remains outstanding; (b) except in compliance with Environmental Law, no Hazardous Materials have been generated, received, handled, used, stored, treated or shipped at or from, and there has been no discharge or release of Hazardous Materials at, on, from or under any of the Project Assets and none of the Project Assets has concentrations of Hazardous Materials that exceed standards published by the relevant Governmental Authorities; (c) no property now or previously owned, leased, managed, controlled or operated by the Borrower (including its predecessors by amalgamation, merger or other business combination) is listed or, to the knowledge of the Borrower, is proposed for listing on any similar list of sites under any other Applicable Law requiring investigation, remediation or Clean-Up or giving rise to claims or losses and expenses imposed under Environmental Laws; (d) except in compliance with Environmental Law, (to the knowledge of the Borrower) none of the lands and premises comprising any of the Project or Project Assets (including the Plant and the Site Lands) has been used for the disposal of Waste or as a landfill or Waste disposal site; and (e) the Borrower has not directly transported or directly

arranged for the transportation of any Hazardous Materials to any location, except in compliance with Environmental Law; with the exception of (i) any matter referred to in Clauses (a) to (e) above which collectively could not reasonably be expected to result in Environmental Liabilities of the Borrower in an aggregate amount for the Borrower exceeding the Threshold Amount on the date of this Agreement and the Threshold Amount thereafter and (ii) those which could not reasonably be expected to give rise to a Material Adverse Effect.

8.1.30 *Employee Relations* □ There are no strikes, work stoppages or controversies pending or (to the knowledge of the Borrower) threatened between the Borrower and any of its employees (including unions representing employees), other than employee grievances arising in the ordinary course of business which could not reasonably be expected to result in work stoppages, and other than those disclosed in writing to the Agent which could not reasonably be expected to have a Material Adverse Effect. The hours worked by and payments made to employees of the Borrower have not been in violation of any Applicable Law dealing with such matters, other than those which could not reasonably be expected to have a Material Adverse Effect. All payments due from the Borrower or for which any claim may be made against the Borrower on account of wages or employee related assessments, premiums, fees, taxes, penalties or fines and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Borrower, with the exception of (a) payments in an aggregate amount for the Borrower not exceeding the Threshold Amount (or Equivalent in other currency) and (b) those which could not reasonably be expected to have a Material Adverse Effect.

8.1.31 *Collective Bargaining* □ The Borrower is not a party to any collective bargaining agreement, contract or legally binding commitment to any trade union or employee organization or group in respect of or affecting employees of the Borrower. The Borrower is not a party to any application, complaint, grievance, arbitration, or other proceeding under any statute or under any collective agreement related to any employee of the Borrower or the termination of any employee of the Borrower except as would not reasonably be expected to have a Material Adverse Effect, and, to the knowledge of the Borrower, there is no open complaint, inquiry or other investigation by any regulatory or other administrative authority or agency with regard to or in relation to any employee of the Borrower or the termination of any employee of the Borrower except as would not reasonably be expected to have a Material Adverse Effect.

8.1.32 *Employee Benefit Matters* □

- (a) Contributions to each Pension Plan and Employee Benefit Plan maintained or contributed to by the Borrower are being made in accordance with Applicable Law and the terms of such Pension Plan or Employee Benefit Plan. The Borrower has remitted all Pension Plan contributions, provincial pension plan contributions, workers' compensation assessments, employment insurance premiums, employer health taxes, municipal real estate taxes and other taxes payable under Applicable Law by it, and, furthermore, have withheld from each payment made to any of its present or former employees, officers and directors, and to all persons who are non-residents of Canada for the purposes of the *Income Tax Act* (Canada) all amounts required by law to be withheld, including all payroll deductions required to be withheld and has remitted such amounts to the proper Governmental Authority within the time required under applicable law. The

Borrower does not administer, maintain or contribute to a Defined Benefit Plan or has any liability in respect of any Defined Benefit Plan.

- (b) All obligations regarding the Pension Plans and the Employee Benefit Plans (including current service contributions) have been satisfied, there are no outstanding defaults or violations by any party to any Pension Plan and any Employee Benefit Plan and no taxes, penalties or fees are owing or exigible under any of the Employee Benefit Plan, except which could not reasonably be expected to result in a Material Adverse Effect. Except as disclosed in Schedule 23 (as updated from time to time), each Pension Plan and each Employee Benefit Plan is fully funded or fully insured pursuant to the actuarial assumptions and methodology set out in Schedule 23 (as updated from time to time) and, in the case of a Pension Plan, as required under the most recent actuarial valuation filed with the applicable Governmental Authority pursuant to generally accepted actuarial practices and principles. To the best knowledge of the Borrower, no fact or circumstance exists that could adversely affect the tax-exempt status of a Canadian Pension Plan or Employee Benefit Plan.

8.1.33 *Pensions* □

- (a) The Unfunded Liabilities of all Pension Plans do not in the aggregate exceed the Threshold Amount. Each Pension Plan complies in all material respects with all applicable requirements of law and regulations. No Pension Event has occurred or is reasonably expected to occur that could result in material liability to the Borrower and no equivalent or analogous action or liability under the laws of any jurisdiction outside Canada with respect to any Canadian Pension Plan or other Pension Plan has occurred or is reasonably expected to occur.
- (b) Full payment when due has been made of all amounts which the Borrower is required under the terms of each Pension Plan or Applicable Law to have paid as contributions to such Pension Plan and no Unfunded Liability in excess of the Threshold Amount in the aggregate exists with respect to all Pension Plans of the Borrower. There is no order outstanding and no pending or, to the knowledge of the Borrower, threatened proceeding against any such Pension Plan, any fiduciary thereof, or the Borrower with respect thereto which could reasonably be expected to have a Material Adverse Effect or could reasonably be expected to result in an order ordering the Borrower to pay more than the Threshold Amount. Each Pension Plan is administered in compliance in all material respects with all Applicable Laws and the respective requirements of the governing documents for such plan. There is no proceeding or claim other than routine claims for benefits pending or, to the knowledge of the Borrower, threatened against the Borrower with respect to any Pension Plan.
- (c) Schedule 23 (as updated from time to time) lists all the Pension Plans and Employee Benefit Plans applicable to the employees of the Borrower in respect of employment in Canada and which are currently maintained or sponsored by the Borrower or to which the Borrower contributes or has an obligation to contribute,

except, for greater certainty, any statutory plans to which the Borrower is obligated to contribute to or comply with under Applicable Law.

8.1.34 *No Changes* □ As of the date hereof, there have been no material changes to the design, erection or commissioning of the Project, except for changes thereto which do not in the aggregate impair satisfaction of the requirements for the Commercial Operation Date, reduce the design capacity or otherwise adversely affect the economic viability or performance of the Project.

8.1.35 *Completion* □ The Borrower is not aware of any existing act, matter, thing or circumstance which will prevent or materially prejudice the Commercial Operation Date occurring before the Scheduled Commercial Operation Date.

8.1.36 *Information Supplied* □

- (a) Each Obligor has disclosed to the Agent and Lenders all agreements, instruments and corporate or other restrictions to which it, the Project or the Project Assets is subject, and all other matters known to it, including all matters pertaining to the Obligors, the Project and the Project Assets, that, individually or in the aggregate, could reasonably be expected to be material to a Lender.
- (b) All information (other than Projections) furnished to the Agent or the Lenders by or on behalf of any Obligor in connection with any of the Transaction Documents is correct in all material respect on the date hereof and no such information contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein not misleading in light of the circumstances in which they were made and as of the date made. No representation or warranty is or shall be deemed made in this Section 8.1.36(b) or (c) as to the actual date of Commercial Operation, Approved Operating Costs or Approved Capital Expenditures, exchange or interest rates, rates of inflation, transportation costs, the Project's actual rate of production or the actual cash flows or actual financial results to be achieved by the Project will turn out to be.
- (c) Each financial forecast and projection ("**Projections**") prepared and furnished by or on behalf of any Obligor to the Lenders pursuant to or in connection with any Transaction Document was based upon assumptions believed to be reasonable by each Obligor as of the date of preparation.
- (d) The Borrower has provided to the Independent Technical Consultant all of the material information in its possession or to which it has access relating to the Project and the design, development, engineering, construction, commissioning, start-up, operation and maintenance thereof (other than the unit operation design and operating condition details relating to the Project) and the Borrower has reviewed the report of the Independent Technical Consultant delivered pursuant to Section 6.1(e) and such report, based on the Borrower's review, (excluding any information with respect to any opinions contained therein), is not materially incorrect.

8.1.37 *Copies of Transaction Documents* □ The copies of each Transaction Document and of any changes to any Transaction Document provided or to be provided by the Borrower to the Agent and each Lender are, or when delivered will be, true and complete copies of such agreements and no consent or other further action is required for the effectiveness and enforceability of any of such agreements heretofore provided and each such agreement is, or when executed and delivered will be, in full force and effect. No default under any Material Project Agreement has occurred and is continuing.

8.1.38 *Existing Debt* □ Set forth on Schedule 21 is a true and complete list of all Debt of the Borrower outstanding as of the date set out in Schedule 21, other than unsecured Debt of the Borrower which in the aggregate is less than \$100,000, and indicating whether such Debt is secured or unsecured. All such Debt is in good standing and, no default or event has occurred which, with the giving of notice, lapse of time or both, would constitute a default under, or in respect of such Debt.

8.1.39 *Ranking* □ The obligations of the Borrower hereunder and the Loans made hereunder, will at all times rank in right and priority of payment at least *pari passu* with all other unsecured non-subordinated Debt of and claims against the Borrower. None of the assets of the Borrower are subject to any purchase-money security interests or other Liens ranking or purporting to rank *pari passu* or in priority to any and all Security, other than Permitted Liens.

8.1.40 *No Immunity* □ No Obligor nor any of its assets is entitled to claim or has any immunity from jurisdiction of any court or from set-off, claim, execution, attachment or any other legal process (whether through service, notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).

8.1.41 *Broker Fees* □ There are no brokerage commissions, finder's fees or investment banking fees payable in connection with any transactions contemplated by the Transaction Documents.

8.1.42 *Sanctioned Activities* □ None of the transactions contemplated by the Transaction Documents violates any Sanctioned Activities. The Borrower has not used any of the proceeds under the Loan Facility for business activities in any Sanctioned Countries. No Obligor is a Sanctioned Person and the Borrower does not engage in any business activities or transactions, or is otherwise associated, with a Sanctioned Person.

8.1.43 *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)* □ The Borrower does not operate in countries that are members of the Financial Action Task Force. The Borrower is not a charity registered with the Canada Revenue Agency nor does it solicit charitable financial donations from the public.

8.2 Repetition of Representations and Warranties

The representations and warranties made in Section 8.1 shall be made as of the date of this Agreement and shall be deemed to be repeated by the Borrower (a) on each date a Drawdown Request is delivered to the Agent and on the corresponding Drawdown Date, (b) as of the last day of each calendar month, (c) as of the Financial Closing Date, (d) on the Commercial Operation Date and (e) on the Proof of Capacity Date, in each case by reference to

the facts and circumstances then existing, it being understood that to the extent such representations and warranties relate solely to a specifically identified earlier date they need only be true and correct in all material respects as of such earlier date.

8.3 Survival of Representations and Warranties

The representations and warranties made in Section 8.1 and each of the other Loan Documents or deemed repeated in Section 8.2 shall survive the execution and delivery of this Agreement and the making of each Drawdown notwithstanding any investigations or examinations which may be made by any Secured Party or Lenders' Counsel, and the Secured Parties shall be deemed to have relied on such representations and warranties in the making of each Drawdown.

ARTICLE 9 COVENANTS

The Borrower covenants and agrees with the Secured Parties that until the Loan Obligations have been paid in full:

9.1 Reporting Covenants

Until all Secured Obligations are paid in full, the Borrower covenants and agrees with the Secured Parties for and on its own behalf and on behalf of the other Obligor that it will duly perform and comply with each of the following reporting covenants:

9.1.1 *Financial and Other Reporting* □ The Borrower shall furnish to (or cause to be furnished to) (by e-mail in pdf format or by such other method of delivery as the Agent may reasonably request) the Agent the following statements and reports, each such statement and report to be in form and substance satisfactory to the Lenders (with sufficient copies for all of the Lenders):

- (a) as soon as practicable and in any event within ninety (90) days after the end of each Fiscal Year, (i) the annual financial statements of each of BioAmber and Mitsui and, for the Fiscal Year ending December 31, 2015 and thereafter, the Borrower, in each case audited by its Auditors (with no Impermissible Qualification) for such Fiscal Year, each prepared in accordance with Applicable Accounting Principles and, if prepared, such Auditors' letter to management, (ii) the unaudited annual financial statements of BioAmber Luxco and, for the Fiscal Year ending December 31, 2014, the Borrower and (iii) a Compliance Certificate from the Borrower prepared as at such Fiscal Year end;
- (b) as soon as practicable and in any event within forty-five (45) days after the end of each calendar month of each Fiscal Year, (i) the unaudited monthly financial statements of each Obligor (other than Mitsui) prepared in accordance with Applicable Accounting Principles (subject to annual audit adjustments and the absence of notes) consisting of a balance sheet and statements of income and retained earnings (or deficit) and of changes in cash position, together with (A) a comparison to the prior period and year, and (B) a corresponding discussion and

analysis of results from management, and (ii) a Compliance Certificate from the Borrower prepared as at such calendar month end;

- (c) as soon as practicable and in any event within forty-five (45) days after the end of each three-month accounting period of each Fiscal Year of Mitsui, the unaudited quarterly financial statements of Mitsui prepared in accordance with Applicable Accounting Principles (subject to annual audit adjustments and the absence of notes) consisting of a balance sheet and statements of income and retained earnings (or deficit) and of changes in cash position, together with (i) a comparison to the prior period and year, and (ii) a corresponding discussion and analysis of results from management;
- (d) at least sixty (60) days prior to the start of each Fiscal Year, a proposed updated operating, maintenance and capital budget (the “**Proposed OMC Budget**”) for the Borrower for the upcoming Fiscal Year on a monthly basis, which Proposed OMC Budget shall be subject to review and approval by the Lenders in consultation with the Independent Technical Consultant and shall be revised to include changes required by the Lenders or the Independent Technical Consultant, acting reasonably until the Lenders, in consultation with the Independent Technical Consultant have indicated that they are satisfied with and have approved such Proposed OMC Budget (such approved Proposed OMC Budget, the “**OMC Budget**”), provided that if during any Fiscal Year the Plant does not fail at any time to produce sixty-six (66) metric tonnes of Product per day for any five (5) consecutive day period, then the Independent Technical Consultant shall not be involved with the approval process of the Proposed OMC Budget and the OMC Budget for the immediately following Fiscal Year.
- (e) [intentionally deleted];
- (f) without duplication, all material notifications, information, certificates and reports under the Material Project Documents;
- (g) prior to the Commercial Operation Date, copies of any material reports received from the Contractor or any other reports that the Agent may request from time to time, acting reasonably; and
- (h) from time to time, such other reports and additional information regarding the Project or any of the assets of the Borrower as Agent or any Lender may reasonably request.

9.1.2 *Pre-COD Reports.* From and after the Financial Closing Date until the Commercial Operation Date the Borrower shall furnish to (or cause to be furnished to) (by e-mail in pdf format or by such other method of delivery as the Agent may reasonably request) the Agent a Project progress report of the Borrower (in form and substance satisfactory to the Lenders) by the 15th day of each calendar month attesting to all matters of Project status customary for such reports including:

- (a) Project Costs incurred in such prior month by major expense category and compared as against the Project Budget;
- (b) a statement of all amounts paid under the Material Project Documents during such month;
- (c) Project Costs anticipated to be payable in the next succeeding month;
- (d) the Costs to Complete;
- (e) a description of any Cost Overruns detailing any variances from the Project Budget;
- (f) the estimated Commercial Operation Date detailing any variances from the Project Schedule;
- (g) certification that no Funding Shortfall exists;
- (h) a narrative report describing in reasonable detail the progress of the construction of the Project since the last report, and compared as against the originally established milestones set out in the Project Schedule;
- (i) that the Project is being built substantially in all material respects in accordance with the Material Project Documents and good industry practices;
- (j) that the Commercial Operation Date is expected to occur on or before the Scheduled Commercial Operation Date;
- (k) identification of all Material Project Documents, if any, entered into by the Borrower since the last such report or the Financial Closing Date, as the case may be;
- (l) that all Project Authorizations which are at the time necessary in connection with the Project have been obtained and are in full force and effect and with respect to any changes in Project Authorizations since the last report;
- (m) the reconciliation of amounts disbursed from the Project Revenue Account to amounts sets forth and approved in any Drawdown Requests; and
- (n) any fact, occurrence, condition, circumstance or event that have had or could reasonably be expected to:
 - (i) delay the Commercial Operation Date;
 - (ii) have an adverse effect on or otherwise impair (A) the design or engineering of the Plant and the Project, (B) the procurement in connection with the Project, (C) the planned operation and maintenance of the Plant and Project; and/or (D) any other aspect of the Project;

- (iii) render unreasonable or inappropriate any material assumption, prospect or forecast on which the Base Financial Model is based,

and in each case an explanation of the anticipated manner timing and actions proposed to be taken by the Borrower in reaction to any such fact, occurrence, condition, circumstance or event.

9.1.3 *Post COD Reports.* From and after the Commercial Operation Date the Borrower shall furnish to (or cause to be furnished to) (by e-mail in pdf format or by such other method of delivery as the Agent may reasonably request) the Agent a Project operating report of the Borrower (in form and substance satisfactory to the Lenders) for each Fiscal Quarter by the 15th day of each Fiscal Quarter attesting to all matters of Project status customary for such reports including:

- (a) operating performance of the Plant and Project;
- (b) details of the financial performance of the Plant and Project in such calendar month including the year to date revenues, expenses and costs in comparison with the OMC Budget. Without limiting the generality of the foregoing, such detail shall include a breakdown to align with the Base Financial Model revenue and expense line items as well as the various line items in the OMC Budget;
- (c) Product production and shipment during such period and variations from the related projections for such period reflected in the OMC Budget and current Base Financial Model;
- (d) the Borrower's most recent cash planning forecast covering at least the next following month;
- (e) costs constituting capital expenditures during such period as compared to the Approved Capital Expenditures as reflected in the current Base Financial Model;
- (f) confirmation of compliance, in all respects, with each of the Material Project Documents during such calendar month and if any have not been complied with in all respects, details of all such non-compliance along with an explanation as to why such non-compliance is immaterial and does not and will not lead to an event of default under such Material Project Document or otherwise to termination or repudiation of such Material Project Document, along with details of activities under or pursuant to the Material Project Document, any issues arising out of any of the Material Project Documents or any amendments thereto;
- (g) details of any scheduled or forced interruptions or shutdowns of operations during such calendar month including all causes, effect (financial and otherwise) and activities during each interruptions or shutdowns (including a summary of all tests and inspections during each such interruptions or shutdowns), along with a description and details (including estimated length and financial impact) of all scheduled interruptions or shutdowns for the next four (4) Fiscal Quarters and a

description of any tests and inspections to be run during each such scheduled interruptions or shutdowns;

- (h) confirmation that there have been no violations of any Project Authorizations in such calendar month, confirmation that all Project Authorizations in connection with the Project which are necessary for the current and subsequent calendar quarter remain in full force and effect and details of any changes (including changed conditions) or renewals to or in respect of the Project Authorizations since the last report;
- (i) details of current staff count of the Borrower, vacancies, number of new hires and terminations and details of any changes since the last report along with safety statistics in the calendar quarter and a description and details of any incidents that occurred in such calendar month;
- (j) details of all correspondence from or with any Governmental Authority in such calendar month including details of any complaints made to or disputes with any Governmental Authority about the Borrower, Plant or its operations;
- (k) details of any material technical problems or the discovery of any material defects in the physical facilities of the Project; and
- (l) details of any fact, occurrence, condition, circumstance or event that have had or could reasonably be expected to
 - (i) have an adverse effect on or otherwise impair (A) the operation, maintenance and management of the Plant and Project; and/or (B) any other aspect of the Project;
 - (ii) render unreasonable or inappropriate any material assumption, prospect or forecast on which the Base Financial Model is based,

and in each case an explanation of the anticipated manner timing and actions proposed to be taken by the Borrower in reaction to any such fact, occurrence, condition, circumstance or event.

9.1.4 *Independent Technical Consultant Reports* □ The Borrower shall cooperate with the Independent Technical Consultant in order to allow the Independent Technical Consultant to carry out the investigations and provide the certificates and reports of the Independent Technical Consultant contemplated by the Loan Documents or as may be requested by the Lenders.

9.1.5 *Notice of Environmental Claims.* The Borrower will promptly give notice to the Agent as soon as a Responsible Officer of it obtains knowledge of any Environmental Liability, any claim in writing, or the commencement of any proceeding or dispute affecting the Borrower, any of its assets or the Project relating to Environmental Liabilities which, either alone or when aggregated with all other such Environmental Liabilities, has resulted or could reasonably be expected to result in Environmental Liabilities in an aggregate amount exceeding the Threshold

Amount in the aggregate or more than the Threshold Amount individually or which could reasonably be expected to give rise to a Material Adverse Effect.

9.1.6 *Environmental Matters* □

- (a) Environmental Compliance Orders. The Borrower shall promptly (but in no event later than three (3) Business Days after the Borrower obtains knowledge thereof) notify the Agent and, on request by the Agent, make available for inspection and review on a confidential basis by representatives of the Agent, copies of all written orders, control orders, directions, action requests, claims or notices issued by any Governmental Authority to the Borrower (i) relating to the Environmental condition of the Project or Project Assets or (ii) relating to non-compliance with any Environmental Law; and proceed diligently to resolve any such orders, claims or notices relating to compliance with Environmental Law where the failure to resolve the same could reasonably be expected to (A) result in an Environmental Liability of the Borrower exceeding the Threshold Amount in the aggregate or more than the Threshold Amount individually, or (B) have a Material Adverse Effect.
- (b) Environmental Information Requests. On the reasonable request by the Agent, the Borrower shall promptly make available for inspection and review on a confidential basis by representatives of the Agent such information in the possession or control of the Borrower as the Agent may reasonably request from time to time to evidence compliance with the representations and warranties contained in Sections 8.1.28 and 8.1.29 and the covenants contained in Section 9.3.26.
- (c) Environmental Reports. The Borrower shall promptly notify the Agent of and (i) provide copies of each Environmental report prepared by or on behalf of the Borrower in respect of any of the Project or Project Assets which is filed with any Governmental Authority, other than those that are not material, and (ii) make available for inspection and review on a confidential basis by representatives of the Agent each Environmental report and Environmental audit concerning any of the Project or Project Assets prepared by or on behalf of the Borrower in accordance with any request of any Governmental Authority relating to Environmental matters, in each case, promptly upon filing thereof.

9.1.7 *Employee Benefits and Analogous Notices* □ The Borrower shall deliver or cause to be delivered to the Agent the following information and notices as soon as reasonably possible, and in any event within ten (10) Business Days (a) after the Borrower knows or has reason to know that a Pension Event has occurred which is reasonably likely to result in a material liability to the Borrower, deliver to the Lender a certificate of a Responsible Officer of the Borrower setting forth the details of such Pension Event, the action that the Borrower proposes to take with respect thereto, and, when known, any action taken or threatened by any Governmental Authority, (b) upon request of the Lender made from time to time, deliver to the Lender a copy of the most recent actuarial report, funding waiver request, and annual report filed with respect to any Pension Plan or Employee Benefit Plan, (c) with respect to a Canadian Pension Plan, after the Borrower fails to make a required instalment or other payment in

accordance with a schedule of contributions, according to the terms of such Canadian Pension Plan or as otherwise required by a Governmental Authority, a notification of such failure and (d) after the Borrower receives reasonable advance written notice from the Lender requesting the same, copies of any Pension Plan or Employee Benefit Plan and related documents, reports and correspondence specified in such notice.

9.1.8 *Interest Holders* □ If the Agent or any Lender reasonably believes it requires information concerning the identity of any direct or indirect holder of any legal or beneficial owner of any Capital Stock in the Borrower to comply with Applicable Law, the Agent (of its own volition or at the request of such Lender, as the case may be) may request the Borrower to deliver, and the Borrower agrees (to the extent, it is within its ability to do so) to deliver, to the Agent such information as the Agent or such Lender reasonably believes is required to permit it to comply with such Applicable Law.

9.1.9 *Forecasts* □ If the Borrower determines that any forecast, projection or estimate for the Borrower to the Lenders no longer reflects its current assumptions of future economic conditions and the Borrower's planned courses of action and that its current forecast, projections or estimates which are materially different than those reflected in those earlier forecasts, projections or estimates, then the Borrower will promptly notify the Agent of such fact, accompanied by appropriate details thereof.

9.1.10 *Notices pursuant to the Government Funding Agreements* □ The Borrower will, promptly, but in any event within five (5) Business Days after receipt or knowledge thereof, provide to the Agent: (a) copies of any notice of a default or event of default under any Government Funding Agreement, (b) notice of the acceleration of any portion of the Government Funding Debt, (c) notice of the delivery by any of the Government Funding Entities of any reservation of rights letter in connection with the Government Funding Debt, and (d) notice of the exercise of any remedies by any of the Government Funding Entities pursuant to the Government Funding Documents.

9.1.11 *Notice of Certain Events* □ The Borrower shall promptly (but in no event later than three (3) Business Days after the Borrower obtains knowledge thereof) notify the Agent upon its discovery of the occurrence of any of the following, including a description of the nature and duration thereof and the action the Borrower proposes to take with respect thereto:

- (a) any Default or Event of Default;
- (b) any default, event of default or dispute under, or termination of, or any notice of default, event of default, dispute under or termination of any Material Project Document;
- (c) any Material Adverse Change or any anticipated change in circumstance, fact, law or condition or development or effect that could reasonably be expected to result in a Material Adverse Change;
- (d) any order or the commencement of any proceeding or dispute affecting the Borrower, its assets, the Project, any material Project Authorization which, either alone or when aggregated with all other such proceeding, will, or if adversely

determined to the Borrower could reasonably be expected to, (i) prejudice, restrict or render unenforceable or ineffective, in a material adverse way, any legal rights intended or purported to be granted under or pursuant to (A) any Secured Document to or for the benefit of the Secured Parties or to (B) any Material Project Document to or for the benefit of the Borrower, or (ii) result in any single order ordering the Borrower to pay more than the Threshold Amount in the aggregate or more than the Threshold Amount in any single order or which could reasonably be expected to give rise to a Material Adverse Effect;

- (e) any event of Force Majeure or any force majeure under or as defined in any Material Project Document;
- (f) any actual or threatened strikes or work stoppages;
- (g) the Borrower shall notify the Agent, promptly following the occurrence thereof, of any material disputes between the Borrower and any Governmental Authority relating to Taxes;
- (h) any fact, development, circumstance, condition or event which has or could reasonably be expected to affect the ability of the Borrower to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date;
- (i) the occurrence of any unplanned interruption of access to the Project, blockade of access to the Project or material insurance claim relating to the Project Assets;
- (j) (i) any other fact, development, circumstance, condition or event relating to or in connection with the design, development, engineering, construction, commissioning, start-up, maintenance, operation and management of the Project which could reasonably be expected to materially and adversely affect the Borrower's rights in the Project, or in the Project Assets, Liens granted or purported to be granted by or pursuant to any Security Document, the ability of the Borrower to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date or to pay Secured Obligations when due or (ii) any other fact, development, circumstance, condition or event that could reasonably be expected to materially increase the total capital cost of the Project or have a material adverse effect on the performance or operations of the Project following the Commercial Operation Date.

9.1.12 *Additional Information.* The Borrower will deliver or cause to be delivered to the Agent (either in paper or electronic (pdf) form as the Agent may request): from time to time, such additional information regarding the Project, Project Assets or the Obligor as any Secured Party may reasonably request.

9.2 Financial Covenant

Until all Secured Obligations are paid in full, the Borrower covenants and agrees with the Secured Parties that it will ensure that the following financial test is complied with at all times on and after the Commercial Operation Date.

9.2.1 *Debt Service Coverage Ratio*☐The Debt Service Coverage Ratio shall be equal to or greater than 1.75:1, to be certified on a quarterly basis in each Compliance Certificate.

9.3 Affirmative Covenants

Until all Secured Obligations are paid in full, the Borrower covenants and agrees with the Secured Parties that it will, and (where the context so admits) it will ensure that each other Obligor will, duly perform and comply with each of the following affirmative covenants:

9.3.1 *Punctual Payment*☐Each Obligor will duly and punctually pay each sum payable by it under each Secured Document to which it is a party at the time and place and in the manner provided for in such Secured Document.

9.3.2 *Use of Proceeds*☐The Borrower agrees to use the proceeds of the Loans solely to pay, finance or refinance that portion of the Project Costs not paid, financed or refinanced by other sources in each case, (a) in accordance with the Transaction Documents and in a manner consistent with the Base Financial Model, and (b) for no other purpose. The Borrower undertakes not to use any of the proceeds under the Loan Facility for Sanctioned Activities, which includes, in particular, business activities involving Sanctioned Persons.

9.3.3 *Conduct of Business - General*☐ Each Obligor will maintain in good standing (except with respect to Mitsui so long as it is not relevant under Japanese law) and full force and effect its legal existence in its present jurisdiction of incorporation or formation and the Authorizations, registrations, legal capacity, rights and qualifications necessary to carry on its business and own its assets in each jurisdiction in which it carries on business or owns any assets except for the failure to maintain qualifications that would not be reasonably likely to cause a Material Adverse Effect.

9.3.4 *Conduct of Business - Project*☐The Borrower maintains, manages and operates the Project in all material respects in accordance with prudent industry practice.

9.3.5 *Single Purpose Entity Matters*☐ The Borrower will do or cause to be done all things necessary or desirable to preserve and keep in full force and effect its rights and powers and, in particular, to maintain its existence as a single purpose entity and will conduct its business as an entity separate and distinct from any other person. The Borrower will not cease to be a single purpose entity. The Borrower will not amend its Constitutional Documents without the prior written consent of the Agent.

9.3.6 *Completion of Project*☐Each Obligor shall fully perform all of its covenants and obligations under each of the Transaction Documents to which it is a party including, with respect to the Borrower, the construction of the Plant and the obtaining of all necessary Authorizations therefor for which it is responsible, all in accordance with Applicable Law and in accordance with the requirements of the Transaction Documents. The physical facilities, including the Plant, to be engineered, designed, constructed, commissioned, started-up and owned by the Borrower shall be engineered, designed, constructed, commissioned and started-up in accordance with the Transaction Documents and good industry practices no later than the Limit Commercial Operation Date.

9.3.7 *Warranty Rights* □ The Borrower shall enforce against the other parties to the Construction Management & Procurement Agreement and the Engineering & Construction Support Agreement any warranty rights under the Construction Management & Procurement Agreement and the Engineering & Construction Support Agreement, except to the extent non-enforcement thereof could not reasonably be expected to result in a Material Adverse Change.

9.3.8 *Financial Closing Date* □ The Financial Closing Date shall occur on or before July 31, 2014 or such other date consented to by the Lenders.

9.3.9 *Commercial Operation Date* □ The Borrower will continuously and diligently pursue the Commercial Operation Date so that the Commercial Operation Date is achieved on or before the Scheduled Commercial Operation Date, but in no event shall the Commercial Operation Date occur later than the Limit Commercial Operation Date.

9.3.10 *Punch List* □ The Borrower shall at the commencement of the Completion Tests deliver to the Independent Technical Consultant and the Agent the Punch List Items and a certificate certifying the Punch List Amount.

9.3.11 *Mitigation Plans* □

- (a) The Borrower shall promptly notify the Agent as soon as it becomes aware or it is reasonably expected that Commercial Operation will not occur by the Commercial Operation Date. Within ten (10) Business Days of the date of such notice, the Borrower shall provide to the Agent and the Independent Technical Consultant a proposed plan to mitigate the delay or anticipated delay and achieve Commercial Operation prior to the Limit Commercial Operation Date (the “**Proposed Mitigation Plan**”). Notwithstanding the foregoing, if the Agent becomes aware or it is reasonably expected that Commercial Operation will not occur by the Commercial Operation Date the Agent may give notice to the Borrower requiring the Borrower to provide the Agent and the Independent Technical Consultant with the Proposed Mitigation Plan and the Borrower shall within ten (10) Business Days of the date of such notice provide the Agent and the Independent Technical Consultant with the Proposed Mitigation Plan. The Proposed Mitigation Plan will be subject to review and approval by the Agent in consultation with the Independent Technical Consultant and shall be revised to include any changes required by the Independent Technical Consultant (the “**Mitigation Plan**”). The Mitigation Plan shall be finalized and implemented by no later than the earlier of (i) the fifteenth (15th) day from the date on which the Proposed Mitigation Plan is delivered to the Agent and (ii) the Commercial Operation Date. The Borrower shall forthwith carry out the Mitigation Plan to ensure the Commercial Operation shall occur on or prior to the Limit Commercial Operation Date.
- (b) If the Borrower is required to deliver a Proposed Mitigation Plan pursuant to Section 9.3.11(a) and any of the following events or circumstances occur:

- (i) the Borrower fails to deliver a Proposed Mitigation Plan within the ten (10) Business Day period referred to in Section 9.3.11(a) (Mitigation Plans);
 - (ii) the Borrower delivers a Proposed Mitigation Plan or Mitigation Plan which indicates that Commercial Operation will not occur by the Commercial Operation Date;
 - (iii) the Borrower delivers a Mitigation Plan that is not approved by the Agent (acting reasonably on the advice of the Independent Technical Consultant);
 - (iv) the Borrower fails to finalize and implement the Mitigation Plan on the earlier of (i) the fifteenth (15th) day from the date on which the Proposed Mitigation Plan is delivered to the Agent or (ii) the Commercial Operation Date; or
 - (v) the Mitigation Plan is not at any time being implemented in accordance with its terms in any material respect,
- (c) then, such event or circumstance shall constitute an Event of Default hereunder.

9.3.12 *Compliance with Applicable Laws* □ The Borrower will comply in all material respects with all Applicable Laws, including Environmental Laws. The Borrower shall perform all obligations incidental to any trust imposed upon it by statute and shall ensure that any breaches of the said obligations and the consequences of any such breach shall be promptly remedied.

9.3.13 *Authorizations* □ Each Obligor shall obtain, renew, maintain in full force and effect and in good standing and comply with all Authorizations (including, in the case of the Borrower, Project Authorizations) when such Authorizations are required to be obtained pursuant to the Transaction Documents and/or Applicable Law which are necessary or required (a) for the design, engineering, construction, commission, start-up, maintenance and/or operation (as the case may be) of its business (including, in the case of the Borrower, (i) the Project and (ii) the completion of the Project as required by the Transaction Documents), (b) to comply with its obligations under the Transaction Documents and (c) to derive all material benefits from the Transaction Documents. The Borrower shall, with due diligence and in a reasonable and prudent manner, enforce the material rights granted to it under and in connection with all such Authorizations.

9.3.14 *Easements* □ It will obtain all Easements required to design, construct, commission, start-up, maintain and operate the Project.

9.3.15 *Material Project Documents* □

- (a) The Borrower shall enter into as and when required all Material Project Documents required to engineer, design, construct, commission, start-up, operate and maintain the Project.

- (b) The Borrower shall ensure that the Project is implemented and carried out in accordance with the Construction Management & Procurement Agreement and the Engineering & Construction Support Agreement.
- (c) The Borrower shall ensure that: (i) the appointments of the Contractor, E&C Support Provider and the Independent Technical Consultant are not terminated unless a replacement, as the case may be, has been appointed within thirty (30) Business Days and whose identity and terms of appointment are acceptable to the Required Lenders; or (ii) each such replacement Contractor and/or E&C Support Provider enters into such replacement agreements as the Required Lenders determine are necessary or appropriate, in form and substance satisfactory to the Required Lenders; and (iii) the replacement independent technical consultant shall execute an agreement in the form and substance satisfactory to the Agent.
- (d) The Borrower shall (i) perform and observe in all material respects all of its covenants and obligations contained in each of the Material Project Documents to which it is a party, (ii) take all reasonable and necessary action to prevent the early termination or cancellation of any Material Project Document in accordance with the terms thereof or otherwise and (iii) diligently enforce all of its rights under each Material Project Document against the other party or parties thereto.
- (e) Each Obligor shall perform and observe in all material respects all of its covenants and obligations set out in Sections 16.4.4 and 16.5 of the Joint Venture Agreement, including with respect to the Assignment Agreement and the Supply Contracts (as each such term is defined in the Joint Venture Agreement).

9.3.16 *New Project Documents and Replacements.*

- (a) Each Material Project Document listed in Schedule 11, each replacement to an existing Material Project Document and each Additional Project Document (each a “**New Document**”) entered into by the Borrower on or after the date of this Agreement shall be in form and substance satisfactory to the Required Lenders.
- (b) If the Borrower desires to enter into any New Document it shall provide a copy of the proposed New Document to the Agent prior to the execution thereof, and the execution and delivery of such proposed agreement shall be subject to the approval of the Required Lenders that such New Document is in form and substance satisfactory to them.
- (c) Forthwith upon entering into a New Document, the Borrower shall provide a certified true copy of such executed New Document to the Agent together with (i) if requested by the Agent, except with respect to any Supply Agreement or Government Funding Agreement, a Consent or such other acknowledgement and consent as the Agent may reasonably require executed by the counterpart to such New Document and the Borrower and (ii) such legal opinions and corporate and other supporting documents in connection therewith as the Agent may require, acting reasonably. The Borrower shall comply with, and diligently enforce, all

obligations under the Material Project Documents, save where failure to do so neither has, nor could reasonably be expected to have, a Material Adverse Effect.

9.3.17 *Changes to Documents* □ Promptly after the execution and delivery thereof, the Borrower shall furnish the Agent with certified copies of all changes to any Material Project Document.

9.3.18 *Construction Documents* □ The Borrower shall not change, unless such change is administrative or not otherwise material in nature, or terminate the Construction Management & Procurement Agreement or the Engineering & Construction Support Agreement.

9.3.19 *Adherence to Permitted Liens* □ The Borrower shall do, observe and perform, or cause to be done, observed and performed, all obligations and things necessary or expedient to be done, observed or performed by the Borrower under or in connection with its obligations under any of the Permitted Liens, within the time limitations and in the manner and to the extent therein respectively provided, in order to preserve, protect and maintain all of its material rights thereunder and shall take all steps necessary to remedy any material non-compliance of which it becomes aware, and the Borrower will not suffer or permit any default under any such Permitted Lien that could be reasonably expected to have a Material Adverse Effect.

9.3.20 *Financial Records* □ The Borrower will maintain proper and complete records and books of account and records covering all its business and affairs on a current basis, make full, true and correct entries of its transactions in such books, set aside on its books from their earnings all such proper reserves as required by Applicable Accounting Principles.

9.3.21 *Rights of Inspection; Appraisals* □ The Borrower shall, and shall cause the Contractor to permit and provide, during normal business hours and from time to time upon reasonable notice as frequently as the Agent reasonably determines to be appropriate, to the Agent, the Secured Parties and the Independent Technical Consultant, and any of their respective representatives, at the expense of the Borrower, access to the Plant, the Project and the Site Lands and to the technical and statistical data, accounting books, records and other data with respect to the Project and to discuss its affairs, finances and accounts with any of its Responsible Officers and with any of its Auditors or other representatives. If an Event of Default or Default shall have occurred and be continuing or if access is necessary to preserve or protect the Project as determined by the Agent or the Independent Technical Consultant, to conduct appraisals and valuations, the Borrower shall, and shall cause the Contractor to, provide such access to such persons at all times and without advance notice. The Borrower will, and shall cause the Contractor to, also permit each Secured Party and the Independent Technical Consultant and their respective representatives to copy, make abstracts and audit relevant portions of their respective books, accounts and records and representatives of any Senior Party may accompany the Agent's representatives on any regularly scheduled audits. Without limiting the generality of the foregoing, the Borrower shall, and shall cause the Contractor to, permit the Independent Technical Consultant to access to the Site Lands, the Plant and the Project at all reasonable times to ensure that the technical requirements and specifications and the planning and design documents set out in the Transaction Documents are being implemented and followed as intended. The Borrower will promptly reimburse each Secured Party and the Independent Technical Consultant for all reasonable out-of-pocket costs and expenses incurred in connection with such visits and inspections.

9.3.22 *Access to Officers* □ Upon the request of the Agent or the Independent Technical Consultant at reasonable intervals, the Borrower shall make available to the Agent and the Independent Technical Consultant any of its respective representatives (including its Responsible Officers) to answer questions concerning such Obligor's business and affairs.

9.3.23 *Maintenance of Assets* □ The Borrower will at all times, maintain, operate, preserve, protect and keep the Project, the Plant and other Project Assets in good repair, working order and condition, ordinary wear and tear excepted, in accordance with good and prudent engineering, operating and business practices and will make any necessary and proper repairs, renewals and replacements to the Project, the Plant and other Project Assets (unless the continued maintenance of any of such Project Assets is no longer necessary or economically desirable for the operation of the Project) to ensure the Project, the Plant and other Project Assets are at all times maintained, operated, preserved, protected and kept in accordance with the foregoing.

9.3.24 *Maintenance of Insurance* □ The Borrower shall strictly observe each of the covenants and undertakings pertaining to insurance coverage set out in this Section 9.3.24:

- (a) General. The Borrower will maintain or cause to be maintained with nationally recognized financially sound and reputable insurers authorized to do business in Canada with a credit rating of at least A-, and a size rating of at least X by A.M. Best or at least A- by S&P unless otherwise approved by the Required Lenders, acting reasonably, insurance with respect to its business and assets, in such amounts and against such liabilities, casualties, risks and contingencies existing from time to time as is typical for a similar facility as the Plant and a similar project as the Project, all as reasonably required by the Required Lenders. Such policies shall be obtained, maintained and dealt with as set forth in this Section 9.3.24.
- (b) Policies. All policies of insurance referred to in Section 9.3.24 shall include:
 - (i) additional insured status for the Secured Parties, and, in relation to any liability policies, also their respective Affiliates and the directors, officers, employees, agents and advisors of such Secured Party and of such Secured Party's Affiliates (collectively, the "**Additional Insureds**");
 - (ii) waivers of subrogation from the insurers in favor of the Borrower and all named insureds and Additional Insureds. The Borrower hereby waives any and every right of subrogation against the Secured Parties;
 - (iii) policies either (A) non-cancellable; or (B) only cancellable after 30 days written notice from insurers to the Agent (or on ten (10) days prior written notice for non-payment and in accordance with prudent industry practice for war and similar risks under any marine transit policy). Furthermore, the Borrower shall inform the Agent as soon as reasonably possible if it becomes aware of a cancellation, lapse, termination, suspension or material change in cover or of any reasonable prospect of such;

- (iv) the Agent shall have the right but not the obligation to pay premiums on behalf of the first named insured in case of non-payment, and all amounts so paid by or at the request or instruction of the Agent under this Section 9.3.24 shall be subject to Section 9.5;
 - (v) policies shall be unaffected by any Insolvency Event or Insolvency Proceeding relating to or in connection with the Borrower or the Project;
 - (vi) insurance shall be primary and not excess to or contributing with any other insurance or self-insurance maintained by the Borrower and any named and Additional Insureds. However, policies can act in excess of underlying policies or such Project-specific policies provided by contractors in accordance with the terms of this Agreement;
 - (vii) the Additional Insureds shall have no obligations or liability whatsoever towards insurers or in relation to any insurance policy including no obligation or liability to pay any premium and no obligation to pay any deductibles; and
 - (viii) that the Agent shall be the sole loss payee.
- (c) Policy Terms. All policies of insurance required to be maintained pursuant to Section 9.3.24 shall contain terms, conditions, deductibles, limits and exclusions reasonably acceptable to the Secured Parties.
- (d) Direct Agreements. If the Borrower is not the first named insured on any of the insurances required to be maintained by this Agreement then the Borrower shall procure that the party that is first named insured shall enter into a direct agreement with the Secured Parties such that the Secured Parties can assert their rights under this Agreement in relation to such insurances. Such agreement shall be in form and substance acceptable to the Secured Parties.
- (e) Annual Evidence. Prior to policy replacement or renewal, the Borrower will deliver to the Agent certificates of insurance issued by its insurers or insurance broker(s), together with the Insurance Broker's Certificate certifying, among other things that insurance policies have been obtained, premiums due have been paid, insurance cover in place complies with the requirements of this Section 9.3.24, the requirements of the then existing Material Project Documents and listing all such insurance policies, and in addition shall deliver the following to the Agent, all in form and substance satisfactory to the Secured Parties:
- (i) the Insurance Broker's Certificate attaching true and complete copies of the certificates of insurance evidencing all such insurance;
 - (ii) confirmation and a copy of a waiver of subrogation from the various insurers in favour of the Secured Parties;

- (iii) evidence of clauses within and/or endorsements to the applicable policies evidencing the applicable insurance establishing the Secured Parties and any other Additional Insured, as applicable, required by this Agreement and other Material Project Documents, as additional insureds and for all policies covering real property, as sole loss payee, accompanied with a satisfactory mortgagee clause and/or provisions; and
- (iv) all such other evidence as may be required by the Lenders, acting reasonably, including all such evidence in respect of insurance not placed by the Borrower's insurance broker.

The insurance provided and maintained by the Borrower (or on its behalf) shall be at least that evidenced in any certificates or other evidence provided by or on behalf of the Borrower.

- (f) Renewal. The Borrower shall cause its insurance broker to provide to the Agent evidence (which shall include "cover notes" or 'binders' and full policy wording) of the renewal of every policy of insurance referred to in this Section 9.3.24 (other than insurance where in accordance with prudent practices it is customary to allow such insurance to lapse having regard to the status of the Project) at least five (5) days prior to the expiry of such policies of insurance. The Borrower shall provide to the Agent all such evidence at least five (5) days prior to the expiry of such policies of insurance.
- (g) Assignment. The Borrower will assign, or cause to be assigned, to the Secured Parties by a specific assignment, pursuant to the provisions of the Security, all policies of insurance effected pursuant to this Section 9.3.24 and all claims thereunder, to be held by the Secured Parties as part of the Collateral.

9.3.25 *Payment of Taxes and Claims.* □ The Borrower will (a) pay and discharge all lawful claims for labour, material and supplies, (b) deliver or cause to be delivered all Income Tax, Sales Tax and other Tax returns when they are due to the appropriate Governmental Authority, (c) punctually pay and discharge all Taxes payable by it when due, (d) withhold and collect all Taxes required to be withheld and collected by it and remit such Taxes to the appropriate Governmental Authority before they are past due in the manner required by Applicable Law and (e) pay and discharge all Statutory Prior Claims before they are past due; except that no such claims, obligations or Taxes referred to in Clause (c) above need be paid if (i) they are being actively and diligently contested in good faith by Contested Tax Proceedings, and (ii) the Tax liability contested does not exceed the Threshold Amount in the aggregate for all Contested Tax Proceedings.

9.3.26 *Comply with Environmental Laws.* □ The Borrower will and will cause its representatives to (a) manage and operate the Project and its business and activities in compliance with all Environmental Laws, (b) maintain all Authorizations and make all registrations required under all Environmental Laws in relation to the Project and remain in compliance therewith and (c) store, treat, transport, generate, otherwise handle and dispose of all Hazardous Materials and Waste owned, managed or controlled by it in compliance with all Environmental Laws; provided that, it shall not constitute a Default where any such failure or

non-compliance has not resulted in, and could not reasonably be expected to result in, (i) Environmental Liabilities to the Borrower in an aggregate amount exceeding the Threshold Amount or (ii) a Material Adverse Effect. The Borrower will and will cause its representatives to maintain proper procedures to monitor compliance with Environmental Laws and Project Authorizations relating to the Environment and circumstances which may give rise to a claim or losses and expenses to a requirement of expenditure by the Borrower or of cessation or material alteration of their activity pursuant to Environmental Laws. The Borrower shall diligently cure and have dismissed any actions and proceedings brought under Environmental Laws with respect to the Project and the Site Lands for which the Borrower is responsible at law or under any Transaction Document or with respect to the Borrower.

9.3.27 *Construction Lien Act (Ontario)* □ The Borrower shall comply with, or cause to be complied with, the provisions of the *Construction Lien Act (Ontario)* and shall pay or cause to be paid from time to time when the same shall be due all claims and demands of constructors, subcontractors, labourers, suppliers of materials, builders, workmen and others, which, if unpaid, might result in, or permit the creation of, a construction lien on the Site Lands or the Plant or any part thereof or on the revenues, income and profits arising therefrom. If a construction lien, other than a Permitted Lien, is registered against title to the Site Lands or the interest of the Borrower, and the Borrower is liable for the satisfaction and removal of such construction lien under the Project Documents, the Borrower shall promptly pay and discharge same. If the Borrower *bona fide* disputes the validity or correctness of a registered construction lien and the Borrower is liable for the satisfaction and removal of such construction lien under the Project Documents, it may contest such construction lien in any manner properly contemplated by the laws of the Province of Ontario, provided it promptly discharges or vacates, or cause to be discharged or vacated, the construction lien from the title to the Site Lands or the Plant or the interest of the Borrower therein, by posting of a bond, or by payment into court of such amount as is necessary to obtain such discharge and removal.

9.3.28 *Pension Plan and Employee Benefit Plan Compliance* □ The Borrower shall establish, maintain and operate (a) all Pension Plans in compliance with all laws, regulations and rules applicable thereto and the respective requirements of the governing documents for such Pension Plans, and (b) all Employee Benefit Plans to comply with the provisions of all Applicable Laws and the respective requirements of the governing documents for such Employee Benefit Plans; except, in the case of Clauses (a) and (b), to the extent any failure to do so is not reasonably expected to result in liability to the Borrower in an aggregate amount in excess of the Threshold Amount.

9.3.29 *Anti-Terrorism Laws* □ The Borrower shall not knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or violates or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law to the extent relevant or applicable.

9.3.30 *Violations of Anti-Terrorism Laws* □ If the Borrower obtains actual knowledge that any holder of a direct or indirect equity or financial interest in the Borrower is the subject of any enforcement action or restriction under the Anti-Terrorism Laws, the Borrower shall promptly notify the Agent in writing thereof. Upon the request of the Agent, the Borrower shall promptly provide any information the Agent believes is reasonably necessary to be delivered to comply with any Anti-Terrorism Laws.

9.3.31 *Anti-Money Laundering Laws*□The Borrower shall adopt and maintain adequate policies, procedures and controls to ensure that it is in material compliance with all Anti-Money Laundering Laws applicable to it. The Borrower acknowledges that, pursuant to Anti-Money Laundering Laws, each Lender may be required to obtain, verify and record information regarding the Borrower, its directors, authorized signing officers, direct shareholders or other persons in Control of the Borrower, and the transactions contemplated hereby, and disclose such information to Governmental Authorities, subject to any restrictions that exist under local privacy or data protection laws. The Borrower consents to such information being obtained, verified, recorded and disclosed to Governmental Authorities and agrees to promptly provide to the Agent all such information, including supporting documentation and other evidence, as may be reasonably requested by the Agent (which request will be made upon receipt from a Relevant Lender (or any Participant or prospective Transferee or Participant thereof) to do so, in order to comply with Anti-Money Laundering Laws.

9.3.32 *Canadian Economic Sanctions and Export Control Laws*□ The Borrower will comply, in all material respects with applicable Canadian Economic Sanctions and Export Control Laws, including those regarding activities involving Iran or Sudan. The Borrower shall adopt and maintain adequate policies, procedures, and controls to ensure that it is in material compliance with applicable Canadian Economic Sanctions and Export Control Laws.

9.3.33 *Updated Schedules*. At the request of the Agent from time to time the Borrower shall forthwith revise and provide to the Agent updates of the Schedules hereto in form and substance satisfactory to the Lender to ensure that the representations and warranties relative thereto made in this Agreement are true, accurate and complete at all times.

9.3.34 *Further Assurances*. Subject to the terms and conditions herein provided, the Borrower agrees to do all things that may be required by Applicable Laws or that the Agent may request that are reasonably necessary, proper or advisable under Applicable Laws to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by, and to carry out the purposes and intent of each Transaction Document.

9.4 Negative Covenants

9.4.1 *Nature of Business*. The Borrower shall not engage in any business activity other than the Project and shall not make any change to the nature of the Project. The Borrower shall not engage in any business activity that relates to Sanctioned Activities.

9.4.2 *Base Financial Model*. The Borrower shall not change the Base Financial Model without the consent of the Agent (acting on the instructions of the Required Lenders) after consultation with and approval by the Independent Technical Consultant of such change, except for a change that is specifically contemplated in this Agreement.

9.4.3 *Material Project Agreements, Project Authorizations and Additional Project Documents*. The Borrower shall not:

- (a) cancel or terminate prior to the express expiry date of any Material Project Document to which it is a party or consent to or accept any such early cancellation or termination thereof except with the prior consent of the Agent

(acting on the instructions of the Required Lenders) after consultation with and approval by the Independent Technical Consultant;

- (b) fail to enforce, forgive, compromise, settle, adjust or release (collectively, a “**failure to enforce**”) any term of, obligation or right under, or in respect of, any Material Project Document except (i) with the prior consent of the Agent (acting on the instructions of the Required Lenders) after consultation with and approval by the Independent Technical Consultant or (ii) where (A) such failure to enforce (I) either is not material in nature or is not adverse to the Borrower or the Project (for certainty, but without limitation, a failure to enforce relating to assignment, economic terms and termination shall be amongst those provisions of the Material Project Documents that are considered to be material) and (II) does not materially impact the Borrower’s obligations to the Secured Parties and (B) the Borrower gives the Agent prompt notice of such failure to enforce;
- (c) change any Material Project Document or material Project Authorization except (i) with the prior consent of the Agent (acting on the instructions of the Required Lenders) after consultation with and approval by the Independent Technical Consultant or (ii) where (A) such change (I) either is not material in nature or is not adverse to the Borrower or the Project (for certainty, but without limitation, changes relating to assignment, economic terms and termination shall be amongst those provisions of the Material Project Documents and material Project Authorizations that are considered to be material) and (II) does not materially impact the Borrower’s obligations to the Secured Parties and (B) the Borrower gives the Agent prompt notice of such change;
- (d) petition, request or take any other legal or administrative action that seeks, or may reasonably be expected, to materially impair any Material Project Document or any material Project Authorization; and/or
- (e) enter into any Material Project Document which replaces an existing Material Project Document or enter into any Additional Project Documents except in accordance with Section 9.3.16.

9.4.4 *No Disposition or Assignment of Material Project Documents.* The Borrower will not dispose, by operation of law or otherwise, all or any part of its rights in any Material Project Document or material Project Authorization. The Borrower will not, consent or agree to any assignment (other than by way of security to the Agent) or transfer of any Material Project Document or any material Project Authorization.

9.4.5 *Limitation on Debt.* The Borrower will not create, assume, incur, otherwise become liable upon or permit to exist any Debt, other than:

- (a) Debt secured by Permitted Liens;
- (b) Debt under the Secured Documents;
- (c) Debt under the Government Funding Agreements;

- (d) Permitted Derivatives;
- (e) such other Debt as the Required Lenders may consent to from time to time.

9.4.6 *Financial Assistance* □ The Borrower will not provide any financial assistance by means of Investment, guarantee or otherwise to any person, other than Permitted Investments.

9.4.7 *Sale of Assets* □ The Borrower will not dispose of any of its assets, except for disposals of:

- (a) Product made in the ordinary course of business;
- (b) obsolete, redundant, damaged or otherwise unusable goods, machinery and equipment;
- (c) defaulted accounts in order to realize on them in a commercially reasonable manner; and
- (d) disposals of defaulted accounts by subrogation or assignment to any export credit guarantee department or other Governmental Authority, in order to collect on them from that export credit guarantee department or other Governmental Authority;

in each case, provided that (i) no Default or Event of Default has occurred and is continuing or could reasonably be expected to occur after such disposal takes place and (ii) the proceeds of any such disposal shall be directly deposited into the Project Revenue Account and thereafter applied in accordance with Article 5.

9.4.8 *Negative Pledge* □ The Borrower will not create, incur, assume or otherwise become liable upon or permit to exist any Lien on, against or with respect to any of its assets, except for:

- (a) Liens in respect of Statutory Prior Claims, but only if the obligations secured by such Liens are paid when due;
- (b) Liens for assessments or governmental charges or levies which are paid when due or, if overdue, the validity or amount of which is being contested in good faith by appropriate proceedings and in respect of which adequate steps have been taken (which may include cash being paid to or pledged with the relevant Governmental Authority) to prevent penalties from being imposed, interest from accruing and the commencement or continuation of enforcement proceedings and adequate reserves in accordance with Applicable Accounting Principles have been recorded on the consolidated balance sheet of the Borrower;
- (c) construction, mechanics', carriers', warehousemen's, storage, repairers' and materialmen's Liens; provided that the obligations secured by such liens are paid when due and no Lien has been registered against any assets of the Borrower or if a Lien has been registered, same is being diligently defended in good faith by

appropriate proceedings and appropriate steps have been taken to prevent any disposal of such assets;

- (d) Liens arising from court or arbitral proceedings; provided that the claims secured thereby are being contested in good faith by appropriate proceedings by the Borrower, execution thereon has been stayed and continues to be stayed and such Liens do not, in the aggregate, detract from the value of any asset of the Borrower or impair the use thereof in the conduct of business of the Borrower, other than in a manner that is immaterial;
- (e) deposits of cash securities in connection with any appeal, review or contestation of any security or lien, or any matter giving rise to any security or lien, described in paragraph (d) above;
- (f) any pledge of cash by the Borrower to any insurer, guarantor, third party contractor, public utility or Governmental Authority made in the ordinary and usual course of business to secure the performance of bids, tenders, contracts (other than contracts of Debt), leases, customs duties and other similar obligations;
- (g) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of combination of accounts or similar rights in the ordinary course of conducting day-to-day banking business in relation to deposit accounts or other funds maintained with a financial institution;
- (h) Liens over specific items of property (as opposed to Liens over all or any substantial part of the assets of the Borrower) in favour of Unrelated Parties securing purchase-money Debt (including capital leases) outstanding at any time in an aggregate outstanding amount which does not exceed \$2,000,000 (or Equivalent in other currency);
- (i) the Liens created by the Security and any other Liens created in favour of the Secured Parties;
- (j) the Liens created by the SJIF Security but only prior to (and not on or after) the Financial Closing Date;
- (k) on and after the Financial Closing Date the Liens created by the SJIF Security provided that the SJIF Security is at all times subject to the SJIF Intercreditor Agreement;
- (l) Liens not referred to elsewhere in this definition over specific items of property securing not more than \$2,000,000 (or Equivalent in other currency) in the aggregate for all such Liens at any time subject to an Intercreditor Agreement;
- (m) Liens on real property which consist of (i) reservations, limitations, provisos and conditions expressed in the original grant from the Crown, (ii) any general qualifications to title imposed under the land titles registry system in which any

real property is situate, (iii) any encroachments, variations in description or by-law infractions which might be revealed by an up-to-date survey of the real property which do not detract in any material way from the use or intended use of the property, (iv) any agreement with a municipality with respect to the development of the buildings, fixtures and improvements on the real property which do not create material obligations, (v) restrictions or restrictive covenants disclosed by registered title which do not detract in any material way from the use or intended use of the property, (vi) any easement or right-of-way disclosed by registered title which do not detract in any material way from the use or intended use of the property, (vii) any easement for the supply of utilities or telephone services to the real property and for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services, (viii) registered easements or rights of way for passage, ingress and egress of persons and vehicles over parts of the real property, (ix) facility cost sharing, servicing, parking, reciprocal and other similar agreements with neighbouring land owners and/or Governmental Authorities, (x) the provisions of Applicable Laws including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning, and (xi) the Liens set out in Schedule 20;

- (n) the option to purchase/right of first refusal with respect to the Site Lands in favour of Lanxess Inc. registered on September 28, 2012 under number LA112242 but only prior to (and not on or after) the Financial Closing Date;
- (o) on and after the Financial Closing Date the option to purchase/right of first refusal with respect to the Site Lands in favour of Lanxess Inc. registered on September 28, 2012 under number LA112242 provided that such option to purchase/right of first refusal is at all times subject to the Lanxess Subordination Agreement;
- (p) the option to purchase/right of first refusal of the Site Lands in favour of Lanxess Inc. set out in Sections 16 and 22.10 of the Land Purchase Agreement and Section 14.5 of the Steam Supply Agreement but only prior to (and not on or after) the Financial Closing Date;
- (q) on and after the Financial Closing Date the option to purchase/right of first refusal of the Site Lands in favour of Lanxess Inc. set out in Sections 16 and 22.10 of the Land Purchase Agreement and Section 14.5 of the Steam Supply Agreement provided that such option to purchase/right of first refusal is at all times subject to the Lanxess Subordination Agreement; and
- (r) such other Liens securing such obligations as may be approved by the Required Lenders from time to time.

For greater certainty, no Liens shall be permitted on any Capital Stock of the Borrower, other than Liens created by the Security and any other Liens created in favour of the Secured Parties, subject however to the Intercreditor Agreement.

9.4.9 *No Subsidiaries.* The Borrower shall not own or otherwise have any rights in, (directly or indirectly), or make any Acquisition of, or create or form any Subsidiaries.

9.4.10 *No Partnerships.* The Borrower shall not, directly or indirectly, be a member of, or a partner or participant in, any limited or general partnership, association, joint venture or syndicate.

9.4.11 *No Merger, Amalgamation, etc.* The Borrower shall not enter into any Business Combination, liquidation, winding-up, dissolution, administration or similar transaction.

9.4.12 *Limitation on Investments.* The Borrower shall not make any Investments, other than (a) Investments in Cash Equivalents held in the Accounts and (b) Investments in the form of equity in the Borrower made by the Sponsors in excess of the Sponsor Contributions.

9.4.13 *Limitations on Acquisitions.* The Borrower shall not make any Acquisition.

9.4.14 *Ownership of Project.* The Borrower shall not permit any other person to own, Acquire or otherwise become entitled to any legal, beneficial or participating ownership interest or other rights in the Project or Project Assets.

9.4.15 *Change in Control.* The Borrower shall not permit any Change in Control to occur.

9.4.16 *Distributions.*

(a) *Permitted Distributions.* Subject to Section 9.4.16(c), the Borrower will not declare, set apart for payment, make or pay any Distributions, except for a Permitted Distribution provided that on the date of such Permitted Distribution (the “**Permitted Distribution Date**”) each of the following conditions (the “**Permitted Distribution Conditions**”) is satisfied:

- (i) no Default or Event of Default has occurred and is continuing at the time of and no Default or Event of Default could reasonably be expected to occur after giving effect to such proposed Permitted Distribution;
- (ii) Commercial Operation has been achieved;
- (iii) the Debt Service Coverage Ratio equals or exceeds 1.90:1;
- (iv) there are sufficient cash reserves on the balance sheet of the Borrower and in the Project Revenue Account to meet the next sixty (60) days of projected Operating Costs;
- (v) the Borrower has paid at least the first Scheduled Principal Repayment Instalment;
- (vi) such payment is made within thirty (30) days after the most recent Scheduled Principal Repayment Date;

- (vii) there is, and immediately following the making thereof would be, no Debt Service Reserve Deficiency;
 - (viii) the DSRA, MRA and Cost Overrun Account are fully funded to the extent required pursuant to Sections 5.2, 5.3 and 5.4; and
 - (ix) the Agent shall have received the notice set out in Section 9.4.16(b) with respect to such Permitted Distribution.
- (b) *Permitted Distribution Notices.* If the Borrower proposes to make a Permitted Distribution, it shall, not less than 10 Business Days prior to the proposed Permitted Distribution Date, give the Agent notice thereof. The notice shall (i) certify compliance with the conditions to the Permitted Distribution set forth in Section 9.4.16(a), on the date of such notice and as of the proposed Permitted Distribution Date and (ii) set forth the information and computations demonstrating compliance with such conditions.
- (c) *Permitted Royalty Payment.* Notwithstanding Section 9.4.16(a), the Borrower may make a Permitted Royalty Payment in accordance with the terms and conditions of Section 5.6.3(j).

9.4.17 *Issue or Transfer of Capital Stock.* The Borrower shall not issue or agree to issue, any Capital Stock of the Borrower to any person other than the Sponsor Shareholders. The Borrower shall not consent to or approve or agree to consent to or approve any direct or indirect transfer of any Capital Stock of the Borrower to any person other than the Sponsor Shareholders.

9.4.18 *Derivatives.* The Borrower will not enter into any Derivative except for Permitted Derivatives.

9.4.19 *Fiscal Year.* The Borrower will not change its Fiscal Year.

9.4.20 *Securitizations.* The Borrower will not dispose of any account, note receivable or accounts receivable, with or without recourse, except for a disposal permitted under Section 9.4.7(c).

9.4.21 *Arm's Length Arrangements.* The Borrower will not enter into an agreement, transaction or other arrangement with an Affiliate of the Borrower, or any other person with whom it is not dealing at arm's length, unless such agreement, transaction or arrangement is made on commercially reasonable terms (including normal trade terms, but excluding for certainty deferred payment terms) at fair market value and consistent with commercial relations between Unrelated Parties.

9.4.22 *No Continuance.* The Borrower will not continue under the laws of any other jurisdiction.

9.4.23 *Constitutional Documents.* The Borrower shall not change its Constitutional Documents except with the consent of the Required Lenders.

9.4.24 *Location.* The Borrower shall not change its location for the purposes of Section 7(4) of the PPSA.

9.4.25 *Pension Plans.* With respect to any Pension Plan, the Borrower shall not incur any Unfunded Liability which, when aggregated with the Unfunded Liabilities under all other Pension Plans, would exceed the Threshold Amount.

9.4.26 *Benefit Plans* □ Any other term or provision of this Agreement or any other Loan Document to the contrary notwithstanding, the Borrower shall not (a) adopt, establish, maintain, contribute or be obligated to contribute to, or otherwise have liability for, a Defined Benefit Plan, (b) permit any further Unfunded Liabilities with respect to any Pension Plan which would trigger a requirement to make a material increase in contributions to fund any such liabilities, (c) acquire an interest in any person if such person sponsors, administers, maintains or contributes to, or has any liability in respect of, any Defined Benefit Plan, or (d) fail to pay any required contributions or payments to a Pension Plan on or before the due date for such required instalment or payment; save where any such failure or non-compliance is immaterial and does not and could not reasonably be expected to result in a loss and expense to the Borrower in an aggregate amount for all such failures exceeding the Threshold Amount.

9.4.27 *Bank Accounts* □ On and after the Initial Funding Date, the Borrower shall not maintain any cash balance or deposit account with any bank or other financial institution other than the Accounts.

9.4.28 *Securities Accounts* □ On and after the Initial Funding Date, the Borrower shall not maintain any securities account other than the Accounts.

9.5 Performance of Covenants by Agent

Upon the occurrence and during the continuance of a Default, the Agent, on the instructions of the Required Lenders and following reasonable notice by the Agent to the Borrower, may (unless the Borrower has provided the Agent with a reasonably detailed remediation plan acceptable to the Required Lenders with respect to such Default and is pursuing such remediation) perform any covenant of the Borrower under this Agreement which the Borrower fails to perform or cause to be performed and which the Agent is capable of performing, including any covenants the performance of which requires the payment of money, provided that the Agent shall not be obligated to perform any such covenant on behalf of the Borrower and no such performance by the Agent shall require the Agent to further perform such covenants or shall operate as a derogation of the rights and remedies of the Agent and the Lenders under this Agreement or as a waiver of such covenant by the Agent. Any amounts paid by the Agent as aforesaid shall be reimbursed by the Lenders in their Rateable Shares and shall be repaid by the Borrower to the Agent on behalf of the Lenders on demand.

ARTICLE 10
EVENTS OF DEFAULT AND REMEDIES

10.1 Events of Default

The occurrence of any one or more of the following events, defaults, breaches, failures, states or conditions (each such event being herein referred to as an “**Event of Default**”) shall constitute a default by the Borrower under this Agreement:

10.1.1 *Non-Payment of Principal* □ The Borrower fails to pay any principal amount payable under any Loan Document or under any Cash Management Agreement, or any early termination amount payable under any Permitted Derivative with any Secured Party, when due.

10.1.2 *Non-Payment of Interest and Other Amounts* □ The Borrower fails to pay any interest, Fee or other amount (excluding principal) payable hereunder when due and such failure is caused by administrative or technical error and continues unremedied for more than three (3) Business Days after such due date.

10.1.3 *Misrepresentation* □ Any representation or warranty made or deemed made by any Obligor in any Secured Document is found to have been false, incorrect, inaccurate, incomplete or misleading in any material respect.

10.1.4 *Financial Test* □ Any financial test contained in Section 9.2 is not complied with.

10.1.5 *Negative Covenants* □ Any negative covenant contained in Section 9.4 is not complied with.

10.1.6 *Maintain Existence* □ Any Obligor fails to comply with Section 9.3.3.

10.1.7 *Breach of Other Covenants* □ Any Obligor fails to perform or comply with any provision or obligation contained in any Secured Document to which it is a party (other than those referred to in Subsections 10.1.1, 10.1.2, 10.1.3, 10.1.4, 10.1.5 and 10.1.6 above) and such failure continues unremedied for a period of thirty (30) days after the occurrence thereof.

10.1.8 *Cross-Default* □ The Borrower defaults under any one or more agreements, documents or instruments relating to Debt in an aggregate amount exceeding the Threshold Amount and such default has not been waived by the persons to whom the Debt is owed or, if there is any cure period applicable to such default, such cure period lapses without the default being cured.

10.1.9 *Cross Acceleration* □ The Borrower becomes obligated to repay, prepay, offer to prepay, pay, purchase or otherwise retire or acquire any Debt (other than Debt under this Agreement) in an aggregate amount exceeding the Threshold Amount before its scheduled maturity date by reason of an event or circumstance that could reasonably be expected to be treated as a default or event of default in the context of a commercial or Governmental Authority lending transaction (including an event equivalent or analogous to a Default), although it may not be described as such in the agreement governing such Debt.

10.1.10 *Unsatisfied Judgments* □ Any one or more judgments for the payment of money in an aggregate amount exceeding the Threshold Amount are rendered against the Borrower and the Borrower does not discharge same in accordance with their respective terms, or procure a stay of execution thereof, within thirty (30) days from the date of the entry of each such judgments and in any event at least five (5) Business Days before any such judgment may be executed upon.

10.1.11 *Enforcement of Liens* □ Any one or more persons entitled to any Liens on any assets of the Borrower take possession of any such assets valued in excess of the Threshold Amount or any one or more seizures, executions, garnishments, sequestrations, distresses, attachments or other equivalent processes in respect of claims against the Borrower are issued or levied against any assets of the Borrower valued in excess of the Threshold Amount and such Borrower does not discharge the same or provide for the discharge in accordance with their respective terms, or procure a stay of execution thereof, within thirty (30) days from the date such possession or process first takes effect and in any event at least five (5) Business Days before such assets are capable of being disposed of thereunder. Any one or more persons entitled to any Liens on the Capital Stock of the Borrower takes possession of such Capital Stock.

10.1.12 *Insolvency Event* □ Any Insolvency Event with respect to any Obligor occurs.

10.1.13 *Cessation of Business* □ The Borrower ceases or suspends or threatens to cease or suspend all or a substantial portion of its business, save for (a) any temporary cessation or suspension of business arising from employee lock-outs or strikes (b) any temporary plant closures arising in the ordinary course of day-to-day business operations of the Borrower or (c) any other cessation or suspension of business that could not reasonably be expected to result in a Material Adverse Effect.

10.1.14 *Security Imperilled* □ If (a) any proceeding is commenced which, if determined adversely to any Obligor or to the rights of the Secured Parties contemplated under the Loan Documents, would result in (i) any material impairment of any Obligor's ability to perform any of its Loan Obligations or (ii) any prejudice to, restriction on or rendering unenforceable or ineffective, any Sponsor Guarantee or Security or any rights intended to be granted under or pursuant to any Loan Document by any Obligor to or for the benefit of the Secured Parties which the Required Lenders in good faith determine is materially adverse to their rights or interests, (b) any Loan Document or any material right thereunder becomes or is determined by a court of competent jurisdiction to be invalid, unenforceable or ineffective, (c) the Lien of any Security over any Capital Stock of the Borrower or any Material asset is determined by a court of competent jurisdiction to be or ceases to be valid and perfected ranking in priority in the manner contemplated herein or in the Security Documents, other than by reason of the direct act or omission of any Secured Party or (d) any Obligor denies that it has any or further obligations under any Loan Document or challenges the validity of any provision thereof or of the Security.

10.1.15 *Unfunded Pension Liabilities and Pension Event* □ The aggregate Unfunded Liability under all Pension Plans exceeds in the aggregate the Threshold Amount. A Pension Event shall have occurred that when taken either alone or together with all other Pension Events (a) could reasonably be expected to result in a Material Adverse Effect or (b) causes any Lien to arise in respect of the Borrower in connection with any Pension Plan (other than for

contributions not yet due) which could reasonably be expected to secure assets of the Borrower exceeding the Threshold Amount in value.

10.1.16 *Environmental Liabilities* □ Should the aggregate Environmental Liabilities of the Borrower which has become payable as well as the aggregate of all actual losses and expenses paid or reasonably expected to be incurred by the Borrower in order to comply with any Environmental Liabilities at any time, not fully funded by insurance, exceed \$1,000,000 (or Equivalent in other currency).

10.1.17 *Change in Applicable Law* □ The introduction of or change in the interpretation or application of, or any revocation or replacement of any Applicable Law has occurred which, in any case is likely to materially adversely affect the ability of the Borrower to meet its obligations under (a) any Loan Document or which might reasonably be expected to result in a Default or Event of Default thereunder or (b) any Material Project Document or which might reasonably be expected to result in a default or event of default thereunder.

10.1.18 *Material Adverse Change* □ Any Material Adverse Change occurs.

10.1.19 *Change in Control* □ Any Change in Control occurs or, at any time, is expected to occur within ten (10) Business Days, in either case, without the consent of the Required Lenders.

10.1.20 *Change in Project Ownership or Control* □ The Borrower shall cease (a) to own, legally and beneficially a 100% undivided ownership interest in the Project Assets or (b) to have sole control of the Project Asset.

10.1.21 *Failure to Achieve Commercial Operation* □ Commercial Operation has not occurred on or before the Limit Commercial Operation Date or the Independent Technical Consultant certifies to the Agent that, in the Independent Technical Consultant's judgment, Commercial Operation cannot reasonably be expected to be achieved by the Limit Commercial Operation Date.

10.1.22 *Expropriation* □ If (a) any action or series of actions that is taken, authorized or ratified by any Governmental Authority for the appropriation, requisition, seizure, confiscation, expropriation or nationalization (by intervention, condemnation, custody or other form of taking), whether with or without compensation, of (i) any portion of the equity ownership of the Borrower or (ii) any portion of the right, title, interest, ownership or control of the Project; or any Governmental Authority under colour of legal authority takes and holds possession of any substantial part of the Project Assets, (b) the Borrower disposes of itself of all or a material part of its property because it is required to do so by a binding order from a Governmental Authority or (c) the Borrower is otherwise prevented from exercising normal control over all or a material part of its assets or loses any of the rights or privileges necessary to maintain its existence or to carry on its business.

10.1.23 *Cessation of Activities* □ If (a) there is a voluntary cessation of construction, commissioning, start-up, operation, maintenance or production of the Project, (b) the Project Assets are placed on a "care and maintenance basis", (c) the Project is abandoned, cancelled or terminated or (d) any other cessation of construction, commissioning, operation or production activities of the Project occurs for thirty (30) days without interruption.

10.1.24 *Project Authorizations.*□ The failure to obtain any Project Authorization required to be held at that time or to comply with any terms or conditions to which any such Project Authorization is subject and such failure could reasonably be expected to materially adversely affect the Project. The suspension, revocation, cancellation, material change, unenforceability or expiration of any Project Authorization while it is still required for the Project and the suspension, revocation, cancellation, material change, unenforceability or expiration of which would reasonably be expected to materially adversely affect the Project and such Project Authorization has not been renewed or replaced within thirty (30) days of such suspension, revocation, cancellation, material change, unenforceability or expiration, provided, however, that such grace period shall only be provided if the Borrower is diligently pursuing such renewal or replacement.

10.1.25 *Funding Shortfall.*□ If at any time prior to the Commercial Operation Date, (a) there shall exist a Funding Shortfall and such Funding Shortfall has not been remedied (through proceeds of drawdowns under the Cost Overrun Account (only in respect of a Funding Shortfall that exists after the First Drawdown) or additional capital contributions by a Sponsor) within ten (10) Business Days after written notice thereof to the Borrower by the Agent, or (b) the Independent Technical Consultant is unable to certify that there is no Funding Shortfall (or certifies that there is a Funding Shortfall and such Funding Shortfall has not been remedied (through proceeds of drawdowns under the Cost Overrun Account (only in respect of a Funding Shortfall that exists after the Initial Drawdown Date) or additional capital contributions by a Sponsor) within ten (10) Business Days after receipt by the Borrower of such certificate of the Independent Technical Consultant.

10.1.26 *DSRA.*□ At any time after the Commercial Operation Date, the balance of the Debt Service Reserve Account is less than the Debt Service Reserve Requirement then applicable for more than 90 days.

10.1.27 *Compliance with Material Project Documents.*□ The Borrower fails in any material respect to observe or perform any material obligation to be performed or observed by it under any Material Project Document to which it is a party which failure could reasonably be expected to result in a Material Adverse Change.

10.1.28 *Loan Documents, Material Project Documents Unenforceable or Breaches.*□ (a) any one or more of the Transaction Documents is determined by a court of competent jurisdiction to be void, voidable or illegal, or not to be a legal, valid, binding and enforceable obligation of any party thereto, (b) any one or more of the Transaction Documents is repudiated by any party thereto (other than any Secured Party which is a party thereto), (c) any one or more Obligor or, to the Borrower's knowledge, any counterparty to a Material Project Document, is in default of, or in breach under or in respect of, any one or more Material Project Document to which it is a party or (d) any party to a Transaction Document (other than any Secured Party which is a party thereto) denies to any material extent, its obligations under any Transaction Document or claims any of the Transaction Documents to be rescinded, terminated, at an end, spent, invalid or withdrawn in whole or in part.

10.1.29 *Suspension of banking transactions in Japan.* Any clearing house, densai.net Co., Ltd. or any other similar institution takes procedures for the suspension of any transactions of any Obligor (which maintains any account in Japan) with banks or similar financial institutions.

10.2 Termination and Acceleration

Upon the occurrence of an Event of Default, the Agent may (or, subject to Section 11.9, at the direction of the Required Lenders shall) do any one or more of the following:

- (a) declare the whole or any item or part of the Total Commitment or the unutilized portion (if any) of any Loan Facility to be cancelled, terminated or reduced, whereupon the Relevant Lenders (to the extent applicable) shall not be required to make any further Drawdown hereunder in respect of such portion of the Total Commitment or each Loan Facility cancelled, terminated or reduced;
- (b) accelerate the maturity of all or any item or part of the Loan Obligations of the Borrower hereunder and declare them to be payable on demand or immediately due and payable, whereupon they shall be so accelerated and become so due and payable;
- (c) suspend any rights of the Borrower under any Loan Document, whereupon such rights shall be so suspended;
- (d) demand payment under any Sponsor Guarantee and/or enforce any Security;
- (e) demand that the Borrower pay (i) its Out-of-the-Money Derivative Exposure, if any, to each Secured Party and (ii) its Cash Management Obligations, if any, owing to each Lender and each Secured Party that has requested the Agent to make such demand, whereupon the Borrower shall be obliged to pay immediately to the Agent for the account of (A) each applicable Secured Party such Out-of-the-Money Derivative Exposure under all Permitted Derivatives entered into by it with each Secured Party and (B) each applicable Secured Party the amount of the Cash Management Obligations owing to that Secured Party; and
- (f) take any other action, commence any other proceeding or exercise such other rights as may be permitted by applicable law (whether or not provided for in any Secured Document) at such times and in such manner as the Agent may consider expedient,

all without any additional notice, demand, presentment for payment, protest, noting of protest, dishonour, notice of dishonour or any other action being required. If an Event of Default referred to in Section 10.1 occurs, unless the Required Lenders otherwise agree, the Total Commitment shall be cancelled and the Loan Obligations shall be accelerated and become immediately due and payable automatically without any action on the part of any other Secured Party being required.

10.3 Waiver

The Agent (on the instructions of the Required Lenders) may waive any Default. No waiver, however, shall be deemed to extend to a subsequent Default, whether or not the same as or similar to the Default waived, and no act or omission by the Agent and the Lenders shall extend to, or be taken in any manner whatsoever to affect, any subsequent Default or the rights

of the Agent and the Lenders arising therefrom. Any such waiver must be in writing and signed by the Agent to be effective. No failure on the part of the Agent and the Lenders to exercise, and no delay by the Agent and the Lenders in exercising, any rights under any Loan Document shall operate as a waiver of such rights. No single or partial exercise of any such rights shall preclude any other or further exercise of such rights or the exercise of any other rights.

ARTICLE 11

THE AGENT AND LOAN FACILITY ADMINISTRATION

11.1 Appointment and Authorization

Each Secured Party irrevocably appoints and authorizes the Agent to execute, deliver and take such actions as its agent under each Loan Document to which the Agent is party and to exercise such rights under each such Loan Document as are specifically delegated to the Agent by the terms thereof, together with such rights as are reasonably incidental thereto. The Agent accepts such appointment and agrees to perform its obligations as the Agent under each Loan Document in accordance with the provisions thereof.

11.2 Declaration of Agency

The Agent declares that it shall hold the Security entrusted to it and the rights granted to it under each Loan Document, for its own benefit and as agent for the rateable benefit of each Secured Party. The rights vested in the Agent by any Loan Document shall be performed by the Agent in accordance with this Article 11.

11.3 Protection of Agent

The Agent shall not be liable for any action taken or omitted to be taken by it under any Loan Document or in connection therewith, except to the extent of any losses and expenses that are determined by a final judgment that is binding on the Agent to have directly resulted from the wilful misconduct or gross negligence of the Agent. In no event shall the Agent be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to loss of profit, goodwill, reputation, business opportunity or anticipated saving), even if the Agent has been advised as to the likelihood of such loss or damage and regardless of the form of action.

11.4 Interest Holders

The Agent may treat each Relevant Lender as the holder of all rights of such Relevant Lender in respect of the Loan Facility until a duly executed and delivered Loan Transfer Agreement signed by such Relevant Lender and the Transferee, completed in form and substance satisfactory to the Agent, has been delivered to the Agent and the Agent has been paid its required processing fee for such loan transfer. The Agent may treat each Secured Party as the holder of all rights of such Secured Party under Cash Management Agreements and Permitted Derivatives stated by such Secured Party to have been entered into by it until a duly executed and delivered assignment and assumption agreement signed by the Borrower party to each such Cash Management Agreement and Permitted Derivative, such Secured Party and the proposed assignee, in form and substance satisfactory to the Agent, signed and executed by all such parties

has been delivered to the Agent and the Agent has been paid such processing fee for such assignment as the Agent shall reasonably require together with payment of all fees, costs and expenses of the Lenders' Counsel incurred or anticipated being incurred in completing such assignment.

11.5 Consultation with Professionals

The Agent may engage and consult with the Lenders' Counsel, accountants, consultants, financial advisors and other experts and the Agent shall not be liable for any action taken or not taken or suffered by it in good faith and in accordance with the advice and opinion of the Lenders' Counsel or such accountants, consultants, financial advisors or other experts.

11.6 Documents

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

11.7 Agent and their Subsidiaries and Affiliates

With respect to its Commitments, those portions of the Loan Facility made available by it and each Permitted Derivative and Cash Management Agreement entered into by it, the Agent shall have the same rights hereunder as any other Secured Party and may exercise the same as though it were not the Agent and the Agent and its Subsidiaries and Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower and its Affiliates and persons doing business with the Borrower or any of its Affiliates as if it were not the Agent and without any obligation to account therefor.

11.8 Responsibility of the Agent

The obligations of the Agent to the Secured Parties under each Loan Document to which the Agent is party are only those expressly set forth in such Loan Document, subject as otherwise provided in this Article 11. The Agent shall have no fiduciary obligation to any Secured Party. The Agent shall only have those contractual obligations expressly set forth in each Loan Document to which the Agent is party and no other duties, responsibilities, covenants or obligations shall be inferred or implied against the Agent. The Agent shall not be required to expend or risk any of its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder or in the exercise of any of its rights or powers. The Agent shall have no duty or obligation to investigate whether any Default has occurred or is continuing. The Agent shall be entitled to assume that no Default has occurred and is continuing, unless any officer of the Agent charged with the administration of the Loan Documents has actual knowledge or has been notified by a Borrower of such fact or has been notified by a Lender that such Lender considers that a Default has occurred and is continuing, such notification to specify in detail the nature thereof.

11.9 Action by the Agent

11.9.1 *Exercise of Discretion* □ The Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights which may be vested in it by, and with respect to taking or refraining from taking any action which it may be able to take under or in respect of, any Loan Document, unless the Agent has been instructed by the Required Lenders to exercise such rights or to take or refrain from taking such action, unless expressly permitted or required to do so by the provisions of any Loan Document. The Agent shall not incur any obligations under or in respect of any Secured Document with respect to anything which it may do or refrain from doing in the reasonable exercise of its judgment or which may seem to it to be necessary or desirable in the circumstances, except to the extent of any losses and expenses that are determined by a final judgment that is binding on the Agent to have directly resulted from the wilful misconduct or gross negligence of the Agent.

11.9.2 *Instructions from Required Lenders* □ The Agent shall in all cases be fully protected in acting or refraining from acting under any Loan Document in accordance with the instructions of the Required Lenders, and any action taken or refrained from being taken pursuant to such instructions shall be binding on all Secured Parties.

11.9.3 *Convening Meetings* □ The Majority Lenders (or if there are only two (2) Lenders, either Lender) may request the Agent to convene a meeting of Lenders to discuss any matter pertaining to the Loan Documents and specify the matters to be discussed. Upon receipt of any such request the Agent will promptly notify each of the Lenders of its receipt of such request and request the Lenders to meet at its offices or that of Lenders' Counsel within five (5) Business Days thereafter or such other time as the Agent and the Lenders may agree upon.

11.9.4 *Compliance with Applicable Law* □ Notwithstanding anything else herein contained, the Agent may refrain from doing anything which would or might in its opinion be contrary to any Applicable Law or which would or might otherwise render it liable to any person and may do anything which is, in its opinion, necessary to comply with any Applicable Law.

11.9.5 *Insurance* □ Without prejudice to the provisions of any other Loan Document, the Agent shall have the right, but not the obligation, to insure any of the Collateral or to require any other person to maintain any such insurance and it shall not be responsible for any losses and expenses which may be suffered by any person as a result of the lack of or inadequacy or insufficiency of any such insurance.

11.9.6 *Proceedings* □ The Agent shall have the right to institute, prosecute and defend any proceeding affecting the Agent or any rights of the Secured Parties arising under any Loan Documents and, subject to Section 11.18, to compromise any matter or difference or submit any such matter or difference to arbitration and to compromise or compound any debts owing to the Agent as agent or any other claims against it as the agent upon being provided with such evidence as shall seem sufficient to the Agent.

11.9.7 *New Obligations* □ The Agent shall have the right to give or enter into any obligation as it shall, with the approval of the Required Lenders and subject to all of the provisions of the Loan Documents to which it is party, think fit in relation to the Secured Documents.

11.9.8 *Agent May Require Security* □ Notwithstanding Section 11.9.1, the Agent may refrain from acting in accordance with any instructions of the Required Lenders to begin any proceeding arising out of or in connection with any Secured Document until it has received such security as it may require (whether by way of payment in advance or otherwise) for all claims and losses and expenses and disbursements which it anticipates it will or may expend or incur in complying with such instructions.

11.9.9 *Standard of Promptness* □ Where the Agent is obliged by the provisions of this Article 11 to give any notice or notification “promptly” or “forthwith”, if it gives such notice or notification within two (2) Business Days of an officer of it charged with the administration of this Agreement becoming aware of the subject matter of such notice or notification, it shall be deemed to have given such notice or notification promptly or forthwith.

11.10 Notice of Events of Default

In the event that an officer of the Agent charged with the administration of this Agreement is notified in writing of any Event of Default by the Borrower or a Lender, the Agent shall endeavour to notify the Lenders within three (3) Business Days, and, subject to Section 11.9, the Agent shall take such action and assert such rights under the Loan Documents as the Required Lenders shall request in writing, and the Agent shall not be subject to any liability by reason of its acting pursuant to any such request. Prior to receiving any instructions from the Required Lenders in respect of such Event of Default, the Agent may, but shall not be obliged to, take such action or assert such rights (other than those matters requiring unanimous Lender consent under any other provision of this Agreement) as it deems in its discretion to be advisable for the protection of the Secured Parties, except that, if the Required Lenders have instructed the Agent not to take such action or assert such rights, in no event shall the Agent act contrary to those instructions except as permitted by Sections 11.9.4 and 11.9.8.

11.11 Responsibility Disclaimed

The Agent in such capacity shall not be under any obligation whatsoever (a) to the Borrower as a consequence of any failure or delay in the performance by, or any breach by, any Secured Party of any of its obligations under any Secured Document, (b) to any Secured Party, as a consequence of any failure or delay in performance by, or any breach by, the Borrower of any of its obligations under any Secured Document or (c) to any Secured Party for any statements, representations or warranties in any Transaction Document or any other agreement, document or instrument contemplated by any Transaction Document or in any other information provided pursuant to any Transaction Document or any other agreement, document or instrument contemplated by any Transaction Document or for the validity, effectiveness, enforceability or sufficiency of any Transaction Document or any other agreement, document or instrument contemplated thereby. The Agent may conclusively rely and shall be protected and incur no liability for or with respect to any action taken, omitted or suffered in reliance upon any instruction, request or order from the Borrower or any notice, resolution, direction, consent, certificate, affidavit, statement, cable, telex or other paper or document which it reasonably believes to be genuine and to have been delivered, signed or sent by an authorized representative of the Borrower.

11.12 Indemnification

11.12.1 *Lenders to Indemnify Agent* ☐ Each of the Lenders (and following the occurrence of an Enforcement Event, the other Secured Parties) severally agrees to indemnify the Agent (to the extent not reimbursed by the Borrower on demand) on a full indemnity (after-Taxes) basis, pro rata according to their respective Total Exposures from and against any and all claims and losses and expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of any Secured Document or any other agreement, document or instrument contemplated thereby or any action taken or omitted by the Agent under any Secured Document or any agreement, document or instrument contemplated thereby, except that no Secured Party shall be liable to the Agent for any portion of such losses and expenses or disbursements to the extent they are determined by a final judgment that is binding on the Agent to have directly resulted from the gross negligence or wilful misconduct of the Agent. Payment by the Secured Parties to the Agent pursuant to this Section 11.12.1 shall not discharge or satisfy any obligation of the Borrower to make such payment to the Agent, but rather the Secured Parties making such payment shall be subrogated to the rights of the Agent against the Borrower in respect thereof.

11.12.2 *Agent May Indemnify Itself* ☐ The Agent may indemnify itself out of any Collateral or any funds received by the Agent pursuant to Section 11.20 against any and all claims and losses and expenses or disbursements suffered or incurred by the Agent in connection with any matter or thing done or omitted to be done in any way relating to any Secured Document, except for any portion of such losses and expenses or disbursements to the extent they are determined by a final judgment to have directly resulted from the gross negligence or wilful misconduct of the Agent.

11.13 Protection of Representatives, Etc.

Each reference in Sections 11.1, 11.3, 11.9, 11.10, 11.11, 11.12, 11.15 and 11.20 to the Agent shall (to the extent the context so admits) be deemed to include the Agent and its representatives and the Agent shall be constituted as agent and bare trustee of each such representative and shall hold and enforce their rights under those Sections for their respective benefits.

11.14 Credit Decision

Each Secured Party represents and warrants to the Agent that: (a) in making its decision to enter into each Secured Document to which it is party, to make its Commitments and its portion of the Loan Facility available to the Borrower and to enter into each Cash Management Agreement and Permitted Derivative, it has independently taken whatever steps it considers necessary to evaluate the financial condition and affairs of the Borrower and that it has made an independent credit judgment without reliance upon any information furnished by the Agent and (b) so long as any portion of the Loan Facility is being utilized by the Borrower or any Secured Obligation remains unperformed, it will continue to make its own independent evaluation of the financial condition and affairs of the Borrower and the other Obligors.

11.15 Replacement of Agent and Reference Lender

11.15.1 *Agent* □ The Agent (the “**Resigning Agent**”) may resign at any time by giving written notice thereof to the other Lenders and the Borrower. Such resignation will not be effective until a replacement agent is appointed. Upon receipt of notice of any such intended resignation, the Required Lenders shall have the right to appoint a replacement to the Resigning Agent who must be one of the Lenders. Unless a Default has occurred that is continuing, the consent of the Borrower (which shall not be unreasonably withheld or delayed) to any such replacement shall also be required. If no replacement to the Resigning Agent shall have been so appointed and shall have accepted such appointment within fifteen (15) days of receipt of such notice, the Lenders (excluding the Lender that is the Resigning Agent) shall within the following fifteen (15) days appoint a replacement who may, but need not be, a Lender. If the Lenders fail to appoint a replacement to the Resigning Agent within such fifteen (15) day period, without limitation of its rights under this Section, the Resigning Agent may, on behalf of the Secured Parties, appoint a replacement Agent which shall be a bank organized under the laws of Canada (or a Province) which has (or whose Holding Entity has) capital of at least \$500,000,000 and an approved credit rating and has (or whose Affiliates have) offices in Toronto. If the Resigning Agent does not appoint a replacement Agent, the Majority Lenders (excluding the Lender that is the Resigning Agent) shall assume the agency duties of the Resigning Agent under the Secured Documents until such time as a replacement Agent is appointed. Upon the resignation of a Resigning Agent, the replacement agent shall thereupon succeed to and become vested with all the rights and obligations of the Resigning Agent and the Resigning Agent shall be discharged from its obligations under the Secured Documents. A replacement agent shall evidence its acceptance of appointment hereunder by signing and delivering a counterpart of this Agreement to the Borrower. After any Resigning Agent’s resignation or removal hereunder as the Agent, the provisions of this Article 11 and Sections 12.1 and 12.2 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as an Agent.

11.15.2 *Reference Lender* □ The Agent shall appoint a Lender (or its Affiliate) to act as Reference Lender in relation to the Loan Facility. Any Reference Lender may resign at any time by giving notice thereof to the Agent. Upon receipt of such notice, the Agent shall appoint a replacement Reference Lender who shall be one of the Lenders (or their Affiliates).

11.16 Delegation

The Agent shall have the right to delegate any of its rights, duties or obligations under the Loan Documents to any other person upon such terms and conditions as the Agent may think fit and the Agent shall not be bound to supervise the proceedings or be in any way responsible for any obligations or losses and expenses incurred by reason of any misconduct or default on the part of any such delegate; provided that the Agent exercised reasonable care in selecting any such delegate.

11.17 Required Lender Decisions

Where the Required Lenders are required to agree or consent to any act or thing, or to exercise any judgment or discretion, under any Loan Document, the Agent shall ask all Lenders for such agreement or consent to do any such act or thing or to exercise such judgment or discretion. The foregoing shall not limit the right of the Required Lenders to agree or consent

to any such act or thing or to exercise such judgment or discretion. A copy of such agreement or consent or notice of the exercise of such judgment or discretion shall be sent by the Agent to all the Lenders.

11.18 Waivers and Amendments

11.18.1 *General* □ The rights of each Secured Party under each Secured Document shall be cumulative and not exclusive of any rights which each Secured Party would otherwise have, and no failure or delay by any Secured Party in exercising any right shall operate as a waiver of it nor shall any single or partial exercise of any right preclude its further exercise or the exercise of any other right. Subject as otherwise provided in Sections 11.18.2, 11.18.3 and 11.18.4, (a) any term, condition, other provision, obligation or agreement contained in any Loan Document may only be changed with the consent of the Majority Lenders, (b) any act or thing referred to in any Loan Document to be agreed to or consented by the Required Lenders may be agreed to or consented to by the Majority Lenders and (c) the exercise of any judgment or discretion by the Required Lenders contained in any Loan Document may be exercised by the Majority Lenders.

11.18.2 *Amendments Requiring Lenders' Consent* □ Without the prior consent of every Lender, no amendment to any Loan Document shall: (a) increase the aggregate amount of the Loan Facility, the amount or term of any of the Commitments or the proportion represented by the Rateable Share of any Lender, (b) postpone or defer the time for the payment of the principal of or interest on any Loan, any Fee or any other amount payable hereunder, (c) decrease the rate or amount or change the currency of any principal, interest or Fees payable hereunder (save for a decrease of the Default Rate by up to two percent (2%) which may be consented to by the Required Lenders) or the requirement of pro rata application in accordance with (i) each Lender's Rateable Share of all amounts received by the Agent in respect of the Loan Facility or (ii) its Total Exposure of all amounts received by the Secured Parties after the occurrence of an Enforcement Event, (d) change the definition of "**Majority Lenders**", "**Rateable Share**", "**Required Lenders**" or "**Total Exposure**", (e) amend Section 11.22, 11.25 or 12.10.2 or this Section 11.18; or (f) release, subordinate or postpone any Sponsor Guarantee or release, discharge or subordinate any Security, except that the Agent may release and discharge (A) each Sponsor Guarantee and the Security upon payment in full of all Secured Obligations owing to all Secured Parties, (B) the Security over assets disposed of in accordance with Section 9.4.7, (C) the Security over specific Insurance Proceeds to the extent such proceeds are permitted by the provisions of this Agreement to be paid or released to the Borrower either as Insurance Proceeds derived from any accounts receivable insurance policy or as comprehensive or property damage Insurance Proceeds applied to repair or replace property compensated for, (D) each Sponsor Guarantee pursuant to Section 7.10.

11.18.3 *Amendments Requiring Consent of Agent* □ No amendment or waiver of any provision of any Loan Document shall affect any of the rights or obligations of the Agent under any Secured Document without the prior consent of the Agent.

11.18.4 *Amendments Requiring Consent of Secured Party Owed Cash Management Obligations or Permitted Derivative Obligation* □ No amendment or waiver of any provision of any Loan Document shall affect any of the rights or obligations of any Secured Party under any Cash Management Agreement or Permitted Derivative to which it is party without the prior

consent of that Secured Party and the Borrower party to that Cash Management Agreement or Permitted Derivative.

11.19 Determination by Agent

11.19.1 *Good Faith*□ Any determination to be made by the Agent under any Loan Document shall be made by the Agent acting reasonably and in good faith and, if so made, shall be deemed to have been properly made and conclusive and binding on all parties, absent manifest error.

11.19.2 *Certificate of the Agent as to Rates*□ Except as otherwise provided in Section 11.20.5, a certificate of the Agent certifying any amount or interest shall be conclusive and binding on the parties hereto for all purposes, absent manifest error. No provision hereof shall be construed so as to require the Agent to issue a certificate at any particular time.

11.19.3 *Notification of Rates*□ The Reference Lender (if it is not the same person as the Agent) shall (or shall cause its Affiliate that is the Reference Lender to) promptly notify the Agent of each interest rate that is required to determine pursuant to this Agreement. Promptly following receipt of each such notice, or promptly after determination if the Agent and the Reference Lender is the same person, the Agent shall promptly notify the Lenders of each interest rate the Agent is required to determine and report to the Lenders pursuant to this Agreement.

11.20 Interlender Procedure for Making Loans Under the Loan Facility

11.20.1 *Lenders to provide their Rateable Shares to Agent*□ Subject to the terms and conditions of this Agreement, the Loan Facility shall be available to the Borrower as follows: upon receipt by the Agent of a Drawdown Request, the Agent will promptly notify each Lender of the Agent's receipt of such notice and of such Lender's Rateable Share of such Drawdown. Each Lender will, subject to Section 6.3 as applicable, make its Rateable Share of each Drawdown available to the Agent by paying, no later than 11:00 a.m. on the Drawdown Date requested by the Borrower, its Rateable Share of such Loan in freely transferable, cleared funds for value on the Drawdown Date to the Agent's Accounts. The Agent will, subject to Section 6.3 as applicable, make such funds available, if so received, to the Borrower on the Drawdown Date by bank transfer to the Project Revenue Account.

11.20.2 *Limitation on Agent's Liability*□ The obligations of the Agent under this Section 11.20 shall be limited to taking such steps as are commercially reasonable to implement the instructions described in Section 11.20.1, and the Agent shall not be liable for any losses and expenses which may be incurred or suffered by the Borrower and occasioned by the failure or delay of funds to reach the designated destination. Without limiting the generality of the foregoing, the Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Agent (including any act or provision of any present or future law or regulation or Governmental Authority, any act of God or war, civil unrest, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Bank of Canada wire or facsimile or other wire or communication facility).

11.20.3 *Lenders to indemnify Agent for failure to make funds available* □ Unless the Agent has been notified by a Lender no less than two (2) Business Days prior to the Drawdown Date requested by the Borrower that such Lender will not make available to the Agent its Rateable Share of such Drawdown, the Agent may assume that such Lender has made its Rateable Share of the Drawdown available to the Agent on the Drawdown Date in accordance with the provisions hereof, and the Agent may (but it is not its practice to do so), in reliance upon such assumption, make available (to the extent applicable) to the Borrower on such date a corresponding amount. If the Agent has made such assumption, to the extent a Lender has not so made its Rateable Share of the Drawdown available to the Agent, such Lender agrees to pay to the Agent forthwith on demand, to the extent that such amount is not recovered from the Borrower within seven (7) days of demand (without in any way obligating the Agent to commence any proceeding against the Borrower to recover such amount), such Lender's Rateable Share of the Drawdown and all losses and expenses incurred by the Agent in connection therewith, together with interest thereon at the Agent's prevailing rate for overnight deposits of comparable amount plus two (2) percent (2%) per annum for each day from the date such amount is made available by the Agent until the date such amount is paid or repaid to the Agent.

11.20.4 *Borrower to repay any Drawdown not funded by a Relevant Lender* □ Notwithstanding Section 11.20.3, if a Lender fails so to pay any portion of any Drawdown to the Agent pursuant to Section 11.20.3, the Borrower shall, without prejudice to any rights that the Borrower might have against such Lender, repay such portion to the Agent within three (3) Business Days after demand therefor by the Agent, together with interest thereon at the rate payable hereunder by the Borrower in respect of such Drawdown.

11.20.5 *Agent to issue Certificate as to Amount payable* □ Any amount payable to the Agent pursuant to this Section 11.20 (other than Section 11.20.1) shall be set forth in a certificate delivered by the Agent to the Lender concerned and the Borrower (which certificate shall contain reasonable details of how the amount payable is calculated) and shall be conclusive evidence thereof. If a Lender makes the payment to the Agent required by this Section 11.20, the amount so paid shall constitute, to the extent thereof, such Lender's Rateable Share of the Drawdown for purposes of this Agreement.

11.20.6 *No Lender responsible for any other Lender's Rateable Share* □ The failure of any Relevant Lender to advance its Rateable Share of any Drawdown to the Agent pursuant to this Agreement shall not relieve any other Lender of its obligations, if any, hereunder to advance its Rateable Share of the Drawdown to the Agent pursuant to this Agreement on that Drawdown Date, but no Lender shall be responsible for the failure of any other Lender to advance its Rateable Share of any Drawdown to the Agent on any Drawdown Date.

11.21 Remittance of Payments

Forthwith after receipt of any payment of principal, interest, Fees or other amounts for the benefit of the Lenders pursuant to the provisions hereof, the Agent shall remit to the Lending Office of each Lender entitled thereto, its Rateable Share of such payment. If the Agent, on the assumption that it will receive, on any particular date, a payment of principal, interest, Fees or other amounts hereunder, remits to each Lender its Rateable Share of such payment (although it is not its practice to do so) and the Borrower fails to make such payment,

each Lender agrees to repay to the Agent forthwith on demand, to the extent that such amount is not recovered from the Borrower within seven (7) days of demand (without in any way obligating the Agent to commence any proceeding to recover such amount), such Lender's Rateable Share of the payment made pursuant hereto together with all losses and expenses incurred by the Agent in connection therewith and interest thereon (at the Agent's prevailing rate applicable to overnight deposits of comparable amount plus two percent (2%) per annum for each day from the date such amount is remitted to the Lenders. The exact amount of the repayment required to be made by the Lenders will be set forth in a statement delivered by the Agent to each Lender, which statement shall be conclusive and binding for all purposes, absent manifest error.

11.22 Redistribution of Payments

11.22.1 *Disproportionate Receipts of Loan Obligations to be Shared* □ Except as otherwise provided in Section 11.22.6, if a Lender, through the exercise of any right of set-off, the retention of any In-the-Money Derivative Exposure or otherwise (save for any payment made to it in accordance with the provisions hereof), receives payment of a portion of the Loan Obligations due to it before an Enforcement Event occurs which is greater than the proportion received by any other Lender in respect of the aggregate amount of the Loan Obligations due to such other Lender (having regard to the respective Rateable Shares of the Lenders immediately before such payment is received), the Lender receiving such proportionately greater payment (the "**Purchasing Lender**") shall purchase a participation (which shall be done simultaneously with receipt of such payment) in that portion of the Loan Obligations due to the other Lender or Lenders (the "**Selling Lender**") so that the respective receipts shall be pro rata according to their respective Rateable Shares determined before such payment was received.

11.22.2 *Disproportionate Receipts of Secured Obligations to be Shared* □ Except as otherwise provided in Section 11.22.6, if a Secured Party, through the exercise of any right of set-off, the retention of any In-the-Money Derivative Exposure or otherwise (save for any payment made to it in accordance with the provisions hereof), receives payment of a portion of the Secured Obligations due to it at the time an Enforcement Event occurs or at any time thereafter which is greater than the proportion received by any other Secured Party in respect of the aggregate amount of the Secured Obligations due to such other Secured Party (having regard to the respective Total Exposures of the Secured Parties immediately before such payment is received), the Secured Parties receiving such proportionately greater payment (the "**Purchasing Secured Party**") shall purchase a participation (which shall be done simultaneously with receipt of such payment) in that portion of the Secured Obligations due to the other Secured Party or Secured Parties (the "**Selling Secured Party**") so that the respective receipts shall be pro rata according to their Total Exposures determined before such payment is received.

11.22.3 *Subsequent Recoveries* □ If all or part of such proportionately greater payment received by any Purchasing Lender referred to in Section 11.22.1 or any Purchasing Secured Party referred to in Section 11.22.2 shall be recovered from an Obligor by the Selling Secured Lender or Selling Secured Party (the "**Affected Seller**"), such purchase shall be rescinded and the purchase price paid for such participation shall be returned by the Affected Seller to the extent of such recovery, together with interest thereon at such Purchasing Lender's prevailing rate for overnight deposits of comparable amount calculated and payable from the Business Day following the day such return is requested until it is paid in full.

11.22.4 *Preferential Payments.* If all or part of any proportionately greater payment received by a Purchasing Lender referred to in Section 11.22.1 or a Purchasing Secured Party referenced to in Section 11.22.2 is found to have been a transfer in fraud of creditors or a preferential payment under any applicable Insolvency Law or Fraudulent Conveyances Law or is otherwise required to be returned by such Purchasing Lender or Purchasing Secured Party, such purchase shall be rescinded and the purchase price paid for such participation shall be returned by such Selling Lender or Selling Secured Party to the extent of such amount returned, together with interest thereon at such Purchasing Lender's or Purchasing Secured Party's prevailing rate for overnight deposits of comparable amount calculated and payable from the Business Day following the day such return is requested until it is paid in full.

11.22.5 *Notice Requirement.* If any Lender receives or recovers payment of any amount it is required to share pursuant to Section 11.22.1, 11.22.2 or 11.22.3, it shall promptly provide full particulars thereof to the Agent and the Agent shall promptly provide copies of such particulars to the other Secured Parties.

11.22.6 *Credit Protection.* The provisions of Sections 11.22.1 and 11.22.2 shall not apply to any credit protection purchased by a Secured Party without financial assistance from or independent recourse by the protection provider to any Obligor or any of its Affiliates.

11.23 Prompt Notice to Lenders

11.23.1 *Distribution of Information.* The Agent agrees to provide to the other Lenders copies of the information, notices and reports received by it from the Borrower for distribution to the Lenders pursuant to this Agreement, including information provided pursuant to Section 8.2 and Section 9.1, promptly upon receipt of same.

11.23.2 *Distribution by Use of Websites.* The Agent may satisfy its obligations under this Agreement to deliver to the other Lenders copies of the information, notices and reports referred to in Section 11.23.1 by posting this information onto an electronic website designated by the Agent to which the other Lenders have access. The Agent shall supply the other Lenders with the address of and any relevant password specifications for that designated website. Neither the Agent nor any Lender shall be liable to the Borrower for any losses and expenses suffered or incurred by them arising from the use by any unauthorized person of any information, notice or report or other communication posted on any such website or sent through electronic, telecommunications or other information transmission systems that are intercepted by any unauthorized person, save to the extent they are determined by a final judgment to have directly resulted from the gross negligence or wilful misconduct of the Agent or such Lender.

11.24 Several Debts of the Lenders

Each Lender's share in each Drawdown constitutes a several debt owing by the Borrower to such Lender.

11.25 Enforcement

To the extent that the Agent receives or recovers monies pursuant to any right of enforcement under this Agreement or any other Security, such monies shall be applied and

distributed as amongst the Secured Parties: (a) first, in or towards payment of all of the Agent's losses and expenses and disbursements incurred to recover such monies, (b) secondly, in or towards payment of all unpaid fees and losses and expenses and disbursements of the Agent pro rata to the amounts thereof, (c) thirdly, in or towards payment of all Secured Obligations which are due and payable at such time to the Secured Parties pro rata to the Total Exposures of the Secured Parties; (d) fourthly, if the Secured Obligations have been paid in full, in payment to any person to whom that Agent is obliged by applicable law or agreement to pay in priority to the Borrower, to the extent it is so obliged and (e) fifthly, thereafter, in payment of the Borrower or as otherwise required by any applicable order or final judgment. The fact that the Agent may make a payment pursuant to Clause (d) or (e) above or may determine that the Secured Obligations have been paid in full, will not thereafter prevent the Agent from applying any further monies, or any credit balance on any account, in the order set out in this Section 11.25. If for any reason the Agent considers in its sole discretion that the amounts to be received by it will be, or the amounts actually received by it pursuant thereto are, insufficient to satisfy all claims with respect to all payments then falling due with respect to any Secured Obligation, until such time as the Agent has received the full amount of all such payments, the Agent shall not be obliged to pay any such claims. The Agent may satisfy any obligation to make a payment otherwise required under Clause (d) or (e) above by interpleading and paying the amount thereof into court.

ARTICLE 12 GENERAL

12.1 Costs and Expenses

The Borrower shall on demand pay to the Secured Parties the amount of all reasonable out-of-pocket fees, costs and expenses incurred and disbursements made by the Secured Parties (including travel expenses and the reasonable fees and out-of-pocket expenses, of the Lenders' Counsel and those of accountants, experts, consultants and other representatives retained by the Secured Parties, including the Independent Technical Consultant as well as the costs and expenses of any engineering reports, environmental studies or reports and any other reports or studies required by any Secured Party) in connection with each of (a) the due diligence conducted by the Secured Parties with respect to the Obligors, the Project and the financing contemplated herein, (b) the preparation, negotiation, settlement, execution, delivery, entry into effect, registration and administration of each Loan Document and/or the satisfaction of any conditions or obligations specified in Article 6, (c) post-closing costs, (d) each change to each Loan Document and (e) the interpretation, defence, establishment, preservation, protection or enforcement of rights of the Secured Parties under each Secured Document. The Borrower shall on demand pay to the Agent the amount of all out-of-pocket fees, costs and expenses incurred and disbursements made by the Secured Parties (including the fees and out-of-pocket expenses of the Lenders' Counsel and those of accountants, experts, consultants and other representatives retained by the Secured Parties) in connection with a Default or Event of Default or with the interpretation, defence, establishment, preservation, protection or enforcement of rights of the Secured Parties under each Loan Document. For the avoidance of doubt, the foregoing payment obligation shall be effective regardless of whether any Loan is advanced to the Borrower hereunder.

12.2 Indemnification by the Borrower

12.2.1 *Drawdowns.* The Borrower shall within fifteen (15) days of demand pay to the Agent for the account of each Relevant Lender, on a full indemnity (after-Taxes) basis, the amount of all losses and expenses, including losses and expenses sustained by such Relevant Lender in connection with the liquidation or reemployment, in whole or in part, of deposits or funds borrowed or acquired by such Relevant Lender to fund such Relevant Lender's Rateable Share in any Drawdown to the Borrower, which such Relevant Lender sustains or incurs (a) if for any reason a Drawdown does not occur on a date requested by the Borrower, (b) if the Borrower fails to give any notice required to be given by it hereunder in the manner and at the time specified herein or (c) as a consequence of any failure by the Borrower to repay any amount when required by the terms of this Agreement.

12.2.2 *Other.* The Borrower shall defend, indemnify and save harmless each of the Secured Parties and their respective representatives (each, an "**Indemnified Party**") on a full indemnity basis from and against any and all claims and losses and expenses (including interest and, to the extent permitted by applicable law, penalties, fines and monetary sanctions) which an Indemnified Party suffers or incurs as a result of or otherwise in respect of (a) any claim of any kind relating to the Environmental Liabilities which arises out of the performance of, or the enforcement or exercise of any right under, any Loan Document, including any claim in nuisance, negligence, strict liability or other cause of action arising out of a discharge of Contaminants into the Environment, any fines or orders of any kind that may be levied or made pursuant to an Environmental Law in each case relating to or otherwise arising out of any of the assets of any Borrower, (b) the direct or indirect use or proposed use of the proceeds of any Drawdown, (c) any Default or (d) any proceeding to which any Indemnified Party is party arising out of the execution, delivery or performance of, or the enforcement of any right under any Loan Document. Each Lender shall be constituted as the agent and bare trustee of each Indemnified Party who is its own representative and shall hold and enforce each such Indemnified Party's rights under this paragraph for such party's benefit. The foregoing indemnity shall not apply in respect of claims or losses and expenses of an Indemnified Party to the extent that they are determined by a final judgment to have directly resulted from the gross negligence or wilful misconduct of that Indemnified Party. This Section 12.2 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

12.3 Application of Payments

Any payments received in respect of the obligations of the Borrower under any Loan Document from time to time may, notwithstanding any appropriation by the Borrower but subject to Sections 11.21, 11.22 and 11.25, be appropriated to such parts of the obligations of such Borrower under any Loan Document and in such order as the Agent sees fit, and the Agent shall have the rights to change any appropriation at any time.

12.4 Set-Off, Combination of Accounts and Crossclaims

The obligations of the Borrower under each Loan Document will be paid by such Borrower free and clear of and without regard to any equities between such Borrower and the Agent and the Lenders or any right of set-off or cross-claim. Any Debt owing by the Agent or any Lender to the Borrower, direct or indirect, extended or renewed, actual or contingent,

matured or not, may be set off or applied against the obligations of such Borrower under any Secured Document by the Agent or such Lender at any time after maturity or upon the occurrence and during the continuance of an Event of Default, without demand upon or notice to anyone, and the terms of such Debt shall be changed hereby to the extent required to permit such set-off, application and combination.

12.5 Rights in Addition

The rights conferred by each Secured Document are in addition to, and not in substitution for, any other rights each of the Agent and Lenders may have under that Secured Document or any other Secured Document, at law, in equity or by or under Applicable Law or any agreement. Each of the Agent and Lenders may proceed by way of any proceeding at law or in equity and no right of the Agent or any Lender shall be exclusive of or dependent on any other. The Agent and Lenders may exercise any of its rights separately or in combination and at any time.

12.6 Certificate Evidence

A certificate prepared by the Agent or any Lender and provided to the Borrower setting forth any interest rate or any amount payable under this Agreement, including the amount of compensation or loss and expense payable under Section 3.4 or 12.2, shall be conclusive and bind such Borrower, absent manifest error.

12.7 Evidence of Debt.

12.7.1 *Agent's Books* □ The Agent shall open and maintain on its books accounts evidencing all Drawdowns and all amounts owing by the Borrower to the Agent and each Lender under the Loan Facility. The Agent shall enter in the accounts details of all amounts from time to time owing, paid or repaid by the Borrower under the Loan Facility. The information entered in the accounts shall constitute, in the absence of manifest error, conclusive evidence of the existence and quantum of the obligations of the Borrower to the Agent and each Lender under the Loan Facility. The Borrower and each Lender shall, on reasonable notice to the Agent, be entitled to obtain from the Agent copies of extracts of all entries made in such accounts.

12.7.2 *Lenders May Request Promissory Notes* □ Any Lender may request that its Rateable Share in Loans be evidenced by a promissory note (a “**Note**”). In such event, the Borrower shall prepare, execute and deliver to such Lender a Note payable to the order of such Lender in a form supplied by the Agent. Thereafter, the Rateable Share of such Lender in all outstanding Loans evidenced by such Note and interest thereon shall at all times (including after any assignment pursuant to Section 12.10) be represented by one or more Notes payable to the order of the payee named therein or any assignee pursuant to Section 12.10, except to the extent that any such Lender or assignee subsequently returns any such Note for cancellation and requests that its Rateable Share on outstanding Loans once again be evidenced as described in Section 12.7.1.

12.7.3 *Agent's Accounts Govern* □ If there is any conflict or inconsistency between the accounts of the Agent maintained pursuant to Section 12.7.1 and the accounts of any other party

hereto, including those recorded in any Note referred to in Section 12.7.2, the accounts of the Agent shall govern and be binding on the other parties hereto, absent manifest error.

12.8 Notices

Any notice, demand, consent, approval or other communication to be made or given under or in connection with this Agreement (a “**Notice**”) shall be in writing and may be made or given by personal delivery, by facsimile or by e-mail addressed to the Agent and the Borrower at their respective addresses set out in Schedule 2 or to such other address as such party may from time to time notify the others in accordance with this Section 12.8, and to the Lenders at their respective Lending Offices. Any Notice made or given by personal delivery shall be conclusively deemed to have been given at the time of actual delivery or, if made or given by facsimile or by e-mail, at the opening of business on the first (1st) Business Day following the transmittal thereof provided that the party sending such Notice receives confirmation of receipt. Notwithstanding the foregoing, (a) the Agent shall not be deemed to have received any Notice until it is actually received by an officer of that Agent charged with the administration of this Agreement and (b) the Agent may in its discretion act upon verbal Notice from any person reasonably believed by the Agent to be a person authorized the Borrower or a Relevant Lender to give instructions under or in connection with this Agreement including any request for a Drawdown. The Agent and the Lenders shall not be responsible for any error or omission in such instructions or in the performance thereof. Any notice given by the Borrower in respect of itself or any other Borrower shall bind each such Borrower.

12.9 Judgment Currency

If, for the purposes of obtaining or enforcing judgment in any court in any jurisdiction, it becomes necessary to convert into the currency of the jurisdiction giving such judgment (the “**Judgment Currency**”) an amount due under any Secured Document in any other currency (the “**Original Currency**”), then the date on which the rate of exchange for conversion is selected by that court is referred to herein as the “**Conversion Date**”. If there is a change in the rate of exchange between the Judgment Currency and the Original Currency between the Conversion Date and the actual receipt by the Agent or a Lender of the amount due to it under such Secured Document or under such judgment, the Borrower shall, notwithstanding such judgment, pay all such additional amounts as may be necessary to ensure that the amount received by the Agent or such Lender in the Judgment Currency, when converted at the rate of exchange prevailing on the date of receipt, will produce the amount due in the Original Currency. The Borrower’s liability hereunder constitutes a separate and independent liability which shall not merge with any judgment or any partial payment or enforcement of payment of sums due under any Secured Document.

12.10 Successors and Assigns

12.10.1 *Benefit & Burden* □ The Loan Documents shall enure to the benefit of and be binding on the parties hereto, their respective successors and each assignee of some or all of the rights or obligations of the parties under the Loan Documents permitted by this Section 12.10. Any entity resulting from Business Combination, to which the Agent shall be a party, shall be the Agent under this Agreement without further action. Any reference in any such Loan Document to any party hereto shall (to the extent the context so admits) be construed accordingly.

12.10.2 *Borrower* □ The Borrower may not assign all or any part of any of its rights or obligations in respect of the Loan Facility or under any Loan Document. Where the context so admits, each reference in this Agreement to the Borrower shall be construed so as to include the successors of the Borrower.

12.10.3 *Participation* □ Each Lender may grant to any other person other than a BioAmber Competitor (a “**Participant**”) a participation in the whole or any part of any of its Commitments (including its Rateable Share in any related Loans) under which the Participant shall be entitled to the benefit of the same rights under this Agreement with respect to such Participation as if it were a party hereto in the place and stead of such Lender provided that, in respect of such participated share of its Commitments and as amongst all parties to this Agreement, such Lender (and not the Participant) shall remain entitled to enforce such rights, and shall remain responsible for the performance of all obligations, of such Lender under this Agreement with respect to the share of each of its Commitments subject to such participation. Each Lender that grants a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Loan Documents (the “**Participant Register**”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

12.10.4 *Assignments* □ Each Lender (a “**Transferring Lender**”) may, with the prior written consent of the Agent assign its Commitment (including its share in any Loans made under the Loan Facility), or any part thereof in a minimum amount of \$1,000,000, or such lesser amount as the Agent may permit, to (a) any other Lender or any Affiliate or Approved Fund of the Transferring Lender, (b) prior to the occurrence of a Default and so long as no Default exists, to any person not referred to in clause (a) above who is not a BioAmber Competitor, with the prior consent of the Borrower, such consent not to be unreasonably withheld or delayed, or (c) after the occurrence of a Default and while the same is continuing, to any other person.

Any such transfer to any person permitted pursuant to the preceding sentence (a “**Transferee**”) shall be made pursuant to a loan transfer agreement (a “**Loan Transfer Agreement**”) substantially in the form of Schedule 6 (or in such other form to substantially the same effect as the Agent may approve). Each Loan Transfer Agreement must be delivered to the Agent at least five (5) Business Days before it takes effect accompanied, if such assignment is not being made to an Affiliate or Approved Fund of an existing Relevant Lender, by payment to the Agent of a processing fee of \$3,500. Each party hereto hereby agrees that any such Transferee shall be subject to the obligations identical to the obligations assigned under any such Loan Transfer Agreement and shall be entitled to rights identical to the rights assigned to such

Transferee as if such Transferee were named in this Agreement as an original party in substitution for the Transferring Lender in respect of each such Commitment, or part thereof, assigned, and such Transferring Lender shall be released from all obligations in relation to each of its Commitments, or part thereof, so assigned.

The Agent, acting solely for this purpose as an agent of the Borrower, shall maintain a copy of each Loan Transfer Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agent and the Lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

12.10.5 *Pledge to Reserve Bank* □ Notwithstanding Section 12.10.4, any Lender may at any time, without the consent of the Borrower or the Agent assign all or any portion of its rights under this Agreement and its Notes to secure obligations of such Lender, including to a Federal Reserve Bank or the Bank of Canada; provided, however, that no such assignment to a Federal Reserve Bank or the Bank of Canada shall release the assignor Lender from its obligations hereunder.

12.10.6 *Schedule 1* □ The Agent will from time to time revise Schedule 1 to record the Lenders and their respective Commitments after giving effect to assignments and/or transfers referred to in Section 12.10.4 above. Any such revised Schedule 1 shall be *prima facie* evidence of the identities and Commitments of the Lenders. The Agent shall provide a copy of any such revised Schedule 1 to the Borrower and each Lender upon request.

12.10.7 *Increased Costs* □ If as a result of any assignment of the whole or any part of any Commitment of any Relevant Lender pursuant to Section 12.10.4, or any participation granted by any Relevant Lender pursuant to Section 12.10.3 made while no Default is continuing, the Transferee or Participant would incur costs, expenses or other amounts of the nature described in Section 3.4 in excess, at that time, of those which the Borrower would have been required to indemnify such Lender had such assignment or participation not taken place, the indemnity obligations of the Borrower under Section 3.4 shall not extend to such excess.

12.10.8 *Withholding Tax* □ If as a result of any assignment of the whole or any part of any Commitment of any Transferring Lender pursuant to Section 12.10.4 made while no Default is continuing, the Borrower would be required to deduct or withhold withholding Tax and make increased payments to the Transferee pursuant to Section 3.6 in excess, at that time, of such increased payments which the Borrower would have been required to pay to the Transferring Lender pursuant to Section 3.6 had such assignment not taken place, the provisions of Section 3.6 requiring such increased payment shall not apply to the extent of such excess.

12.10.9 *Disclosure* □ As at the date hereof, the Borrower has entered into a non-disclosure agreement with each of the Lenders. Each of these agreements is incorporated herein as if recited at length provided that the first sentence of Section 11 of each of these agreements is

deemed amended such that the agreement remains valid and in force from its Effective Date (as defined in such agreement) until the Secured Obligations have been paid in full.

12.10.10 *Substitute Lenders*. □ If at any time (a) the Borrower becomes obligated to compensate any Lender for additional amounts pursuant to Section 3.4 or is required to pay Indemnified Taxes or additional amounts to any Lender or to any taxing authority for the account of any Lender pursuant to Section 3.6 or (b) any Lender becomes a Defaulting Lender (in any such case, an “**Unwanted Lender**”), then the Borrower may, on ten (10) Business Days’ prior written notice to the Agent and such Unwanted Lender replace the Unwanted Lender by causing the Unwanted Lender to (and the Unwanted Lender shall be obligated to) assign and transfer its rights and obligations under this Agreement pursuant to Section 12.10.4 to another Lender that has agreed to accept such assignment and transfer or to another person selected by the Borrower that is acceptable to the Agent (acting in its discretion exercised reasonably) (a “**Replacement Lender**”) for a purchase price equal to the Loan Obligations owing to the Unwanted Lender, including all accrued interest and Fees and other amounts payable hereunder, together with such amount as would be payable to the Unwanted Lender under Section 12.2.1 if the Rateable Share of the Unwanted Lender in each outstanding Loan were actually being paid by the Borrower instead of being purchased by way of assignment and transfer pursuant to Section 12.10.4; provided that (i) neither the Agent nor any Lender shall have any obligation to the Borrower to find a Replacement Lender, (ii) in circumstances where an Unwanted Lender is sought to be replaced pursuant to this Section 12.10.10, in order for the Borrower to be entitled to replace such Unwanted Lender, such replacement must, save in the case of a Defaulting Lender, take place no later than ninety (90) days after the date the Unwanted Lender shall have notified the Agent that it had become an Unwanted Lender, (iii) in no event shall the Unwanted Lender be required to pay or surrender to such Replacement Lender any of the principal, interest, Fees or other amounts received by the Unwanted Lender pursuant to this Agreement and (iv) the Borrower shall only be entitled to replace an Unwanted Lender pursuant to this Section 12.10.10 if no Default has occurred which is continuing.

12.10.11 *Cash Collateral and Withholding from Defaulting Lenders*. □

- (a) Each Defaulting Lender shall be required to provide to the Agent cash in an amount, as shall be determined from time to time by the Agent in its discretion, equal to all obligations of such Defaulting Lender to the Agent that are owing or may become owing pursuant to this Agreement. Such cash shall be held by the Agent in one or more cash collateral accounts, which accounts shall be in the name of the Agent and shall not be required to be interest bearing. The Agent shall be entitled to apply the foregoing cash in accordance with any of Sections 4.5, 11.12 and 11.25.
- (b) The Agent shall be entitled to withhold and deposit in one or more non-interest bearing cash collateral accounts in the name of the Agent amounts (whether principal, interest, fees or otherwise) received by the Agent and due to a Defaulting Lender pursuant to this Agreement which amounts shall be used by the Agent (i) first, to reimburse the Agent for any amounts owing to it by the Defaulting Lender pursuant to any Loan Document and (ii) second, to cash collateralize all other obligations of such Defaulting Lender to the Agent owing pursuant to this Agreement in such amount as shall be determined from time to

time by the Agent in its discretion, including such Defaulting Lender's obligation to pay its Rateable Share of any indemnification or expense reimbursement amounts not paid by the Borrower.

- (c) For greater certainty and in addition to the foregoing, neither the Agent nor any of its Affiliates nor any of their respective shareholders or representatives shall be liable to any Lender (including a Defaulting Lender) for any action taken or omitted to be taken by it in connection with amounts payable by the Borrower to a Defaulting Lender and received and deposited by the Agent in a cash collateral account and applied in accordance with the provisions of this Agreement, save and except to the extent determined by a final judgment to have been directly resulted from the gross negligence or wilful misconduct of the Agent.
- (d) Without limiting the foregoing, if any Lender becomes a Defaulting Lender as a result of the failure to fund any payment or its portion of any Loans required to be made by it hereunder or to purchase any participation required to be purchased by it hereunder or under any other Loan Document, 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 Relevant Lender to satisfy such Lender's obligations until all such unsatisfied obligations are paid in full.
- (e) Without limiting the foregoing, if a Defaulting Lender as a result of the exercise of a set-off shall have received a payment in respect of its outstanding applicable Loans or participation required hereunder which results in its outstanding applicable Loans and participation share being less than its Rateable Share thereof, then no payments will be made to such Defaulting Lender until such time as all amounts due and owing to the Lenders have been equalized in accordance with each Lender's respective Rateable Share. Further, if at any time prior to the acceleration or maturity of the Loans, the Agent shall receive any payment in respect of principal while one or more Defaulting Lenders shall be party to this Agreement, the Agent shall apply such payment first to the Loans for which each such Defaulting Lender shall have failed to fund its Rateable Share until such time as such Loan Obligations are paid in full or each Relevant Lender (including each Defaulting Lender) is owed its Rateable Share of all outstanding Loans. After acceleration or maturity of the Loans, subject to Section 12.10.11(d) above, all principal will be paid rateably as otherwise provided herein.

12.10.12 *Funding if there is a Defaulting Lender* □

- (a) Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Relevant Lender is a Defaulting Lender: (i) the Commitment Fees payable pursuant to Section 3.2.2 shall cease to accrue on the unused portion of the Commitment of such Defaulting Lender if and for so long as such Lender is a Defaulting Lender pursuant to paragraph (i) or (ii) of the definition thereof, (ii) a Defaulting Lender shall not be included in determining whether, and Commitments and Rateable Share of such Defaulting Lender shall be excluded in

determining whether, the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 11.18; and (iii) for certainty, the Borrower and the Agent shall retain and reserve their respective other rights respecting each Defaulting Lender; provided that the Agent shall only be required to give effect to Clauses (i) and (ii) above if the Agent has actual knowledge that a Lender is a Defaulting Lender. If the Agent acquires actual knowledge that a Lender is a Defaulting Lender, then the Agent shall promptly notify the Borrower and the other Lenders that such Relevant Lender is a Defaulting Lender (and such Lender shall be deemed to have consented to such disclosure); provided that, for certainty, the Agent shall have no duty to inquire as to whether any Lender is a Defaulting Lender.

- (b) Each Defaulting Lender shall indemnify each of the Borrower for any losses, claims, costs, damages or liabilities (including reasonable out-of-pocket expenses and reasonable legal fees on a solicitor and his own client basis) incurred by such Borrower as a result of such Defaulting Lender failing to comply with the terms of this Agreement including any failure to fund its portion of any Loans required to be made by it hereunder.

12.11 “USA Patriot Act”

Each Lender that is subject to the USA Patriot Act and the Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies such Persons, which information includes the name, address and tax identification number of each such persons and other information that will allow such Lender or the Agent, as applicable, to identify such persons in accordance with the USA Patriot Act. This notice is given in accordance with the requirements of the USA Patriot Act and is effective as to the Lenders subject to the USA Patriot Act.

12.12 Survival

The Loan Obligations payable under Sections 3.4, 3.6, 12.1 and 12.2 (“**Indemnity Obligations**”) shall survive the payment in full of all other Loan Obligations and shall continue in full force and effect until such Indemnity Obligations are paid in full.

12.13 Time of the Essence

Time is of the essence of each provision of each Loan Document.

12.14 Governing Law

This Agreement shall be governed by, and interpreted in accordance with, the laws in force in the Province of Ontario, including the federal laws of Canada applicable therein, but excluding choice of law rules. Such choice of law shall, however, be without prejudice to or limitation of any other rights available to the Agent and the Lenders under the laws of any jurisdiction where any Obligor or its property may be located.

12.15 JURISDICTION

12.15.1 *SUBMISSION TO JURISDICTION AND WAIVER OF OBJECTIONS* WITH RESPECT TO ANY CLAIM ARISING OUT OF THIS AGREEMENT, ANY OTHER SECURED DOCUMENT OR ANY OTHER AGREEMENT RELATING TO ANY SECURED DOCUMENT (COLLECTIVELY, THE “**FINANCE RELATED AGREEMENTS**”):

- (a) FOR THE EXCLUSIVE BENEFIT OF THE SECURED PARTIES, THE BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF:
 - (i) THE PROVINCE OF ONTARIO, CANADA LOCATED AT TORONTO; AND
 - (ii) THE JURISDICTION IN WHICH THE CHIEF EXECUTIVE OFFICE OF THE BORROWER IS LOCATED OR IN WHICH IT IS INCORPORATED OR FORMED LOCATED AT THE PRINCIPAL FINANCIAL CENTER OF SUCH JURISDICTION,INCLUDING ANY APPELLATE COURT FROM ANY THEREOF; AND
- (b) THE BORROWER IRREVOCABLY WAIVES:
 - (i) ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING ARISING OUT OF OR RELATING TO ANY OF THE FINANCE RELATED AGREEMENTS BROUGHT IN ANY COURT OF PRIMARY JURISDICTION;
 - (ii) ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN ANY COURT OF PRIMARY JURISDICTION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM;
 - (iii) THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING BROUGHT IN ANY COURT OF PRIMARY JURISDICTION, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER THE BORROWER; AND
 - (iv) THE RIGHT TO REQUIRE ANY SECURED PARTY TO POST SECURITY FOR COSTS IN ANY PROCEEDING BROUGHT IN ANY COURT OF PRIMARY JURISDICTION.

12.15.2 *AGENT AND LENDERS MAY SUE IN ANOTHER JURISDICTION* NOTHING IN THIS AGREEMENT WILL BE DEEMED TO PRECLUDE ANY OF THE AGENT AND THE LENDERS FROM BRINGING ANY PROCEEDING IN RESPECT OF ANY FINANCE RELATED AGREEMENT IN ANY OTHER JURISDICTION.

12.15.3 *FINAL JUDGMENT* THE BORROWER AGREES THAT A FINAL JUDGMENT IN ANY PROCEEDING COMMENCED IN ANY COURT OF PRIMARY

JURISDICTION SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

12.15.4 *WAIVER OF TRIAL BY JURY* □ FOR THE PURPOSES OF ANY PROCEEDING COMMENCED IN THE UNITED STATES, THE BORROWER AND EACH SECURED PARTY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY PROCEEDING (A) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH OR RELATING TO ANY FINANCE RELATED AGREEMENT, OR (B) ARISING FROM OR RELATING TO ANY RELATIONSHIP EXISTING IN CONNECTION WITH ANY FINANCE RELATED AGREEMENT, AND AGREES THAT ANY SUCH PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE BORROWER HEREBY (C) CERTIFIES THAT NO REPRESENTATIVE OF ANY SECURED PARTY HAS REPRESENTED EXPRESSLY OR OTHERWISE THAT SUCH SECURED PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (D) ACKNOWLEDGES THAT THE AGENT AND THE LENDERS HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.15.4.

12.16 Service of Process

12.16.1 *Manner of Service* □ The Borrower irrevocably consents to the service of process out of the Courts of Primary Jurisdiction in accordance with the local rules of civil procedure or by mailing a copy thereof, by registered mail, postage prepaid to the Borrower at the address of the Borrower, or by sending a copy thereof by facsimile or by e-mail in pdf format to the Borrower at the facsimile number or e-mail address of the Borrower determined under Section 12.8.

12.16.2 *Appointments of Agent for Service* □ The Borrower irrevocably designates and appoints the Borrower's Counsel in Ontario as its agent to accept and acknowledge on its behalf any and all process which may be served in connection with any proceeding arising out of or relating to any Finance Related Agreement brought in any of the Courts of Primary Jurisdiction, such service, to the extent permitted by applicable law, being hereby conclusively acknowledged by the Borrower to be effective and binding service on it in every respect whether or not it is carrying on, or has at any time carried on, business in the jurisdiction in which the Courts of Primary Jurisdiction are located. The Borrower irrevocably consents to the service of process out of the Court of Primary Jurisdiction by personal service on the Borrower or on any such process agent.

12.16.3 *Acceptance of Agent for Service of Guarantors.* The Borrower irrevocably accepts its appointment to act as a process agent on behalf of each Guarantor contained in any Secured Document to which each such Guarantor is party which may be served in connection with any claim arising out of or relating to any such Secured Document brought in any of the Courts of Primary Jurisdiction.

12.17 Limitation Period

The parties agree that each Loan Document to which the Borrower is party is made for a business purpose and is a business agreement as defined in the *Limitations Act, 2002* (Ontario). The Borrower agrees with the Agent and each Lender to vary the limitation period under *the Limitations Act, 2002* (Ontario), other than one established by Section 15 of that Act, applicable to each Loan Document to which the Borrower is party and any claim thereunder to 10 years.

12.18 Invalidity

If any provision of any Loan Document is determined to be invalid or unenforceable by a final judgment, that provision shall be deemed to be severed therefrom, and the remaining provisions of such Loan Document shall not be affected thereby and shall remain valid and enforceable. The Borrower shall, at the request of the Required Lenders, enter into good faith negotiations with the Lenders to replace any invalid or unenforceable provision contained in any Loan Document with a valid and enforceable provision which has the economic effect as close as possible to that of the invalid and unenforceable provision, to the extent permitted by law.

12.19 Changes

No agreement purporting to change (other than waive) any provision of any Loan Document shall be binding upon the parties hereto or thereto unless that agreement is in writing and signed by the Agent and the Borrower and/or Obligor party thereto. No waiver of strict performance or compliance with any provision of any Loan Document shall be binding on the Agent or Lender unless such waiver is in writing signed by or on behalf of each party sought to be bound thereby. No change to any provision of any Loan Document shall be binding upon the Lenders unless it is made in compliance with Section 11.18.

12.20 Entire Agreement

12.20.1 *Generally* There are no representations, warranties, conditions, other agreements or acknowledgments, whether direct or collateral, express or implied, that form part of or affect this Agreement or any other Loan Document other than as expressed herein or in such other Loan Document. The execution of each Loan Document has not been induced by, nor does the Borrower rely upon or regard as material, any representations, warranties, conditions, other agreements or acknowledgments not expressly made in any Loan Document.

12.21 This Agreement to Govern

If there is any inconsistency between the provisions of this Agreement and the provisions of any other Loan Document the provisions hereof shall govern and apply to the extent of the inconsistency. Notwithstanding the foregoing, this Section shall not apply to limit, restrict, prejudice or otherwise affect or impair in any way the rights of the Agent and the Lenders under any Security Document after those rights have become enforceable.

12.22 Execution

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this Agreement (including any change to this Agreement) by any party hereto to the other parties to this Agreement by facsimile transmission or e-mail in pdf format, or posting a copy of a signature page of this Agreement (including any change to this Agreement) signed by any party hereto on the internet website designated by the Agent under Section 11.23.2, shall be as effective as delivery to the other parties hereto of a manually executed counterpart hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

BIOAMBER SARNIA INC.

By: /s/ Jean-Francois Huc

Name: Jean-Francois Huc

Title: Chief Executive Officer, BioAmber
Inc.

COMERICA BANK, as Agent

By: /s/ Robert Rosen

Name: Robert Rosen

Title: Senior Vice-President & Regional
Managing Director

COMERICA BANK, as Lender

By: /s/ Robert Rosen

Name: Robert Rosen

Title: Senior Vice-President & Regional
Managing Director

EXPORT DEVELOPMENT CANADA,
as Lender

By: /s/ Frank Kelly

Name: Frank Kelly

Title: Director, Extractive Industries
Structured and Project Finance

By: /s/ Ashley Glen

Name: Ashley Glen

Title: Senior Associate
Structured and Project Finance

FARM CREDIT CANADA, as Lender

By: /s/ Tom Paas

Name: Tom Paas

Title: Senior Corporate Credit Manager

Certification

I, Jean-François Huc, President and Chief Executive Officer of BioAmber Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended June 30, 2014 of BioAmber Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. [Intentionally omitted];
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 12, 2014

By: /s/ Jean-François Huc

Jean-François Huc
President and Chief Executive Officer
(Principal Executive Officer)

Certification

I, Andrew Ashworth, Chief Financial Officer of BioAmber Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended June 30, 2014 of BioAmber Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. [Intentionally omitted];
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 12, 2014

By: /s/ Andrew Ashworth

Andrew Ashworth

Chief Financial Officer

(Principal Financial Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report on Form 10-Q of BioAmber Inc. (the “Company”) for the quarter ended June 30, 2014, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Jean-François Huc, President and Chief Executive Officer of the Company, certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that to my knowledge as of the date hereof:

- 1) the Report which this statement accompanies fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- 2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: August 12, 2014

By: /s/ Jean-François Huc

Jean-François Huc
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report on Form 10-Q of BioAmber Inc. (the “Company”) for the quarter ended June 30, 2014, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Andrew Ashworth, Chief Financial Officer of the Company, certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that to my knowledge as of the date hereof:

- 1) the Report which this statement accompanies fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

- 2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: August 12, 2014

By: /s/ Andrew Ashworth

Andrew Ashworth
Chief Financial Officer
(Principal Financial Officer)

