

## AGENCY AGREEMENT

October 27, 2006

Brookfield Power Corporation  
480 de la Cité Boulevard  
Suite 200  
Gatineau, Québec  
J8T 8R3

Attention: Donald Tremblay

and

Brookfield Power Inc.  
480 de la Cité Boulevard  
Suite 200  
Gatineau, Québec  
J8T 8R3

Attention: Donald Tremblay

Dear Sirs/Mesdames:

The undersigned, Scotia Capital Inc., CIBC World Markets Inc., RBC Dominion Securities Inc., TD Securities Inc., BMO Capital Markets Inc. and HSBC Securities (Canada) Inc. (collectively, the “**Agents**” and individually, an “**Agent**”), understand that Brookfield Power Corporation (the “**Company**”) proposes to create, issue and sell an aggregate principal amount of up to Cdn. \$450,000,000 (or the equivalent thereof in one or more non-Canadian currencies) of medium term notes (the “**Notes**”) with maturities of not less than one year, unconditionally guaranteed as to principal, premium, if any, and interest by Brookfield Power Inc. (the “**Guarantor**”), all as described in the English and French language versions of the short form base shelf prospectus of the Company dated September 28, 2006, as supplemented by the English and French language versions of the prospectus supplement of the Company dated October 27, 2006, as may be amended by any Prospectus Amendment or supplemented by any Prospectus Supplement or Pricing Supplement from time to time, together with all documents and information incorporated or deemed to be incorporated therein by reference (the “**Prospectus**”).

### Definitions

In this Agreement or in any amendment hereto, the following terms shall have the following meanings:

“**1933 Act**” means the *United States Securities Act of 1933*, as amended;

“**affiliate**”, “**distribution**”, “**material change**”, “**material fact**”, “**misrepresentation**” have the respective meanings given to such terms in Canadian Securities Laws;

“**Agent**” and “**Agents**” have the meanings given to such terms in the recitals above;

“**Agents’ Fee**” has the meaning given to such term in section 4;

“**Agreement**” means the agreement resulting from the acceptance by the Company and the Guarantor of the offer made by the Agents by this letter as it may be amended from time to time by written agreement of the parties hereto;

“**Auditors**” means Deloitte & Touche LLP, the auditors of the Company and the Guarantor;

“**Business Day**” means a day which is not a Saturday, a Sunday or a statutory or civic holiday or a day on which chartered banks are not open for business in the Province of Ontario;

“**Canadian Securities Laws**” means all applicable securities laws in each of the provinces and territories of Canada and the respective regulations and rules under such laws together with applicable published policy statements of the securities regulatory authorities in such provinces and territories;

“**CDS**” means The Canadian Depository for Securities Limited and its successors in interest;

“**Claim**” has the meaning given to such term in subsection 14(b);

“**Closing Time**” means 8:30 a.m. (Toronto time) on the Prospectus Closing Date or any Note Closing Date or such other time as the Company, the Guarantor and the applicable Agents may otherwise agree upon;

“**Company**” has the meaning given to such term in the recitals above;

“**connected issuer**” and “**related issuer**” have the respective meanings given to such terms in Section 1.1 of National Instrument 33 105 – *Underwriting Conflicts*;

“**Distribution**” means “distribution” or “distribution to the public” as those terms are defined in applicable securities legislation of the Offering Jurisdictions;

“**Financial Information**” means, at any time, the Financial Statements, together with any auditor’s report thereon and the notes thereto, any management’s discussion and analysis of financial condition and results of operations, and any earnings coverage ratios, in each case included in or incorporated or deemed to be incorporated by reference in the Prospectus;

“**Financial Statements**” means, at any time, the audited and unaudited financial statements of the Company and the Guarantor included in or incorporated or deemed to be incorporated by reference in the Prospectus at such time;

“**Guarantee**” means the Guarantee dated December 16, 2004 between the Guarantor and the Trustee, as may be amended, supplemented or restated from time to time, providing for the guarantee by the Guarantor of the Notes of the Company;

“**Guarantor**” has the meaning given to such term in the recitals above;

“**Indemnified Party**” has the meaning given to such term in subsection 14(b);

“**Indenture**” means the trust indenture dated December 16, 2004 among the Company, The Bank of New York and the Trustee, as supplemented by a second supplemental indenture to be dated as of a date on or before the First Note Closing Date to be entered into by the Company, The Bank of New York and the Trustee, as may be further amended, supplemented or restated from time to time, providing for the issue of the Notes of the Company;

“**NI 44-101**” means National Instrument 44-101 – *Short Form Prospectus Distributions* of the Canadian Securities Administrators, as amended from time to time;

“**NI 44-102**” means National Instrument 44-102 – *Shelf Distributions* of the Canadian Securities Administrators, as amended from time to time;

“**Note Closing Date**” means the date on which the completion of the issuance and sale by the Company of any offering of Notes pursuant to this Agreement occurs;

“**Notes**” has the meaning given to such term in the recitals above;

“**Offering Jurisdictions**” means all provinces of Canada;

“**Pricing Supplement**” means a pricing supplement to the Prospectus, in either or both of the English and French languages, incorporated by reference into the Prospectus for the purpose of distributing the Notes, as contemplated by NI 44-102;

“**Prospectus**” has the meaning given to such term in the recitals above;

“**Prospectus Amendment**” means an amendment to the Prospectus, in both the English and French languages, including an amendment by way of a material change report, as contemplated by the Shelf Requirements;

“**Prospectus Closing Date**” means November 1, 2006 or such date as the Company, the Guarantor and the Agents may otherwise agree upon in writing;

“**Prospectus Supplement**” means a supplement to the Prospectus (other than a Pricing Supplement), in both the English and French languages, incorporated by reference into the Prospectus for the purpose of distributing the Notes, as contemplated by NI 44-102;

“**Purchasers**” means the persons who acquire Notes from the Company or any Agent (where such Agent is acting as principal hereunder) and the permitted assignees or transferees of such persons from time to time;

“**Shelf Requirements**” means, collectively, NI 44-101 and NI 44-102;

“**Subsidiaries**” means a corporation, partnership, limited partnership, trust or other entity 50% or more of the combined voting power of the outstanding voting securities of which is owned, directly

or indirectly, by the Guarantor or by one or more its Subsidiaries or by the Guarantor and one or more of its Subsidiaries, excluding any publicly listed entities;

**"Supplemental Material"** means any Prospectus Amendment, Prospectus Supplement, Pricing Supplement or other supplementary or amending document required to be filed by the Company or the Guarantor under Canadian Securities Laws in connection with the distribution of the Notes; and

**"Trustee"** means BNY Trust Company of Canada, the trustee under the Indenture and/or any successor trustee appointed in accordance with the provisions thereof.

Terms used herein and not otherwise defined have the meanings ascribed to them in the Indenture.

Unless otherwise expressly provided in this Agreement, words importing only the singular number include the plural and vice versa and words importing gender include all genders. References to **"sections"** or **"subsections"** are to the appropriate section or subsection of this Agreement.

### **Terms and Conditions**

The following are the terms and conditions of this Agreement:

1. **Agents' Appointment.** The Company hereby appoints the Agents to act as the agents of the Company to solicit offers to purchase Notes from Purchasers in the Offering Jurisdictions and the Agents hereby agree to act as agents for such purpose, subject to the terms and conditions contained herein. Notwithstanding the foregoing, the Company may appoint additional agents hereunder by delivering to the then existing Agents a copy of this Agreement signed by each such agent, whereupon each such agent shall become one of the Agents hereunder unless one or more of the existing Agents is reasonably of the view that such additional agent would not be able to fulfill its responsibilities under this Agreement and so notifies the Company within five days of receipt of the foregoing copy of this Agreement. For greater certainty, the parties to this Agreement acknowledge and agree that the Agents shall not at any time be obligated to purchase any Notes, but that any Agent, either alone or together with one or more of the other Agents, may from time to time purchase the Notes as principal at such prices and with such commissions as may be agreed upon by the Company and such Agent or Agents for resale to the public in the Offering Jurisdictions at prices to be negotiated by such Agent or Agents with Purchasers.
2. **Prospectus Filings.**
  - (a) The Company and the Guarantor shall, as soon as reasonably practicable, fulfil, and shall continue to fulfil for so long as this Agreement is in effect, to the reasonable satisfaction of the Agents' counsel, all Canadian Securities Laws requirements to be fulfilled by the Company and the Guarantor (including without limitation, from time to time, any filings, proceedings and legal requirements set forth in the Shelf Requirements) to enable the Notes to be offered for sale and sold to the public in each of the Offering Jurisdictions under the Prospectus in compliance with Canadian Securities Laws by or through the Agents.

- (b) To the extent that any filing (including, without limitation, the filing of a Prospectus Amendment) results in the Agents assuming additional liability, the Company and the Guarantor shall consult with the Agents as to all such filings it proposes to effect, provided that there shall be no obligation of the Company or the Guarantor to consult with the Agents in respect of documents filed as part of their respective continuous disclosure obligations.
3. **Distribution of Notes.** An Agent shall, on such dates as the Company has notified such Agent that it requires funds, use its best efforts to solicit offers to purchase the Notes from, and sell the Notes to, Purchasers in the Offering Jurisdictions, only as permitted by and in compliance with applicable Canadian Securities Laws and upon the terms and conditions set forth in the Prospectus and in this Agreement. The Agents shall not make use of any confidential information memorandum or other marketing materials (other than term sheets) in respect of the solicitation of offers to purchase and the sale of the Notes without the prior approval of the Company. The Agents will not solicit offers to purchase or sell Notes so as to require registration thereof or the filing of a prospectus, registration statement or other notice or document with respect thereto under the laws of any jurisdiction other than the Offering Jurisdictions, including, without limitation, the United States. For purposes of this section 3, the Agents shall be entitled to assume that the Notes are qualified for Distribution in any Offering Jurisdiction where a receipt or similar document for the Prospectus has been obtained from the applicable securities regulatory authority. The Company will have the sole right to accept offers to purchase Notes. The Company may, in its absolute discretion, reject any proposed purchase of Notes from the Company in whole or in part and each Agent may, in its discretion, exercised reasonably, reject any offer to purchase Notes received by it. Each Agent shall, in sufficient time to permit the Company to comply with applicable Canadian Securities Laws, provide the Company with a comprehensive breakdown of the Notes distributed by such Agent in each of the Offering Jurisdictions where such breakdown is required under applicable Canadian Securities Laws including, without limiting the generality of the foregoing, for the purpose of calculating fees payable by the Company to the applicable securities regulatory authorities.
4. **Agents' Fee.** In consideration of the services to be rendered by one or more of the Agents in connection with an offering and sale of Notes under this Agreement on a Note Closing Date, the Company will pay to such Agent or Agents on such Note Closing Date a commission to be determined by mutual agreement of the Company and such Agent or Agents and disclosed in the applicable Pricing Supplement. The commission in respect of any particular Note will be payable in the same currency as the principal amount of the Note (the "**Agents' Fee**").
5. **Terms of the Notes.**
- The Notes will be issued pursuant to the provisions of the Indenture, and shall have the attributes and characteristics in all material respects as described in the Prospectus. Subject to the foregoing, all terms and conditions of each Note issued by the Company from time to time shall be determined by the Company in its sole discretion and shall be set out in the applicable Pricing Supplement. Such terms and conditions shall include, without limiting the generality of the foregoing, the maturity of the Note (not less than one year from the date of original issue), the fixed or floating interest rate or rates and interest payment dates for the Note, the currency in which the Note will be denominated, the issue price of the Note (at par,

at premium or at a discount), the redemption or repayment provisions of the Note and the entitlement of the holder to exchange or convert the Note into other debt instruments of the Company or to extend the maturity date of the Notes, if any. The Notes shall be direct, unsecured and unsubordinated indebtedness of the Company ranking *pari passu* with all other present and future unsecured and unsubordinated indebtedness of the Company. Until the Guarantee is terminated in accordance with Section 2.4 thereof, all amounts payable under the Notes shall be unconditionally guaranteed by the Guarantor pursuant to the Guarantee. The obligations of the Guarantor under the Guarantee shall be direct, unsecured and unsubordinated obligations of the Guarantor ranking *pari passu* with all other present and future unsecured and unsubordinated indebtedness of the Guarantor.

6. **Creation and Issue of Notes.** The Company shall duly and validly create, authorize and issue the Notes. The Notes shall be created and issued under the Indenture on the date of delivery thereof.
7. **Deliveries by the Company and the Guarantor.** The Company and the Guarantor shall deliver to the Agents:
  - (a) on the date of this Agreement, a copy of the Prospectus in form and substance satisfactory to the Agents, acting reasonably, and approved, signed and certified as required by Canadian Securities Laws, including copies of any documents or information incorporated or deemed to be incorporated by reference therein;
  - (b) as soon as they are available, copies of any Prospectus Amendment, Prospectus Supplement or Pricing Supplement, approved, signed and certified as required by Canadian Securities Laws and in form and substance satisfactory to the Agents, including copies of any documents or information incorporated or deemed to be incorporated by reference therein and not previously delivered to the Agents, provided that each Pricing Supplement need be delivered only to the Agent or Agents involved in the particular offering of Notes to which such Pricing Supplement relates;
  - (c) within three Business Days of the date of this Agreement, that number of commercial copies of the Prospectus, in both the English and French languages as required, as the Agents may reasonably require, without charge, in such numbers and in such cities in the Offering Jurisdictions as the Agents may reasonably request;
  - (d) as soon as practicable after a receipt therefor has been issued, in the case of a Prospectus Amendment and, in the case of a Prospectus Supplement, one Business Day after the date thereof, that number of commercial copies of any Prospectus Amendment and any Prospectus Supplement, in both the English and French languages as required, as the Agents may reasonably require, without charge, in such numbers and in such cities in the Offering Jurisdictions as the Agents may reasonably request;
  - (e) at the time of delivery to the Agents of the French language version of the Prospectus or any Prospectus Amendment, Prospectus Supplement or Pricing Supplement;

- (i) opinions of the Company's counsel addressed to the Agents, the Company, the Agents' counsel and the Company's counsel in form and substance satisfactory to the Agents, acting reasonably, dated as of the date of the Prospectus or such Prospectus Amendment, Prospectus Supplement or Pricing Supplement, to the effect that the French language version of the Prospectus or such Prospectus Amendment, Prospectus Supplement or Pricing Supplement, including all documents incorporated or deemed to be incorporated therein by reference, except for the Financial Information as to which no opinion need be expressed, is in all material respects a complete and proper translation of the English language version thereof and that the said version is not susceptible to any materially different interpretation with respect to any material matter contained therein;
  - (ii) opinions of the Auditors addressed to the Agents, the Company, the Agents' counsel and the Company's counsel, dated as of the date of the Prospectus or such Prospectus Amendment, Prospectus Supplement or Pricing Supplement, to the effect that the French language version of the Financial Information is in all material respects a complete and proper translation of the English language version thereof; and
- (f) at the time of delivery to the Agents the Prospectus or any Prospectus Amendment, Prospectus Supplement or Pricing Supplement, a "long-form" comfort letter of the Auditors, dated as of the date of the Prospectus or such Prospectus Amendment, Prospectus Supplement or Pricing Supplement (with the requisite procedures to be completed by the Auditors within two Business Days of such date), addressed to the Agents and the board of directors of the Company, in form and substance satisfactory to the Agents, acting reasonably, with respect to the financial and accounting information contained in the Prospectus or such Prospectus Amendment, Prospectus Supplement or Pricing Supplement, including all documents incorporated or deemed to be incorporated therein by reference.

The delivery of the Prospectus and any Supplemental Material will constitute the Company's and the Guarantor's consent to the Agents' use of such materials for the offering and sale of the Notes in the Offering Jurisdictions in accordance with the provisions of this Agreement.

**8. Material Change.** The Company and the Guarantor shall promptly notify the Agents in writing during the period of Distribution of the Notes of the full particulars of:

- (a) any material change (actual, anticipated, contemplated or threatened, whether financial or otherwise) in the business, affairs, operations, assets, or liabilities (absolute, accrued, contingent or otherwise), financial condition or capital of the Company or the Guarantor;
- (b) any change in any material fact contained in the Prospectus or any Supplemental Material, or whether any event or state of facts has occurred after the date hereof, which change, event or state of facts is or may be of such a nature as to result in a misrepresentation therein;

- (c) any material fact which arises which would have been required to be stated in the Prospectus or any Supplemental Material had the fact arisen on or prior to the date of the Prospectus or any Supplemental Material, as the case may be; or
- (d) any order of any securities regulatory authority preventing or suspending the use of the Prospectus or any Supplemental Material or the offering or sale of the Notes, of any other securities of the Company or of any securities of the Guarantor or of any of the Subsidiaries.

The Company and the Guarantor shall promptly comply (but in any event within any applicable time limitation) with all applicable filing and other requirements under all applicable Canadian Securities Laws in connection with such change, event or fact and, if required, shall prepare a Prospectus Amendment, provided that such Prospectus Amendment shall be in form and substance satisfactory to the Agents, acting reasonably. The Company and the Guarantor agree that it will allow the Agents to participate fully in the preparation of the Prospectus Amendment and to conduct all due diligence with respect thereto which the Agent may reasonably require. The Company, the Guarantor and the Agents shall cooperate fully with each other in regards to all steps that are necessary with respect to the preparation of such Prospectus Amendment. The Company and the Guarantor shall in good faith first discuss with the Agents any change in circumstances (actual, anticipated, contemplated or threatened, whether financial or otherwise) which is of such a nature that there is reasonable doubt whether notice need be given to the Agents pursuant to this section 8.

9. **Offering Documents.** The delivery by the Company and the Guarantor to the Agents of the Prospectus and any Supplemental Material shall constitute the Company's and the Guarantor's joint and several representation and warranty to the Agents and the Purchasers that, at the time of such delivery:

- (a) the information and statements contained therein (except information and statements relating solely to the Agents and provided by the Agents) contain no untrue statement of a material fact and do not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made;
- (b) the Prospectus and any Supplemental Material comply in form and content with all applicable Canadian Securities Laws; and
- (c) the Prospectus and any Supplemental Material filed in the French language in the Province of Québec is in all material respects a reasonable and proper translation of the English language version thereof.

10. **Representations and Warranties of the Company and the Guarantor** In addition to the representations and warranties set forth in section 9 hereof, the Company and the Guarantor jointly and severally represent and warrant to the Agents and the Purchasers as of the Prospectus Closing Date and each Note Closing Date with the same force and effect as if then made, that:



- (a) the Company is a corporation duly incorporated and organized and is validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which the conduct of its business or the ownership, leasing or operation of its property and assets requires such qualification and has all requisite corporate power and authority to (i) carry on its business as now conducted and as currently proposed to be conducted; (ii) own, lease and operate its property and assets; (iii) create, issue, sell and deliver the Notes; and (iv) execute, deliver and perform its obligations under this Agreement, the Indenture and the Notes;
- (b) the Guarantor is a corporation duly incorporated and organized and is validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which the conduct of its business or the ownership, leasing or operation of its property and assets requires such qualification and has all requisite corporate power and authority to (i) carry on its business as now conducted and as currently proposed to be conducted; (ii) own, lease and operate its property and assets; and (iii) execute, deliver and perform its obligations under this Agreement and the Guarantee;
- (c) each of the Company, the Guarantor and each of the Subsidiaries has conducted and is conducting its business in compliance with its constating documents and with all applicable laws, rules and regulations of each jurisdiction in which its business is carried on and holds all licences, permits, approvals, consents, certificates, registrations and authorizations (whether governmental, regulatory or otherwise) to enable its business to be carried on as now conducted and its property and assets to be owned, leased and operated, except where a failure, either individually or in the aggregate, to hold such licenses, permits, approvals, consents, certificates, registrations and authorizations would not, either individually or in the aggregate, have a material adverse effect on the business or operations of the Company, the Guarantor and the Subsidiaries taken as a whole as now carried on or proposed to be carried on and all such licences, permits, approvals, consents, certificates, registrations and authorizations are validly existing and in good standing and none of them contains any provision, condition or limitation which will have a materially adverse effect on its ability to operate its business as now carried on or as proposed to be carried on and, other than as disclosed in the Prospectus or any Supplemental Material, and neither the Company nor the Guarantor is aware of any fact or matter which would reasonably result in the termination of or material adverse change in any such licence, permit, approval, consent, certificate, registration or authorization;
- (d) the execution and delivery of this Agreement, the Indenture, the Guarantee and the Notes, the fulfilment of the terms hereof and thereof by the Company and the Guarantor and the issuance, sale and delivery of the Notes at the Closing Time do not and will not result in a breach of, and do not and will not create a state of facts which, after notice or lapse of time or both, will result in a breach of, and do not and will not conflict with:
  - (i) any of the terms, conditions or provisions of the constating documents or resolutions of the shareholders or directors (or any committee thereof) of the Company or the Guarantor;

- (ii) any indenture, agreement, lease, instrument or document to which the Company or the Guarantor is a party or by which it is contractually bound at the Closing Time except where a breach of such an indenture, agreement, lease, instrument or document would not, either individually or in the aggregate, have a material adverse effect on the business or operations of the Company or the Guarantor as now carried on or proposed to be carried on; or
  - (iii) any laws of Canada or any province of Canada or any regulations or rules thereunder applicable to the Company or the Guarantor or any judgement, order or decree of any governmental body, agency or court having jurisdiction over the Company or the Guarantor, the breach of which would have a material adverse effect on the business or operations of the Company or the Guarantor as now carried on or as proposed to be carried on;
- (e) the authorized capital of the Company consists of an unlimited number of common shares;
- (f) the Guarantor is the registered and beneficial owner of all the issued and outstanding shares of the Company and such shares are owned by the Guarantor free and clear of all encumbrances;
- (g) other than as set forth in the Prospectus, or in connection with any right of first refusal or similar right with respect to any joint venture agreement to which the Company, the Guarantor or any Subsidiary is now or becomes party, no person, firm or corporation has any agreement, option, right or privilege (contractual or otherwise) capable of becoming an agreement (including convertible or exchangeable securities or warrants) for the purchase or acquisition from the Company, the Guarantor or any Subsidiary of any interest in any securities of the Company or the Guarantor or any material interest in any securities of any Subsidiary, whether issued or unissued;
- (h) the performance of this Agreement, the Indenture, the Guarantee and the Notes by the Company and the Guarantor will not adversely affect (i) the business or operations of the Company, the Guarantor or any Subsidiary as now carried on or proposed to be carried on by the Company, the Guarantor or any Subsidiary or (ii) the properties and assets of the Company, the Guarantor or any Subsidiary and the execution and delivery of this Agreement, the Indenture, the Guarantee and the Notes by the Company or the Guarantor does not and will not result in the creation or imposition of any encumbrance, mortgage, lien, charge, pledge, security interest, hypothec, claim, or demand of any nature whatsoever upon any of the property and assets of the Company, the Guarantor or any Subsidiary;
- (i) the Financial Statements accurately and fairly present the financial position of the Company on a consolidated basis and the Guarantor on a consolidated basis, reflect all material liabilities (absolute, accrued, contingent or otherwise) of the Company and the Guarantor and, except as disclosed in the notes to the Financial Statements, have been prepared in accordance with Canadian generally accepted accounting principles applied on a consistent basis;

- (j) other than as set forth in the Prospectus, (i) there has been no material adverse change (actual, anticipated, contemplated or threatened, whether financial or otherwise) in the business, affairs, operations, assets, liabilities or obligations (absolute, accrued, contingent or otherwise) financial condition, or capital of the Company, the Guarantor and the Subsidiaries taken as a whole since December 31, 2005 and (ii) each of the Company, the Guarantor and the Subsidiaries has carried on its business in the ordinary course since December 31, 2005;
- (k) neither the Company nor the Guarantor is aware of any legislation which it anticipates may materially and adversely affect the business, affairs, operations, assets, liabilities or obligations (absolute, accrued, contingent or otherwise) or financial condition of the Company, the Guarantor and the Subsidiaries taken as a whole;
- (l) other than as set forth in the Prospectus, there is no action, proceeding or investigation (whether or not purportedly on behalf of the Company, the Guarantor or any Subsidiary) pending or, to the knowledge of the Company, the Guarantor or their respective directors and officers, threatened against or affecting the Company, the Guarantor or any Subsidiary before or by any federal, provincial, municipal or other governmental department, commission, board or agency, domestic or foreign, which could in any way materially adversely affect the Company, the Guarantor and the Subsidiaries taken as a whole or the condition (financial or otherwise) of the Company, the Guarantor the Subsidiaries taken as a whole or which questions the validity of the issuance of the Notes or of any action taken or to be taken by the Company or the Guarantor pursuant to this Agreement, the Indenture or the Guarantee or in connection with the issuance of the Notes;
- (m) none of the Company, the Guarantor or any Subsidiary has received notice from any governmental or regulatory authority of any jurisdiction in which it carries on a material part of its business or owns or leases any material property, of any restriction on its ability to or of a requirement for it to qualify to, nor is the Company or the Guarantor aware of any restriction in its or any Subsidiary's ability to or of a requirement for it to qualify to, conduct its business as described in the Prospectus in such jurisdiction, except such qualifications as have been satisfied or would not have a material adverse effect on the business or operations of the Company, the Guarantor and the Subsidiaries taken as a whole as now carried on or as proposed to be carried on;
- (n) each of the Company, the Guarantor and each of the Subsidiaries is in compliance with all covenants under its existing credit facilities, and no default on its part exists under, or as a result of the distribution of the Notes will exist under, any agreement, indenture or instrument securing or otherwise relating to any of its indebtedness including its existing credit facilities, the contravention, breach or absence of which would have a material adverse effect on the business or operations of the Company or the Guarantor;

- (o) the Company is in compliance with the terms and conditions of the Indenture, and no default on its part or Event of Default exists under, or as a result of the distribution of the Notes will exist under, the Indenture;
- (p) the Guarantor is in compliance with the terms and conditions of the Guarantee, and no default on its part exists under, or as a result of the distribution of the Notes will exist under, the Guarantee;
- (q) each of the Company, the Guarantor and each of the Subsidiaries:
  - (i) is in compliance with any and all applicable federal, provincial and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxins substances or wastes, pollutants or contaminants (“**Environmental Laws**”);
  - (ii) has received all permits, licenses or other approvals required of it under applicable Environmental Laws to conduct its business; and
  - (iii) is in compliance with all terms and conditions of any such permit, license or approval;

the contravention, breach or absence of which would have a material adverse effect on the business or operations of the Company or the Guarantor as now carried on or as proposed to be carried on, except as disclosed in the Prospectus;
- (r) no material labour dispute exists with the employees of the Company, the Guarantor or any of the Subsidiaries, or, to the knowledge of the Company or the Guarantor, is imminent;
- (s) there is no person, firm or corporation acting or purporting to act for the Company or the Guarantor entitled to any commission or brokerage or finder’s fee in connection with this Agreement or any of the transactions contemplated hereunder, except the Agents as provided herein;
- (t) this Agreement has been duly authorized, executed and delivered on behalf of each of the Company and the Guarantor and is a legal, valid and binding obligation of each of the Company and the Guarantor, enforceable against each of them in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally and subject to the qualifications that equitable remedies may be granted in the discretion of a court of competent jurisdiction and except that rights of indemnity, contribution and waiver of contribution may be limited under applicable law;
- (u) the Indenture, duly executed and delivered on behalf of the Company, has been duly authorized by all necessary corporate action and constitutes a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting the rights of creditors

generally and subject to the qualification that equitable remedies may be granted in the discretion of a court of jurisdiction;

- (v) the Guarantee, duly executed and delivered on behalf of the Guarantor, has been duly authorized by all necessary corporate action and constitutes a legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally and subject to the qualification that equitable remedies may be granted in the discretion of a court of jurisdiction;
- (w) each of the Company, the Guarantor and each of the Subsidiaries maintains insurance policies covering such casualties and contingencies in such amounts as are in accordance with sound business practices and standards in the industry and as provided for under any supplements to such insurance policies issued by the insurers from time to time and it is not in default with respect to any such insurance policies and, except as disclosed in the Prospectus, has not received any advice or notification that any such insurance policies will be cancelled, will not be renewed or is inadequate with regard to sound business practices and standards in the industry;
- (x) each of the Company, the Guarantor and each of the Subsidiaries owns or possesses, or can acquire on reasonable terms, all material patents, licenses, inventions, copyright, know-how (including trade secrets and other unpatented or unpatentable proprietary or confidential information), trade-marks, and trade-names currently employed by it in connection with the business now carried on by it, and none of the Company, the Guarantor or any Subsidiary has received any notice of infringement of or conflict with asserted rights of others with respect to any of the foregoing which, individually or in the aggregate, if the subject of an unfavourable decision, ruling or finding, would reasonably be expected to have a material adverse effect on the business or operations of the Company, the Guarantor and the Subsidiaries taken as a whole as now carried on or proposed to be carried on;
- (y) none of the Company, the Guarantor or any Subsidiary is an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) nor has made an assignment in favour of its creditors nor a proposal in bankruptcy to its creditors or any class thereof nor had any petition for a receiving order presented in respect of it; none of the Company, the Guarantor or any Subsidiary has initiated proceedings with respect to a compromise or arrangement with its creditors or for its winding-up, liquidation or dissolution; no receiver has been appointed in respect of the Company, the Guarantor or any Subsidiary or any of the assets thereof and no execution or distress has been levied upon any of the assets thereof;
- (z) except for such consents as will have been obtained prior to the applicable Closing Time, no consent, approval, authorization, order, registration or qualification of or with any Person, court or governmental agency or body is required for the creation, issuance, sale and delivery of the Notes or the fulfilment of the terms thereof or the fulfilment by the Company or the Guarantor of the terms of this Agreement, the Indenture or the Guarantee;

- (aa) the terms of the Indenture and the Guarantee conform in all material respects to the descriptions thereof contained in the Prospectus and the terms of the Notes conform in all material respects to the descriptions thereof contained in the Prospectus;
  - (bb) the Notes, when issued, executed and delivered by the Company and authenticated by the Trustee, will be duly authorized by all necessary corporate action and will constitute legal, valid and binding obligations of the Company, enforceable against it in accordance with their terms, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally and subject to the qualification that equitable remedies may be granted in the discretion of a court of jurisdiction;
  - (cc) on each Note Closing Date, the Notes to be issued on such Note Closing Date are rated at least BBB (high) with a Stable trend, BBB with a Stable outlook and BBB with a Stable outlook by Dominion Bond Rating Service Limited ("DBRS"), Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. ("S&P") and Fitch Ratings Ltd. ("Fitch"), respectively, and no condition (financial or otherwise) on the Company's retaining any such rating assigned to the Notes has been imposed by any such rating agency (nor has any such rating agency informed the Company or the Guarantor that it is considering imposing such condition) and no such rating agency has indicated to the Company or the Guarantor that it is considering the suspension, withdrawal or change of or any review for a possible change that does not indicate the direction of the possible change in, any rating of the Notes, of the Company, of the Guarantor or of any securities of the Company or the Guarantor or any change in the outlook, where applicable, for any rating of the Notes, of the Company, of the Guarantor or of any securities of the Company or the Guarantor; and
  - (dd) the Company is a reporting issuer in each of the Offering Jurisdictions not in default of any requirements of the Canadian Securities Laws.
11. **Closing.** Each purchase and sale of the Notes under this Agreement shall take place at the Closing Time at the Toronto offices of Torsys LLP.
12. **Deliveries at Closing.** Notwithstanding any other provision hereof the Agents' obligations hereunder shall be subject to conditions precedent (each of which is expressly declared to be solely for the benefit of the Agents) that the Agents have received:
- (a) at each Closing Time, a single amended and restated global certificate representing the Notes sold to Purchasers, registered in the name of CDS&Co., as nominee for CDS, against payment to the Company, or as the Company may direct to the Agents in writing not less than 48 hours prior to such Closing Time, of the purchase price for the Notes (net of the Agents' Fee) by electronic wire transfer of immediately available funds;
  - (b) at each Closing Time, a certificate, addressed to the Agents, the Agents' counsel, the Company's and the Guarantor's counsel and the Purchasers, dated the applicable Closing Date and signed by the Chief Executive Officer and the Chief Financial Officer of the Company, or such other senior officers of the Company as may be

acceptable to the Agents, and the Chief Executive Officer and the Chief Financial Officer of the Guarantor, or such other senior officers of the Guarantor as may be acceptable to the Agents, certifying that:

- (i) each of the Company and the Guarantor has complied with all terms and conditions of this Agreement, the Indenture and the Guarantee and all agreements and instruments delivered thereunder to be complied with by the Company or the Guarantor at or prior to such Closing Time;
- (ii) no order, ruling or determination having the effect of suspending the sale or ceasing or suspending trading in the Notes or any other securities of the Company or the Guarantor has been issued and is continuing in effect and no proceedings for such purpose have been instituted and are continuing or are pending or, to the best of the knowledge, information and belief of the persons signing such certificate, are contemplated or threatened;
- (iii) the representations and warranties of the Company and the Guarantor contained in this Agreement, the Indenture and the Guarantee are true and correct as of such Closing Time with the same force and effect as if made at and as of such Closing Time after giving effect to the transactions contemplated hereby;
- (iv) the representations and warranties of the Company and the Guarantor arising by reason of the delivery of the Prospectus or any Supplementary Material are true and correct as at such Closing Time as if such documents had been dated the Prospectus Closing Date or Note Closing Date, as applicable, and delivered to the Agents at such Closing Time;
- (v) no rating agency has imposed (or has informed the Company or the Guarantor that it is considering imposing) any condition (financial or otherwise) on the Company's retaining any rating assigned to the Notes or has indicated to the Company or the Guarantor that it is considering the suspension, withdrawal or change of, or any review for a possible change that does not indicate the direction of the possible change in, any rating of the Notes, of the Company, of the Guarantor or of any securities of the Company or the Guarantor or any change in the outlook, where applicable, for any rating of the Notes, of the Company, of the Guarantor or of any securities of the Company or the Guarantor; and
- (vi) there has not been, since the date as of which information is given in the Prospectus or any Supplemental Material, as applicable, any material adverse change (actual, anticipated or proposed; whether financial or otherwise) in the assets, liabilities (contingent or otherwise), business, affairs, prospects, operations or condition (financial or otherwise) of the Company, the Guarantor and the Subsidiaries taken as a whole or any adverse change in any material fact such as is contemplated by section 8;

- (c) on the Prospectus Closing Date, a legal opinion of the Company's and the Guarantor's counsel, Torys LLP, and legal opinions of Canadian local counsel, where appropriate, addressed to the Purchasers, the Agents and their counsel and dated the Prospectus Closing Date, in form and substance satisfactory to the Agents, acting reasonably, to the effect that:
- (i) the Company is a corporation incorporated and validly existing under the laws of the Province of Ontario and has the corporate power and capacity to carry on its business as now conducted, to own its property and assets and to execute, deliver and perform its obligations under this Agreement, the Indenture and the Notes;
  - (ii) the Guarantor is a corporation incorporated and validly existing under the laws of the Province of Ontario and has the corporate power and capacity to carry on its business as now conducted, to own its property and assets and to execute, deliver and perform its obligations under this Agreement and the Guarantee;
  - (iii) the authorized capital of the Company consists of an unlimited number of common shares and the Guarantor is the registered owner of all of the issued and outstanding shares of the Company;
  - (iv) all necessary corporate action has been taken by the Company to authorize the execution and delivery by it of this Agreement and the Indenture and the performance of its obligations hereunder and thereunder and each of this Agreement and the Indenture has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally and subject to the qualifications that equitable remedies may be granted in the discretion of a court of competent jurisdiction and except that rights to indemnity, contribution and waiver may be limited under the applicable laws and other customary qualifications;
  - (v) all necessary corporate action has been taken by the Guarantor to authorize the execution and delivery by it of this Agreement and the performance of its obligations hereunder and this Agreement has been duly executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally and subject to the qualifications that equitable remedies may be granted in the discretion of a court of competent jurisdiction and except that rights to indemnity, contribution and waiver may be limited under the applicable laws and other customary qualifications;
  - (vi) the execution and delivery of this Agreement and the Indenture, the fulfilment of the terms hereof and thereof by the Company do not result in a breach of, and do not create a state of facts which, after notice or lapse of



time or both, will result in a breach of, and do not conflict with any of the terms, conditions or provisions of the constating documents of the Company or any applicable law of the Province of Ontario;

- (vii) the execution and delivery of the Notes, the fulfilment of the terms thereof by the Company and the issuance, sale and delivery of the Notes will not result in a breach of, and will not create a state of facts which, after notice or lapse of time or both, will result in a breach of, and will not conflict with any of the terms, conditions or provisions of the constating documents of the Company or any applicable law of the Province of Ontario;
- (viii) the execution and delivery of this Agreement and the Guarantee, the fulfilment of the terms hereof and thereof by the Guarantor do not result in a breach of, and do not create a state of facts which, after notice or lapse of time or both, will result in a breach of, and do not conflict with any of the terms, conditions or provisions of the constating documents of the Guarantor or any applicable law of the Province of Ontario;
- (ix) all necessary corporate action has been taken by the Company and the Guarantor to authorize the signing, filing and delivery of the Prospectus;
- (x) the laws of the Province of Québec with respect to the use of the French language will (other than those relating to verbal communications) have been complied with in respect of the Prospectus to be delivered to purchasers in the Province of Québec in connection with the sale of the Notes when issued, to the extent such purchasers receive a copy of the Prospectus in the French language, provided that the Prospectus in the English language may be delivered without delivery of the French language versions thereof to those physical persons in the Province of Québec who have expressly requested or agreed in writing to receive the Prospectus in the English language only;
- (xi) the Indenture and the issuance, authentication and delivery of the Notes thereunder complies and will comply with the provisions of the *Business Corporations Act* (Ontario), the *Business Corporations Act* (British Columbia) and similar legislation in the other Offering Jurisdictions. No registration, filing or recording of the Indenture is necessary under the laws of Canada or the Offering Jurisdictions in order to preserve or protect the validity or enforceability of the Notes relating to the trust indentures;
- (xii) the Notes will, when duly authorized, completed, executed, countersigned and delivered against payment therefor in accordance with the Indenture, constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and subject to the qualification that specific performance and equitable remedies may only be granted in the discretion of a court of competent jurisdiction and other customary qualifications and the holders of the Notes are entitled to the benefits thereof under the Indenture

- (xiii) all necessary documents and proceedings have been filed and taken and all other legal requirements have been fulfilled under the laws of the Offering Jurisdictions to qualify the Notes to be offered and sold to the public in each of the Offering Jurisdictions through investment dealers or brokers registered under applicable legislation of such Offering Jurisdictions who have complied with the relevant provisions of such legislation;
  - (xiv) the Guarantee constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and subject to the qualification that specific performance and equitable remedies may only be granted in the discretion of a court of competent jurisdiction and other customary qualifications and the holders of the Notes are entitled to the benefits of the Guarantee;
  - (xv) the provisions of the Indenture and the Guarantee conform in all material respects with the statements relating thereto contained in the Prospectus and the attributes and characteristics of the Notes conform in all material respects with the statements relating thereto contained in the Prospectus;
  - (xvi) the Trustee, at its principal office in the City of Toronto, has been duly appointed as the Trustee under the Indenture; and
  - (xvii) the Company is a reporting issuer in each of the Offering Jurisdictions;
- (d) on each Note Closing Date, a legal opinion of the Company's and the Guarantor's counsel, Torgys LLP, addressed to the Purchasers, the Agents and their counsel and dated such Note Closing Date, in form and substance satisfactory to the Agents, acting reasonably to the effect that:
- (i) the statements in the applicable Pricing Supplement under "Certain Canadian Federal Income Tax Considerations", insofar as such statements constitute statements of law, have been reviewed by counsel to the Company and the Guarantor and accurately summarise the Canadian federal income tax provisions applicable to the Notes to be issued on such Note Closing Date; and
  - (ii) the statements in the Prospectus under "Eligibility for Investment", insofar as such statements constitute statements of law, have been reviewed by counsel to the Company and the Guarantor and accurately summarise such law applicable to the Notes to be issued on such Note Closing Date;
- (e) on the Prospectus Closing Date, a letter from the Auditors, dated the Prospectus Closing Date, in form and substance satisfactory to the Agents, acting reasonably, addressed to the Agents and the board of directors of the Company, bringing the information contained in the "long form" comfort letter or letters referred to in subparagraph 7(f) forward to the Closing Time, provided that such comfort letter

shall be based on the requisite procedures to be completed by the Auditors having a cut-off date not more than two Business Days prior to the Closing Time;

- (f) on the Prospectus Closing Date, executed copies of the Indenture and the Guarantee, in each case in form and substance satisfactory to the Agents and their counsel;
- (g) except if previously delivered, all consents required under material agreements of the Company and of the Guarantor relating to transactions contemplated in the Prospectus and any Supplemental Material, the absence of which would have a material adverse effect on the business or operations of the Company or the Guarantor;
- (h) on the Prospectus Closing Date, all certificates, opinions and other documents required under the Indenture and under any other agreements or documents required to be delivered pursuant to this section 12;
- (i) on each Note Closing Date, confirmation of each of DBRS, S&P and Fitch as to the rating of the Notes to be issued on such Note Closing Date satisfactory to the Agents and their counsel;
- (j) certificates dated the Prospectus Closing Date and signed by appropriate officers of the Company, addressed to the Agents and their counsel, with respect to the constating documents of the Company, all resolutions of the board of directors and shareholders, as applicable, of the Company and other corporate action relating to this Agreement, the Indenture and the Notes, as applicable, the authorization, creation, issue and sale of the Notes, the incumbency and specimen signatures of signing officers and with respect to such other matters as the Agents may reasonably request;
- (k) certificates dated the Prospectus Closing Date and signed by appropriate officers of the Guarantor, addressed to the Agents and their counsel, with respect to the constating documents of the Guarantor, all resolutions of the board of directors and shareholders, as applicable, of the Guarantor and other corporate action relating to this Agreement and the Guarantee, as applicable, the incumbency and specimen signatures of signing officers and with respect to such other matters as the Agents may reasonably request; and
- (l) such other certificates, statutory declarations, agreements or materials, in form and substance satisfactory to the Agents, as the Agents may reasonably request, including such as may be required as a basis for any opinions required to be tendered hereunder or under the Indenture.

### **13. Rights of Termination.**

- (a) **Litigation Out.** If any action, suit or other proceeding, whether formal or informal, is instituted or threatened or any order is made by any federal, provincial or other governmental authority in relation to the Company, the Guarantor or any Subsidiary which, in the sole opinion of any of the Agents, acting reasonably, operates to

prevent or restrict the distribution or trading of the Notes or which, in the sole opinion of any of the Agents, acting reasonably, materially and adversely impacts the market price and value of the Notes, any Agent shall be entitled, at its sole option, in accordance with subsection 13(h), to terminate its obligations under this Agreement by such Agent giving written notice to that effect to the Company and the Guarantor any time prior to any Closing Time.

(b) **Disaster and Market Out.** If, prior to any Closing Time:

- (i) there should develop, occur or come into effect any occurrence of national or international consequence or any action, governmental regulation, enquiry or other occurrence, whether in any financial market or otherwise, of any nature whatsoever which, in the sole opinion of any of the Agents, acting reasonably, materially and adversely affects or may materially and adversely affect the Canadian or international financial markets or the business of the Company, the Guarantor and the Subsidiaries taken as a whole; or
- (ii) the state of the Canadian or international financial markets is such that, in the sole opinion of any of the Agents, it could reasonably be expected to have a significant material adverse effect on the market price or value of the Notes,;

any of the Agents shall be entitled, at its sole option, acting reasonably, in accordance with subsection 13(h), to terminate its obligations under this Agreement by such Agent giving written notice to that effect to the Company and the Guarantor any time prior to any Closing Time.

(c) **Material Change Out.** If, prior to any Closing Time, there should occur any material change or a change in any material fact such as is contemplated by section 8, which has, or in the sole opinion of the Agents, acting reasonably, might reasonably be expected to have, a material adverse effect on the market price or value of the Notes, any of the Agents shall be entitled, at its sole option, in accordance with subsection 13(h), to terminate its obligations under this Agreement by such Agent giving written notice to that effect to the Company and the Guarantor any time prior to any Closing Time.

(d) **Change in Rating of Notes.** If, prior to any Closing Time, the Notes are not rated at least BBB (high) with a Stable trend, BBB with a Stable outlook and BBB with a Stable outlook by DBRS, S&P and Fitch, respectively, or if any or all such rating agencies has imposed (or has informed the Company or the Guarantor that it is considering imposing) any condition (financial or otherwise) on the Company's retaining any such rating assigned to the Notes or has indicated to the Company or the Guarantor that it is considering the suspension, withdrawal or change of or any review for a possible change that does not indicate the direction of the possible change in, any rating of the Notes, of the Company, of the Guarantor or of any securities of the Company or the Guarantor or any change in the outlook or trend, where applicable, for any rating of the Notes, of the Company, of the Guarantor or of any securities of the Company or the Guarantor, any of the Agents shall be entitled, at its sole option, in accordance with subsection 13(h), to terminate its obligations

under this Agreement by such Agent giving notice to that effect to the Company and the Guarantor any time prior to any Closing Time.

- (e) **Suspension of Trading.** If any order to cease or suspend trading in the Notes or any securities of the Company, the Guarantor or any Subsidiary is made by any securities regulatory authority in any Offering Jurisdiction or any other regulatory authority, which has not been rescinded, revoked or withdrawn, any of the Agents shall be entitled, at its sole option, in accordance, with subsection 13(h), to terminate its obligations under this Agreement by such Agent giving notice to that effect to the Company and the Guarantor any time prior to any Closing Time.
- (f) **Events of Default.** If, prior to any Closing Time, there shall occur and is continuing an Event of Default (as defined in the Indenture) under the Indenture or any indenture amending, supplementing or restating the Indenture, any of the Agents shall be entitled, at its sole option, in accordance with subsection 13(h), to terminate its obligations under this Agreement by such Agent giving written notice to that effect to the Company and the Guarantor any time prior to any Closing Time.
- (g) **Non-Compliance With Conditions.** Each of the Company and the Guarantor agrees that (i) all terms and conditions in section 13 shall be construed as conditions and complied with so far as they relate to acts to be performed or caused to be performed by it; (ii) it will use commercially reasonable efforts to cause such conditions to be complied with; and (iii) any breach or failure by it to comply with any such conditions shall entitle any of the Agents to terminate its obligations under this Agreement by such Agent giving written notice to that effect to the Company and the Guarantor at or prior to any Closing Time, unless otherwise expressly provided in this Agreement. Any of the Agents may waive, in whole or in part or extend the time for compliance with any terms and conditions without prejudice to its rights in respect of any other terms and conditions or any other or subsequent breach or non-compliance.
- (h) **Exercise of Termination Rights.** The rights of termination contained in subsections 13(a) through (g) are in addition to any other rights or remedies that any of the Agents may have in respect of any default, act or failure to act or non-compliance by the Company or the Guarantor in respect of any of the matters contemplated by this Agreement or otherwise. In the event of any such termination, there shall be no further liability on the part of the Agent who has given notice of termination to the Company and the Guarantor or on the part of the Company and the Guarantor to the Agent who has given notice of termination except in respect of any liability which may have arisen prior to or arises after such termination under any of sections 14, 15 and 16.

#### 14. **Indemnity.**

- (a) The Company and the Guarantor jointly and severally agree to indemnify and save harmless each of the Agents and each of their affiliates, directors, officers, employees and agents from and against all liabilities, claims, losses, reasonable costs,

damages and reasonable expenses arising directly or indirectly from or as a consequence of:

- (i) any information or statement (except any statement relating solely to the Agents and provided by the Agents) contained in the Prospectus, any Prospectus Amendment, any Pricing Supplement or any Supplementary Material or in any certificate of the Company or the Guarantor delivered under or pursuant to this Agreement which at the time and in light of the circumstances under which it was made contains a misrepresentation;
  - (ii) any omission or alleged omission to state in the Prospectus, any Prospectus Amendment, any Pricing Supplement, any Supplementary Material or in any certificate of the Company or the Guarantor delivered under or pursuant to this Agreement, any fact (except facts relating solely to the Agents), whether material or not, required to be stated in such document or necessary to make any statement in such document not misleading in light of the circumstances under which it was made;
  - (iii) any order made or enquiry, investigation or proceeding commenced or threatened by any securities regulatory authority or other competent authority based upon any untrue statement or omission or alleged untrue statement or alleged omission or any misrepresentation or alleged misrepresentation (except a statement, omission or misrepresentation or alleged statement, omission or misrepresentation relating solely to the Agents) in the Prospectus, any Prospectus Amendment, any Pricing Supplement or any Supplementary Material or based upon any failure to comply with Canadian Securities Laws (other than any failure or alleged failure to comply by the Agents), preventing or restricting the trading in or the sale and distribution of the Notes in the Offering Jurisdictions;
  - (iv) the non-compliance or alleged non-compliance by the Company or the Guarantor with Canadian Securities Laws, including the Company's or the Guarantor's non-compliance with any statutory requirement to make any document available for inspection;
  - (v) any inaccuracy of a representation or warranty of the Company or the Guarantor made in this Agreement, the Indenture or in any agreement, certificate or other document delivered pursuant hereto or thereto; or
  - (vi) any breach by the Company or the Guarantor of any covenant to be performed by it contained in this Agreement, the Indenture or in any agreement, certificate or other document delivered pursuant hereto or thereto.
- (b) **Notification of Claims.** If any matter or thing contemplated by this section 14 (any such matter or thing being referred to as a “**Claim**”) is asserted against any person or company in respect of which indemnification is or might reasonably be considered to be provided, such person or company (the “**Indemnified Party**”) shall notify the Company and the Guarantor as soon as possible of the nature of such Claim and the

Company or the Guarantor shall be entitled (but not required) to assume the defence of any suit brought to enforce such Claim; provided, however, that the defence shall be conducted through legal counsel acceptable to the Indemnified Party, acting reasonably, that no settlement of any such Claim may be made by the Company or the Guarantor without the prior written consent of the Indemnified Party and the Company and the Guarantor shall not be liable for any settlement of any such Claim unless it has consented in writing to such settlement.

- (c) **Right of Indemnity in Favour of Others.** With respect to any Indemnified Party who is not a party to this Agreement, the Agents shall obtain and hold the rights and benefits of this section 14 in trust for and on behalf of such Indemnified Party.
- (d) **Retaining Counsel.** In any Claim, the Indemnified Party shall have the right to retain other counsel to act on his, her or its behalf, provided that the reasonable fees and disbursements of such counsel shall be paid by the Indemnified Party unless (i) the Company, the Guarantor and the Indemnified Party shall have mutually agreed to the retention of the other counsel or (ii) the named parties to any such Claim (including any added third or impleaded party) include both the Indemnified Party on the one hand and the Company and/or the Guarantor on the other hand, and in the opinion of the Indemnified Party on the written advice of counsel, a copy of which shall be provided to the Company and the Guarantor, the representation of all parties by the same counsel would be inappropriate due to the actual or potential differing interests between them (in each of which cases neither the Company nor the Guarantor shall have the right to assume the defence of such suit on behalf of the Indemnified Party but shall be jointly and severally liable to pay the reasonable fees and expenses of counsel for the Indemnified Party).

15. (a) **Contribution.**

In order to provide for a just and equitable contribution in circumstances in which the indemnity provided in section 14 would otherwise be available in accordance with its terms but is, for any reason, held to be unavailable to or unenforceable by the Agents or enforceable otherwise than in accordance with its terms, the Company, the Guarantor and the Agents shall, severally and not jointly and severally, contribute to the aggregate of all claims, expenses, costs and liabilities and all losses of a nature contemplated by section 14 and suffered or incurred by the Company, the Guarantor and the Agents in such proportions so that the Agents are responsible for the portion represented by the percentage that the aggregate fees payable by the Company to the Agents bears to the aggregate offering price of the Notes and the Company and the Guarantor are jointly and severally responsible for the balance, whether or not they have been sued together or sued separately. The Agents shall not in any event be liable to contribute, in the aggregate, any amounts in excess of such aggregate fees or any portion of such fees actually received. However, no party who has engaged in any fraud, fraudulent misrepresentation or gross negligence shall be entitled to claim contribution from any person who has not engaged in such fraud, fraudulent misrepresentation or gross negligence.

- (b) **Right of Contribution in Addition to Other Rights.** The rights to contribution provided in this section 15 shall be in addition to and not in derogation of any other right to contribution which the Agents may have by statute or otherwise at law.
  - (c) **Calculation of Contribution.** If the Company or the Guarantor may be held to be entitled to contribution from the Agents under the provisions of any statute or at law, the Company and the Guarantor shall be limited to contribution in an amount not exceeding the lesser of:
    - (i) the portion of the full amount of the loss or liability giving rise to such contribution for which the Agents are responsible, as determined in subsection 15(a); and
    - (ii) the amount of the aggregate fees actually received by the Agents from the Company under this Agreement.
  - (d) **Notice.** If any of the Agents have reason to believe that a claim for contribution may arise, it shall give the Company and the Guarantor notice of such claim in writing, as soon as reasonably possible, but failure to notify the Company and the Guarantor shall not relieve the Company and the Guarantor of any obligation which they may have to the Agents under this section 15.
  - (e) **Right of Contribution in Favour of Others.** With respect to this section 15, the Company and the Guarantor acknowledge and agree that each of the Agents is contracting on its own behalf and as agent for its affiliates, directors, officers, employees and agents.
16. **Expenses.** Whether or not the transactions herein contemplated shall be completed, all reasonable expenses of or incidental to the creation, authorization, issue, delivery and sale of the Notes and of or incidental to all other matters in connection with the transactions herein set out shall be borne by the Company and the Guarantor, including, without limitation, expenses payable in connection with the reasonable fees of counsel to the Company and the Guarantor and local counsel, all fees of the Company's and the Guarantor's auditors, printing costs, rating agency fees, fees and costs incurred in connection with the marketing of the Notes and the out-of-pocket expenses of the Agents, including the costs of any road shows, the Agents' reasonable transportation costs related to the offering of Notes, the fees and disbursements of the Agents' counsel, and all taxes payable on such fees and expenses.
17. **Due Diligence.** In connection with a sale of Notes, the Issuer and the Guarantor shall allow the Agents and the Agents' counsel to carry out reasonable due diligence necessary to fulfil the Agents obligations under Canadian Securities Laws.
18. **Severability.** If any provision of this Agreement is determined to be void or unenforceable, in whole or in part, it shall be deemed not to affect or impair the validity of any other provision of this Agreement and such void or unenforceable provision shall be severable from this Agreement.



19. **Guarantee.** The obligations and liabilities of the Guarantor under this Agreement and will terminate upon the termination of the Guarantee in accordance with Section 2.4 thereof and the sole recourse of the Agents and the Purchasers under this Agreement thereafter will be to the Company.
20. **Connected Issuers and Related Issuers.** Upon request by the Company, each of the Agents shall provide a list of its affiliates that provide services or lend money to the Company and the Guarantor and their subsidiaries. If during the term of this Agreement, there is any change in such list so identified, the Agent being affected by such change will promptly notify the Company in writing of such change and the Company will determine whether such change establishes a connected issuer or related issuer reporting obligation of the Company. If the Company at any time reasonably determines that a connected issuer or related issuer relationship has been established with one or more of the Agents, it shall notify the Agents and convene a meeting with the Agents to consider the respective obligations of the Company and the Agents pursuant to any applicable laws of the Offering Jurisdictions.
21. **Out of the Market Period and No Trade Period.**
- (a) At any time during the term of this Agreement and for any reason the Company may designate a time period (an “Out of the Market Period”) during which the Company will not distribute any Notes, any such designation to be made by written notice to the Agents which notice shall state the approximate expected duration thereof. Any Out of the Market Period may be terminated by the Company at any time by written notice to the Agents indicating that the Out of the Market Period has terminated.
  - (b) The Company shall not, during the time period (the “No Trade Period”) in which the Company believes, in its reasonable judgment, that any change or fact described below (which has not been announced or is the subject of the filing of a confidential material change report) is sufficiently imminent and probable that a reasonably prudent reporting issuer would not trade in its own securities, issue or agree to issue any Notes to the Agents (whether acting as agent or principal) or continue the distribution of Notes until such No Trade Period ends through either a change in circumstances or a public announcement of such change or fact being made. The changes or facts that give rise to a No Trade Period are as follows: (i) any change in the business, affairs, operations, assets, liabilities (contingent or otherwise), capital or ownership of the Company, the Guarantor, if applicable, and their subsidiaries taken together, or (ii) any change in any matter covered by a statement contained in or incorporated by reference in the Prospectus or any Prospectus Amendment thereto or any Prospectus Supplement thereto or any Pricing Supplement thereto as the same are immediately prior to such change, or (iii) any fact that has arisen and that would have been required to have been stated in the Prospectus had the fact arisen on, or prior to, the date of the Prospectus, which change or fact in any case is, or may be, of such a nature as (w) to render the Prospectus as amended or supplemented, as it was immediately prior to such change or fact, misleading or untrue in any material respect, or (x) would result in the Prospectus as amended or supplemented, as it was immediately prior to such change or fact, containing a misrepresentation (as defined in applicable Canadian Securities Laws), or (y) would result in the Prospectus as amended or supplemented, as it was immediately prior to such change or fact, not

complying with the Canadian Securities Laws, or (z) would reasonably be expected to have a significant effect on the market price or value of Notes. The Company shall promptly comply with all applicable filing and other requirements under Canadian Securities Laws arising as a result of such change or fact but need not submit any document required to be filed to the Agents and the Agents' Counsel for review or approval prior to such filing. The Company shall, following such filing, promptly notify the Agents of any such change or fact described above and shall provide the Agents with copies of such filings or other documents required under such Canadian Securities Laws and for greater certainty shall not issue or agree to issue any Notes if a confidential filing has been made, provided however if such change or fact is the subject of a confidential material change report, the Company shall terminate the distribution of Notes and shall promptly notify any Agent which has agreed to purchase any such Note as principal or agent during the distribution of such Notes (without a copy of such notice to any Agent which has not agreed to purchase any such Note or to the Agents' counsel) of such termination of Distribution and of the termination of such Agent's purchase, without providing any Agent with the particulars of the basis of such termination.

22. **Procedures.** The Company and the Agents shall follow the operating procedures established from time to time by mutual agreement of the Company and the Agents in respect of settlement matters and the timing of payment of commissions in connection with the sale of the Notes by the Agents.
23. **Termination.** Unless terminated earlier pursuant to the provisions of section 13, this Agreement shall expire on the earlier of:
- (i) October 27, 2008; or
  - (ii) the date by which the Company has issued Notes in the aggregate principal amount of \$450,000,000 under the Prospectus.
24. **Survival.** The representations, warranties, covenants, obligations and agreements of the parties contained herein or delivered pursuant hereto shall survive the purchase and sale of the Notes or the termination of this Agreement in respect of any Agent and shall continue in full force and effect until all such Notes have been paid in full. The Agents shall be entitled to rely upon the representations and warranties of the Company and the Guarantor contained herein or delivered pursuant hereto notwithstanding any investigation which the Agents may undertake or which may be taken on the Agents' behalf.
25. **Notices.** Any notice or other communication to be given hereunder shall, in the case of notice to the Company and the Guarantor, be addressed to:

Brookfield Power Corporation  
480 de la Cité Boulevard  
Suite 200  
Gatineau, Québec  
J8T 8R3

Attention: General Counsel

Telecopy No: (819) 561-7188

- and -

Brookfield Power Inc.  
480 de la Cité Boulevard  
Suite 200  
Gatineau, Québec  
J8T 8R3

Attention: General Counsel

Telecopy No: (819) 561-7188

with a copy to:

Torys LLP  
Suite 3000  
Box 270, TD Centre  
79 Wellington Street West  
Toronto, Ontario M5K 1N2

Attention: Philip J. Brown

Telecopy No: (416) 865-7380

in the case of notice to the Agents, be addressed to:

Scotia Capital Inc.  
Scotia Plaza, 68th Floor  
40 King Street West  
Toronto, Ontario M5W 2X6

Attention: D. Gregory Lawrence

Telecopy No: (416) 862-3037

CIBC World Markets Inc.  
BCE Place, 6th Floor  
161 Bay Street  
Toronto, Ontario M5J 2S8

Attention: Sean Gilbert

Telecopy No: (416) 956-6719

RBC Dominion Securities Inc.  
2nd Floor, North Tower  
Royal Bank Plaza  
200 Bay Street  
Toronto, Ontario M5J 2W7

Attention: Tushar Kittur

Telecopy No: (416) 842-6474

TD Securities Inc.  
222 Bay Street, 7th Floor  
Toronto, Ontario M5K 1A2

Attention: William Perdue

Telecopy No: (416) 308-3715

BMO Capital Markets Inc.  
1 First Canadian Place, Fifth Floor  
P.O. Box 150  
Toronto, Ontario M5X 1H3

Attention: Jeffrey P. Watchorn

Telecopy No: (416) 359-5277

HSBC Securities (Canada) Inc.  
70 York Street, 4th Floor  
Toronto, Ontario M5J 1S9

Attention: Jeffrey B. Allsop

Telecopy No: (416) 868-5353

with a copy to:

McCarthy Tétrault LLP  
Suite 4700  
Toronto-Dominion Bank Tower  
Toronto, Ontario M5K 1E6

Attention: David Woollcombe

Telecopy No: (416) 868-0673

Any such notice or other communication shall be in writing and, unless delivered personally to a responsible officer of the addressee, shall be given by courier service or telecopy and shall be deemed to have been received, if given by telecopy prior to 4:00 p.m. Toronto time, on the day of sending (if such day is a Business Day and, if not, on the next Business Day following the sending thereof) and, if given by courier service or sent by telecopy after 4:00 p.m. Toronto time, on the next Business Day following the sending thereof. Any party may change its address for notice by notice to the other parties given in the manner herein provided.

26. **Lead Agent.** Except where otherwise specified in this Agreement, all steps which must or may be taken by the Agents in connection with the Agreement may be taken by Scotia Capital Inc., as lead Agent, on the Agents' behalf, after consultation with the other Agents, and each of the Agents authorizes the Company and the Guarantor to deal solely with Scotia Capital Inc. on behalf of all Agents except in respect of any claim or settlement under section 14 or a notice of termination pursuant to section 15. Notwithstanding the foregoing, the Company and the Guarantor may, from time to time, deal directly with any Agent other than Scotia Capital Inc. in connection with a distribution of the Notes.
27. **Obligations.** The Company and the Guarantor agree that the obligations of the Agents hereunder are several and not joint or joint and several. The Company and the Guarantor further agree that their obligations hereunder are joint and several.
28. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the courts of such province shall have exclusive jurisdiction over any dispute hereunder.
29. **Time of the Essence.** Time shall be of the essence hereof.
30. **Currency.** All monetary amounts referred to in this Agreement are in lawful money of Canada.
31. **Previous Agreements.** This Agreement supersedes any previous agreements in connection with the sale of the Notes.
32. **Benefit of the Agreement.** This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors.
33. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A signed counterpart provided by way of telecopier shall be binding upon the parties as an originally signed counterpart.

If the foregoing is acceptable to the Company and the Guarantor, please signify such acceptance on the duplicate of this letter and return such duplicates to the Agents, which accepted offer shall constitute shall constitute a binding agreement between us.

Yours very truly,

*[Signature page follows]*

**SCOTIA CAPITAL INC.**

By: "D. Gregory Lawrence"  
D. Gregory Lawrence  
Director

**CIBC WORLD MARKETS INC.**

By: "John R. Gouinlock"  
John R. Gouinlock  
Director

**RBC DOMINION SECURITIES INC.**

By: "Tushar Kittur"  
Tushar Kittur  
Vice-President

**TD SECURITIES INC.**

By: "William Perdue"  
William Perdue  
Managing Director

**BMO CAPITAL MARKETS INC.**

By: "Jeffrey P. Watchorn"  
Jeffrey P. Watchorn  
Managing Director

**HSBC SECURITIES (CANADA) INC.**

By: "Jeffrey B. Allsop"  
Jeffrey B. Allsop  
Managing Director

**ACCEPTED AND AGREED** this \_\_\_\_\_ day of October, 2006.

**BROOKFIELD POWER CORPORATION**

By: “Donald Tremblay”  
Donald Tremblay  
Executive Vice-President and Chief  
Financial Officer

By: “Steve Riedel”  
Steve Riedel  
Vice-President, Corporate Finance

**BROOKFIELD POWER INC.**

By: “Donald Tremblay”  
Donald Tremblay  
Executive Vice-President and Chief  
Financial Officer

By: “Steve Riedel”  
Steve Riedel  
Vice-President, Corporate Finance