

TRANS MOUNTAIN PIPELINE RECLAMATION TRUST AGREEMENT

made as of the

30th day of January, 2015

and amended and restated on the 14th day of October, 2015

between

Trans Mountain Pipeline ULC, as general partner for and on behalf of

Trans Mountain Pipeline L.P.

and

Valiant Trust Company

governing the Trust Fund

in respect of the

Reclamation of the Trans Mountain Pipeline

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APPENDIX A: DESCRIPTION OF THE TRANS MOUNTAIN PIPELINE

APPENDIX B: QUALIFIED INVESTMENTS

THIS TRUST AGREEMENT is made as of the 30th day of January, 2015 and amended and restated on the 14th day of October, 2015.

BETWEEN:

TRANS MOUNTAIN PIPELINE ULC, an unlimited liability company subsisting under the laws of Alberta (hereinafter referred to as "**Trans Mountain**")

OF THE FIRST PART

AND:

VALIANT TRUST COMPANY, a trust company subsisting under the laws of Canada (hereinafter referred to as "**Valiant**")

OF THE SECOND PART WHEREAS:

- A. Trans Mountain holds the regulatory authorizations allowing it to operate the pipeline commonly known as the "Trans Mountain Pipeline" (the "**Pipeline**"), as described in Appendix "A" to this Agreement;
- B. the Pipeline is subject to regulation by the National Energy Board under the *National Energy Board Act* (Canada) (the "**NEB Act**");
- C. on 26 May 2009 the National Energy Board (the "**NEB**") issued the RH-2-2008 Reasons for Decision, which required each person holding an authorization to operate a pipeline under the NEB Act or the *Canada Oil and Gas Operations Act* (Canada) to file a proposed process and mechanism to set aside funds to pay for the reclamation obligations in respect of the sites in Canada used for the operation of a pipeline;
- D. the NEB has ordered Trans Mountain to set aside funds using a trust structure to pay for the reclamation obligations in respect of the sites in Canada used by Trans Mountain for the operation of the Pipeline;
- E. in satisfaction of the requirements of the NEB, Trans Mountain has created the Trans Mountain Pipeline Reclamation Trust and accompanying Appendices for the benefit of the Beneficiaries, as defined in Article I, for the purpose of funding its Reclamation Obligations, as defined herein, in relation to the Pipeline;
- F. Valiant has agreed to hold the reclamation funds in accordance with the terms and conditions of this Agreement and the NEB has approved the appointment of Valiant as Trustee; and
- G. the Company and the Trustee intend that the PRT will constitute a Qualifying Environmental Trust, as defined in Article I.

NOW THEREFORE, the parties each intending to be legally bound, hereby covenant and agree as follows:

ARTICLE I
INTERPRETATION

1.1 Definitions

In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the meanings ascribed to them below:

- Abandon and Abandonment:** shall, with respect to the Pipeline, have the meanings ascribed to them by the *Onshore Pipeline Regulations*, as amended from time to time, pursuant to the NEB Act.
- Affiliate:** shall mean, with respect to a party, that party's affiliated companies within the meaning of the *Canada Business Corporations Act*.
- Agent:** shall mean a person hired for value to assist the Trustee with the discharge of Trustee duties or the exercise of Trustee powers.
- Agreement:** shall mean this agreement, including any and all amendments and appendices hereto and thereto.
- Annual Contribution Amount:** shall mean the amount equivalent to the identifiable charges collected annually to pay for the future cost of Reclamation Obligations and any amount ordered by the NEB.
- Applicable Laws:** shall mean all existing or future Canadian federal, provincial, territorial or non-Canadian laws, statutes, and regulations applicable to the Trustee or the PRT and all orders or binding directives made under statutory authority by any governmental or regulatory body having jurisdiction over the PRT.
- Beneficiary:** shall mean (i) any Person, acting in its own capacity or acting on behalf of a partnership, that has Reclamation Obligations in respect of the Pipeline from time to time, including the Company, (ii) Trans Mountain Pipeline L.P., and (iii) and the Orphan Pipeline Fund.
- Business Day:** shall mean any day on which the Toronto Stock Exchange is open for business.
- Business Recovery Plan:** shall mean a plan or program to ensure the continued availability of essential services, operations and programs, including all applicable resources, which plans are activated during, or immediately after, an emergency or disruption and are aimed at permitting the rapid and cost effective resumption of critical functions.

- Company:** shall mean the Person holding the regulatory authorization(s) to operate the Pipeline at the relevant time, whether on its own behalf or on behalf of one or more Persons, and for greater certainty, the initial Company shall be Trans Mountain.
- Consequential Losses:** shall have the meaning ascribed thereto by section 4.6.1.
- Deactivate and Deactivation:** shall, with respect to the Pipeline, have the meanings ascribed to them by the *Onshore Pipeline Regulations*, as amended from time to time, pursuant to the NEB Act.
- Decommission and Decommissioning:** shall, with respect to the Pipeline, have the meanings ascribed to them by the *Onshore Pipeline Regulations*, as amended from time to time, pursuant to the NEB Act.
- Depository:** shall mean any authorized domestic or foreign depository or clearing or settlement agency or system, including a transnational book-based system, and shall include The Canadian Depository for Securities Limited and The Depository Trust Company.
- Event of Default:** shall mean, with respect to a particular Beneficiary, one of the following circumstances:
- (a) a judgment, decree or order of a court of competent jurisdiction is entered against such Beneficiary: (i) adjudging such Beneficiary bankrupt or insolvent, or approving a petition seeking its reorganization or winding-up under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any other bankruptcy, insolvency or analogous law; (ii) appointing a receiver, trustee, liquidator, or other person with like powers, over all, or substantially all, of the property of such Beneficiary; (iii) ordering the involuntary winding up or liquidation of the affairs of such Beneficiary; or (iv) appointing any receiver or other person with like powers over all, or substantially all, of the property of such Beneficiary unless, in any such case, such judgment, petition, order or appointment is stayed within 30 days of its entry;
 - (b) an order or a resolution is passed for the dissolution, winding-up, reorganization or liquidation of such Beneficiary;
 - (c) such Beneficiary institutes proceedings to be adjudicated bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any other bankruptcy, insolvency or analogous

law;

- (d) such Beneficiary consents to the filing of any petition under any such law or to the appointment of a receiver, or other person with like powers, over all, or substantially all, of any of their property;
- (e) such Beneficiary makes a general assignment for the benefit of creditors, or becomes unable to pay its debts generally as its debts become due or its liabilities are greater than the value of its assets;
- (f) such Beneficiary takes or consents to any action in furtherance of any of the aforesaid purposes; or
- (g) such Beneficiary ceases or proposes to cease carrying on business, or a substantial part thereof, or makes or threatens to make a bulk sale of its property, provided that any shutdown of facilities for maintenance purposes will not constitute a ceasing or threatening to cease to carry on business, and provided further that a proposal to cease carrying on business shall not be deemed insolvency if such proposal is in relation to the Beneficiary's final Reclamation Obligations of the last remaining Pipeline segment which such Beneficiary is responsible to abandon in relation to the Trust Fund.

Fiscal Year: shall mean with respect to the Trust Fund, the period commencing on the day and year first written above and ending on the immediately following December 31 and thereafter the same as a calendar year.

Investment Manager: shall mean an Agent or a sub-delegate pursuant to section 10.2 hereof to manage the investment of all or a portion of the Trust Fund.

NEB: shall mean the National Energy Board, established pursuant to the NEB Act, or any successor to the National Energy Board.

NEB Act: shall mean the *National Energy Board Act (Canada)*, as amended from time to time.

New Trust: shall have the meaning ascribed thereto in section 13.2.4.

Orphan Pipeline Fund: shall mean a not-for-profit corporation that will be established pursuant to a statute of the Parliament of Canada and will maintain funds for the purpose of funding reclamation of abandoned pipelines in Canada, consistent with the NEB's Reasons for Decision MH-001-2013.

Person: includes a partnership.

Pipeline: shall have the meaning ascribed thereto in Appendix A hereof.

Property: shall mean all tangible and intangible assets and rights of any nature or type and includes without limitation cash and Qualified Investments.

PRT: shall mean the relationship between the Trustee and a Beneficiary or Beneficiaries, including the obligations of the Trustee towards the Beneficiary or Beneficiaries both personal and with regard to the Trust Fund, and the corresponding rights of a Beneficiary, whether those obligations and rights are created at law or by the terms of the Agreement; and in the context of the Agreement, means a discretionary trust for the purpose of reclamation in favour of the one or several Beneficiaries that have Reclamation Obligations with regard to the Site, and also the Orphan Pipeline Fund.

Qualified Investments: shall mean all or any of those investments that from time to time are qualified investments for a "qualifying environmental trust" as defined in the Tax Act, and for greater certainty, such investments on the date hereof include only those types of property described in paragraphs (a), (b), (c), (c. 1), (d), and (f) of the definition of "qualified investment" in section 204 of the Tax Act that are not a "prohibited investment" as defined in subsection 211.6(1) of the Tax Act, and as described in Appendix B hereto.

Qualifying Environmental Trust: shall mean a "qualifying environmental trust" as defined in subsection 211.6(1) of the Tax Act, or any successor provision thereto, as amended and/or restated from time to time.

Reclamation Obligation: shall mean with respect to the Site, the duty to:

- (a) carry out the physical Abandonment, Decommissioning or Deactivation of the Pipeline; including without limitation the duty to bear all costs incurred to satisfy any conditions imposed by the NEB in any order or direction approving such Decommissioning or Deactivation of the Pipeline or granting leave to Abandon the Pipeline;
- (b) develop Abandonment plans with respect to the Pipeline, and prepare applications for leave to Abandon or for approval of the Deactivation or Decommissioning of the Pipeline; and
- (c) carry out post-abandonment monitoring and remediation of the Site, where post-abandonment refers to the period of time after the conditions of an order or direction issued by the NEB granting leave to Abandon have been satisfied.

Site: shall mean any location or locations in Canada used for the operation of the Pipeline.

- Standard of Care:** shall have the meaning ascribed thereto in section 4.4.
- Statement of Investment Policies and Procedures:** shall mean a written statement of investment policies and procedures approved by the Company prior to implementation, in respect of the Trust Fund's portfolio of investments, and shall set out broad policies and procedures for the Qualified Investments of the Trust Fund, which may include: categories of investments; diversification of the investment portfolio; asset mix and rate of return expectations; liquidity of investments; the retention or delegation of voting rights acquired through Trust Fund investments; and the method of, and basis for, the valuation of investments.
- Subcustodian or Subsubcustodian:** shall mean a corporate institution, appointed by the Trustee or by a delegate of the Trustee authorized by the Trustee to sub-delegate, which has title to, or Trustee- authorized possession of, Trust Fund assets with the obligation to hold secure those assets, and to deal with them as authorized by the Trustee or the delegate of the Trustee.
- Tax Act:** shall mean the *Income Tax Act*, RSC 1985, c 1 (5th Supp), as amended from time to time.
- Tax Obligations:** shall mean taxes, fees, premiums, assessments, levies, and other charges of any kind whatsoever, which the PRT becomes liable to or subject to, including all interest, penalties, fines, additions to tax or other additional amounts imposed in respect thereof, and further including without limitation those levied on, or measured by, or referred to as income, gross receipts, profits, capital, transfer, land transfer, goods and services, harmonized sales, use, value-added, stamp, withholding, premium, taxes on insurance premiums, business, property, ad valorem, surtaxes, and registration fees.
- Trustee:** shall mean a trust company that is (a) resident in Canada for purposes of the Tax Act; (b) licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, including for greater certainty under the Trust and *Loan Companies Act* (Canada); (c) and appointed under this Agreement to hold the office of trustee, and shall initially be Valiant.
- Trust Fund:** shall mean the Property held pursuant to this Agreement as shall exist from time to time together with any earnings, profits, increments and accruals arising therefrom, including all amounts delivered to and accepted by the Trustee from any prior Trustee or the Company, less any amounts properly paid or distributed in accordance with the terms of this Agreement or otherwise.
- Trans Mountain:** shall mean the first party specified above.

Valiant: shall mean the second party specified above.

1.2 Singular, Plural and Gender

Whenever the singular, plural, masculine, feminine, neuter or body corporate is used in this Agreement, the same shall be construed as meaning the singular, plural, masculine, feminine, neuter or body corporate where the facts, context or contents so requires.

1.3 Headings

The headings used in this Agreement are included solely for convenience of reference, and shall not in any way affect the interpretation of the provisions of this Agreement.

1.4 Consultation

Where the Trustee is required in this Agreement to consult with the Company in respect of a decision, the Trustee shall, irrespective of the outcome of such consultation, retain the discretion otherwise provided in this Agreement.

ARTICLE II

ESTABLISHMENT AND ACCEPTANCE OF TRUST FUND;

APPOINTMENT OF TRUSTEE AS CUSTODIAN

2.1 Establishment of Trust Fund, Appointment of Trustee and Custodian, and Acceptance of Trust

- 2.1.1 By the payment of a Ten (\$10.00) Dollar Canadian bill bearing serial number FTA3227642 to the Trustee, the receipt and sufficiency of which the Trustee acknowledges, the Company hereby establishes the PRT with the Trustee and hereby appoints the Trustee as trustee of the PRT consisting solely of such Property as shall from time to time be paid or delivered to the Trustee with respect to the PRT.
- 2.1.2 The Trustee hereby agrees to be the Trustee of the PRT and the Trustee hereby accepts the trust herein set out and agrees to hold, invest, distribute and administer the PRT and the Trust Fund upon the terms and conditions of this Agreement.
- 2.1.3 The Trustee shall have no liability or responsibility for any Property until it is in fact received by it or any Subcustodian.
- 2.1.4 The Company shall contribute, on an annual basis, the Annual Contribution Amount to the PRT as required by the NEB Act or an order or direction made by the NEB. Contributions made by the Company shall be irrevocable and shall not revert to the Company except as otherwise provided by this Agreement.

2.1.5 The Trustee shall establish a custody account or accounts in the name of the Trustee or the Subcustodian appointed under this Agreement, for the account of the Trust Fund in which the Trustee shall deposit or cause to be deposited the Property of the Trust Fund as the Trustee may from time to time determine.

2.1.6 The Trustee shall have the right at any time during the continuance of the PRT to accept such further or additional property which Trans Mountain or any other Person may donate, settle, assign, transfer or otherwise contribute to the PRT.

2.2 Purpose of the PRT

2.2.1 The sole purpose of the PRT is to provide funds for the purpose of discharging Reclamation Obligations.

2.2.2 The PRT shall be administered so that all contributions to and income or gains of the PRT shall be used to:

- (a) discharge the Reclamation Obligations;
- (b) compensate the Trustee or its Agents for services rendered or expenses incurred in accordance with this Agreement;
- (c) discharge the PRT's Tax Obligations;

and these payments only.

2.3 The Trust: Discretionary as to Two or More Beneficiaries

The Trust Fund is held by the Trustee on trust for one or several Beneficiaries, the Trustee having a power to appoint among the Beneficiaries at its discretion funds from the Trust Fund responding at the time of payment to the then existing Reclamation Obligations of each Beneficiary. The Trustee may make payment to or for the benefit of the appointed Beneficiary, that is, either to the Beneficiary, or to a person or persons named by the NEB to conduct work with respect to Reclamation Obligations. Before making any discretionary payment the Trustee must receive the approval of the NEB, which approval will cover both the Reclamation Obligations being addressed and that person or those persons that are instructed to carry out work with respect to such Reclamation Obligations.

2.4 Situs, Mind and Management

The Trustee shall:

- 2.4.1 manage and administer the affairs of the PRT from one or more of its offices in the Province of Alberta;

- 2.4.2 only appoint trust officers who are resident in Alberta to have authority to make investment or administrative decisions respecting the Trust Fund;
- 2.4.3 to the extent reasonably possible, only appoint Agents who shall manage and administer the affairs of the PRT from offices in the Province of Alberta and shall comply with section 2.4.2 *mutatis mutandis*, and in any event, only delegate authority with regard to material investment or administrative decisions respecting the Trust Fund to Agents who shall manage the affairs of the PRT from offices in the Province of Alberta and shall comply with section 2.4.2 *mutatis mutandis*;
- 2.4.4 hold meetings solely in the Province of Alberta as required concerning the affairs of the PRT, and keep appropriate minutes of such meetings;
- 2.4.5 keep all books and records pertaining to the Trust Fund in the Province of Alberta; and
- 2.4.6 take all other such steps as are reasonably possible to maintain the situs, mind and management of the PRT in the Province of Alberta.

2.5 Qualifying Environmental Trust

- 2.5.1 It is the express intention of the parties that the PRT settled hereby constitutes a Qualifying Environmental Trust, and this Agreement shall be read and interpreted to the greatest extent possible to comply with such definition. All parties involved, including the Company and the Trustee, shall take (or avoid taking, as the case may be) all actions as are reasonably possible and as may be required to ensure that the PRT is a Qualifying Environmental Trust.
- 2.5.2 Any amendments to this Agreement that are required in order for the PRT to constitute a Qualifying Environmental Trust, shall be deemed to have been made as of the day and year first written above, to the extent that such amendments, made with the consent of the NEB further to section 13.1, do not render the PRT in breach of any other Applicable Laws.

ARTICLE III DISTRIBUTIONS

3.1 Disbursement of Funds

The Trustee may disburse funds from the Trust Fund:

- 3.1.1 to a Beneficiary, solely for the purpose described in section 2.2.1, on presentation by a Beneficiary of:
 - (a) a written direction or an order from the NEB issued in the name of the Beneficiary confirming the amount to be disbursed from the Trust Fund and the timing of the disbursement; and

- (b) a certificate of an officer of the Beneficiary confirming that the Beneficiary has not suffered an Event of Default, and that to the officer's knowledge, the Beneficiary will not suffer an Event of Default within a year following the date of the certificate of the officer;
- 3.1.2 to any third party designated by the NEB, for the purpose described in section 2.2.1, provided that the Trustee is in receipt of a written direction or an order from the NEB issued in the name of the third party, with such direction or order confirming the amount to be disbursed from the Trust Fund, and the timing of the disbursement; or
- 3.1.3 to pay such other amounts described in paragraphs (b) and (c) of section 2.2.2.

3.2 Payments from the Trust Fund

Upon payment being made by the Trustee pursuant to this Article III, the Property removed from the Trust Fund thereby shall no longer constitute a part of the Trust Fund.

3.3 Sale of the Pipeline or a Portion Thereof

The Trustee may transfer the Trust Fund or a portion thereof to another Qualifying Environmental Trust for the purpose of funding Reclamation Obligations in accordance with this Agreement and upon any order or direction from the NEB, including any such direction or order that is made part of the NEB's direction or order in connection with a sale, transfer or other disposition of the Pipeline, or an interest therein, or a portion thereof, pursuant to paragraphs 74(1)(a), (b) and (c) of the NEB Act.

ARTICLE IV CONCERNING THE TRUSTEE

4.1 Full Power and Authority

The Trustee represents and warrants that it has full power and authority to enter into this Agreement, and to perform all of its obligations hereunder.

4.2 Duties and Responsibilities of the Trustee

In administering and investing the Trust Fund, the Trustee shall:

- 4.2.1 **Custody of the Trust Fund.** Hold as custodian or appoint or cause to be appointed domestic or foreign Subcustodians as to part or all of the Trust Fund.
- 4.2.2 **Recording of Assets.**
 - (a) Register the Property of the Trust Fund in its own name as Trustee, or in the names of its nominees or in the name of, or nominees of, any

Subcustodian or Sub-Subcustodian appointed under this Agreement, or hold the investment in bearer form if the investment is not registrable or if it would not be in the best interest of the Beneficiaries of the Trust Fund to do otherwise.

- (b) Clearly record all assets of the Trust Fund at all times and in all circumstances in the books and records of the Trustee so as to show that the beneficial ownership of such assets is vested in the Beneficiaries.
- (c) Where any Property of the Trust Fund is held by a Subcustodian, identify in the books and records of the Trustee that such Property is being held on behalf of the Trust Fund by that Subcustodian.

4.2.3 **Segregation of Trust Funds.** Keep the Trust Fund distinct from its own assets and from those of any other person in the accounts and records kept by the Trustee and, if for any reason, the assets of the Trust Fund should become mixed with the assets of the Trustee in the books and records kept by the Trustee, the entire resulting mixed fund shall be deemed to be held by the Trustee in trust hereunder to the extent necessary to satisfy the Trust Fund's claim on such mixed fund. The Trustee may, however, through the use of a Depository authorized pursuant to this Agreement, commingle the Trust Fund with assets of other customers of the Trustee (but not with assets held for the Trustee's own account), in which case the Beneficiaries shall be entitled, in common with those other customers, to its proportionate share of assets so held and/or the rights thereto.

4.2.4 **Collection of Income and Proceeds.** Take all reasonable steps to collect and receive all income, principal, dividends and other payments and distributions due to the Trust Fund, promptly credit all such receipts received by it to the Trust Fund and sign on behalf of the Trust Fund any declarations, affidavits, certificates of ownership and other documents required to collect income and principal payments, including but not limited to, tax reclamations, rebates and other withheld amounts and collect proceeds from any Property, which may mature, provided that whenever any Property offers the Trustee the option of receiving dividends in shares or cash, the Trustee is authorized to select the cash option, provided that the Trustee shall not be responsible for the failure to receive payment of (or late payment of) distributions with respect to the Property held in the Trust Fund.

4.2.5 **Appointment of Agents.** Meet the Standard of Care with respect to the selection, appointment, supervision and continued retention of any Agent it retains, and shall cause each Agent to agree to comply with a commercially reasonable standard of care that is as analogous as reasonably possible in the circumstances to the Standard of Care.

4.3 **No Implied Duties**

The Trustee shall have only such duties and responsibilities as are specifically set forth in this Agreement and in accordance with Applicable Laws.

4.4 **Standard of Care**

In exercising its powers and performing its duties hereunder, the Trustee shall act honestly and in good faith with the degree of care and diligence that a Canadian trust company would exercise in dealing with similar property of another person and shall employ all relevant knowledge and skill which the Trustee possesses or ought to possess by reason of its profession or business (the "**Standard of Care**"). For greater certainty, any exclusion or limitation or relief or protection from liability, duty or responsibility described elsewhere in the Agreement shall not absolve the Trustee of its responsibility to adhere to the Standard of Care.

4.5 **Trustee Limitation of Liability**

4.5.1 **Trust Fund Losses.** The Trustee shall not be liable for any loss to or diminution of the Trust Fund resulting from:

- (a) subject to section 4.6.2, any act or omission of the Trustee in connection with the affairs of the Trust Fund;
- (b) breach of any Applicable Law respecting which the Trustee has not received notice as provided by section 9.2.1; or
- (c) the failure of the Company to provide notice of a change in the Company's relationships with certain parties in accordance with section 9.2.2.

4.5.2 **Contributions to PRT.** The Trustee shall have no duty or responsibility for:

- (a) determining the amount or timing of, or
- (b) collecting from the Company,

the Annual Contribution Amount or any other contribution, or for the compliance of same with Applicable Laws.

4.5.3 **Sufficiency of Funds.** Subject to section 4.6.2, the Trustee shall not be responsible for the sufficiency of the Trust Fund to meet and discharge any payments and liabilities under the PRT.

4.5.4 **Trustee Not to Expend Own Funds.** Subject to any other section of this Agreement specifying to the contrary, no provision of this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur financial

liability in the performance of any of its duties or in the exercise of any of its rights or powers.

4.5.5 **Non Fund Assets.** The duties of the Trustee shall be limited to the Property held in the Trust Fund, and the Trustee shall have no duties or obligations with respect to Property held by any other person. The Company hereby acknowledges that the Trustee shall not serve as, and shall not be deemed to be, a co-trustee under any circumstances.

4.5.6 **Survival.** The provisions of this section 4.5 shall survive the termination of this Agreement and the Trust Fund.

4.6 **Indemnification**

4.6.1 **Indemnification of Trustee.** The Trustee and its respective officers, directors, employees and Agents are hereby indemnified and held harmless by the Trust Fund, and to the extent the assets of the Trust Fund are insufficient to pay such indemnification, by the Company, as applicable, from any and all taxes, claims, liabilities, damages, costs and expenses of any kind, including reasonable legal and experts' fees and expenses (but excluding "**Consequential Losses**", which term shall be interpreted as including, but not be limited to, loss of profit, loss of revenue, and loss of opportunity) arising out of the performance of its or their obligations, as applicable, under this Agreement, except as a result of a breach of the Standard of Care or failure to comply with the terms of this Agreement.

4.6.2 **Indemnification of Beneficiaries, the Company and the Trust Fund.** Subject to sections 4.5.1(b), 4.5.1(c), and 4.5.2, the Trustee hereby indemnifies and holds harmless the Beneficiaries and the Company, as applicable, and their respective officers, directors, employees and the Trust Fund from any and all claims, liabilities, damages, costs and expenses of any kind, including reasonable legal and expert's fees and expenses but excluding Consequential Losses, arising out of the Trustee's breach of the Standard of Care, failure to comply with the terms of this Agreement, or as otherwise specified by this Agreement, including without limitation pursuant to Article VIII. For greater certainty, notwithstanding any other provision of this Agreement, the funds for such indemnification shall not be paid out of the Trust Fund.

4.6.3 **Survival.** The indemnifications set out in this section 4.6 shall survive the termination of this Agreement and the Trust Fund.

ARTICLE V
POWERS OF THE TRUSTEE

5.1 Powers of the Trustee

The Trustee shall have and exercise the following powers and authority in the administration of the Trust Fund:

5.1.1 Purchase and Sale of Property.

- (a) Subject to Article X, purchase and sell and engage in other transactions, including receipts and deliveries, exchanges, exercises, conversions, subscriptions, and other voluntary corporate actions, with respect to any Property, whether income producing or not.
- (b) Sell or otherwise dispose of any Property held by it at any time (by any means considered reasonable by the Trustee) for cash or on credit, or partly for cash and partly on credit, and receive the consideration and grant discharges therefor.

5.1.2 Exercise of Rights.

- (a) Where applicable, vote upon any securities or other Property; to give general or special proxies or powers of attorney with or without power of substitution.
- (b) Subject to Article X, exercise any conversion privileges, subscription rights, warrants or other rights or options available in connection with any Property held at any time by the Trustee, and make any payments incidental thereto.
- (c) Consent to, or otherwise participate in or dissent from, the reorganization, consolidation, amalgamation or merger of any corporation, company or association, or to the sale, mortgage, pledge or lease of the property of any corporation, company or association, any of the securities of which may be held by it at any time, and do any act with reference thereto, including the delegation of discretionary powers, the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions which it may deem necessary or advisable in connection therewith.
- (d) Renew or extend or participate in the renewal or extension of any Property, upon such terms as it may deem advisable.
- (e) Agree to a reduction in the rate of interest on any Property or of any guarantee pertaining thereto, in any manner and to any extent that it may deem advisable.

- (f) Waive any default whether in the performance of any covenant or condition of any Property, or in the performance of any guarantee, or enforce rights in respect of any such default in such manner and to such extent as it may deem advisable.

Exercise and enforce any and all rights of foreclosure, bid on property on sale or foreclosure, take a conveyance in lieu of foreclosure with or without paying a consideration therefor and, in connection therewith, release the obligation on the covenant secured by such security and exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect of any such security or guarantee pertaining thereto.

- 5.1.3 **Dealing with Claims.** Commence, defend, adjust or settle suits, administrative or legal proceedings in connection with the Trust Fund, and represent the Trust Fund in any such suits, administrative or legal proceedings and keep the Company informed; provided, however, that the Trustee shall not be obliged or required to do so unless it has first been indemnified by the Company at the Company's expense to the Trustee's satisfaction against all expenses and liabilities which it may incur as a result thereof, except where such suits, administrative or legal proceedings directly result from a breach by the Trustee of the Standard of Care.
- 5.1.4 **Hold Property in Trust.** Hold in trust any Property that it may acquire hereunder and generally to exercise any of the powers of an owner with respect to the Property held in the Trust Fund.
- 5.1.5 **Foreign Exchange.** Enter into and settle foreign exchange transactions for the purpose of facilitating the transactions of the Trust Fund with such counterparties as the Trustee may determine, including its Affiliates.
- 5.1.6 **Asset Dispositions.** Dispose of any Property of the Trust Fund on such terms as the Trustee may determine, in order to pay any outstanding obligations imposed on the Trust Fund, provided that the Company has been provided with prior written notice of the Trustee's intention to do so.
- 5.1.7 **Agents.** Retain Agents, including for greater certainty, all Subcustodians and Investment Managers, provided that the Trustee shall not enter into, amend, terminate or waive performance under contracts or agreements for service with an Agent unless the Trustee has first consulted with the Company in regard thereto. For greater certainty, the Trustee is not authorized to retain as an Agent the Company, any Beneficiary or any Affiliate of the Company or Beneficiary.
- 5.1.8 **Redemption of Property.** Present for redemption or exchange any Property which may be called, redeemed, withdrawn or retired, provided that timely receipt of written notice of the same is received by the Trustee from the issuer.

- 5.1.9 **Executing Instruments.** Make, execute, acknowledge and deliver any and all deeds, conveyances, contracts, waivers, releases or other documents of transfer and any and all other instruments in writing that may be necessary or proper for the accomplishment of any of the powers herein granted.
- 5.1.10 **Power to do any Necessary Act.** Generally take all action, whether or not expressly authorized, which the Trustee may deem necessary or desirable, acting reasonably, for the fulfillment of its duties hereunder. Without limiting the generality of the foregoing, this may include seeking, in accordance with the Applicable Laws, the advice and direction of a court of competent jurisdiction with respect to any matter concerning the PRT.
- 5.1.11 **Powers Inexhaustible.** The exercise of any one (1) or more of the powers provided in this Article V or any combination thereof from time to time shall not be deemed to exhaust the rights of the Trustee to exercise such power or powers or combination of them thereafter from time to time.

5.2 **Self-Dealing**

- 5.2.1 The Trustee's services with respect to the PRT are not exclusive and, subject to the limitations otherwise provided in this Agreement on the power and authorities of the Trustee, the Trustee may from time to time in its discretion appoint, employ, invest in, contract or deal with any individual, firm, partnership, association, trust or body corporate, including without limitation, itself and any of its Affiliates whether on its own account or for the account of another (in a fiduciary capacity or otherwise), without being liable to account therefor and such actions in and of themselves shall not result in breach of this Agreement, provided always that the Trustee shall comply with the terms of this Agreement, including without limitation sections 2.2 and 2.5.
- 5.2.2 Without limiting the generality of and subject to the foregoing, the Trustee may act hereunder notwithstanding that the Trustee or any of its divisions, branches or Affiliates may:
- (a) have a material interest in the transaction or that circumstances are such that the Trustee may have a potential conflict of duty or interest including the fact that the Trustee or any of its Affiliates may:
 - (i) purchase, hold, sell, invest in or otherwise deal with Property of the same class and nature as may be held in the Trust Fund, whether on its own account or for the account of another (in a fiduciary capacity or otherwise);
 - (ii) act as a market maker for any Property that forms part of the Trust Fund;
 - (iii) act as financial advisor to the issuer of any Property that forms part of the Trust Fund;

- (iv) provide brokerage services to other clients;
 - (v) act as agent for more than one (1) client with respect to the same transaction;
 - (vi) have a material interest in the issue of any Property that forms part of the Trust Fund;
 - (vii) use in other capacities, knowledge, procedures, systems, processes or other expertise gained in its capacity as Trustee hereunder, subject to the provisions of section 15.6 hereof; provided that such use is not detrimental to the best interests of the Beneficiaries of the Trust Fund; and
 - (viii) invest the assets of the Trust Fund in the securities or other assets of any of its Affiliates; and
- (b) earn profits from any of the activities listed herein;

without being liable to account therefor and without being in breach of this Agreement.

5.3 Limitations - Borrowing

Notwithstanding anything to the contrary elsewhere contained herein, the PRT shall not borrow and the Trustee, or its successors, shall not have the authority to borrow on behalf of the PRT.

ARTICLE VI **TAX OBLIGATIONS**

6.1 Tax Obligations

- 6.1.1 The Company and the Trustee acknowledge that it is intended that Tax Obligations payable in relation to the Trust Fund, shall be paid by the Trustee out of the Trust Fund.
- 6.1.2 The Trustee shall prepare and file or issue, on a timely basis, all income tax returns, elections and other forms which, by virtue of the Tax Act or any other Tax Obligation, a trustee of the PRT is required to file or issue in respect of each taxation year of the PRT, including the Fiscal Year ending on termination of the PRT.

ARTICLE VII
REPORTING AND RECORD KEEPING

7.1 Accounts and Records

7.1.1 The Trustee shall maintain proper and accurate books, records and accounts of all transactions affected or controlled by the Trustee hereunder including, without limitation, the receipt, investment, reinvestment and disbursement of monies from the Trust Fund, and shall provide the Company with the following:

- (a) within fifteen (15) Business Days following the last day of each month, a statement of account or report showing all Property transferred to the Trustee during the immediately preceding month;
- (b) within fifteen (15) Business Days following the close of:
 - (i) each quarterly period,
 - (ii) each Fiscal Year, and
 - (iii) any part of a quarterly period in which the Trustee has resigned or been removed in accordance with Article XII or in which the PRT has been terminated in accordance with Article XIII,

a statement of account or report showing all relevant information concerning the Property held by the Trustee including, without limitation, information detailing all investments made, reinvestment undertaken, investment income earned, and disbursement of funds for each quarterly period or part thereof, or Fiscal Year, as applicable;

- (c) within five (5) months following the close of each Fiscal Year, audited financial statements for such Fiscal Year; and
- (d) any other report or information as may otherwise require disclosure by Applicable Laws or that is reasonably requested by the NEB or the Company.

7.1.2 The Trustee shall, on reasonable prior notice and during normal business hours, make available for inspection to:

- (a) the officers, employees and authorized agents of the NEB or the Company; or
- (b) any other person authorized by Applicable Law;

all books, records and accounts required to be maintained by the Trustee, in connection with this Agreement or as required by Applicable Law, provided