



Trans-Northern Pipelines Inc.
Pipelines Trans-Nord Inc.

OPERATOR OF ALBERTA PRODUCTS PIPE LINE LTD.

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September 2, 2014

Ms. Sheri Young
Secretary of the Board
National Energy Board
517 – 10th Avenue SW
Calgary, AB T2R 0A8

Dear Ms. Young:

Re: MH-001-2013 Reasons for Decision
Pipeline Abandonment – Financial Issues
Set-aside and collection mechanism
Proposed form of Trust Agreement and Identity of Proposed Trustee

In May 2014, the National Energy Board (the “NEB” or the “Board”) issued its Reasons for Decision MH-001-2013 on Set Aside and Collection Mechanisms. The Board directed¹ that companies using a trust to set aside funds for pipeline abandonment must, by September 2, 2014, (i) file for approval a trust agreement, and (ii) identify a trustee. In compliance with that directive, Trans-Northern Pipelines Inc. (“TNPI” or the “Company”) hereby submits for approval its proposed Trust Agreement and its selected Trustee.

A. Overview

In Section B of this Filing, TNPI explains how, in developing the Trust Agreement, the Company has:

- used the Board’s Model Trust Agreement as the basis for the Company’s Trust Agreement, deviating only where necessary to fit the specific circumstances of TNPI, to better achieve the objectives of the trust as identified by the Board, or to provide additional clarity and specificity;
- reflected the Board’s *Indicative Terms*², and the underlying rationale for those Indicative Terms;

¹ Decision MH-001-2013, Appendix VIII

² Decision MH-001-2013, Appendix VI

- retained experienced legal counsel in the areas of trust law and tax law to ensure that the Trust Agreement is, among other things, enforceable and consistent with the Qualified Environmental Trust (“QET”) tax rules; and
- incorporated requirements and clarifications required by the proposed Trustee.

Section C explains TNPI’s selection of Royal Trust to serve as Trustee. Royal Trust is a reputable trust company that will provide the necessary services under the Trust Agreement at competitive rates.

TNPI respectfully submits that its proposed Trust Agreement and its choice of Trustee complies with the Board’s directives and should be approved.

B. Proposed Trust Agreement Reflects Board’s Directives

In Decision MH-001-2013, the Board indicated its expectations regarding key components of the trust, including by providing a Model Trust Agreement and Indicative Terms. TNPI has reviewed the Decision carefully, and has endeavoured to reflect the Board’s intentions. To that end, TNPI has used the Board’s Model Trust Agreement as the foundation for the Trust Agreement, deviating only where necessary to fit the specific circumstances of TNPI, to better achieve the objectives of the trust as identified by the Board, to provide additional clarity and specificity, or to meet specific requirements of Royal Trust. The purpose of the discussion below is to identify for the Board the instances where TNPI has deviated from the Model Trust Agreement, and to explain why it is appropriate to make those changes.

There are three appendices to this letter:

- **Appendix “1”** is the Company’s proposed Trust Agreement. Schedule A to the proposed Trust Agreement is a description of the TNPI facilities, a listing of the leave to open orders for TNPI’s facilities and a system map. Schedule B contains sections of the *Income Tax Act* that address qualified investments.
- **Appendix “2”** is a blackline comparison of TNPI’s proposed Trust Agreement against the Board’s Model Trust Agreement.
- **Appendix “3”** provides a concordance and section-by-section analysis of how the proposed Trust Agreement compares to the Model Trust Agreement.

The majority of the provisions of TNPI’s proposed Trust Agreement are the same, or essentially the same (with only non-substantive changes), as the Model Trust Agreement. Each of the *Indicative Terms* has been reflected in the Company’s proposed Trust Agreement, with the exception of *Indicative Term #12* which, for reasons described below, TNPI believes could jeopardize the QET status. Key points of note in this regard are as follows.

- ***Indicative Term #1: Legal Characteristics of the Trust:*** As required by *Indicative Term #1*, the Trust is explicitly irrevocable (see section 8.02). It also specifies the Annual Contribution Amount in the manner contemplated (see definition of “Annual Contribution Amount” in section 1 and 2.04).

- **Indicative Term #2 Qualifying Environmental Trust:** In its Decision, the Board spoke to the appropriateness of maintaining QET status for the Trust:

The Board supports a tax-efficient approach to setting aside funds for pipeline abandonment provided the set-aside mechanism adequately adheres to the principles and attributes set out in the RH-2-2008 Reasons for Decision. A tax-efficient approach lowers the cost to shippers without impacting the amount of funds available. In the Board's view, it is prudent for pipeline companies to pursue and maintain a tax-efficient approach, including a trust that complies with the QET provisions of the Tax Act.³

TNPI agrees that it is appropriate to seek to maximize the probability of securing and maintaining QET status. As required by *Indicative Term #2*, the Trust Agreement expressly sets out that the parties' intentions are for the Trust Agreement to constitute a QET (see section 2.03). The Qualified Investments and Qualified Trustee requirements are also reflected (see sections 5.03 and 4.01, respectively).

There were two instances where TNPI determined that to employ the language of the Model Trust Agreement could undermine the NEB's intention to have the Trust Agreement retain QET status. They are:

- **Model Trust Section 7.02 [Now section 8.02]:** The Model Trust Agreement provides the Tribunal with the authority to direct the termination of the Trust and "to order such successive arrangements as are appropriate." This type of provision is unusual in a trust agreement and potentially problematic. It is not uncommon in a bare trust or nominee arrangement for the settlor/beneficiary to direct all of the activities of the trustee, inclusive of the timing of the termination of the trust and return of the trust property to the settlor/beneficiary, but that circumstance does not exist in this instance. If this termination right is retained by the Tribunal and exercisable in a non-fiduciary capacity, it might be questioned whether a trust was actually validly created. TNPI also respectfully submits that the termination right is not needed given the embedded protections provided to the Tribunal in the Trust Agreement to monitor and control distributions from the Trust. TNPI has also removed the revocation power granted to the Beneficiaries generally and the Trustee. At law, the power to "revoke" a trust (which is different from the ability to terminate), if available at all, is only available to the settlor of a trust and not beneficiaries.
- **Model Trust Section 9.07 [Now section 10.06]:** This also ties in with *Indicative Term #12*. TNPI amended the 'review' process in two respects. First, the proposed Trust Agreement makes it permissive rather than mandatory, to avoid any need to consider the consequences of non-performance or late performance if the trust is not, for whatever reason, reviewed every five years. Secondly, TNPI particularized (without limitation) the focus of the review to the ability of the Fund to sustain the Reclamation Obligations of the Company.

³ Decision MH-001-2013, p.11

With these changes, TNPI concludes that there is a high probability of the Trust constituting a QET. TNPI submits that these changes can be made while still delivering on the other objectives of the Trust, and should be approved.

- ***Indicative Term #3 Parties:*** As required by *Indicative Term #3*, the Tribunal is not a party to the Trust. The settlor/contributor is “the Company holding the NEB certificate or order allowing it to operate the pipeline system required to be abandoned in the future.” (See section 1.01 definition of “Company” and section 1.11). The selected Trustee, Royal Trust, meets the criteria specified in *Indicative Term #3*. The beneficiary is the party with the Reclamation Obligations.
- ***Indicative Term #4 Change of Parties: Trustee:*** The Trust Agreement complies with all of the requirements for change of Trustee that are specified in *Indicative Term #4*. See Article 4.
- ***Indicative Term #5 Amendments:*** As specified, all amendments to the Trust Agreement must be approved by the Board before they are effective. See sections 8.01.
- ***Indicative Term #6 Control over Investments:*** As specified, the Trustee is responsible for receiving, holding, investing and releasing the Fund. The Trustee must control and hold the Funds and have complete control of the Fund's investment management. The Trustee has full discretion to invest the Fund in Qualified Investments. The other requirements of this *Indicative Term* have also been met. See section 5.03.
- ***Indicative Term #7 Access:*** The proposed Trust Agreement specifies the Circumstances of Access and the Mechanics of Access as required by this *Indicative Term*. The Fund is to be used for the sole purpose of satisfying the reclamation obligations, subject to Trustee remuneration. See sections 2.02 and 5.05.
- ***Indicative Term #8 Trustee Remuneration and Administrative Expenses:*** The *Indicative Terms* state, in part:

If permitted by the Income Tax Act, as amended, the Fund may be accessed by the Trustee, without approval of the Board, for remuneration of the Trustee, expenses incurred by the Trustee and payment of taxes owing by the trust. However, the Company must ensure that the Agreement allows for contributions to be made which cover the costs associated with such a reimbursement.

The Fund cannot be accessed, by the Company, or any Beneficiary, or the Trustee, for any expense incurred by the Company or a Beneficiary that is related to the administration of the trust.

These requirements are reflected in the language of the proposed Trust Agreement. See Article 6.

- ***Indicative Term #9: Surplus:*** TNPI has followed the Board’s direction in specifying how to dispose of any surplus in the Trust after reclamation is completed. The Board

identified both the need for the Trustee to retain discretion, and the need to reference an orphan pipeline fund. The *Indicative Terms* stated for instance: “The Trustee has the discretion to distribute any surplus, or any part of the surplus, existing after all Reclamation Obligations are discharged among the class of beneficiaries or to an orphan pipeline fund.”⁴ The Trust Agreement (Section 3.02) provides that the Trustee, with the approval of the Tribunal, shall distribute the Fund among some one or more of the Company and Orphan Pipeline Fund, and in such proportions, as the Trustee in its absolute discretion determines. It makes clear that the Company is eligible to be a recipient, but leaves it to the discretion of the Trustee to determine whether that is appropriate in the circumstances.

- ***Indicative Term #10: Choice of Law, Term and Termination of the Trust:*** TNPI has selected Ontario law to be the law applicable to the construction of the Trust. The Board, in its *Indicative Terms* set out parameters for how companies should determine the applicable law. It stated, in part:

The law governing the trust will be the law of a jurisdiction to which the trust has a real and substantial connection. If the trust has a real and substantial connection to more than one jurisdiction, and included is a jurisdiction that has abolished the rule against perpetuities (in both its common law and modified form), the Company must select the jurisdiction that has abolished the rule. In this case, there will be no specific term for the trust and the approval of the Board is required to terminate the trust. For example, if the trust has a real and substantial connection to Quebec and Ontario, the choice of law must be Quebec, and there will be no specific term for the trust.⁵

TNPI has assets in both Ontario and Quebec, but the majority of TNPI’s operations are conducted in Ontario, and its economic presence is centred in Ontario. Approximately 85% of TNPI’s pipeline is located in Ontario.⁶ Its head office is in Ontario. TNPI has determined that the real and substantial connection in this case is with Ontario. It is a generally accepted principle of trust law that matters of validity and construction must be determined by the law of that jurisdiction in which the trust has a substantial connection.

The proposed Trust Agreement addresses the Ontario rule against perpetuities appropriately in Section 2.06. As drafted, the proposed clause contemplates both the current circumstances and a circumstance where the Ontario legislature abolishes the rule in the future. The rule against perpetuities is addressed using the “royal lives” clause proposed in the Model Trust Agreement. As a matter of form TNPI chose to terminate the Trust sixteen years (16) years following the date of death of the last royal life, in lieu of a direction to transfer the Fund to the Company five (5) years prior to the typical twenty-one (21) year period. TNPI has incorporated the substance of the provisions of

⁴ Decision MH-001-2013, Appendix VI *Indicative Terms*, Item 9

⁵ Decision MH-001-2013, Appendix VI *Indicative Terms*, Item 10.

⁶ 720 kilometers in Ontario (84.71%) and 130 kilometers in Quebec (15.29%)

the Model Trust Agreement that address how the Trust assets are to be dealt with upon termination of the Trust.

TNPI submits that there would be little advantage and greater risk associated with selecting Quebec, given that TNPI's predominant connection is with Ontario:

- ***Little benefit:*** Pursuant to the Quebec Civil Code, corporations may only qualify as beneficiaries of a trust for 100 years, which approximates the perpetuity period in Ontario when a “royal lives” clause is utilized as is contemplated here.
- ***Additional risk:*** If the governing law of Quebec was to be specified and no perpetuity clause was to be imposed, and the Trust was subsequently determined not to have a substantial connection to Quebec, then either the validity of the Trust might be questioned or the law of Ontario imposed, in which instance the Trust term would be limited to twenty-one (21) years. If all of the beneficial interests under the Trust did not vest within that time period, the Trust could be treated as void. TNPI believes that it would not be appropriate to assume this risk simply to avoid the application of the rule against perpetuities that currently exists under Ontario law.
- ***Indicative Term #11: Sale:*** The Trust Agreement meets the requirement that “The Agreement must allow for the Trustee to release monies from the Fund if the Board approves the sale, transfer or other disposition of the Pipeline or a portion of it from the Company to another person.” See section 5.09.
- ***Indicative Term #12: Review of the Agreement:*** The *Indicative Terms* require that the Trust Agreement “must be reviewed at least every five years or earlier if directed by the Board.” This is one instance where TNPI is proposing changes. The rationale for departing from Section 9.07 of the Model Trust Agreement [now section 10.06], which relates to the importance of preserving QET status, has been described above in the context of *Indicative Term #2*.

C. TNPI Has Selected an Appropriate Trustee

The Board directed that “All companies establishing a trust to set aside funds for pipeline abandonment must, in the trust agreement, require that Board approval be obtained before a trustee's appointment becomes effective. The pipeline company's choice of trustee should be included in the trust agreement filed with the Board on 2 September 2014.”⁷ The Company's proposed Trust Agreement reflects TNPI's selection of Royal Trust to serve as Trustee. TNPI arrived at this choice after considering a number of candidates. Royal Trust emerged as the successful candidate as it is a reputable trust company that will provide the services at competitive rates.

D. Conclusion and Approval Sought

⁷ Decision MH-001-2013, p.26

TNPI respectfully submits that its proposed Trust Agreement and its choice of Trustee complies with the Board's directives and should be approved.

If you have any questions or concerns please contact the undersigned.

Sincerely,



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APPENDIX “1”

PROPOSED TNPI TRUST AGREEMENT

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Trust Agreement

THIS TRUST AGREEMENT made as of the <@> day of <@>, 2014.

BETWEEN:

TRANS-NORTHERN PIPELINES INC./PIPELINES TRANS-NORD INC., a body corporate duly constituted under the Canada Business Corporations Act,

(the “**Settlor**”)

AND:

Royal Trust Corporation of Canada, a licensed trust company incorporated under * with an office located in the City of Toronto, in the Province of Ontario,

(the “**Original Trustee**”)

RECITALS

WHEREAS the Company (as hereinafter defined), holds the regulatory authorization allowing it to operate the pipeline described in Schedule “A” to this Trust Agreement;

AND WHEREAS the Company is subject to regulation by the National Energy Board under the *National Energy Board Act* (Canada);

AND WHEREAS on 26 May 2009 the National Energy Board issued the RH-2-2008 Reasons for Decision, which required the Company 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;

AND WHEREAS on 12 March 2013, the National Energy Board issued the MH-001-2013 Hearing Order, establishing how it would consider each set-aside mechanism proposed;

AND WHEREAS on 5 May, 2014, the National Energy Board ordered the Company to set aside funds using a trust structure to pay for the reclamation obligations in respect of the sites in Canada used by the Company for the operation of the pipeline described on Schedule “A” to this Trust Agreement;

AND WHEREAS in satisfaction of the requirements imposed by the National Energy Board, the Company has created this Trust the Fund of which (as hereinafter defined) will be used to accumulate funds to satisfy the discharge of its reclamation obligations for the sites in Canada

used by the Company for the operation of the pipeline described on Schedule “A” to this Trust Agreement;

AND WHEREAS the Trustee has agreed to hold the Fund (as hereinafter defined) in accordance with the terms and conditions of this Trust Agreement;

NOW, THEREFORE, THIS TRUST AGREEMENT WITNESSETH that in consideration of the promises and of the mutual covenants herein contained, it is hereby mutually covenanted, agreed and acknowledged by and between the parties hereto that any property contributed by the Company to the Trustee under this Trust Agreement shall be held by on the terms set out herein.

ARTICLE 1: INTERPRETATION

1.01 DEFINITIONS

In this Trust Agreement, unless the subject matter or context otherwise requires, the following terms shall have the following meanings:

- (a) “**Abandon**” and “**Abandonment**” have the meaning set out in the definition of “abandon” in the *Onshore Pipeline Regulations* (Canada);
- (b) “**Annual Contribution Amount**” means the annual amount collected by the Company to pay for the future costs to Abandon the Pipeline;
- (c) “**Beneficiary**” and “**Beneficiaries**” mean,
 - (i) the “Company” (as hereinafter defined), having, while entitled to benefit from the “Fund” (as hereinafter defined), “Reclamation Obligations” (as hereinafter defined) in respect of the “Site” (as hereinafter defined); and
 - (ii) any Person (as hereinafter defined) who is contractually obligated to perform or discharge any of the Reclamation Obligations of the Company in respect of the Site and for greater certainty any such Person shall only be entitled to receive distributions from the Fund to perform or discharge such Reclamation Obligations;
- (d) “**Business Day**” means any day except a Saturday, Sunday or a statutory holiday in the Province of Ontario;
- (e) “**Company**” means Trans-Northern Pipelines Inc./Pipelines Trans-Nord Inc., provided for greater certainty that Trans-Northern Pipelines Inc./Pipelines Trans-Nord Inc. holds the regulatory authorizations to operate the Pipeline;
- (f) “**Company’s Notice of Termination**” has the meaning set out in section 4.04 of this Trust Agreement;

- (g) “**Deactivate**” and “**Deactivation**” mean the same thing as the definition of “**deactivate**” in the *Onshore Pipeline Regulations* (Canada);
- (h) “**Decommission**” and “**Decommissioning**” mean the same thing as the definition of “decommission” set out in the *Onshore Pipeline Regulations* (Canada);
- (i) “**Default**” has the meaning set out in section 5.06 of this Trust Agreement;
- (j) “**Effective Date**” means the * day of *, 2014;
- (k) “**Fund**” means as of any particular time, any and all assets of the Trust and any and all property, real, personal or otherwise, tangible or intangible, movable or immovable which has been transferred, conveyed or paid to, acquired or originated by, the Trust, including, without limitation, all of the rights, title and interest of the Trust in and to: (i) all amounts held from time to time by the Trustee (as hereinafter defined) in accordance with this Trust Agreement, including any amounts paid to the Trustee (as hereinafter defined) under any article of this Trust Agreement, and (ii) all income, earnings, profits and gains therefrom and all proceeds deriving therefrom or related thereto and which at such time is owned or held by the Trust; but for greater certainty shall not include any amounts paid, released or distributed in accordance with the terms of this Trust Agreement;
- (l) “**Fund Property**” has the meaning set out in section 4.03 of this Trust Agreement;
- (m) “**Governing Law**” means the law to which the rights of all parties and persons beneficially interested under this Trust shall be subject and which governs all matters of validity, construction, effect and administration of the trusts, powers and provisions of this Trust;
- (n) “**Income Tax Act**” means the Income Tax Act, R.S.C. 1985 (5th Supp.) c. 1;
- (o) “**NEB Act**” means the *National Energy Board Act* (Canada);
- (p) “**New Trust Fund**” has the meaning set out in section 3.01 of this Trust Agreement;
- (q) “**Initial Contribution**” means the sum of One Hundred Dollars (\$100) transferred by the Settlor to the Trustee, by cheque, for the purpose of constituting the Trust;
- (r) “**Orphan Pipeline Fund**” means a not-for-profit organization to be established pursuant to a statute of the Parliament of Canada whose purpose includes paying for the cost to Abandon a pipeline constructed or operated under a statute of the Parliament of Canada;

- (s) “**Person**” includes an individual, body corporate, partnership, limited partnership, joint venture, trust or unincorporated organization, the Crown or any agency or instrumentality thereof, or any other entity recognized by law;
- (t) “**Pipeline**” means the pipeline described in Schedule “A” to this Trust Agreement;
- (u) “**Qualified Investments**” means all or any of those investments that from time to time are qualified investments for a “qualifying environmental trust” as defined in the Income Tax Act and for greater certainty such qualified investments on the date hereof include only those types of property described in paragraphs (a), (b), (c), (c.1), (d) or (f) of the definition of “qualified investment” in section 204 of the Income Tax Act that are not encompassed within the definition of “prohibited investment” in subsection 211.6(1) of the Income Tax Act as more particularly set out in Schedule “B” (“**Prohibited Investment**”);
- (v) “**Qualifying Trust Company**” means a corporation resident in Canada that is licensed or otherwise authorized under the laws of Canada or a Province to carry on in those Provinces in which the Company operates the Pipeline the business of offering to the public its services as trustee;
- (w) “**Reclamation Obligations**” means:
 - (i) the duty to carry out the physical Abandonment, Decommissioning or Deactivation of the Pipeline, including costs incurred to satisfy any conditions imposed by the Tribunal (as hereinafter defined) in any order or direction approving the Decommissioning or Deactivation of the Pipeline or granting leave to Abandon the Pipeline;
 - (ii) the duty to develop an Abandonment plan, and to prepare an application for leave to Abandon or for approval of the Deactivation or Decommissioning of the Pipeline; and
 - (iii) the duty to carry out post-abandonment monitoring and remediation of the Site (as hereinafter defined), where post-abandonment refers to the period of time after a Company has satisfied the conditions of an order or direction issued by the Tribunal (as hereinafter defined) granting leave to Abandon;and all costs incurred and consequent thereon;
- (x) “**Site**” means the location or locations in Canada used by a company for the operation of the Pipeline;
- (y) “**Termination Date**” shall have the meaning set out in section 2.05 of this Trust Agreement;

- (z) “**Tribunal**” means the National Energy Board, a board established under the NEB Act or any successor administrative body having authority to regulate the Company in respect of the operation and Abandonment of the Pipeline;
- (aa) “**Trust Agreement**” means this instrument, as amended from time to time, which instrument is the vehicle for the trust herein created;
- (bb) “**Trust**” means the trust established by this Trust Agreement;
- (cc) “**Trustee**” means the Original Trustee or any replacement trustee appointed pursuant to the terms of this Trust Agreement to hold the office of trustee; and

1.02 EXTENDED MEANINGS

In this Trust Agreement, words importing the singular number include the plural and vice versa and words importing gender include all genders.

1.03 RECITALS

The Recitals of this Trust Agreement shall form an integral part hereof.

1.04 HEADINGS

Articles and Section headings, and Table of Contents, are not to be considered part of this Trust Agreement, are included solely for convenience of reference and do not define, limit or enlarge the construction or interpretation hereof.

1.05 REFERENCES TO ARTICLES AND SECTIONS

Unless otherwise provided, all references herein to Articles or Sections are references to Articles and Sections of this Trust Agreement, respectively.

1.06 CURRENCY

All references to any sums of money in this Trust Agreement shall be interpreted as referring to Canadian dollars, unless otherwise specifically stated in this Trust Agreement.

1.07 REFERENCE TO STATUTES

Any reference in this Trust Agreement to any code, statute, regulation, official interpretation, directive or other legislative enactment of any Canadian or foreign jurisdiction (including any political subdivision thereof) shall be construed to include such code, statute, regulation, official interpretation, directive or enactment and each amendment, re-enactment, reissuance or replacement thereof made at or before the time in question.

1.08 GOVERNING LAW AND SITUS OF TRUST

The Trust shall have its situs in the Province of Ontario and the Governing Law shall be the Province of Ontario, and the laws of Canada applicable therein, provided that the Trustee, with

the consent of the Company, may from time to time determine to transfer the situs of the Trust to another jurisdiction or to change the Governing Law.

1.09 INVALIDITY OF PROVISIONS

Save and except for any provision or covenant contained herein which is fundamental to the subject matter of this Trust Agreement (including, without limitation, those that relate to the payment of moneys), the invalidity or unenforceability of any provision or covenant hereof or herein contained will not affect the validity or enforceability of any other provision or covenant hereof or herein contained and any such invalid or unenforceable provision or covenant will be deemed to be severable.

1.10 REFERENCES TO ACTS OF THE TRUST

For greater certainty, where any reference is made in this Trust Agreement, or in any other instrument to which the Trust or the Trustee, as Trustee of the Trust, are party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Trust) or existence by or with respect to, (i) the Trust; or (ii) the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a proceeding taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Trust) by or with respect to, the Trustee as Trustee of the Trust.

1.11 REFERENCES TO TRANS-NORTHERN PIPELINES INC./PIPELINES TRANS-NORD INC.

If subsequent to the date of this Trust Agreement, Trans-Northern Pipelines Inc./Pipelines Trans-Nord Inc. changes its name, corporate structure, or transfers, assigns or sells its assets to any transferee or successor corporation, any reference in this Trust Agreement to Trans-Northern Pipelines Inc. shall extend to and include a reference to any new name of such corporation and any such transferee or successor corporation; it being the intention that the provisions contained in this Trust Agreement shall be effective regardless of any change in name, corporate structure or transfer, assignment or sale to a transferee or successor corporation by Trans-Northern Pipelines Inc./Pipelines Trans-Nord Inc., but only on condition that, and so long as such transferee or successor corporation holds the regulatory authorizations to operate the Pipeline.

ARTICLE 2: CREATION OF THE TRUST

2.01 Establishment of the Trust

The Settlor hereby declares its intention to establish the Trust for the benefit of the Beneficiaries, to be administered upon the terms and subject to the conditions set out in this Trust Agreement. The Settlor hereby further declares that the Trust shall be irrevocable.

The Settlor and Trustee acknowledge and agree that the Settlor has transferred the Initial Contribution to the Original Trustee, which the Original Trustee has accepted delivery of, for the purpose of settling and constituting the Trust.

The Trustee hereby agrees to act as trustee of the Trust established and governed pursuant to the terms of this Trust Agreement and agrees to hold the Fund for the benefit of the Beneficiaries of the Trust and to invest, dispose of and otherwise deal with the Fund upon the trusts, in the manner and subject to the provisions of this Trust Agreement.

In furtherance of the foregoing, the Company agrees to transfer to the Trustee, on an annual basis, an amount equivalent to the Annual Contribution Amount.

2.02 Purpose of the Trust

The purpose of this Trust is the funding of the Reclamation Obligations of the Company in respect of the Site.

2.03 Qualifying Environmental Trust

It is the express intention of the parties hereto for the Trust settled under this Trust Agreement to constitute a “qualifying environmental trust” as defined in subsection 211.6(1) of the Income Tax Act, as amended or replaced from time to time. This Trust Agreement shall be read and interpreted in light of and consistently with the definition of “qualifying environment trust” in the Income Tax Act, and the Company, Beneficiaries and Trustee shall ensure that no actions are taken which would jeopardize the status of this Trust as a “qualifying environmental trust”.

2.04 Annual Contribution of Company

The Company affirms its obligation as stated in section 2.01 to transfer annually to the Trustee the Annual Contribution Amount. The Trustee shall provide regular reminder notices to the Company regarding its annual contribution obligation, but otherwise shall have no responsibility to take any action toward the collection or the enforcement of the collection of such amounts.

2.05 The Trust: discretionary as to two or more beneficiaries

The Trustee is authorized to make payments from the Fund to or for the benefit of some one or more of the Beneficiaries at its discretion, responding at the time of payment to the then existing Reclamation Obligations of each such Beneficiary. The Trustee may make payment to or for the benefit of a Beneficiary, that is, either to the Beneficiary, or to a person or persons named by the Tribunal to conduct work in the reclaiming of the Site. Before making any discretionary payment the Trustee must receive the approval of the Tribunal to the payment, which approval will cover both the reclamation need being addressed and that person or those persons that are instructed to carry out the reclamation.

2.06 Term of the Trust

- (a) This Trust shall commence on the Effective Date.

- (b) The Termination Date of the Trust shall be either,
- (i) if the principle of law commonly referred to as the rule against perpetuities has been abolished by the Governing Law at any time subsequent to the establishment of this Trust and as a consequence thereof is no longer inapplicable to this Trust, or the rule against perpetuities is not applicable to this Trust for any other reason whatsoever, then this Trust Agreement shall have no specific term and shall continue until the Trustee is directed to terminate the Trust in writing by the Company, with the approval of the Tribunal, or
 - (ii) if the said rule against perpetuities has not been abolished by the Governing Law and is applicable to this Trust, this Trust Agreement shall terminate on that date which is the earlier of (A) the day which is sixteen years after the date of death of the last survivor of all the lineal descendants of Queen Elizabeth II who was alive on the date that this Trust is created and (B) the day upon which the Trustee is directed to terminate the Trust in writing by the Company, with the approval of the Tribunal,
- as the case may be.

ARTICLE 3: TERMINATION OF THE TRUST

3.01 Termination prior to the discharge of the Reclamation Obligations

If the Termination Date occurs pursuant to the provisions of section 2.06 (b) (ii) (A) , then upon the Termination Date the Trustee shall pay and transfer the Fund to the Company. The Company covenants to forthwith following receipt of the Fund to create a new trust by settling the Fund on a trust which trust contains the same trusts, terms and conditions as are contained in this Trust Agreement except that the reference to ‘date that this Trust is created’ in section 2.06 (b) (ii) (A) shall be replaced by a reference to the date on which the new trust is created (the “New Trust Fund”).

3.02 Termination subsequent to the discharge of the Reclamation Obligations

If property remains in the Fund after all Reclamation Obligations of the Company with respect to the Site are discharged, then the Trustee, with the approval of the Tribunal, shall distribute the Fund among some one or more of the Company and Orphan Pipeline Fund, and in such proportions, as the Trustee in its absolute discretion determines. Subject to the consent of the Tribunal the Trustee may distribute the Fund exclusively to the Company.

ARTICLE 4: APPOINTMENT, RESIGNATION, AND REMOVAL OF A TRUSTEE

4.01 Appointment

The Company has the power to appoint a Trustee, with the approval of the Tribunal. The Trustee, and any replacement Trustee, on accepting such appointment agrees to act as Trustee of the Fund in accordance with the terms and conditions of this Trust Agreement. The Trustee and any replacement Trustee must be a Qualifying Trust Company.

4.02 Resignation

A Trustee desiring to resign the office shall in writing notify the Company 30 days prior to the intended resignation date and during this period the Company, as provided in section 4.01, shall appoint a replacement Trustee with the approval of the Tribunal. If a replacement trustee is not appointed within 60 days of the Trustee's notice of resignation, the Trustee may apply to the court in the jurisdiction of the Governing Law to request an order for the appointment of a replacement trustee. The replacement Trustee shall take title or possession of the Fund and Fund Property without delay.

4.03 Obligation of Trustee upon termination

Following termination of the Trustee's appointment, subject to its rights hereunder, and pending the appointment of an interim or a successor Trustee, the Trustee shall continue to hold in trust:

- (a) the Fund; and
- (b) all documents, information, and books and records created, received or maintained by the Trustee which relate to or arise or have arisen in connection with the performance by the Trustee of its duties hereunder (collectively hereinafter referred to as the "**Fund Property**").

4.04 Removal

- (a) If the Company delivers a written notice ("**Company's Notice of Termination**") to the Trustee specifying the intent to terminate the appointment of the Trustee hereunder, then in such a circumstance, such appointment shall terminate on the 30th day following the date that the Company's Notice of Termination was received (or was deemed to have been received) by the Trustee.
- (b) A Trustee shall cease to hold the office of Trustee if convicted of an offence involving dishonest conduct, becomes insolvent with the appointment of a receiver or is in bankruptcy proceedings, or being a corporation that is dissolved or in liquidation or ceases to be a Qualifying Trust Company. With the approval of the Tribunal the Company shall appoint an interim corporate Trustee who is a Qualifying Trust Company. The predecessor Trustee, upon receipt of payment for any outstanding amount for its services and expenses then unpaid, shall transfer, deliver and pay over to such successor Trustee, the Fund and all Fund Property on deposit with or in the possession of such predecessor Trustee hereunder. The interim Trustee will take title to the Trust Fund, and take possession of all assets deposited with the predecessor Trustee, and secure the same. The interim Trustee is entitled to call for and receive all Trustee contributions that are due, accounting to a permanent replacement Trustee when such is appointed.

ARTICLE 5: THE DUTIES AND POWERS OF THE TRUSTEE

5.01 Responsibilities of the Trustee

The duties and obligations of the Trustee shall be determined solely by the law and the provisions of this Trust Agreement, and accordingly the Trustee shall be responsible only for the performance of such duties and obligations.

5.02 Trustee Receipt of Funds

- (a) The Company may, from time to time, deliver or cause to be delivered to the Trustee funds constituting regular contributions, and all such funds so delivered shall be received by the Trustee and held in a trust account upon the terms and conditions herein set forth, only to be disbursed or dealt with in accordance with the terms hereof.
- (b) The Trustee shall be solely responsible for all funds delivered to it.

5.03 Investment of Fund

- (a) The Trustee will invest and maintain the Fund invested in Qualified Investments.
- (b) The Trustee will have and be vested with the power to retain, invest or reinvest, any cash, funds or property constituting the whole or any part of the Fund in Qualified Investments that the Trustee will in its absolute discretion consider advisable including, without limitation, any Qualified Investments that are deposits, investment products or obligations issued or administered by the Trustee or its affiliates, or by any one of more of its affiliates or subsidiaries, notwithstanding that such investments may not be investments authorized by law for trustees or that it may be considered a delegation of its investments duties.

The Trustee is authorized to delegate investment to a manager, and thereto the Trustee may appoint and retain Royal Trust Corporation of Canada, or any of its affiliates, related parties or subsidiaries, or any successors thereof (each “an Affiliate” and collectively “Affiliates”), or any corporation with which an Affiliate has amalgamated or as a result of any reorganization has become a part thereof, to assist in the investment and reinvestment of the Fund, and to exercise any powers or functions relating to the investment and reinvestment of such assets in such manner, on such terms and conditions, and for such remuneration payable from the Trust, as the Trustee, in the Trustee’s absolute discretion, considers advisable, and as the Trustee shall specify in writing, including, without limitation, the power at any time and from time to time to choose, acquire, dispose of or change any such investments or reinvestments and to sub-delegate to another any such powers or functions so conferred on it by the Trustee. Subject to section 5.11 of this Trust Agreement, the Trustee is hereby further authorized to act on the opinion, advice or information obtained from an Affiliate, and shall not be responsible for any loss occasioned by so acting or by not so acting as the case may be, nor shall the Trustee be responsible nor incur any liability for any loss

that may be occasioned by any investment decision or delegation of investment decisions authorized herein and made by the Trustee, or by an Affiliate.

In conferring on the Trustee the authority herein described, it is acknowledged that each Affiliate is affiliated with the Trustee and that such appointment may be made by the Trustee irrespective of any such relationship between them.

The Trustee is further authorized, at any time, to terminate such retainer and to appoint and retain any person or corporation, other than an Affiliate to assist in the investment and reinvestment of the Fund, including, without limiting the generality of the foregoing, any such person who is employed by, or any such corporation which is an affiliate or subsidiary of an Affiliate or the Trustee, or a successor hereof, and so on, from time to time, and the terms hereof shall apply, with necessary modifications, to any such other person or corporation so appointed the Trustee.

- (c) The Trustee may deposit assets of the Fund, including cash, in or with Royal Trust Corporation of Canada, any financial institution affiliated or related to the Trustee, or any agent of or advisor to the Trustee (collectively, "Authorized Depositories") notwithstanding that any of the Authorized Depositories may benefit therefrom, and the Authorized Depositories shall not be required to account for, or to give up, any such benefit. For greater certainty, it shall not be improper for the Trustee to deposit moneys or custody the assets of the Fund with Royal Trust Corporation of Canada or its affiliated, subsidiary, holding or related companies, notwithstanding any benefit realized as a result, including retaining a profit in excess of interest paid (if any) on, or fees payable to any affiliated or related companies in respect of, such deposit or custody arrangement.
- (d) The Trustee may invest in Qualified Investments of (in any form of property offered for purchase as an investment by) the Trustee or an agent of or advisor to the Trustee, including Royal Trust Corporation of Canada or any affiliated, subsidiary, holding or related company or companies of any of the Trustee or any agent or advisor to the Trustee, notwithstanding that the Trustee and/or the Trustee's agent or advisor may benefit therefrom; and the Trustee shall not be required to account for, or to give up, any such benefit.
- (e) To assist the Trustee in making investments that are Qualified Investments and more particularly are not Prohibited Investments the Company shall forthwith provide the Trustee with a listing of all Persons who are related to or affiliated with the Company, and shall provide the Trustee with an amended list within a reasonable time of the addition of any Person who is related to or affiliated with the Company.
- (f) Interest or other investment proceeds paid on the Fund shall be credited to the Fund.

- (g) At the end of each calendar year during which the Trustee has held the Fund, the Trustee shall cause to be issued to the Company a form T-5, or other form as appropriate pursuant to the Income Tax Act, in respect of any interest or other income earned on the Fund.
- (h) All earnings received from the investment of the Fund shall be credited to, and shall become part of, the Fund (and any losses on such investments shall be debited to the Fund). The Trustee shall have no liability for any investment losses resulting from investments made by the Trustee in accordance with the terms of this Trust Agreement, including any losses on any investment required to be liquidated prior to maturity in order to make a payment required pursuant to the terms of this Trust Agreement, and any losses resulting from a loss of opportunity. The Trustee shall have no liability to any person should it be unable to invest all or any portion of the Fund as aforesaid for any period of time, provided that it has made commercially reasonable efforts to do so.

5.04 No Power to Borrow

The Trustee shall not at any time borrow funds or otherwise incur indebtedness.

5.05 Funds to be Used for Reclamation

Subject to Article 6., all funds deposited by the Company with the Trustee as required hereunder and all investments, reinvestments and accretions thereto, the Trustee shall draw upon solely for the purpose of funding the discharge of the Reclamation Obligations of the Beneficiaries of the Trust with respect to the Site.

For greater certainty, access to the Fund, including the precise amount of the Fund to be released for payment of amounts required to satisfy Reclamation Obligations of the Beneficiaries of the Trust, is subject to the Tribunal's approval on the facts of the particular case before it.

5.06 Release of Funds to the Company

The Trustee may release funds, which are held in accordance with this Trust Agreement, to pay for the Reclamation Obligations of a Beneficiary, on presentation by a Beneficiary of:

- (a) a written direction or an order from the Tribunal confirming the amount to be disbursed from the Fund, the timing of the disbursement and the identity of the Beneficiary to receive the funds; and
- (b) a certificate of an officer of the Beneficiary confirming that the Beneficiary has not (1) ceased to carry on business; (2) become insolvent or committed any act of bankruptcy; (3) filed a petition for bankruptcy, or suffered a petition for bankruptcy being filed, against it; (4) made any proposal to or sought arrangement with its creditors; (5) made an assignment for the benefit of creditors; (6) appointed or suffered the appointment of a receiver in respect of its property and/or assets; or (7) had or suffered proceedings being commenced (voluntarily or involuntarily) for the liquidation, dissolution or winding up of itself ("**Default**"),

and that to the officer's knowledge, the Beneficiary will not suffer Default within a year following the date of the certificate of the officer.

On receipt of the Tribunal's written direction or order, and the certificate of an officer of the Beneficiary, the Trustee shall release the requested funds to it.

5.07 Release of Funds to a Third Party

The Trustee may release funds that are held in accordance with this Trust Agreement to any third party for the purposes of funding the discharge of the Reclamation Obligations of a Beneficiary with respect to the Site on presentation of a written direction or an order from the Tribunal, with such direction or order confirming the amount to be disbursed from the Trust Fund, and the timing of the disbursement. On receipt of the written direction or order, the Trustee shall release the requested funds to the third party set out in the order or direction of the Tribunal.

5.08 Duties of the Trustee Regarding Release of the Requested Funds

The funds which are to be released in accordance with sections 5.06 and 5.07 shall be obtained by the Trustee calling in or redeeming certain investments which it holds in the Trust, provided that the Trustee shall only call in or redeem those investments after advising the Company of its decision.

5.09 Sale of the Pipeline or a Portion Thereof

Monies from the Fund may be released in accordance with this Trust Agreement upon the Tribunal's direction or order approving the sale, assignment, transfer or other disposition of the Pipeline or a portion thereof from the Company to another person pursuant to paragraphs 74(1)(a), (b) and (c) of the NEB Act, provided that such other person shall in writing assume the Reclamation Obligations of the Company. For greater certainty any such person shall be deemed to be a transferee or successor corporation pursuant to the provisions of section 1.11.

5.10 Books, Records and Accounts

- (a) 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 Fund, and shall provide the Company with the following, on or before the 15th Business Day following the last day of each month:
 - (i) statement of account or report showing all funds transferred to the Trustee during the immediately preceding month; and
 - (ii) statement of account or report showing all relevant information concerning the funds held by the Trustee including, without limitation, information detailing all investments made, reinvestment undertaken, investment income earned, and disbursement of funds during the immediately preceding month.

- (b) The Trustee shall provide the Company, within a reasonable period of time, with any other report or information that might be required by law to be disclosed by the Trustee and that is reasonably requested by the Tribunal or the Company.
- (c) The Trustee shall, on reasonable prior notice and during normal business hours, make available to and permit the officers, employees and authorized agents of the Tribunal or the Company and/or the auditors of the Company to inspect all books, records and accounts required to be maintained by the Trustee, in connection with this Trust Agreement or as required by law.
- (d) The Trustee shall not be obliged to provide any Beneficiary, other than the Company, with the statements and reports referenced in section 5.10 (a) and the access to books and records referenced in section 5.10 (b), unless the Trustee is otherwise advised by the Company or the Tribunal, provided that such advice must identify such Beneficiary with particularity.

5.11 Standard of Care

Subject to the provisions of section 5.12, in the exercise and discharge of its obligations and duties at law or hereunder, the Trustee shall act honestly and in good faith and shall:

- (a) Exercise that degree of care, diligence and skill that a reasonably prudent person functioning in the office of Trustee would exercise in comparable circumstances;
- (b) Comply with any and all applicable laws, rules and regulations in respect of the Trustee's dealing with, or handling of the Fund pursuant to the terms hereof; and
- (c) Be responsible for loss occasioned by reason of the failure of the Trustee to comply with its obligations at law or duties under this Trust, or its negligence or willful misconduct on the part of itself, its employees or officers.

5.12 Limitation on Trustee Liability

If a Prohibited Investment is made as a consequence of the issuer of the property being a Beneficiary, and the Trustee had not previously been advised in writing of the specific identity of the Beneficiary by the Company or by the Tribunal, the Trustee shall be exculpated from any liability of any kind whatsoever, inclusive of but not limited to income tax liabilities, that may arise from that Prohibited Investment.

If the Trustee exercises any of its authorities under the terms of this Trust Agreement on the approval of or the direction of the Tribunal, all actions of the Trustee in connection with such exercises of its authorities shall be deemed to satisfy the standard of care expressed in section 5.11 (a).

5.13 Appointment of Agents

- (a) The Trustee may appoint such agents and employ or retain such legal counsel, accountants, appraisers or other experts or advisors as may be reasonably required

for the purpose of discharging its duties hereunder and shall not be responsible for any misconduct on the part of any of them except as provided in section 5.11(c). The Trustee may pay out of the Fund reasonable remuneration for all services performed for it in the discharge of its duties hereunder without taxation for costs or fees of any counsel, solicitor or attorney, including solicitor fees on a solicitor and own client basis.

- (b) Provided the agent was properly appointed by the Trustee in accordance with section 5.11, the Trustee may act in good faith on the opinion or advice of, or information obtained from, any agent, legal counsel, accountant, appraiser or other expert of advisor retained or employed by it, in relation to any matter arising in the performance of its duties under this Trust Agreement.

5.14 Safekeeping of Funds

So far as is allowed by law, the Trustee shall control and hold in Trust, in such form and manner as may be necessary to impress a Trust thereon as against any creditor or creditors of the Beneficiaries, all funds held pursuant to the terms hereof until such funds are disbursed or otherwise dealt with in accordance with the terms and conditions of this Trust Agreement.

5.15 Decision to Act or Not Act

The Trustee shall retain the right not to act and shall not be held liable for refusing to act unless it has received clear documentation which complies with the terms of this Trust Agreement. Such documentation must not require the exercise of any discretion or independent judgment on the part of the Trustee.

5.16 Trustee Not to Expend Own Funds

None of the provisions contained in this Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

ARTICLE 6: REMUNERATION AND EXPENSES OF THE TRUSTEE

6.01 Trustee's Fees and Expenses of the Trustee

The Trustee shall be entitled to remuneration for its services hereunder as may be agreed to from time to time by the Company and the Trustee. The remuneration payable to the Trustee shall be paid out of the Fund to the Trustee. The Trustee is also entitled to be reimbursed out of the Fund for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration of its duties hereunder (including, without limitation, legal fees and expenses on a solicitor and own client basis and the reasonable compensation and disbursements of all other advisers, agents or experts employed or retained pursuant to this Trust Agreement), provided that the Trustee shall first deliver to the Company true copies of all invoices, statements or receipts in relation thereto or in evidence thereof.

6.02 Payment of Trustee Fees

In the event the Trust becomes liable to or subject to any fees or other amounts due to the Trustee pursuant to Section 6.01 hereof, the Trustee shall be entitled to withdraw monies from the Fund to pay such fees or other expenses without prior approval or instruction of the Tribunal.

6.03 Payment by the Trustee of Taxes

The Trustee shall prepare the annual income tax return for the Trust, provide the Company with a copy of the return and file the same with the appropriate taxing authority or authorities on a timely basis. In the event the Trust becomes liable to or subject to any taxes under the Income Tax Act or otherwise, the Trustee shall be entitled to make payment of such taxes out of the Fund to the appropriate taxing authority or authorities without prior approval or instruction of the Tribunal.

ARTICLE 7: INDEMNIFICATION OF THE TRUSTEE

7.01 Indemnity

In addition to and without limiting any other protection of the Trustee hereunder or otherwise by law, the Company shall indemnify and hold the Trustee harmless from any and all liabilities, losses, claims, damages, penalties, actions, suits, demands, levies, costs, expenses and disbursements including any and all reasonable legal and adviser fees and disbursements of whatever kind of nature including legal fees on a solicitor and own client basis which may at any time be suffered by, imposed on, incurred by or asserted against the Trustee, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee in connection with its acting as Trustee hereunder, unless the claim arises from conduct of the Trustee that fails to comply with the Trustee's obligations at law or under this Trust Agreement including, without limitation, the provisions of section 5.11 hereof, or otherwise from the negligence or willful misconduct on the part of the Trustee, its employees, or officers. Notwithstanding any other provision hereof, this indemnity shall survive the removal, or resignation of the Trustee, and termination of this Trust Agreement.

ARTICLE 8: AMENDMENT AND TERMINATION OF THE TRUST

8.01 Amendment

The Company and the Trustee may agree to amend the terms of the Trust, including the terms of this Agreement. No amendment to the terms of the Trust and the terms of this Trust Agreement are binding or effective unless the Tribunal approves the amendment.

8.02 Trust Irrevocable

The Trust, and the schedules thereto, which are hereby incorporated into the Trust, may not be revoked by the Settlor. For greater certainty none of the Company or Beneficiaries acting as a whole, or the Trustee may revoke the Trust.

ARTICLE 9: NOTICES

9.01 Acting on Written Notice

The Trustee shall not incur liability for acting upon any written notice, request, consent, certificate, receipt, affidavit, statutory declaration or other paper or document furnished to it by or on behalf of any person authorized to do so by the terms of this Trust Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the verity of any information therein contained, provided the Trustee is acting properly and reasonably in accepting the representations made to it.

9.02 Mode of Giving Notice

Any notice or other document required to be given or delivered hereunder will be valid and effective if given by registered letter (postage prepaid), courier, by personal delivery or by fax addressed by the party to whom such notice is to be given, and will be deemed to have been effectively delivered on:

- (a) the date of actual delivery, if couriered or personally delivered during normal business hours of the party to whom such notice is delivered (and if not, on the next following Business Day); or
- (b) the first Business Day following the date of the fax, if faxed; or
- (c) on the fifth Business Day after effectual posting, if sent by mail.

9.03 Trustee Communication

Notwithstanding any other provision of this Trust Agreement, in respect of all notices and other communications to the Trustee (each a "Trustee Communication") the Trustee need not act upon any Trustee Communication until it has received an original of such Trustee Communication, and the Trustee shall have the right to refuse to do or not to do anything required to be done or not done pursuant to such Trustee Communication received by the Trustee until the Trustee receives the original Trustee Communication.

9.04 Addresses of the Parties

The addresses of the parties for purposes of this section shall be as follows, but may be changed by any party by the delivery of notice of such change in accordance with the notice requirements hereof:

Trans-Northern Pipelines Inc./Pipelines Trans-Nord Inc.
45 Vogell Road, Suite 310
Richmond Hill, Ontario L4B 3P6
Attention: Mr. M. Speagle, Manager Business Services & Secretary-Treasurer

Royal Trust Corporation of Canada
155 Wellington Street West, 20 Floor
Toronto, Ontario M5V 3K7
Attention: Senior Trust Advisor

or to any other address notified by any party to the other parties.

9.05 Address of the Tribunal

Any notice or other document required to be given or delivered to the Tribunal shall be addressed to:

Secretary
National Energy Board
517 —10th Avenue S.W.
Calgary, Alberta, T2R 0A8

ARTICLE 10: MISCELLANEOUS

10.01 Assignment and Enurement

This Trust Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. Subject to the provisions of this Trust Agreement, no party may assign this Trust Agreement or any benefits or obligations hereunder without the approval of the Tribunal.

10.02 Applicable Law

This Trust Agreement (and any amendments hereto) shall be governed by the Governing Law and the laws of Canada applicable therein.

10.03 Entire Agreement and Amendment

For greater certainty, this Trust Agreement represents the entire agreement amongst the parties respecting the Trust, and supersedes all prior discussions, agreements and understandings of every kind and nature amongst them.

10.04 Right to disclose

The Trustee shall have the right to disclose any information disclosed or released to it if in the opinion of the Trustee, or its legal counsel, it is required to disclose under any applicable laws, court order or administrative directions. The Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred relating to such disclosure.

10.05 Merger, Consolidation, Amalgamation

Any company with which the Trustee may be merged, consolidated or amalgamated will become the successor Trustee hereunder without any further action on the part of the Trustee.

10.06 Review of Agreement

This Trust Agreement, and more particularly the Fund, with respect to the capacity of the Fund on a projected basis to discharge the estimated Reclamation Obligations, may be reviewed by the parties and the Tribunal every five (5) years, or earlier if directed by the Tribunal.

[This space intentionally left blank; execution page to follow.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first set forth above.

**TRANS-NORTHERN PIPELINES
INC./PIPELINES TRANS-NORD INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

**ROYAL TRUST CORPORATION OF
CANADA**

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE “A”

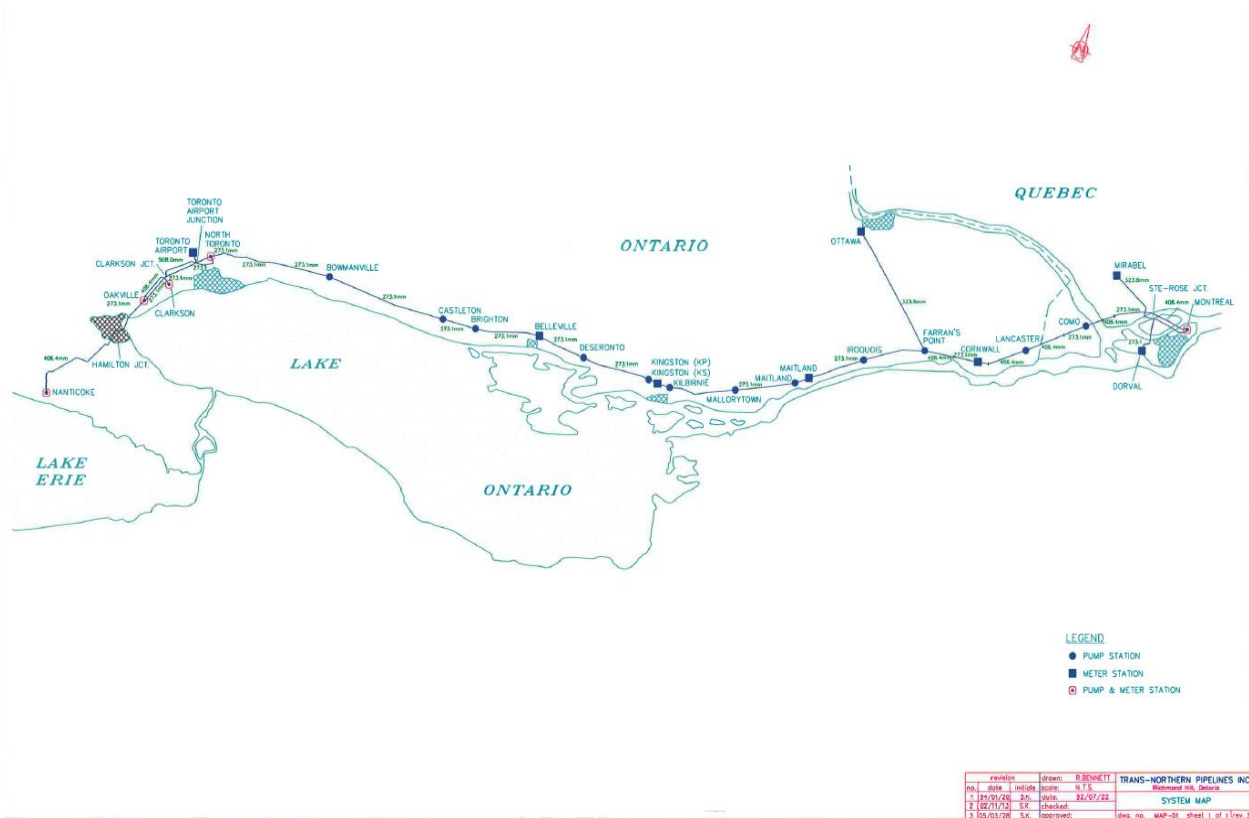
I. Description of Trans-Northern Operations

Trans-Northern Pipelines Inc. operates a 850 kilometer refined petroleum products transmission pipeline system in southern Ontario and Quebec. The pipe line system runs between Montreal, Quebec and Nanticoke, Ontario with laterals to Trudeau Airport in Quebec and Pearson Airport and Ottawa in Ontario. This interprovincial pipeline system is subject to regulation by the National Energy Board of Canada (NEB). Construction, operation and maintenance of the pipeline are in accordance with the NEB Act, the Onshore Pipeline Regulations, CSA Z662-11, the Pipeline Crossing Regulations, and other applicable regulations, codes, and standards.

The pipeline system transports refined products from refineries located in Nanticoke and Mississauga, Ontario and Montreal East, Quebec, to terminals located in Oakville, North Toronto, Belleville, Kingston, Maitland and Ottawa, Ontario. Jet fuel is also delivered to terminals located at Pearson Airport in Ontario and Trudeau International Airport in Quebec.

To move product, Trans-Northern operates pump stations at Nanticoke, Oakville, Clarkson, North Toronto, Bowmanville, Castleton, Brighton, Deseronto, Kingston, Kilbirnie, Mallorytown, Maitland, Iroquois, Farran’s Point, and Lancaster, Ontario, and at Como and Montreal East, Quebec. There are a number of line segmentation (block or check) valves along the continuous pipeline system, and junctions for pipeline laterals in Hamilton, Mississauga (Clarkson), Etobicoke (Toronto Airport), North York (North Toronto and Old Cummer), Morrisburg (Farran’s Point), and Laval (Ste-Rose).

II. Trans-Northern Pipeline Map



III. NEB Orders

Location	Leave to Open
Montreal to Ste-Rose Junction	OPLO-2-17-72
Ste-Rose Junction to Dorval	OPLO-2-10-69
Ste-Rose Junction to Mirabel	OPLO-T2-7-75
Farran's Point to Ottawa (Ottawa Lateral)	OPLO-2-14-73
	OPLO-T2-2-81
	OPLO-2-13-68
	AO-1-OPLO-T2-38-76
	OPLO-2-14-68
Montreal to Kingston	NEB OC-3-1961
	OPLO-T002-11-2004
	NEB OC-3-1961
	OPLO-T002-07/09/10-2004
	NEB OC-3-1961
	OPLO-T002-08-2004
	OPLO-T002-02-2005
	NEB OC-3-1961
OPLO-T2-3-74	
Hamilton Junction to Nanticoke	OPLO-T2-33-78
Clarkson Lateral	MO-60-86
Toronto Lateral	MO-16-73
Clarkson to Oakville	OPLO-T2-7-79
Toronto Airport Junction to Clarkson	OPLO-T2-2-75
Toronto Airport Lateral	OPLO-2-16-71
Kingston to Hamilton	NEB OC-3-1961
	OPLO-T2-3-74
	OPLO-T2-33-78
	AO-1-MO-3-78
	MO-60-86
	MO-32-63
	NEB OC-3-1961
Nanticoke to Toronto Airport Junction	OPLO-T2-15-88
	OPLO-T2-4-77

SCHEDULE “B”

The relevant paragraphs of the definition of “qualified investment” in section 204 currently read as follows:

- (a) money (other than money the fair market value of which exceeds its stated value as legal tender in the country of issuance or money that is held for its numismatic value) and deposits (within the meaning assigned by the *Canada Deposit Insurance Corporation Act* or with a branch in Canada of a bank) of such money standing to the credit of the trust,
- (b) debt obligations described in paragraph (a) of the definition “fully exempt interest” in subsection 212(3) [*being a bond, debenture, note, mortgage, hypothecary claim or similar debt obligation*]
 - (i) *of or guaranteed (otherwise than by being insured by the Canada Deposit Insurance Corporation) by, the Government of Canada,*
 - (ii) *of the government of a province,*
 - (iii) *of an agent of a province,*
 - (iv) *of a municipality in Canada or a municipal or public body performing a function of government in Canada,*
 - (v) *of a corporation, commission or association to which any of paragraphs 149(1)(d) to (d.6)¹ applies or*

¹ The relevant paragraphs read as follows:

(d) **[corporations owned by the Crown]** — a corporation, commission or association all of the shares (except directors’ qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;

(d.1) **[corporations 90% owned by the Crown]** — a corporation, commission or association not less than 90% of the shares (except directors’ qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a Province;

(d.2) **[wholly-owned [by Crown corporation] corporations]** — a corporation all of the shares (except directors’ qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or paragraph (d) applies for the period;

(d.3) **[90% [Crown] owned corporations]** -- a corporation, commission or association not less than 90% of the shares (except directors’ qualifying shares) or of the capital of which was owned by:

(i) one or more persons each of which is Her Majesty in right of Canada or a Province or a person to which paragraph (d) or (d. 2) applies for the period, or

(ii) one or more municipalities in Canada in combination with one or more persons each of which is Her Majesty in right of Canada or a Province or a person to which paragraph (d) or (d. 2) applies for the period;

(d.4) **[combined [Crown] ownership]** -- a corporation all of the shares (except directors’ qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or any of paragraphs (d) to (d.3) applies for the period;

(d.5) **[[municipally-owned corporation earning] income with boundaries of entities]** — subject to subsections (1.2) and (1.3), a corporation, commission or association not less than 90% of the capital of which was owned by one or more entities each of which is a municipality in Canada, or a municipal or public body performing a function of government in Canada, if the income for the period of the corporation, commission or association from activities carried on outside the geographical boundaries of the municipalities does not exceed 10% of its income for the period;

(d.6) **[subsidiaries of municipal corporations]** -- subject to subsections (1.2) and (1.3), a particular corporation all of the shares (except directors’ qualifying shares) or of the capital of which was owned by one or more

- (vi) *of an educational institution or a hospital if repayment of the principal amount of the obligation and payment of the interest is to be made, or is guaranteed, assured or otherwise specifically provided for or secured by the government of a province],*
- (c) debt obligations issued by
 - (i) a corporation, mutual fund trust or limited partnership the shares or units of which are listed on a designated stock exchange in Canada,²
 - (ii) a corporation the shares of which are listed on a designated stock exchange outside Canada,³ or
 - (iii) an authorized foreign bank⁴ and payable at a branch in Canada of the bank,

entities (referred to in this paragraph as “qualifying owners”) each of which is a corporation, commission or association to which paragraph (d.5) applies, a corporation to which this paragraph applies, a municipality in Canada, or a municipal or public body performing a function of government in Canada, if no more than 10% of the particular corporation’s income for the period is from activities carried on outside

(i) if a qualifying owner is a municipality in Canada, or a municipal or public body performing a function of government in Canada, the geographical boundaries of each such qualifying owner,

(ii) if paragraph (d.5) applies to a qualifying owner, the geographical boundaries of the municipality, or municipal or public body, referred to in that paragraph in its application to each such qualifying owner, and

(iii) if this paragraph applies to a qualifying owner, the geographical boundaries of the municipality, or municipal or public body, referred to in subparagraph (i) or paragraph (d.5), as the case may be, in their respective applications to each such qualifying owner.

² A “designated stock exchange” is defined in subsection 248(1) of the Tax Act as a stock exchange, or that part of a stock exchange, for which a designation by the Minister of Finance under Section 262 of the Tax Act is in effect. Section 262 gives the Minister the authority to designate a stock exchange or part thereof for the purposes of the Act. Pursuant to subsection 262(4) of the Tax Act, the Minister of Finance is required to post on the internet website of the Department of Finance or by any other means considered appropriate, the names of the stock exchanges or parts thereof that are designated under Section 262. The current list can be found at <http://www.fin.gc.ca/act/fim-imf/dse-bvd-eng.asp>. In Canada, the designated stock exchanges include the Canadian National Stock Exchange (CNSX), the Montreal Exchange, the TSX Venture Exchange (Tiers 1 and 2) and the Toronto Stock Exchange.

³ *Ibid.* The Department of Finance website referred to also includes the list of designated stock exchanges outside Canada.

⁴ An “authorized foreign bank” is defined in subsection 248(1) of the Tax Act as having the meaning in Section 2 of the *Bank Act* (Canada), being “a foreign bank that is the subject of an order under subsection 524(1)”. Subsection 524(1) states that on application by a foreign bank, the Minister may make an order permitting the foreign bank to establish a branch in Canada to carry on business in Canada under Part XII.1 of the *Bank Act* (Canada). The definition of “foreign bank” is found in Section 2 of the *Bank Act*. It reads:

“foreign bank”, subject to Section 12, means an entity incorporated or formed by or under the laws of a country other than Canada that

is a bank according to the laws of any foreign country where it carries on business, (b) carries on a business in any foreign country that, if carried on in Canada, would be, wholly or to a significant extent, the business of banking, (c) engages, directly or indirectly, in the business of providing financial services and employs, to identify or describe its business, a name that includes the word “bank”, “banque”, “banking” or “bancaire”, either alone or in combination with other words, or any word or words in any language other than English or French corresponding generally thereto, (d) engages in the business of lending money and accepting deposit liabilities transferable by cheque or other instrument, (e) engages, directly or indirectly, in the business of

- (c.1) debt obligations that meet the following criteria, namely,
- (i) any of
 - (A) the debt obligations had, at the time of acquisition by the trust, an investment grade rating with a prescribed credit rating agency,⁵
 - (B) the debt obligations have an investment grade rating with a prescribed credit rating agency,⁶ or,
 - (C) the debt obligations were acquired by the trust in exchange for debt obligations that satisfied the condition in clause (A) and as part of a proposal to, or an arrangement with, the creditors of the issuer of the debt obligations that has been approved by a court under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act*, and
 - (ii) either
 - (A) the debt obligations were issued as part of a single issue of debt of at least \$25 million, or,
 - (B) in the case of debt obligations that are issued on a continuous basis under a debt issuance program, the issuer of the debt obligations had issued and outstanding debt under the program of at least \$25 million,
 - (d) securities (other than futures contracts or other derivative instruments in respect of which the holder's risk of loss may exceed the holder's cost) that are listed on a designated stock exchange,⁷ and
 - (e) guaranteed investment certificates issued by a trust company incorporated under the laws of Canada or of a province.

The definition of “prohibited investment” in subsection 211.6(1) reads as follows:

“prohibited investment”, of a trust at any time, means a property that

providing financial services and is affiliated with another foreign bank, (f) controls another foreign bank, or (g) is a foreign institution, other than a foreign bank within the meaning of any of paragraphs (a) to (f), that controls a bank incorporated or formed under this Act,

but does not include a subsidiary of a bank named in Schedule I as that Schedule read immediately before the day section 184 of the *Financial Consumer Agency of Canada Act* comes into force, unless the Minister has specified that subsection 378(1) no longer applies to the bank.

⁵ Pursuant to regulation 4900(2) of the *Income Tax Regulations* (Canada), the following are prescribed credit rating agencies for the purposes of section 204: A.M. Best Company Inc.; DBRS Limited; Fitch, Inc.; Moody's Investors Service Inc.; and Standard & Poor's Financial Services LLC.

⁶ Ibid.

⁷ *Supra* note 2.

- (a) at the time it was acquired by the trust, was described by any of paragraphs (c), (c.1) or (d) of the definition “qualified investment” in section 204; and
- (b) was issued by
 - (i) a person or partnership that has contributed property to, or that is a beneficiary under, the trust,
 - (ii) a person that is related to, or a partnership that is affiliated with, a person or partnership that has contributed property to, or that is a beneficiary under, the trust, or
 - (iii) a particular person or partnership if
 - (A) another person or partnership holds significant interest (within the meaning assigned by subsection 207.01(4) with any modifications that the circumstances require)⁸ in the particular person or partnership, and
 - (B) the holder of that significant interest has contributed property to, or is a beneficiary under, the trust.

⁸ Subsection 207.01(4) reads:

(4) **[Significant interest]** — An individual has a significant interest in a corporation, partnership or trust at any time if

- (a) in the case of a corporation, the individual is a specified shareholder of the corporation at that time [...];
- (b) in the case of a partnership, the individual, or the individual together with persons and partnerships with which the individual does not deal at arm’s length, holds at that time interests as a member of the partnership that have a fair market value of 10% or more of the fair market value of the interests of all members in the partnership; and
- (c) in the case of a trust, the individual, or the individual together with persons and partnerships with which the individual does not deal at arm’s length, holds at that time interests as a beneficiary (in this paragraph, as defined in subsection 108(1)) under the trust that have a fair market value of 10% or more of the fair market value of the interests of all beneficiaries under the trust.

APPENDIX “2”

**BLACKLINE COMPARISON OF
PROPOSED TRUST AGREEMENT VS. MODEL TRUST AGREEMENT**

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Model

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Trust Agreement

THIS TRUST AGREEMENT made as of the <@> day of <@>, 2014.

BETWEEN:

TRANS-NORTHERN PIPELINES INC./PIPELINES TRANS-NORD INC., a body corporate duly constituted under the Canada Business Corporations Act,

(the “Settlor”)

AND:

~~[NAME OF TRUST COMPANY]~~ Royal Trust Corporation of Canada, a licensed trust company incorporated under * with an office located in the City of ~~XX~~ Toronto, in the Province of ~~fenter city and Province where Trustee is located~~ Ontario,
~~fabbreviated name of trust company~~

AND:

~~[NAME OF NEB REGULATED PIPELINE COMPANY SETTLING AND CONTRIBUTING TO THE TRUST]~~, a corporation incorporated under ~~fspecify what what laws the company is incorporated under~~;
~~fabbreviated name of pipeline company~~
(the “Original Trustee”)

RECITALS

WHEREAS ~~fabbreviated name of pipeline company~~ the Company (as hereinafter defined), holds the regulatory authorization allowing it to operate the pipeline described in Schedule “A” to this ~~trust agreement~~ Trust Agreement;

AND WHEREAS ~~fabbreviated name of pipeline company~~ the Company is subject to regulation by the National Energy Board under the *National Energy Board Act* (Canada) ~~for the Canada Oil and Gas Operations Act, if applicable~~;

AND WHEREAS on 26 May 2009 the National Energy Board issued the RH-2-2008 Reasons for Decision, which required ~~each person holding an authorization to operate a pipeline under the National Energy Board Act (Canada) or the Canada Oil and Gas Operations Act (Canada)~~ the Company 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;

AND WHEREAS on 12 March 2013, the National Energy Board issued the MH-001-2013 Hearing Order, establishing how it would consider each set-aside mechanism proposed;

AND WHEREAS on ~~XX, May 5, 2014,~~ the National Energy Board ordered ~~insert~~ ~~abbreviated name of the pipeline company]~~ the Company to set aside funds using a trust structure to pay for the reclamation obligations in respect of the sites in Canada used by ~~abbreviated name of the pipeline company]~~ the Company for the operation of the pipeline described on Schedule "A" to this ~~trust agreement~~ Trust Agreement;

AND WHEREAS in satisfaction of the requirements imposed by the National Energy Board, ~~abbreviated name of the pipeline company]~~ Company has created ~~a trust~~ this Trust the ~~fund~~ Fund of which ~~(as hereinafter defined)~~ will be used to accumulate funds to ~~meet~~ satisfy the discharge of its reclamation obligations for the sites in Canada used by ~~abbreviated name of the pipeline company]~~ the Company for the operation of the pipeline described on Schedule "A" to this ~~agreement~~ Trust Agreement;

AND WHEREAS ~~abbreviated name of the trust company]~~ the Trustee has agreed to hold the ~~reclamation funds~~ Fund (as hereinafter defined) in accordance with the terms and conditions of this ~~trust agreement~~ Trust Agreement;

NOW, THEREFORE, THIS TRUST AGREEMENT WITNESSETH that in consideration of the promises and of the mutual covenants herein contained, it is hereby mutually covenanted, agreed and acknowledged by and between the parties hereto that any property contributed by ~~abbreviated name of the pipeline company]~~ to ~~abbreviated name of the trust company]~~ Company to the Trustee under this ~~trust agreement~~ Trust Agreement shall be held by ~~abbreviated name of the trust company]~~ in trust on the terms set out herein.

Article 1: INTERPRETATION

1.01 Article DEFINITIONS

~~1.01 In this trust agreement, the following words or phrases~~

In this Trust Agreement, unless the subject matter or context otherwise requires, the following terms shall have the following meanings:

- (a) "Abandon" and "Abandonment" have the meaning set out in the definition of "abandon" in the *Onshore Pipeline Regulations* (Canada), ~~as amended from time to time~~;
- (b) ~~"Agreement" means this instrument, as amended from time to time, which instrument is the vehicle for the trust here created;~~
- (c) ~~"Annual Contribution Amount"~~

~~[Insert definition if the pipeline company is collecting money through a toll surcharge.]~~

(b) **“Annual Contribution Amount”** means the annual amount collected annually by the Company to pay for the future costs to Abandon the pipeline described in Schedule “A” to this Agreement Pipeline;

~~(c) [If amounts for pipeline abandonment are recovered through a line item in the pipeline company’s revenue requirement, or are self-funded, then strike this definition and do not use it in section 2.02 of this Agreement.]~~

(d) **“Beneficiary” and “Beneficiaries”** mean,

~~(d) **“Beneficiary” and “Beneficiaries”** mean the person or persons, including the “company(i) the “Company” (as hereinafter defined hereafter), having, while entitled to benefit from the “fundFund” (as hereinafter defined hereafter), “reclamation obligations), “Reclamation Obligations” (as hereinafter defined hereafter),) in respect of the “siteSite” (as hereinafter defined hereafter); and~~

(ii) any Person (as hereinafter defined) who is contractually obligated to perform or discharge any of the Reclamation Obligations of the Company in respect of the Site and for greater certainty any such Person shall only be entitled to receive distributions from the Fund to perform or discharge such Reclamation Obligations;

(e) ~~(e)~~ **“Business Day”** means any day except a Saturday, Sunday or a statutory holiday in the Province of ~~[Enter province]~~ Ontario;

(f) ~~(f)~~ **“Company”** means ~~the person holding the regulatory authorization(s) for the time being to operate the pipeline described in Schedule “A” to this Agreement~~ Trans-Northern Pipelines Inc./Pipelines Trans-Nord Inc., provided for greater certainty that Trans-Northern Pipelines Inc./Pipelines Trans-Nord Inc. holds the regulatory authorizations to operate the Pipeline;

(g) ~~(g)~~ **“Company’s Notice of Termination”** has the meaning set out in section ~~3.04~~ 4.04 of this Trust Agreement;

(h) ~~(h)~~ **“Deactivate” and “Deactivation”** mean the same thing as the definition of **“deactivate”** in the *Onshore Pipeline Regulations* (Canada), ~~as amended from time to time;~~

(i) ~~(i)~~ **“Decommission” and “Decommissioning”** mean the same thing as the definition of **“decommission”** set out in the *Onshore Pipeline Regulations* (Canada), ~~as amended from time to time;~~

(j) ~~(j)~~ **“Default”** has the meaning set out in section ~~4.05~~ 5.06 of this Trust Agreement;

- (k) **“Effective Date”** means the * day of *, 2014;
- (l) **“Fund”** means ~~collectively~~ as of any particular time, any and all assets of the Trust and any and all property, real, personal or otherwise, tangible or intangible, movable or immovable which has been transferred, conveyed or paid to, acquired or originated by, the Trust, including, without limitation, all of the rights, title and interest of the Trust in and to: (i) all amounts held from time to time by the ~~“trustee”~~; Trustee (as hereinafter defined hereafter); in accordance with this Trust Agreement, including any amounts paid to the “trustee” Trustee (as hereinafter defined hereafter) under any section/article of this Trust Agreement, and (ii) any- ~~interest or return from investing such amounts~~ all income, earnings, profits and gains therefrom and all proceeds deriving therefrom or related thereto and which at such time is owned or held by the Trust; but for greater certainty shall not include any amounts paid, released or distributed in accordance with the terms of this Trust Agreement;
- (m) **“Fund Property”** has the meaning set out in section ~~3.03~~ 4.03 of this Trust Agreement;
- (n) **“Governing Law”** means the law to which the rights of all parties and persons beneficially interested under this Trust shall be subject and which governs all matters of validity, construction, effect and administration of the trusts, powers and provisions of this Trust;
- (o) **“Income Tax Act”** means the Income Tax Act, R.S.C. 1985 (5th Supp.) c. 1;
- (p) ~~(m)~~ **“NEB Act”** means the National Energy Board Act (Canada), as amended- ~~from time to time;~~
- (q) ~~(n)~~ **“New Trust Fund”** has the meaning set out in section ~~2.05~~ 3.01 of this Trust Agreement- ~~(if applicable);~~
- ~~[This definition is to be removed if the law applicable to the trust is one which has abolished the rule against perpetuities.]~~
- (r) **“Initial Contribution”** means the sum of One Hundred Dollars (\$100) transferred by the Settlor to the Trustee, by cheque, for the purpose of constituting the Trust;
- (s) ~~(o)~~ **“Orphan Pipeline Fund”** means a not-for-profit organization to be established pursuant to a statute of the Parliament of Canada whose purpose includes paying for the cost to Abandon a pipeline constructed or operated under a statute of the Parliament of Canada;
- (t) **“Person”** includes an individual, body corporate, partnership, limited partnership, joint venture, trust or unincorporated organization, the Crown or any agency or instrumentality thereof, or any other entity recognized by law;

- (u) ~~(p)~~ “**Pipeline**” means the pipeline described in Schedule “A” to this Trust Agreement;
- (v) ~~(q)~~ “**Qualified Investments**” means all or any of those investments that from time to time are qualified investments for a “qualifying environmental trust” as defined in the Income Tax Act ~~(Canada)~~; and for greater certainty; such qualified investments on the date hereof include only those types of property described in paragraphs ~~enter the applicable paragraph numbers from section 204 of the Income Tax Act~~ (a), (b), (c), (c.1), (d) or (f) of the definition of “qualified investment” in section 204 of the said Income Tax Act that are not encompassed within the definition of “prohibited investment” in subsection 211.6(1) of the said Income Tax Act as more particularly set out in Schedule “B” (“**Prohibited Investment**”);
- (w) “**Qualifying Trust Company**” means a corporation resident in Canada that is licensed or otherwise authorized under the laws of Canada or a Province to carry on in those Provinces in which the Company operates the Pipeline the business of offering to the public its services as trustee;
- (x) ~~(r)~~ “**Reclamation Obligations**” means:
- (i) the duty to carry out the physical Abandonment, Decommissioning or Deactivation of the Pipeline, including costs incurred to satisfy any conditions imposed by the ~~tribunal~~ Tribunal (as hereinafter defined ~~hereafter~~) in any order or direction approving the Decommissioning or Deactivation of the Pipeline or granting leave to Abandon the Pipeline;
 - (ii) the duty to develop an Abandonment plan, and to prepare an application for leave to Abandon or for approval of the Deactivation or Decommissioning of the Pipeline; and
 - (iii) the duty to carry out post-abandonment monitoring and remediation of the ~~“site”~~ Site (as hereinafter defined ~~hereafter~~), where post-abandonment refers to the period of time after a Company has satisfied the conditions of an order or direction issued by the ~~tribunal~~ Tribunal (as hereinafter defined ~~hereafter~~) granting leave to Abandon;
- and all costs incurred and consequent thereon;
- (y) ~~(s)~~ “**Site**” means the location or locations in Canada used by a company for the operation of the Pipeline;
- (z) ~~(t)~~ “**Tax Act**” means ~~the Income Tax Act (Canada), as amended from time to time;~~ Termination Date shall have the meaning set out in section 2.05 of this Trust Agreement;

- (aa) ~~(t)~~ **“Tribunal”** means the National Energy Board, a board established under the NEB Act or any successor administrative body having authority to regulate the Company in respect of the operation and Abandonment of the Pipeline;
- (bb) **“Trust Agreement”** means this instrument, as amended from time to time, which instrument is the vehicle for the trust herein created;
- (cc) ~~(v)~~ **“Trust”** means the ~~relationship between a “trustee” (as defined hereafter) and a Beneficiary or Beneficiaries, including the obligations of the “trustee” (as defined hereafter) towards the Beneficiary or Beneficiaries both personal and with regard to the Fund, and the corresponding rights of a Beneficiary, whether those obligations and rights are created at law or by the terms of this Agreement;~~trust established by this Trust Agreement;
- (dd) ~~(w)~~ **“Trustee”** means ~~a trust company licenced under the *Trust and Loan Companies Act (Canada)* for the time being appointed under the Original Trustee or any replacement trustee appointed pursuant to the terms of this Trust Agreement to hold the office of trustee; and~~
- ~~(x) **“Trust Term” or “Term” shall have the meaning set out in section 2.05 of this Agreement.**~~

~~*[The definition of Trust Term is to be deleted if the law applicable to the trust is the law of a jurisdiction that has abolished the rule against perpetuities.]*~~

1.02 EXTENDED MEANINGS

In this Trust Agreement, words importing the singular number include the plural and vice versa and words importing gender include all genders.

1.03 RECITALS

The Recitals of this Trust Agreement shall form an integral part hereof.

1.04 HEADINGS

Articles and Section headings, and Table of Contents, are not to be considered part of this Trust Agreement, are included solely for convenience of reference and do not define, limit or enlarge the construction or interpretation hereof.

1.05 REFERENCES TO ARTICLES AND SECTIONS

Unless otherwise provided, all references herein to Articles or Sections are references to Articles and Sections of this Trust Agreement, respectively.

1.06 CURRENCY

All references to any sums of money in this Trust Agreement shall be interpreted as referring to Canadian dollars, unless otherwise specifically stated in this Trust Agreement.

1.07 REFERENCE TO STATUTES

Any reference in this Trust Agreement to any code, statute, regulation, official interpretation, directive or other legislative enactment of any Canadian or foreign jurisdiction (including any political subdivision thereof) shall be construed to include such code, statute, regulation, official interpretation, directive or enactment and each amendment, re-enactment, reissuance or replacement thereof made at or before the time in question.

1.08 GOVERNING LAW AND SITUS OF TRUST

The Trust shall have its situs in the Province of Ontario and the Governing Law shall be the Province of Ontario, and the laws of Canada applicable therein, provided that the Trustee, with the consent of the Company, may from time to time determine to transfer the situs of the Trust to another jurisdiction or to change the Governing Law.

1.09 INVALIDITY OF PROVISIONS

Save and except for any provision or covenant contained herein which is fundamental to the subject matter of this Trust Agreement (including, without limitation, those that relate to the payment of moneys), the invalidity or unenforceability of any provision or covenant hereof or herein contained will not affect the validity or enforceability of any other provision or covenant hereof or herein contained and any such **invalid or unenforceable** provision or covenant will be deemed to be severable.

1.10 REFERENCES TO ACTS OF THE TRUST

For greater certainty, where any reference is made in this Trust Agreement, or in any other instrument to which the Trust or the Trustee, as Trustee of the Trust, are party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Trust) or existence by or with respect to, (i) the Trust; or (ii) the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a proceeding taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Trust) by or with respect to, the Trustee as Trustee of the Trust.

1.11 REFERENCES TO TRANS-NORTHERN PIPELINES INC./PIPELINES TRANS-NORD INC.

If subsequent to the date of this Trust Agreement, Trans-Northern Pipelines Inc./Pipelines Trans-Nord Inc. changes its name, corporate structure, or transfers, assigns or sells its assets to any transferee or successor corporation, any reference in this Trust Agreement to Trans-Northern Pipelines Inc. shall extend to and include a reference to any new name of such corporation and any such transferee or successor corporation; it being the intention that the provisions contained in this Trust Agreement shall be effective regardless of any change in name, corporate structure or transfer, assignment or sale to a transferee or successor corporation by Trans-Northern Pipelines Inc./Pipelines Trans-Nord Inc., but only on condition that, and so long as such transferee or successor corporation holds the regulatory authorizations to operate the Pipeline.

Article 2: CREATION OF THE TRUST

2.01 Establishment of the Trust

The Settlor hereby declares its intention to establish the Trust for the benefit of the Beneficiaries, to be administered upon the terms and subject to the conditions set out in this Trust Agreement. The Settlor hereby further declares that the Trust shall be irrevocable.

The Settlor and Trustee acknowledge and agree that the Settlor has transferred the Initial Contribution to the Original Trustee, which the Original Trustee has accepted delivery of, for the purpose of settling and constituting the Trust.

The Trustee hereby agrees to act as trustee of the Trust established and governed pursuant to the terms of this Trust Agreement and agrees to hold the Fund for the benefit of the Beneficiaries of the Trust and to invest, dispose of and otherwise deal with the Fund upon the trusts, in the manner and subject to the provisions of this Trust Agreement.

In furtherance of the foregoing, the Company agrees to transfer to the Trustee, on an annual basis, an amount equivalent to the Annual Contribution Amount.

2.02 Purpose of the Trust

The purpose of this Trust is the funding of the Reclamation Obligations of the Company in respect of the Site.

2.03 ~~2.01~~ Qualifying Environmental Trust:

It is the express intention of the parties hereto for the Trust settled under this Trust Agreement to constitute a “qualifying environmental trust” as defined in subsection 211.6(1) of the Income Tax Act, as amended or replaced from time to time. This Trust Agreement shall be read and interpreted in light of and consistently with the definition ~~of~~ “qualifying environment trust” in the Income Tax Act, and the Company, Beneficiaries and Trustee shall ensure that no actions are taken which would jeopardize the status of this Trust as a “qualifying environmental trust”.

2.02 ~~The Trust: initial transfer and contributions~~

~~The Company settles the Fund irrevocably upon the Trustee, to be administered upon the terms and subject to the conditions set out in this Agreement. In furtherance of the foregoing, the Company agrees to transfer to the Trustee, on an annual basis, an amount equivalent to~~

~~*[Insert: (i) the Annual Contribution Amount (if using a surcharge); (ii) the dollar amount of the line item in the pipeline company's revenue requirement (if collecting funds through the revenue requirement); (iii) the annual amount determined pursuant to Appendix XIV of the M11-001-2013 Reasons for Decision (if self-funding on an annual basis); or (iv) the entire present value of the ACE (if self-funding upfront).]*~~

2.04 Annual Contribution of Company

The Company affirms its obligation as stated in section 2.01 to transfer annually to the Trustee the Annual Contribution Amount. The Trustee shall provide regular reminder notices to the Company regarding its annual contribution obligation, but otherwise shall have no responsibility to take any action toward the collection or the enforcement of the collection of such amounts.

2.05 ~~2.03~~ The Trust: discretionary as to two or more beneficiaries

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

~~2.04 The Trust: appropriation of surplus funds~~

2.06 Term of the Trust

- (a) This Trust shall commence on the Effective Date.
- (b) The Termination Date of the Trust shall be either,

(i) if the principle of law commonly referred to as the rule against perpetuities has been abolished by the Governing Law at any time subsequent to the establishment of this Trust and as a consequence thereof is no longer inapplicable to this Trust, or the rule against perpetuities is not applicable to this Trust for any other reason whatsoever, then this Trust Agreement shall have no specific term and shall continue until the Trustee is directed to terminate the Trust in writing by the Company, with the approval of the Tribunal, or

(ii) if the said rule against perpetuities has not been abolished by the Governing Law and is applicable to this Trust, this Trust Agreement shall terminate on that date which is the earlier of (A) the day which is sixteen years after the date of death of the last survivor of all the lineal descendants of Queen Elizabeth II who was alive on the date that this Trust is created and (B) the day upon which the Trustee is directed to terminate the Trust in writing by the Company, with the approval of the Tribunal,

as the case may be.

Article 3: TERMINATION OF THE TRUST

3.01 Termination prior to the discharge of the Reclamation Obligations

If the Termination Date occurs pursuant to the provisions of section 2.06 (b) (ii) (A) , then upon the Termination Date the Trustee shall pay and transfer the Fund to the Company. The Company covenants to forthwith following receipt of the Fund to create a new trust by settling the Fund on a trust which trust contains the same trusts, terms and conditions as are contained in this Trust Agreement except that the reference to ‘date that this Trust is created’ in section 2.06 (b) (ii) (A) shall be replaced by a reference to the date on which the new trust is created (the “New Trust Fund”).

3.02 Termination subsequent to the discharge of the Reclamation Obligations

If property remains in the Fund after all Reclamation Obligations of the ~~Beneficiaries~~Company with respect to the Site are discharged, then the Trustee, with the approval of the Tribunal, ~~may~~shall distribute the Fund ~~or any part thereof~~ among ~~any~~some one or more of the ~~Beneficiaries~~Company and Orphan Pipeline Fund, and in such proportions, as the Trustee in its ~~sole discretion sees fit~~absolute discretion determines. Subject to the consent of the Tribunal the Trustee may distribute the Fund exclusively to the Company.

2.05 The Trust: duration (or term) of the Trust

~~*[In the case where the jurisdiction selected has abolished the rule against perpetuities]: This Agreement shall have no specific term but shall commence on the date first mentioned above and shall continue until terminated in writing by the Company, with the approval of the Tribunal.*~~

~~OR~~

~~*[In the case where the jurisdiction selected has not abolished the rule against perpetuities]: This Agreement terminates (the “Trust Term”) no later than the expiration of 21 years after the date of death of the last surviving lineal descendent of Queen Elizabeth II who was alive on the date the Trust is created, or in the case of Ontario, Alberta, British Columbia, the Northwest Territories, the Yukon, and Nunavut, upon the expiration of the period permitted by the perpetuities or perpetuity legislation respectively of those jurisdictions. Not more than five years prior to the expiration of the Trust Term, and provided that the Company is not in Default, the Trustee shall pay the Fund to the Company, and the Company covenants upon receipt of the Funds,*~~

~~to establish, at once, a new irrevocable trust upon the terms and subject to the same conditions set out in this Agreement (“the New Trust Fund”), and to contribute to the New Trust Fund the entirety of the Fund.~~

Article 4: APPOINTMENT, RESIGNATION, AND REMOVAL OF A TRUSTEE

4.01 ~~3.01~~ Appointment

The Company has the power to appoint a Trustee, with the approval of the Tribunal. The Trustee, and any replacement Trustee, on accepting such appointment agrees to act as Trustee of the Fund in accordance with the terms and conditions of this Trust Agreement. The Trustee and any replacement Trustee must be a Qualifying Trust Company.

4.02 ~~3.02~~ Resignation

A Trustee desiring to resign the office shall in writing notify the Company 30 days prior to the intended resignation date and during this period the Company, as provided in section ~~3.01~~,4.01, shall appoint a replacement Trustee with the approval of the Tribunal. If a replacement trustee is not appointed within 60 days of the Trustee’s notice of resignation, the Trustee may apply to the court in the jurisdiction of the Governing Law to request an order for the appointment of a replacement trustee. The replacement Trustee shall take title or possession of the Fund and Fund Property without delay.

4.03 ~~3.03~~ Obligation of Trustee upon termination

Following termination of the Trustee’s appointment ~~and~~, subject to its rights hereunder, and pending the appointment of an interim or a successor Trustee, the Trustee shall continue to hold in trust:

- (a) the Fund; and
- (b) all documents, information, and books and records created, received or maintained by the Trustee which relate to or arise or have arisen in connection with the performance by the Trustee of its duties hereunder (collectively hereinafter referred to as the “**Fund Property**”).

4.04 ~~3.04~~ Removal

- (a) If the Company delivers a written notice (“**Company’s Notice of Termination**”) to the Trustee specifying the intent to terminate the appointment of the Trustee hereunder, then in such a circumstance, such appointment shall terminate on the 30th day following the date that the Company’s Notice of Termination was received (or was deemed to have been received) by the Trustee.
- (b) A Trustee shall cease to hold the office of Trustee if convicted of an offence involving dishonest conduct, becomes insolvent with the appointment of a receiver or is in bankruptcy proceedings, or being a corporation that is dissolved or in liquidation or ceases to be a Qualifying Trust Company. With the approval

of the Tribunal the Company shall appoint an interim corporate Trustee ~~regulated under the Trust and Loan Companies Act (Canada), as amended from time to time~~ who is a Qualifying Trust Company. The predecessor Trustee, upon receipt of payment for any outstanding amount for its services and expenses then unpaid, shall transfer, deliver and pay over to such successor Trustee, the Fund and all Fund Property on deposit with or in the possession of such predecessor Trustee hereunder. The interim Trustee will take title to the Trust Fund, and take possession of all assets deposited with the predecessor Trustee, and secure the same. The interim Trustee is entitled to call for and receive all Trustee contributions that are due, accounting to a permanent replacement Trustee when such is appointed.

Article 5: THE DUTIES AND POWERS OF THE TRUSTEE

5.01 ~~4.01~~ Responsibilities of the Trustee

The duties and obligations of the Trustee shall be determined solely by the law and the provisions of this Trust Agreement, and accordingly the Trustee shall be responsible only for the performance of such duties and obligations.

5.02 ~~4.02~~ Trustee Receipt of Funds

- (a) The Company may, from time to time, deliver or cause to be delivered to the Trustee funds constituting regular contributions, and all such funds so delivered shall be received by the Trustee and held in a trust account upon the terms and conditions herein set forth, only to be disbursed or dealt with in accordance with the terms hereof.
- (b) The Trustee shall be solely responsible for all funds delivered to it.

5.03 ~~4.03~~ Investment of Fund

- (a) The Trustee will invest and maintain the Fund invested in ~~authorized (or qualified) investments for qualifying environmental trusts under the terms of the Tax Act~~ Qualified Investments.
- (b) The Trustee will have and be vested with the power to retain, invest or reinvest, any cash, funds or property constituting the whole or any part of the Fund in Qualified Investments that the Trustee will in its absolute discretion consider advisable including, without limitation, any Qualified Investments that are deposits, investment products or obligations issued or administered by the Trustee or its affiliates, or by any one of more of its affiliates or subsidiaries, notwithstanding that such investments may not be investments authorized by law for trustees or that it may be considered a delegation of its investments duties.

~~Optional, to be used if a delegate of trustee does investing:~~

The Trustee is authorized to delegate investment to a manager, and thereto the Trustee may appoint and retain ~~fenter name of trustee affiliate~~ Royal Trust Corporation of Canada, or any of its affiliates, related parties or subsidiaries, or any successors thereof (each "an Affiliate" and collectively "Affiliates"), or any corporation with which ~~fname of affiliate~~ an Affiliate has amalgamated or as a result of any reorganization has become a part thereof, to assist in the investment and reinvestment of the Fund, and to exercise any powers or functions relating to the investment and reinvestment of such assets in such manner, on such terms and conditions, and for such remuneration payable from the Trust, as the Trustee, in the Trustee's absolute discretion, considers advisable, and as the Trustee shall specify in writing, including, without limitation, the power at any time and from time to time to choose, acquire, dispose of or change any such investments or reinvestments and to sub-delegate to another any such powers or functions so conferred on it by the Trustee. Subject to section ~~4.105.11~~ 4.105.11 of this Trust Agreement, the Trustee is hereby further authorized to act on the opinion, advice or information obtained from ~~fname of affiliate~~, ~~or from any such affiliate, subsidiary or successor as hereinbefore described~~ an Affiliate, and shall not be responsible for any loss occasioned by so acting or by not so acting as the case may be, nor shall the Trustee be responsible nor incur any liability for any loss that may be occasioned by any investment decision or delegation of investment decisions authorized herein and made by the Trustee, ~~by [fname of affiliate], by any such affiliate, subsidiary or successor, or by any such sub-delegate~~ or by an Affiliate.

~~Optional, to be used if affiliate of trustee does investing:~~ In conferring on the Trustee the authority herein described, it is acknowledged that ~~fname of affiliate~~ each Affiliate is affiliated with the Trustee and that such appointment may be made by the Trustee irrespective of any such relationship between them.

~~Optional, to be used if affiliate of trustee does investing:~~ The Trustee is further authorized, at any time, to terminate such retainer and to appoint and retain any person or corporation, other than ~~fname of affiliate~~ an Affiliate to assist in the investment and reinvestment of the Fund, including, without limiting the generality of the foregoing, any such person who is employed by, or any such corporation which is an affiliate or subsidiary of, ~~fname of affiliate~~ an Affiliate or the Trustee, or a successor hereof, and so on, from time to time, and the terms hereof shall apply, with necessary modifications, to any such other person or corporation so appointed the Trustee.

- (c) The Trustee may deposit assets of the Fund, including cash, in or with Royal Trust Corporation of Canada, any financial institution affiliated or related to the Trustee, or any agent of or advisor to the Trustee (collectively, "Authorized Depositories") notwithstanding that any of the Authorized Depositories may benefit therefrom, and the Authorized Depositories shall not be required to account for, or to give up, any such benefit. For greater certainty, it shall not be improper for the Trustee to deposit moneys or custody the assets of the Fund with Royal Trust Corporation of

Canada or its affiliated, subsidiary, holding or related companies, notwithstanding any benefit realized as a result, including retaining a profit in excess of interest paid (if any) on, or fees payable to any affiliated or related companies in respect of, such deposit or custody arrangement.

- (d) The Trustee may invest in Qualified Investments of (in any form of property offered for purchase as an investment by) the Trustee or an agent of or advisor to the Trustee, including Royal Trust Corporation of Canada or any affiliated, subsidiary, holding or related company or companies of any of the Trustee or any agent or advisor to the Trustee, notwithstanding that the Trustee and/or the Trustee's agent or advisor may benefit therefrom; and the Trustee shall not be required to account for, or to give up, any such benefit.
- (e) To assist the Trustee in making investments that are Qualified Investments and more particularly are not Prohibited Investments the Company shall forthwith provide the Trustee with a listing of all Persons who are related to or affiliated with the Company, and shall provide the Trustee with an amended list within a reasonable time of the addition of any Person who is related to or affiliated with the Company.
- (f) ~~(e)~~ Interest or other investment proceeds paid on the Fund shall be credited to the Fund.
- (g) ~~(d)~~ At the end of each calendar year during which the Trustee has held the Fund, the Trustee shall cause to be issued to the ~~then~~ Company a form T-5, or other form as appropriate pursuant to the Income Tax Act, in respect of any interest or other income earned on the Fund.
- (h) ~~(e)~~ All earnings received from the investment of the Fund shall be credited to, and shall become part of, the Fund (and any losses on such investments shall be debited to the Fund). The Trustee shall have no liability for any investment losses resulting from investments made by the Trustee in accordance with the terms of this Trust Agreement, including any losses on any investment required to be liquidated prior to maturity in order to make a payment required pursuant to the terms of this Trust Agreement, and any losses resulting from a loss of opportunity. The Trustee shall have no liability to any person should it be unable to invest all or any portion of the Fund as aforesaid for any period of time, provided that it has made commercially reasonable efforts to do so.

5.04 No Power to Borrow

The Trustee shall not at any time borrow funds or otherwise incur indebtedness.

5.05 ~~4.04~~ Funds to be Used for Reclamation

Subject to Article ~~56~~, all funds deposited by ~~a company~~ the Company with the Trustee as required hereunder and all investments, reinvestments and accretions thereto, the Trustee shall

draw upon solely for the purpose of funding the discharge of the Reclamation Obligations of the Beneficiaries of the Trust with respect to the Site.

For greater certainty, access to the Fund, including the precise amount of the Fund to be released for payment of amounts required to satisfy Reclamation Obligations of the Beneficiaries of the Trust, is subject to the Tribunal's approval on the facts of the particular case before it.

5.06 ~~4.05~~ Release of Funds to the Company

The Trustee may release funds, which are held in accordance with this Trust Agreement, to pay for the Reclamation Obligations of a Beneficiary, on presentation by a Beneficiary of:

- (a) a written direction or an order from the Tribunal confirming the amount to be disbursed from the Fund, the timing of the disbursement and the identity of the Beneficiary to receive the funds; and
- (b) a certificate of an officer of the Beneficiary confirming that the Beneficiary has not (1) ceased to carry on business; (2) become insolvent or committed any act of bankruptcy; (3) filed a petition for bankruptcy, or suffered a petition for bankruptcy being filed, against it; (4) made any proposal to or sought arrangement with its creditors; (5) made an assignment for the benefit of creditors; (6) appointed or suffered the appointment of a receiver in respect of its property and/or assets; or (7) had or suffered proceedings being commenced (voluntarily or involuntarily) for the liquidation, dissolution or winding up of itself ("**Default**"), and that to the officer's knowledge, the Beneficiary will not suffer Default within a year following the date of the certificate of the officer.

On receipt of the Tribunal's written direction or order, and the certificate of an officer of the Beneficiary, the Trustee shall release the requested funds to it.

5.07 ~~4.06~~ Release of Funds to a Third Party

The Trustee may release funds that are held in accordance with this Trust Agreement to any third party for the purposes of funding the discharge of the Reclamation Obligations of a Beneficiary with respect to the Site on presentation of a written direction or an order from the Tribunal, with such direction or order confirming the amount to be disbursed from the Trust Fund, and the timing of the disbursement. On receipt of the written direction or order, the Trustee shall release the requested funds to the third party set out in the order or direction of the Tribunal.

5.08 ~~4.07~~ Duties of the Trustee Regarding Release of the Requested Funds

The funds which are to be released in accordance with sections ~~4.05~~5.06 and ~~4.06~~5.07 shall be obtained by the Trustee calling in or redeeming certain investments which it holds in the Trust, provided that the Trustee shall only call in or redeem those investments after ~~consultation~~ with advising the Company of its decision.

5.09 ~~4.08~~ **Sale of the Pipeline or a Portion Thereof**

~~For greater certainty, monies~~ Monies from the Fund may be released in accordance with this Trust Agreement upon the Tribunal's direction or order approving the sale, assignment, transfer or other disposition of the Pipeline or a portion thereof from ~~a Beneficiary~~ the Company to another person pursuant to paragraphs 74(1)(a), (b) and (c) of the NEB Act, provided that such other person shall in writing assume the Reclamation Obligations of the Company. For greater certainty any such person shall be deemed to be a transferee or successor corporation pursuant to the provisions of section 1.11.

5.10 ~~4.09~~ **Books, Records and Accounts**

- (a) 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 Fund, and shall provide the Company with the following, on or before the 15th Business Day following the last day of each month:
 - (i) statement of account or report showing all funds transferred to the Trustee during the immediately preceding month; and
 - (ii) statement of account or report showing all relevant information concerning the funds held by the Trustee including, without limitation, information detailing all investments made, reinvestment undertaken, investment income earned, and disbursement of funds during the immediately preceding month; ~~and.~~
- (b) ~~(iii)~~ The Trustee shall provide the Company, within a reasonable period of time, with any other report or information that might be required by law to be disclosed by the Trustee and that is reasonably requested by the Tribunal or the Company.
- (c) ~~(b)~~ The Trustee shall, on reasonable prior notice and during normal business hours, make available to and permit the officers, employees and authorized agents of the Tribunal or the Company and/or the auditors of the Company to inspect all books, records and accounts required to be maintained by the Trustee, in connection with this Trust Agreement or as required by law.
- (d) The Trustee shall not be obliged to provide any Beneficiary, other than the Company, with the statements and reports referenced in section 5.10 (a) and the access to books and records referenced in section 5.10 (b), unless the Trustee is otherwise advised by the Company or the Tribunal, provided that such advice must identify such Beneficiary with particularity.

5.11 ~~4.10~~ **Standard of Care**

~~In~~ Subject to the provisions of section 5.12, in the exercise and discharge of its obligations and duties at law or hereunder, the Trustee shall act honestly and in good faith and shall:

- (a) Exercise that degree of care, diligence and skill that a reasonably prudent person functioning in the office of Trustee would exercise in comparable circumstances;
- (b) Comply with any and all applicable laws, rules and regulations in respect of the Trustee's dealing with, or handling of the Fund pursuant to the terms hereof; and
- (c) Be responsible for loss occasioned by reason of the failure of the Trustee to comply with its obligations at law or duties under this Trust, or its negligence or willful misconduct on the part of itself, its employees, or officers ~~or agents~~.

5.12 Limitation on Trustee Liability

If a Prohibited Investment is made as a consequence of the issuer of the property being a Beneficiary, and the Trustee had not previously been advised in writing of the specific identity of the Beneficiary by the Company or by the Tribunal, the Trustee shall be exculpated from any liability of any kind whatsoever, inclusive of but not limited to income tax liabilities, that may arise from that Prohibited Investment.

If the Trustee exercises any of its authorities under the terms of this Trust Agreement on the approval of or the direction of the Tribunal, all actions of the Trustee in connection with such exercises of its authorities shall be deemed to satisfy the standard of care expressed in section 5.11 (a).

5.13 ~~4.11~~ Appointment of Agents

- (a) The Trustee may appoint such agents and employ or retain such legal counsel, accountants, appraisers or other experts or advisors as may be reasonably required for the purpose of discharging its duties hereunder and shall not be responsible for any misconduct on the part of any of them except as provided in section ~~4.10~~5.11(c). The Trustee may pay out of the Fund reasonable remuneration for all services performed for it in the discharge of its duties hereunder without taxation for costs or fees of any counsel, solicitor or attorney, including solicitor fees on a solicitor and own client basis. *~~[The last sentence of this paragraph should only be included if the pipeline company determines that these withdrawals are permitted by the QET provisions of the Income Tax Act.]~~*
- (b) Provided the agent was properly appointed by the Trustee in accordance with section ~~4.10~~5.11, the Trustee may act in good faith on the opinion or advice of, or information obtained from, any agent, legal counsel, accountant, appraiser or other expert of advisor retained or employed by it, in relation to any matter arising in the performance of its duties under this Trust Agreement.

5.14 ~~4.12~~ Safekeeping of Funds

So far as is allowed by law, the Trustee shall control and hold in Trust, in such form and manner as may be necessary to impress a Trust thereon as against any creditor or creditors of the

Beneficiaries, all funds held pursuant to the terms hereof until such funds are disbursed or otherwise dealt with in accordance with the terms and conditions of this Trust Agreement.

4.13 ~~Acceptance of Obligations~~ The Trustee hereby accepts the covenants and obligations set out in this Agreement and agrees to discharge the same upon the terms and conditions herein set forth, and to hold and exercise the rights, privileges and benefits conferred upon it by this Agreement for the purposes of the Trust.

5.15 ~~4.14~~ **Decision to Act or Not Act**

The Trustee shall retain the right not to act and shall not be held liable for refusing to act unless it has received clear documentation which complies with the terms of this Trust Agreement. Such documentation must not require the exercise of any discretion or independent judgment on the part of the Trustee.

5.16 ~~4.15~~ **Trustee Not to Expend Own Funds**

None of the provisions contained in this Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Article 6: REMUNERATION AND EXPENSES OF THE TRUSTEE

6.01 ~~5.01~~ **Trustee's Fees and Expenses of the Trustee**

[This section should only be included if Company determines that this withdrawal is permitted by the QET provisions of the Income Tax Act.]

The ~~Company and the Trustee shall~~, Trustee shall be entitled to remuneration for its services hereunder as may be agreed to from time to time, ~~agree to reasonable~~ by the Company and the Trustee. The remuneration ~~to be payable to the Trustee shall~~ be paid out of the Fund to the Trustee ~~for its services hereunder and as of the date hereof~~. The Trustee is also entitled to be reimbursed out of the Fund for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration of its duties hereunder (including, without limitation, legal fees and expenses on a solicitor and own client basis and the reasonable compensation and disbursements of all other advisers, agents or experts employed or retained pursuant to this Trust Agreement), provided that the Trustee shall first deliver to the Company true copies of all invoices, statements or receipts in relation thereto or in evidence thereof.

6.02 ~~5.02~~ **Payment of Trustee Fees**

[This section should only be included if Company determines that the following withdrawals are permitted by the QET provisions of the Income Tax Act.]

In the event the Trust ~~created under this Agreement~~ becomes liable to or subject to any fees or other amounts due to the Trustee pursuant to Section ~~5.01~~ **6.01** hereof, the Trustee shall be entitled to withdraw monies from the Fund to pay such fees or other expenses without prior approval or instruction of the Tribunal.

6.03 ~~5.03~~ Payment by the Trustee of Taxes

[This section should only be included if the Company determines that the following withdrawals are permitted by the QET provisions of the Income Tax Act.]

The Trustee shall prepare the annual income tax return for the Trust, provide the Company with a copy of the return and file the same with the appropriate taxing authority or authorities on a timely basis. In the event the Trust ~~created hereunder~~ becomes liable to or subject to any taxes under the Income Tax Act or otherwise, the Trustee shall be entitled to make payment of such taxes out of the Fund to the appropriate taxing authority or authorities without prior approval or instruction of the Tribunal, ~~provided the Trustee has received notification as to the amount of taxes owing by reference to an assessment from the appropriate taxing authority or a signed copy of the Trust's annual tax return for that year from the Company. For greater certainty, subject to section 4.10, the Trustee shall have no duty or responsibility to confirm the calculation of the amount of tax owing by the Trust, and shall be entitled to rely on the calculations in any assessment or annual tax returns provided to the Trustee.~~

Article 7: INDEMNIFICATION OF THE TRUSTEE

7.01 ~~6.01~~ Indemnity

In addition to and without limiting any other protection of the Trustee hereunder or otherwise by law, the Company shall indemnify and hold the Trustee harmless from any and all liabilities, losses, claims, damages, penalties, actions, suits, demands, levies, costs, expenses and disbursements including any and all reasonable legal and adviser fees and disbursements of whatever kind of nature including legal fees on a solicitor and own client basis which may at any time be suffered by, imposed on, incurred by or asserted against the Trustee, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee in connection with its acting as Trustee hereunder, unless the claim ~~arising~~ arises from ~~the~~ conduct of the Trustee that fails to comply with ~~its~~ the Trustee's obligations at law or under this Trust Agreement including, without limitation, the provisions of section ~~4.10~~ 5.11 hereof, or otherwise from the negligence or willful misconduct on the part of the Trustee, its employees, or officers. Notwithstanding any other provision hereof, this indemnity shall survive the removal, or resignation of the Trustee, and termination of this Trust Agreement.

Article 8: AMENDMENT AND TERMINATION OF THE TRUST

8.01 ~~7.01~~ Amendment

The Company and the Trustee may agree to amend the terms of the Trust, including the terms of this Agreement. No amendment to the terms of the Trust and the terms of this Trust Agreement are binding or effective unless the Tribunal approves the amendment.

8.02 ~~7.02~~ Trust Irrevocable

The Trust, and the schedules thereto, which are hereby incorporated into the Trust, may not be revoked by the Settlor. For greater certainty none of the Company or Beneficiaries acting as a

whole, or the Trustee, ~~except that the Tribunal in its total discretion may direct a termination of~~ may revoke the Trust, ~~and order such successive arrangements as are appropriate.~~

Article 9: NOTICES

9.01 ~~8.01~~ Acting on Written Notice

The Trustee shall not incur liability for acting upon any written notice, request, consent, certificate, receipt, affidavit, statutory declaration or other paper or document furnished to it by or on behalf of any person authorized to do so by the terms of this Trust Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the verity of any information therein contained, provided the Trustee is acting properly and reasonably in accepting the representations made to it.

9.02 ~~8.02~~ Mode of Giving Notice

Any notice or other document required to be given or delivered hereunder will be valid and effective if given by registered letter (postage prepaid), courier, by personal delivery or by fax addressed by the party to whom such notice is to be given, and will be deemed to have been effectively delivered on:

- (a) the date of actual delivery, if couriered or personally delivered during normal business hours of the party to whom such notice is delivered (and if not, on the next following Business Day); or
- (b) the first Business Day following the date of the fax, if faxed; or
- (c) on the fifth Business Day after effectual posting, if sent by mail.

9.03 Trustee Communication

Notwithstanding any other provision of this Trust Agreement, in respect of all notices and other communications to the Trustee (each a "Trustee Communication") the Trustee need not act upon any Trustee Communication until it has received an original of such Trustee Communication, and the Trustee shall have the right to refuse to do or not to do anything required to be done or not done pursuant to such Trustee Communication received by the Trustee until the Trustee receives the original Trustee Communication.

9.04 ~~8.03~~ Addresses of the Parties

The addresses of the parties for purposes of this section shall be as follows, but may be changed by any party by the delivery of notice of such change in accordance with the notice requirements hereof:

~~[insert name and addresses of parties]~~

[Trans-Northern Pipelines Inc./Pipelines Trans-Nord Inc.](#)
[45 Vogell Road, Suite 310](#)
[Richmond Hill, Ontario L4B 3P6](#)
[Attention: Mr. M. Speagle, Manager Business Services & Secretary-Treasurer](#)

[Royal Trust Corporation of Canada](#)
[155 Wellington Street West, 20 Floor](#)
[Toronto, Ontario M5V 3K7](#)
[Attention: Senior Trust Advisor](#)

or to any other address notified by any party to the other parties.

9.05 ~~8.04~~ **Address of the Tribunal**

Any notice or other document required to be given or delivered to the Tribunal shall be addressed to:

Secretary
National Energy Board
517 —10th Avenue S.W.
Calgary, Alberta, T2R 0A8

Article 10: MISCELLANEOUS

10.01 ~~9.01~~ **Assignment and Enurement**

This [Trust](#) Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. ~~No Subject to the provisions of this Trust Agreement, no~~ party may assign this [Trust](#) Agreement or any benefits or obligations hereunder without the approval of the Tribunal.

10.02 ~~9.02~~ **Applicable Law**

This [Trust](#) Agreement (and any amendments hereto) shall be governed by the ~~law of the Province of [insert name of province]~~ [Governing Law](#) and the laws of Canada applicable therein.

9.03 Severability

~~In the event that any provisions hereof shall be determined to be invalid or unenforceable in any respect, such determination so far as the law permits shall not affect any other provision in any other respect or any other provision hereof, all of which shall remain in full force and effect.~~

10.03 ~~9.04~~ **Entire Agreement and Amendment**

For greater certainty, this [Trust](#) Agreement represents the entire agreement amongst the parties respecting the Trust, and supersedes all prior discussions, agreements and understandings of every kind and nature amongst them.

10.04 ~~9.05~~ Right to disclose

The Trustee shall have the right to disclose any information disclosed or released to it if in the opinion of the Trustee, or its legal counsel, it is required to disclose under any applicable laws, court order or administrative directions. The Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred relating to such disclosure.

10.05 ~~9.06~~ Merger, Consolidation, Amalgamation

Any company with which the Trustee may be merged, consolidated or amalgamated will become the successor Trustee hereunder without any further action on the part of the Trustee.

10.06 ~~9.07~~ Review of Agreement

This ~~Agreement shall~~ Trust Agreement, and more particularly the Fund, with respect to the capacity of the Fund on a projected basis to discharge the estimated Reclamation Obligations, ~~may~~ be reviewed by the parties and the Tribunal ~~at least~~ every five (5) years, or earlier if directed by the Tribunal.

[This space intentionally left blank; execution page to follow.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first set forth above.

~~ENTER NAME OF TRUST COMPANY~~ TRANS-NORTHERN PIPELINES INC./PIPELINES TRANS-NORD INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

~~ENTER NAME ROYAL TRUST CORPORATION OF COMPANY~~ CANADA

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE "A"

~~Schedule "A"~~

~~[Accurately describe the pipeline i.e. where and how far it extends, under what instruments it was authorized i.e. NEB Orders/Certificates numbers, and insert a map showing the pipeline]~~

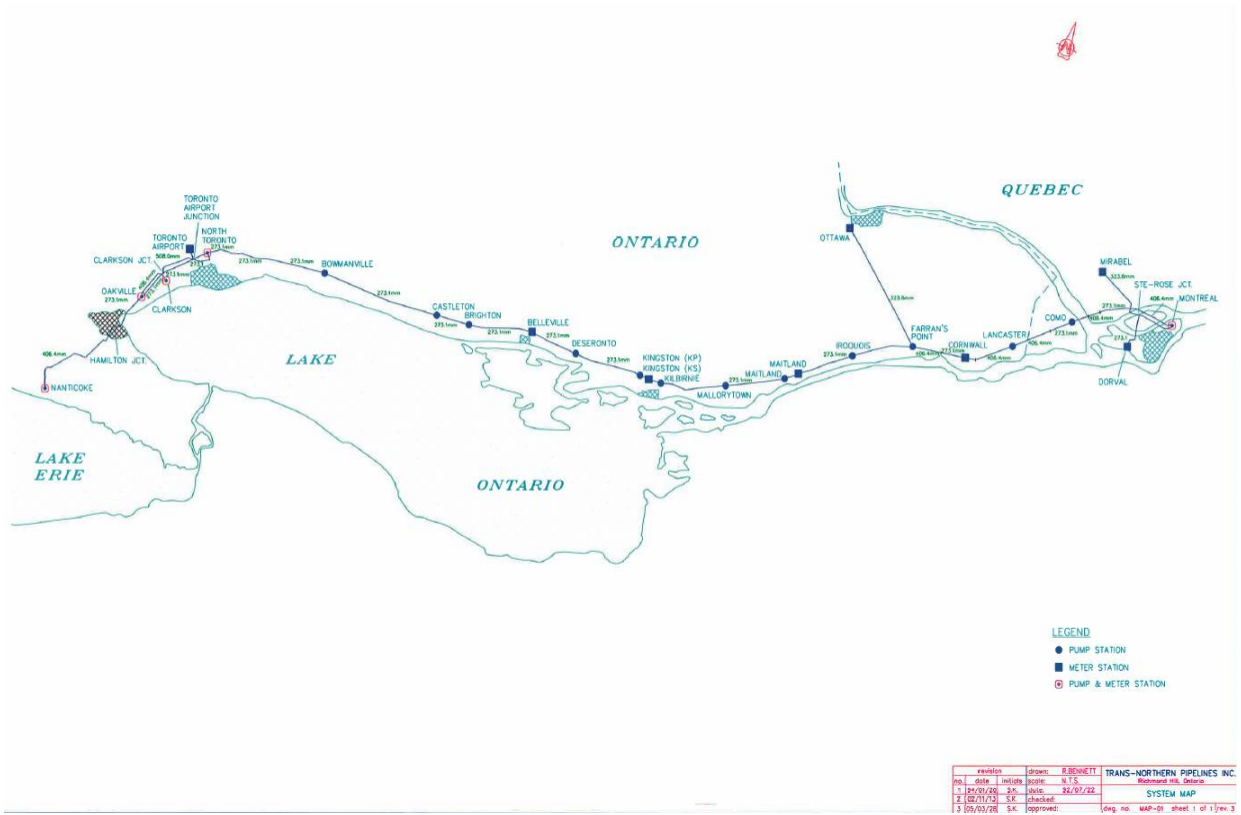
I. Description of Trans-Northern Operations

Trans-Northern Pipelines Inc. operates a 850 kilometer refined petroleum products transmission pipeline system in southern Ontario and Quebec. The pipe line system runs between Montreal, Quebec and Nanticoke, Ontario with laterals to Trudeau Airport in Quebec and Pearson Airport and Ottawa in Ontario. This interprovincial pipeline system is subject to regulation by the National Energy Board of Canada (NEB). Construction, operation and maintenance of the pipeline are in accordance with the NEB Act, the Onshore Pipeline Regulations, CSA Z662-11, the Pipeline Crossing Regulations, and other applicable regulations, codes, and standards.

The pipeline system transports refined products from refineries located in Nanticoke and Mississauga, Ontario and Montreal East, Quebec, to terminals located in Oakville, North Toronto, Belleville, Kingston, Maitland and Ottawa, Ontario. Jet fuel is also delivered to terminals located at Pearson Airport in Ontario and Trudeau International Airport in Quebec.

To move product, Trans-Northern operates pump stations at Nanticoke, Oakville, Clarkson, North Toronto, Bowmanville, Castleton, Brighton, Deseronto, Kingston, Kilbirnie, Mallorytown, Maitland, Iroquois, Farran's Point, and Lancaster, Ontario, and at Como and Montreal East, Quebec. There are a number of line segmentation (block or check) valves along the continuous pipeline system, and junctions for pipeline laterals in Hamilton, Mississauga (Clarkson), Etobicoke (Toronto Airport), North York (North Toronto and Old Cummer), Morrisburg (Farran's Point), and Laval (Ste-Rose).

II. Trans-Northern Pipeline Map



III. NEB Orders

Schedule "B"

Location	Leave to Open
<u>Montreal to Ste-Rose Junction</u>	<u>OPLO-2-17-72</u>
<u>Ste-Rose Junction to Dorval</u>	<u>OPLO-2-10-69</u>
<u>Ste-Rose Junction to Mirabel</u>	<u>OPLO-T2-7-75</u>
<u>Farran's Point to Ottawa (Ottawa Lateral)</u>	<u>OPLO-2-14-73</u> <u>OPLO-T2-2-81</u> <u>OPLO-2-13-68</u> <u>AO-1-OPLO-T2-38-76</u> <u>OPLO-2-14-68</u>
<u>Montreal to Kingston</u>	<u>NEB OC-3-1961</u> <u>OPLO-T002-11-2004</u> <u>NEB OC-3-1961</u> <u>OPLO-T002-07/09/10-2004</u> <u>NEB OC-3-1961</u> <u>OPLO-T002-08-2004</u> <u>OPLO-T002-02-2005</u> <u>NEB OC-3-1961</u> <u>OPLO-T2-3-74</u>
<u>Hamilton Junction to Nanticoke</u>	<u>OPLO-T2-33-78</u>
<u>Clarkson Lateral</u>	<u>MO-60-86</u>
<u>Toronto Lateral</u>	<u>MO-16-73</u>
<u>Clarkson to Oakville</u>	<u>OPLO-T2-7-79</u>
<u>Toronto Airport Junction to Clarkson</u>	<u>OPLO-T2-2-75</u>
<u>Toronto Airport Lateral</u>	<u>OPLO-2-16-71</u>
<u>Kingston to Hamilton</u>	<u>NEB OC-3-1961</u> <u>OPLO-T2-3-74</u> <u>OPLO-T2-33-78</u> <u>AO-1-MO-3-78</u> <u>MO-60-86</u> <u>MO-32-63</u> <u>NEB OC-3-1961</u>
<u>Nanticoke to Toronto Airport Junction</u>	<u>OPLO-T2-15-88</u> <u>OPLO-T2-4-77</u>

SCHEDULE “B”

The relevant paragraphs of the definition of “qualified investment” in section 204 currently read as follows:

- (a) money (other than money the fair market value of which exceeds its stated value as legal tender in the country of issuance or money that is held for its numismatic value) and deposits (within the meaning assigned by the *Canada Deposit Insurance Corporation Act* or with a branch in Canada of a bank) of such money standing to the credit of the trust,
- (b) debt obligations described in paragraph (a) of the definition “fully exempt interest” in subsection 212(3) [*being a bond, debenture, note, mortgage, hypothecary claim or similar debt obligation*]
 - (i) *of or guaranteed (otherwise than by being insured by the Canada Deposit Insurance Corporation) by, the Government of Canada,*
 - (ii) *of the government of a province,*
 - (iii) *of an agent of a province,*
 - (iv) *of a municipality in Canada or a municipal or public body performing a function of government in Canada,*

- (v) *of a corporation, commission or association to which any of paragraphs 149(1)(d) applies or to (d.6)¹*
- (vi) *of an educational institution or a hospital if repayment of the principal amount of the obligation and payment of the interest is to be made, or is guaranteed, assured or otherwise specifically provided for or secured by the government of a province] ,*

(c) debt obligations issued by

¹ The relevant paragraphs read as follows:¹

*(d) [corporations owned by the Crown] — a corporation, commission or association all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;*¹

*(d.1) [corporations 90% owned by the Crown] — a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a Province;*¹

*(d.2) [wholly-owned [by Crown corporation] corporations] — a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or paragraph (d) applies for the period;*¹

*(d.3) [90% [Crown] owned corporations] -- a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by:*¹

(i) one or more persons each of which is Her Majesty in right of Canada or a Province or a person to which paragraph (d) or (d. 2) applies for the period, or¹

(ii) one or more municipalities in Canada in combination with one or more persons each of which is Her Majesty in right of Canada or a Province or a person to which paragraph (d) or (d. 2) applies for the period;¹

*(d.4) [combined [Crown] ownership] -- a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or any of paragraphs (d) to (d.3) applies for the period;*¹

*(d.5) [[municipally-owned corporation earning] income with boundaries of entities] — subject to subsections (1.2) and (1.3), a corporation, commission or association not less than 90% of the capital of which was owned by one or more entities each of which is a municipality in Canada, or a municipal or public body performing a function of government in Canada, if the income for the period of the corporation, commission or association from activities carried on outside the geographical boundaries of the municipalities does not exceed 10% of its income for the period;*¹

(d.6) [subsidiaries of municipal corporations] -- subject to subsections (1.2) and (1.3), a particular corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more entities (referred to in this paragraph as "qualifying owners") each of which is a corporation, commission or association to which paragraph (d.5) applies, a corporation to which this paragraph applies, a municipality in Canada, or a municipal or public body performing a function of government in Canada, if no more than 10% of the particular corporation's income for the period is from activities carried on outside¹

(i) if a qualifying owner is a municipality in Canada, or a municipal or public body performing a function of government in Canada, the geographical boundaries of each such qualifying owner;¹

(ii) if paragraph (d.5) applies to a qualifying owner, the geographical boundaries of the municipality, or municipal or public body, referred to in that paragraph in its application to each such qualifying owner, and¹

(iii) if this paragraph applies to a qualifying owner, the geographical boundaries of the municipality, or municipal or public body, referred to in subparagraph (i) or paragraph (d.5), as the case may be, in their respective applications to each such qualifying owner.

- (i) a corporation, mutual fund trust or limited partnership the shares or units of which are listed on a designated stock exchange in Canada,²
 - (ii) a corporation the shares of which are listed on a designated stock exchange outside Canada,³ or
 - (iii) an authorized foreign bank⁴ and payable at a branch in Canada of the bank,
- (c.1) debt obligations that meet the following criteria, namely,
- (i) any of
 - (A) the debt obligations had, at the time of acquisition by the trust, an investment grade rating with a prescribed credit rating agency,⁵

² A “designated stock exchange” is defined in subsection 248(1) of the Tax Act as a stock exchange, or that part of a stock exchange, for which a designation by the Minister of Finance under Section 262 of the Tax Act is in effect. Section 262 gives the Minister the authority to designate a stock exchange or part thereof for the purposes of the Act. Pursuant to subsection 262(4) of the Tax Act, the Minister of Finance is required to post on the internet website of the Department of Finance or by any other means considered appropriate, the names of the stock exchanges or parts thereof that are designated under Section 262. The current list can be found at <http://www.fin.gc.ca/act/fim-imf/dse-bvd-eng.asp>. In Canada, the designated stock exchanges include the Canadian National Stock Exchange (CNSX), the Montreal Exchange, the TSX Venture Exchange (Tiers 1 and 2) and the Toronto Stock Exchange.

³ *Ibid.* The Department of Finance website referred to also includes the list of designated stock exchanges outside Canada.

⁴ An “authorized foreign bank” is defined in subsection 248(1) of the Tax Act as having the meaning in Section 2 of the *Bank Act* (Canada), being “a foreign bank that is the subject of an order under subsection 524(1)”. Subsection 524(1) states that on application by a foreign bank, the Minister may make an order permitting the foreign bank to establish a branch in Canada to carry on business in Canada under Part XII.1 of the *Bank Act* (Canada). The definition of “foreign bank” is found in Section 2 of the *Bank Act*. It reads:¹ “foreign bank”, subject to Section 12, means an entity incorporated or formed by or under the laws of a country other than Canada that¹

is a bank according to the laws of any foreign country where it carries on business, (b) carries on a business in any foreign country that, if carried on in Canada, would be, wholly or to a significant extent, the business of banking, (c) engages, directly or indirectly, in the business of providing financial services and employs, to identify or describe its business, a name that includes the word “bank”, “banque”, “banking” or “bancaire”, either alone or in combination with other words, or any word or words in any language other than English or French corresponding generally thereto, (d) engages in the business of lending money and accepting deposit liabilities transferable by cheque or other instrument, (e) engages, directly or indirectly, in the business of providing financial services and is affiliated with another foreign bank, (f) controls another foreign bank, or (g) is a foreign institution, other than a foreign bank within the meaning of any of paragraphs (a) to (f), that controls a bank incorporated or formed under this Act,¹

but does not include a subsidiary of a bank named in Schedule I as that Schedule read immediately before the day section 184 of the *Financial Consumer Agency of Canada Act* comes into force, unless the Minister has specified that subsection 378(1) no longer applies to the bank.

⁵ Pursuant to regulation 4900(2) of the *Income Tax Regulations* (Canada), the following are prescribed credit rating agencies for the purposes of section 204: A.M. Best Company Inc.; DBRS Limited; Fitch, Inc.; Moody’s Investors Service Inc.; and Standard & Poor’s Financial Services LLC.

- (B) the debt obligations have an investment grade rating with a prescribed credit rating agency,⁶ or,
 - (C) the debt obligations were acquired by the trust in exchange for debt obligations that satisfied the condition in clause (A) and as part of a proposal to, or an arrangement with, the creditors of the issuer of the debt obligations that has been approved by a court under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act*, and
- (ii) either
- (A) the debt obligations were issued as part of a single issue of debt of at least \$25 million, or,
 - (B) in the case of debt obligations that are issued on a continuous basis under a debt issuance program, the issuer of the debt obligations had issued and outstanding debt under the program of at least \$25 million,
- (d) securities (other than futures contracts or other derivative instruments in respect of which the holder's risk of loss may exceed the holder's cost) that are listed on a designated stock exchange,⁷ and
- (e) guaranteed investment certificates issued by a trust company incorporated under the laws of Canada or of a province.

The definition of “prohibited investment” in subsection 211.6(1) reads as follows:

“**prohibited investment**”, of a trust at any time, means a property that

- (a) at the time it was acquired by the trust, was described by any of paragraphs (c), (c.1) or (d) of the definition “qualified investment” in section 204; and
- (b) was issued by
 - (i) a person or partnership that has contributed property to, or that is a beneficiary under, the trust,
 - (ii) a person that is related to, or a partnership that is affiliated with, a person or partnership that has contributed property to, or that is a beneficiary under, the trust, or
 - (iii) a particular person or partnership if

⁶ Ibid.

⁷ *Supra* note 2.

- (A) another person or partnership holds significant interest (within the meaning assigned by subsection 207.01(4) with any modifications that the circumstances require)⁸ in the particular person or partnership, and
- (B) the holder of that significant interest has contributed property to, or is a beneficiary under, the trust.

⁸ Subsection 207.01(4) reads:¹

(4) **[Significant interest]** — An individual has a significant interest in a corporation, partnership or trust at any time if¹

(a) in the case of a corporation, the individual is a specified shareholder of the corporation at that time [...];¹

(b) in the case of a partnership, the individual, or the individual together with persons and partnerships with which the individual does not deal at arm's length, holds at that time interests as a member of the partnership that have a fair market value of 10% or more of the fair market value of the interests of all members in the partnership; and¹

(c) in the case of a trust, the individual, or the individual together with persons and partnerships with which the individual does not deal at arm's length, holds at that time interests as a beneficiary (in this paragraph, as defined in subsection 108(1)) under the trust that have a fair market value of 10% or more of the fair market value of the interests of all beneficiaries under the trust.

Document comparison by Workshare Compare on September-02-14 3:22:39 PM

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Document 2 ID	PowerDocs://DM_TOR/7371778/5
Description	DM_TOR-#7371778-v5-Model_Trust_Agreement
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Moved from	14
Moved to	14
Style change	0
Format changed	0
Total changes	696

APPENDIX “3”

**CONCORDANCE AND SECTION-BY-SECTION COMPARISON OF
MODEL TRUST AGREEMENT TO PROPOSED TNPI TRUST AGREEMENT**

NEB Model Trust Provision	Corresponding TNPI Trust Agreement Provision	Explanation for TNPI Addition/Change
1.01- “Abandon”	No Change	Deleted words “as amended from time to time” now reflected in Section 1.07. The effect is the same.
1.01 - “Agreement”	1.01 “Trust Agreement”	Replaced term with “Trust Agreement”. The effect is the same.
1.01 “Annual Contribution Amount”	No Change	Model Trust Agreement left term undefined. TNPI has provided a definition.
1.01 “Beneficiary”	No Change	Added (ii) to include any Person who is contractually obligated to perform or discharge any of the Reclamation Obligations. Consistent with Model Trust Agreement.
1.01 “Business Day”	No Change	No Change
1.01 “Company”	No Change	Changed to reference TNPI specifically; however, Section 1.11 now addresses the circumstances of asset sale, change of corporate structure etc. The effect is the same.
1.01 “Company’s Notice of Termination”	No Change	No Change
1.01 “Deactivate” and “Deactivation”	No Change	Deleted words “as amended from time to time” now reflected in Section 1.07. The effect is the same.
1.01	No Change	Deleted words “as amended from time to

“Decommission” and “Decommissioning”		time” now reflected in Section 1.07. The effect is the same.
1.01 “Default”	No Change	No Change
n/a	1.01 Effective Date	Added to identify an effective date of the Trust.
1.01 “Fund”	No Change	Expanded for greater certainty.
1.01 “Fund Property”	No Change	No Change
n/a	1.01 “Governing Law”	Added for clarity of drafting.
n/a	1.01 “Income Tax Act”	Added for clarity of drafting. Replaces term “Tax Act” in Model Trust Agreement.
1.01 “NEB Act”	No Change	Deleted words “as amended from time to time” now reflected in Section 1.07. The effect is the same.
1.01 “New Trust Fund”	No Change	No Change. Definition not deleted because Ontario has not abolished the rule against perpetuities.
n/a	1.01 “Initial Contribution”	Legal enforceability of Trust requires certainty of subject matter. This requires a specific initial contribution to be set out. Only a nominal amount is required to establish the Trust.
1.01 “Orphan Pipeline Fund”	No Change	No Change
n/a	1.01 “Person”	Added for clarity of drafting.
1.01 “Pipeline”	No Change	No Change
1.01 “Qualified Investments”	No Change	No Change. As required by Model Trust Agreement, TNPI has filled in applicable sections of the <i>Income Tax Act</i> .
n/a	1.01 “Qualifying Trust Company”	Specified to assist in maintaining QET status.

1.01 “Reclamation Obligations”	No Change	Non-substantive changes
1.01 “Site”	No Change	No Change
1.01 “Tax Act”	1.01 “Income Tax Act”	Replaced by “Income Tax Act” for clarity. Effect is the same.
n/a	1.01 “Termination Date”	A term now employed in 2.05 (discussed below)
1.01 “Tribunal”	No Change	No Change
n/a	1.01 “Trust Agreement”	Replaces “Agreement” in Model Trust Agreement. Effect is the same.
1.01 “Trust”	No Change	Simplified definition was possible. Effect is the same.
1.01 “Trustee”	No Change	Change to allow specific reference to the Original Trustee, or any replacement. Effect is the same.
1.01 “Trust Term” or “Term”	n/a	Model Trust Agreement says that the definition of Trust Term is to be deleted if the law applicable to the trust is the law of a jurisdiction that has abolished the rule against perpetuities. Ontario has not abolished that rule.
n/a	1.02 Extended Meanings	Added for clarity. This is a standard trust agreement provision.
n/a	1.03 Recitals	Added for clarity. This is a standard trust agreement provision.
n/a	1.04 Headings	Added for clarity. This is a standard trust agreement provision.
n/a	1.05 Reference to Articles and Sections	Added for clarity. This is a standard trust agreement provision.
n/a	1.06 Currency	Added for clarity. This is a standard trust agreement provision.
n/a	1.07 Reference to Statutes	Added for clarity. This is a standard trust agreement provision.

n/a	1.08 Governing Law and Situs of Trust	TNPI has selected Ontario for the reasons described in TNPI's cover letter.
n/a	1.09 Invalidity of the Trust	Same concept as in the Model Trust Agreement, Section 9.03 Severability.
n/a	1.10 References to Acts of the Trust	Replaces similar language in the definition of "Trust" in Article 1 of the Model Trust Agreement.
n/a	1.11 References to Trans-Northern Pipelines Inc./Pipelines Trans-Nord Inc.	To ensure that the provisions of the Trust Agreement remain effective in the event of sale of pipeline, changes in corporate structure etc.
2.01 Qualifying Environmental Trust	2.01 Establishment of the Trust and 2.03 Qualifying Environmental Trust	QET related language moved to 2.03 with no substantive change.
2.02 The Trust: initial transfer and contributions	2.01 Establishment of the Trust	Additional language added to 2.01 to make it clear the Trust is irrevocable. Reference to Initial Contribution. Legal enforceability of trust requires certainty of subject matter. This requires a specific initial contribution to be set out. Annual Contribution terms now addressed in definition of "Annual Contribution Amount".
n/a	2.02 Purpose of the Trust	Added to provide clarity that the purpose of the Trust is aligned with the QET rules.
n/a	2.03 Qualifying Environmental Trust	Language moved to 2.01 with no substantive changes.
n/a	2.04 Annual Contribution of Company	Provides affirmation of Company's obligation to make the Annual Contribution Amount, and provides an obligation on Trustee to remind the Company of its obligation.
2.03 The Trust: discretionary as to two or more	2.05 The Trust: discretionary as to two or more beneficiaries	No substantive changes.

beneficiaries		
2.04 The Trust: appropriation of surplus funds	3.02 Termination subsequent to the discharge of the Reclamation Obligations	Some changes to wording, but continues to affirm the Trustee's discretion and role of NEB in distribution of any surplus funds.
2.05 The Trust: duration (or term)	2.06 Term of the Trust	Ontario has not abolished the rule against perpetuities. As drafted, the proposed clause contemplates both the current circumstances and a circumstance where the Ontario legislature abolishes the rule in the future. The rule against perpetuities is addressed using a standard "Royal Lives" clause. Based on the current expectation, the Royal Lives clause would bring the term to an end 16 years following the death of the infant Prince George. Assuming Prince George lives a long life, then the Termination Date could be expected to be approximately 100 years from the Effective Date.
n/a	3.01 Termination prior to the discharge of the reclamation Obligations	Addresses the circumstance where Termination occurs prior to discharge of reclamation obligations. Tracks the intent of NEB that a new trust be established.
n/a	3.02 Termination subsequent to the discharge of the Reclamation Obligations	Disposition of Trust assets following reclamation was addressed in 2.04 of Model Trust Agreement. See above.
3.01 Appointment	4.01 Appointment	No substantive change except to add language to ensure replacement Trustees are a Qualifying Trustee.
3.02 Resignation	4.02 Resignation	Adds language to address what happens if replacement Trustee not appointed within 60 days.
3.03 Obligation of Trustee upon termination	4.03 Obligation of Trustee upon termination	No substantive change
3.04 Removal	4.04 Removal	No substantive changes.
4.01	5.01 Responsibilities of the	No Change

Responsibilities of the Trustee	Trustee	
4.02 Trustee Receipt of Funds	5.02 Trustee Receipt of Funds	No Change
4.03 Investment of Fund	5.03 Investment of Fund	Retained NEB's optional language. Added language at the Trustee's request to ensure that Trustee not in conflict by investing in related corporations etc.. Added that TNPI assist the Trustee by providing a list of Prohibited Investments to comply with QET rules.
n/a	5.04 No Power to Borrow	A prohibition on borrowing is consistent with QET rules.
4.04 Funds to be Used for Reclamation	5.05 Funds to be Used for Reclamation	Words "with respect to the Site" added to help define the purpose of the Trust as being within QET rules.
4.05 Release of Funds to the Company	5.06 Release of Funds to the Company	No Change
4.06 Release of Funds to a Third Party	5.07 Release of Funds to a Third Party	Words "with respect to the Site" added to help define the purpose of the Trust as being within QET rules.
4.07 Duties of the Trustee Regarding Release of the Requested Funds	5.08 Duties of the Trustee Regarding Release of the Requested Funds	No substantive change
4.08 Sale of the Pipeline or a Portion Thereof	5.09 Sale of the Pipeline or a Portion Thereof	Added language to ensure that it remains clear the Purpose of the Trust will be consistent with QET rules.
4.09 Books, Records and Accounts	5.10 Books, Records and Accounts	Added (d) as a reasonable modification for provision of some documents at the request of the Trustee.
4.10 Standard of Care	5.11 Standard of Care	No substantive change
n/a	3.16 Limitation on Trustee Liability	Added at the request of the Trustee. Covers a situation where Trustee was not

		advised of Prohibited Investments. TNPI has an obligation under s.5.03 to provide that information to the Trustee.
4.11 Appointment of Agents	5.12 Appointment of Agents	No Change
4.12 Safekeeping of Funds	5.13 Safekeeping of Funds	No Change
4.13 Acceptance of Obligations	2.01 Establishment of the Trust	Moved. No substantive change.
4.14 Decision to Act or Not Act	5.14 Decision to Act or Not Act	No Change
4.15 Trustee Not to Expend Own Funds	5.15 Trustee Not to Expend Own Funds	No Change
5.01 Trustee's Fees and Expenses of the Trustee	6.01 Trustee's Fees and Expenses of the Trustee	No Change. Retained as TNPI determined provision was permissible under QET rules.
5.02 Payment of Trustee Fees	6.02 Payment of Trustee Fees	No Change. Retained as TNPI determined provision was permissible under QET rules.
5.03 Payment by the Trustee of Taxes	6.03 Payment by the Trustee of Taxes	Retained as TNPI determined provision was permissible under QET rules. Clarified 6.03 to place the responsibility for producing the Trust's annual tax returns on the Trustee. The strikeouts are consistent with that clarification.
6.01 Indemnity	7.01 Indemnity	No Change
7.01 Amendment	8.01 Amendment	No Change
7.02 Trust Irrevocable	8.02 Trust Irrevocable	No substantive change. Reference to the Settlor added because, at law, only a settlor can revoke a trust.
8.01 Acting on Written Notice	9.01 Acting on Written Notice	No Change
8.02 Mode of Giving Notice	9.02 Mode of Giving Notice	No Change

n/a	9.03 Trustee Communication	Added at the request of the Trustee. TNPI considers it to be a reasonable addition.
8.03 Addresses of the Parties	9.04 Addresses of the Parties	No Change
8.04 Address of the Tribunal	9.05 Address of the Tribunal	No Change
9.01 Assignment and Enurement	10.01 Assignment and Enurement	Addition “Subject to the provisions of this Trust Agreement” required to reconcile with other sections of the Trust Agreement.
9.02 Applicable Law	10.02 Applicable Law	No substantive change. “Governing Law” is defined in section 1.01 to mean Ontario.
9.03 Severability	1.10 Invalidity of the Trust	Same concept in substance.
9.04 Entire Agreement and Amendment	10.03 Entire Agreement and Amendment	No Change
9.05 Right to disclose	10.04 Right to disclose	No Change
9.06 Merger, Consolidation, Amalgamation	10.05 Merger, Consolidation, Amalgamation	No Change
9.07 Review of Agreement	10.06 Review of Agreement	The concern about this provision in the Model Trust Agreement was described in TNPI’s letter in the context of the discussion about <i>Indicative Term #2</i> .