

ENBRIDGE PIPELINES INC. ABANDONMENT TRUST

TRUST AGREEMENT

BETWEEN

ENBRIDGE PIPELINES INC.

- and -

CIBC TRUST CORPORATION

Made as of the _____ day of _____, 20__.

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This Trust Agreement made as of the _____ day of _____, 20__.

BETWEEN:

ENBRIDGE PIPELINES INC., a corporation incorporated under the laws of Canada (the "**Company**")

- and -

CIBC TRUST CORPORATION, a federally regulated trust company incorporated under the laws of Canada (the "**Trustee**")

WHEREAS:

- A. The Company owns and holds the regulatory authorizations allowing it to operate the Pipeline, as defined herein;
- B. The Company is subject to regulation by the National Energy Board under the *National Energy Board Act* (Canada);
- C. On May 26, 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* to file a proposed process and mechanism to set aside funds to pay for the Reclamation Obligations in respect of the sites in Canada used for the operation of a pipeline;
- D. On March 12, 2013, the National Energy Board issued MH-001-2013 Hearing Order, establishing how it would consider each set aside mechanism proposed;
- E. National Energy Board Order MO-030-2014 dated May 5, 2014 (the "**NEB Order**") requires the pre-funding of the anticipated costs of abandoning all or any portion of the Pipeline and requires 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;
- F. Pursuant to the NEB Order, Abandonment Charges must be collected for the purpose of funding the Pipeline's Abandonment Costs and such Abandonment Charges together with the net investment income with respect thereto must be held in a trust having the attributes described in the NEB Order;
- G. In satisfaction of the requirements imposed by the National Energy Board, the Company is creating pursuant hereto a trust to be referred to as the Enbridge Pipelines Inc. Abandonment Trust (the "**Trust**") to hold and administer the Fund, as defined herein;
- H. The Contributor intends that the Trust qualify at all times as a Qualifying Environmental Trust within the meaning of Tax Legislation; and
- I. The Trustee has agreed to act as trustee of the Trust and to hold, invest and otherwise administer the Fund in accordance with the provisions hereof.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, each of the Trustee and the Company hereby agree and declare as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

The terms used herein including in the recitals hereto 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)* and shall be deemed to include Deactivation and Decommissioning where the context so requires;
- (b) "**Abandonment Costs**" means all of the costs to be incurred to perform Abandonment Work;
- (c) "**Abandonment Charges**" means separate and identifiable charges for transportation services with respect to the Pipeline that the NEB will require shippers to pay and that the NEB will require to be contributed by the Company to the Trust pursuant to the NEB Order, and includes tolls, toll surcharges and any other funds of any nature or kind, which are required to be contributed to the Trust;
- (d) "**Abandonment Work**" means all activities reasonably necessary, incidental or related to carrying out, performing or satisfying any or all Reclamation Obligations with respect to the Pipeline or any portion thereof from time to time, including all costs incurred in connection therewith;
- (e) "**Abandonment Work Certificate**" means the certificate set out in Appendix C to this Agreement;
- (f) "**Advisors**" has the meaning ascribed to it in section 11.3;
- (g) "**Affiliate**" means, with respect to a party, that party's affiliates within the meaning of the *Canada Business Corporations Act*, and for CIBC Trust Corporation includes, but is not limited to, CIBC World Markets Inc., CIBC Asset Management Inc., CIBC Mellon Trust Company and CIBC Mellon Global Securities Service Company (and also includes, for clarity, any division of any of the foregoing regardless of the name under which the business of such division is carried on);
- (h) "**Agreement**" means this agreement, including any and all appendices hereto, as it may from time to time be amended, modified, supplemented or restated;
- (i) "**Applicable Law**" means, in respect of any particular matter or issue, all Canadian federal, provincial, territorial or municipal laws, statutes, rules, regulations, official directives and orders of governmental authorities (whether administrative, legislative, executive or otherwise), including judgments, orders and decrees of courts, commissions, boards or bodies exercising similar functions, that are applicable with respect to the matter in issue;

- (j) "**Authorized Party**" means any person or entity properly identified to the Trustee in accordance with section 6.3 as being entitled to provide a Contributor Direction, Investment Instruction or Beneficiary Direction;
- (k) "**Beneficiary**" or "**Beneficiaries**" means, as at the date hereof, the Company, and if at any time hereafter an additional person or persons become, in accordance with Applicable Law, subject to the Reclamation Obligations and obligated to Abandon the Pipeline and to perform or cause to be performed the necessary Abandonment Work in respect thereof, such additional person or persons shall, with the approval of the NEB, become a Beneficiary or Beneficiaries hereunder;
- (l) "**Beneficiary Direction**" has the meaning ascribed to it in subsection 6.3(c);
- (m) "**Business Day**" means each day other than a Saturday, Sunday, a statutory holiday in Alberta or any day on which the principal chartered banks located in Calgary are not open for business during normal banking hours;
- (n) "**Calgary Office**" has the meaning ascribed thereto in Appendix E;
- (o) "**Company**" means Enbridge Pipelines Inc. and its successors and permitted assigns;
- (p) "**Contribution**" means the Initial Contribution and all subsequent contributions of Abandonment Charges or other amounts made to the Trust by the Company or by any other person or entity from time to time;
- (q) "**Contributor**" means the Company in its capacity as the party making and agreeing to make Contributions pursuant to sections 2.1 and 4.1 and, if at any time Abandonment Charges are no longer being collected, means the Beneficiary;
- (r) "**Contributor Direction**" has the meaning ascribed to it in subsection 6.3(a);
- (s) "**Court**" means a court of competent jurisdiction in the adjudication of matters referred to herein;
- (t) "**Deactivate**" and "**Deactivation**" have the meaning set out in the definition of "deactivate" in the *Onshore Pipeline Regulations (Canada)*;
- (u) "**Decommission**" and "**Decommissioning**" have the meaning set out in the definition of "decommission" in the *Onshore Pipeline Regulations (Canada)*;
- (v) "**Default**" has the meaning ascribed thereto in section 14.1;
- (w) "**Discretionary Committee**" has the meaning ascribed thereto in Appendix E;
- (x) "**Fiscal Year**" means the period commencing on the day and year first written above and ending on the immediately following December 31 and thereafter the same as a calendar year;
- (y) "**Fund**" has the meaning ascribed to it in section 2.1;

- (z) **"Initial Contribution"** means the initial contribution of Property made by the Company to settle the Fund, as detailed in Appendix B hereto;
- (aa) **"Insolvency Event"** means, in respect of a person, that:
- (i) a judgment, decree or order of a Court is entered against such person:
 - (A) adjudging such person bankrupt or insolvent, or approving a petition seeking its reorganization or winding-up under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any other bankruptcy, insolvency or analogous law;
 - (B) appointing a receiver, trustee, liquidator, or other person with like powers, over all, or substantially all, of the Property of such person;
 - (C) ordering the involuntary winding up or liquidation of the affairs of such person; or
 - (D) appointing any receiver or other person with like powers over all, or substantially all, of the Property of such person unless, in any such case, such judgment, petition, order or appointment is stayed within 30 days of its entry;
 - (ii) an order or a resolution is passed for the dissolution, winding-up, reorganization or liquidation of such person pursuant to Applicable Law, including the *Canada Business Corporations Act*,
 - (iii) such person institutes proceedings to be adjudicated bankrupt or insolvent or consents to the institution of bankruptcy or insolvency proceedings against it under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any other bankruptcy, insolvency or analogous law;
 - (iv) such person consents to the appointment of a receiver, or other person with like powers, over all or substantially all of their Property;
 - (v) such person makes a general assignment for the benefit of creditors or becomes unable to pay its debts generally as they become due; or
 - (vi) such person takes or consents to any action in furtherance of any of the purposes referred to in clauses (ii), (iii) or (iv);
- (bb) **"Investment Instruction"** is applicable only if an Investment Manager has been appointed, and means all directions and instructions provided to the Trustee by an Authorized Party of an Investment Manager in accordance with sections 6.3 and 6.4 with respect to the investment of the Fund in Qualified Investments;
- (cc) **"Investment Manager"** means an investment advisor or manager with respect to the Fund or any portion thereof which has been appointed by the Trustee as provided in section 5.2. For greater certainty, an Affiliate of the Trustee may be an Investment Manager;

- (dd) "**NEB**" means, subject to section 1.4(b), the National Energy Board, established pursuant to the NEB Act;
- (ee) "**NEB Act**" means the *National Energy Board Act* (Canada);
- (ff) "**NEB Decision**" means an applicable decision, order, direction or other determination of the NEB relating to Abandonment, Reclamation Obligations or the Trust;
- (gg) "**NEB Order**" has the meaning ascribed in the recitals;
- (hh) "**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;
- (ii) "**Pipeline**" means the pipeline system currently owned and operated by the Company as more particularly described in Appendix A hereto, or any part thereof, including all or any of the sites where the Pipeline has been operated from time to time;
- (jj) "**Perpetuities Act**" means the *Perpetuities Act* (Alberta);
- (kk) "**person**" means, unless the context otherwise requires, an individual, partnership, limited partnership, corporation, limited liability company, association, trust, unincorporated organization or governmental authority;
- (ll) "**Property**" means all tangible and intangible assets and rights of any nature or type and includes without limitation cash and securities within the meaning ascribed to that term for purposes of the *Securities Act* (Alberta);
- (mm) "**Qualifying Environmental Trust**" means a trust that meets the requirements of that term as it is defined in subsection 211.6(1) of the Tax Act and as it is or may hereafter be defined in any other Tax Legislation applicable to the Trust;
- (nn) "**Qualified Investments**" means those investments which from time to time are qualified investments for a Qualifying Environmental Trust and that are not encompassed within the definition of "prohibited investment" in subsection 211.6(1) of the Tax Act; and which as of the date hereof include only those types of property described in paragraphs (a), (b), (c), (c.1), (d) and (f) of the definitions of "qualified investment" in section 204 of the Tax Act, all as more particularly described in Appendix D hereto; and "**Qualified Investment**" means any one of them;
- (oo) "**Reclamation Obligations**" means
 - (i) the duty to carry out the physical Abandonment of the Pipeline, including costs incurred to satisfy any conditions imposed by the NEB in any order or direction granting leave to Abandon the Pipeline;
 - (ii) the duty to develop an Abandonment plan, and to prepare an application for leave to Abandon the Pipeline; and

- (iii) the duty to carry out post-abandonment monitoring and remediation of a site or sites, relating to the prior operation of the Pipeline, where post-abandonment refers to the period of time after the Beneficiary has carried out the physical Abandonment of the Pipeline,

and all obligations incurred or assumed in performing such duties;

- (pp) "**Standard of Care**" has the meaning ascribed to that term in section 12.1;
- (qq) "**Statement of Investment Policies and Procedures**" has the meaning ascribed to that term in section 5.1(a);
- (rr) "**Tax Act**" means the *Income Tax Act* (Canada) and the regulations thereto;
- (ss) "**Tax Legislation**" means the Tax Act, the *Corporate Tax Act* (Alberta) and the corresponding legislation of all applicable Canadian provinces;
- (tt) "**Tax Obligations**" means the obligation to pay taxes and to comply with all certification, reporting and filing requirements with respect thereto, including without limitation the exercise of rights with respect to claiming exemptions or refunds related to taxes on behalf of the Trust;
- (uu) "**Trust**" means the trust constituted pursuant to Article 2;
- (vv) "**Trust Account**" has the meaning ascribed thereto in Appendix E;
- (ww) "**Trust and Loan Companies Act**" means the *Trust and Loan Companies Act* (Canada);
- (xx) "**Trust Expenses**" means all fees and expenses which the Trustee is entitled to receive or recover hereunder pursuant to Article 10; and all other costs, expenses and charges of any kind whatsoever reasonably incurred by or on behalf of the Trustee in connection with the investment of the Fund and the administration of the Trust in respect of which the Trustee is entitled to be reimbursed in accordance with the express provisions hereof;
- (yy) "**Trust Officer**" has the meaning ascribed thereto in Appendix E;
- (zz) "**Trust Term**" has the meaning ascribed to that term in section 13.2; and
- (aaa) "**Trustee**" means CIBC Trust Corporation, a trust company duly incorporated under the Trust and Loan Companies Act and registered as a trust company in the Province of Alberta with an office located in the City of Calgary in the Province of Alberta which has been approved to act as the Trustee of the Trust by the NEB and has been appointed under this Agreement to hold such office, and includes a successor replacement trustee appointed pursuant to this Agreement.

1.2 Currency

All references to currency in this Agreement are to Canadian dollars, unless otherwise specifically indicated.

1.3 Headings and References

The division of this Agreement into articles, sections and appendices and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. Unless otherwise specified, references to articles, sections and appendices are to articles and sections of and appendices to this Agreement.

1.4 Construction

In this Agreement:

- (a) words denoting the singular include the plural and *vice versa* and words denoting any gender include all genders;
- (b) references to any statute, rule, regulation, official directive or order of any governmental authority or any provision thereof refer to such instrument or provisions as from time to time amended, supplemented, restated or replaced; and
- (c) references to the NEB or any other governmental authority refer to the governmental authority for the time being exercising the relevant powers and authorities thereof or having the relevant responsibilities thereof under Applicable Law with respect to the Pipeline, including but not limited to the right to require and oversee Abandonment of the Pipeline or a part thereof, notwithstanding any change in the name, organization or constitution thereof or any amendment, replacement or repeal of any legislation creating or governing such governmental authority, and including (if applicable) governmental authorities created or governed by the laws of any Province of Canada.

1.5 Appendices

The following Appendices form an integral part of this Agreement:

- Appendix A - Description of Pipeline
- Appendix B - Initial Contribution
- Appendix C - Abandonment Work Certificate
- Appendix D - Qualified Investments
- Appendix E - Residence, Situs, Mind and Management of the Trust

ARTICLE 2 **CREATION OF THE TRUST**

2.1 Settlement of Fund

The Contributor hereby irrevocably transfers to and settles upon the Trustee the Initial Contribution to be held and administered by the Trustee, together with the balance of the Fund, in trust upon the terms and subject to the conditions set out in this Agreement (such Initial Contribution together with (i) all additional Contributions made hereunder from time to time, (ii) all interest, returns, gains, dividends, distributions or

other proceeds of any investment of any such amounts and of any such proceeds from time to time, and (iii) all other amounts and Property held from time to time by the Trustee hereunder, of any nature or kind, being referred to collectively herein as the “**Fund**”). The Trustee acknowledges receipt of such Initial Contribution.

2.2 Declaration of Trust

The Trustee accepts the trust hereby constituted and agrees to own legal title to, hold, use and administer the Fund in trust for the benefit of the Beneficiaries, their permitted assigns and representatives, in accordance with and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Trust hereunder. The Trustee shall have no liability or responsibility for any Property until such Property is received by the Trustee from the Contributor.

2.3 Name of Trust

- (a) The Trust shall be known and designated as the “**Enbridge Pipelines Inc. Abandonment Trust**” and, whenever lawful and convenient, the Fund shall be held and the affairs of the Trust shall be conducted and transacted under that name. The Trustee, with the consent of the Company, may adopt such other name or use such other designation as the Trustee deems appropriate, and in such case the Trustee may hold the Fund and conduct and transact the affairs of the Trust under such other name or designation.
- (b) If at any time neither the Company nor any of its Affiliates is a Contributor to or Beneficiary of the Trust, the Company may, by written notice to the Trustee, require that any reference to “Enbridge” in the name of the Fund be removed, and the Trustee hereby agrees that upon receipt of such notice the Trustee shall promptly proceed to take, or cause to be taken, all steps necessary or convenient to remove any reference to “Enbridge” in the name of the Trust.

2.4 Situs and Mind and Management

The situs, and mind and management, of the Trust shall be the Province of Alberta and the principal place of administration of the Trust shall be located at Calgary, Alberta, or such other place or places in the Province of Alberta as the Trustee may from time to time designate and will initially be located at 301 8th Avenue SW, Third Floor, Hollingsworth Building, Calgary, Alberta, T2P 1C5. Without limiting the generality of the foregoing, the Trust shall be and remain a resident of the Province of Alberta for purposes of the *Alberta Corporate Tax Act* and the Trustee shall not take or fail to take any action that would result in the Trust not so qualifying as a resident of the Province of Alberta. In furtherance of the requirements set forth in this section 2.5, the Trustee shall adhere to the requirements and procedures set out in Appendix E.

2.5 Purpose of the Trust

- (a) It is the express intention of the parties hereto that the Trust created by this Agreement constitutes a Qualifying Environmental Trust. This Agreement shall be read and interpreted in light of and consistently with the definition of Qualifying Environmental Trust as in effect from time to time, and none of the Company, the Contributor, the Beneficiaries or the Trustee shall take any action, including making any filing under the Tax Act, which would

reasonably be expected to jeopardize the status of the Trust as a Qualifying Environmental Trust.

- (b) Without limiting the generality of the foregoing, the Trust has been established and will be maintained for the sole purpose of funding reclamation of one or more sites in Canada which are (or have at any time been) used in the operation of the Pipeline. The Trust is not, is not intended to be, shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, syndicate, association, joint venture, company, or corporation; further, neither the Trustee nor the Company shall be deemed to be treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers.
- (c) In its first tax year, in filing a return of income for the Fund, the Fund shall complete and file Form T3M entitled "Environmental Trust Income Tax Return" under the Tax Act and any similar form required under other Tax Legislation.
- (d) To the maximum extent permitted by Applicable Laws, until all Abandonment Work is completed, the Fund shall be administered so that all amounts held by or distributed by the Trust shall be used to perform (or to reimburse the Beneficiary or applicable third party for performing) Abandonment Work with respect to the Pipeline, to pay taxes payable by the Trust and to pay Trust Expenses in accordance with, but subject to, Article 10.

ARTICLE 3 **TRUSTEE**

3.1 Appointment and Term of Trustee

The appointment of the Trustee as trustee of the Trust was approved by the NEB pursuant to **[Order number and date.]** The term of office of any body corporate holding office as Trustee hereunder commences from the date on which such trustee executes this Agreement and shall continue until the earlier of the date of the termination of the Trust or the effective date of the Trustee's resignation or removal as provided herein.

3.2 Qualifications of the Trustee

The Trustee shall at all times be a body corporate:

- (a) to which the Trust and Loan Companies Act applies;
- (b) resident in Canada for the purpose of the Tax Act;
- (c) licensed or otherwise authorized under the laws of Canada and the province of Alberta to carry on in Canada and the province of Alberta the business of offering to the public its services as trustee; and
- (d) that has agreed to comply with section 2.4 and has offices and personnel in the Province of Alberta enabling it to comply with section 2.4.

3.3 Resignation or Removal of the Trustee

- (a) The Trustee may resign by giving the Contributor and Beneficiary not less than 90 days' prior written notice of such resignation, unless a shorter or longer period of notice is agreed to between the parties hereto, provided that no such resignation shall be effective until the appointment of a replacement trustee has become effective as provided below.
- (b) The Trustee may be removed as trustee of the Trust upon receipt of 60 days' prior written notice (unless a shorter or longer period of notice is agreed to between the parties hereto) of such removal being delivered to the Trustee by the Contributor, or, if a Default has occurred and is continuing with respect to the Contributor, by the NEB, subject to and effective upon the appointment of a replacement trustee becoming effective as provided below.
- (c) Notwithstanding section 3.3(b), if an Insolvency Event occurs in respect of the Trustee, or if the Trustee is convicted of an offence involving dishonest conduct, the Trustee may be removed as trustee of the Trust by the Contributor or, if a Default has occurred and is continuing with respect to the Contributor, by the NEB without any period of prior notice to the Trustee, subject to and effective upon the appointment of a replacement trustee becoming effective as provided below.
- (d) In the event of the removal or resignation of the Trustee, a replacement trustee shall be appointed by the Contributor provided that such appointment shall be conditional upon approval of the appointment by the NEB (or, if a Default has occurred and is continuing with respect to the Contributor, a successor trustee shall be appointed by the NEB). Any such appointment shall be made in writing and the replacement trustee must meet the requirements of section 3.2.
- (e) In the event the Contributor fails to appoint a replacement trustee within 60 days of receipt of the written notice of resignation, the Trustee, at the expense of the Trust, shall have the right to seek appointment of a replacement trustee from the NEB or from a Court.
- (f) Upon completion of all of the following:
 - (i) a trust company qualified under section 3.2 being conditionally appointed as the replacement trustee by the Contributor (or, if a Default has occurred and is continuing, by the NEB);
 - (ii) the appointment of the replacement trust company, if made by the Contributor, being approved by the NEB; and
 - (iii) such trust company executing and delivering to the Contributor and the previous Trustee an acceptance of such appointment in form and substance satisfactory to the Contributor agreeing to be bound by the provisions of this Trust Agreement,

the resignation or removal of the previous Trustee and the appointment of such replacement trustee shall become effective for all purposes and such replacement trustee shall have all of the same powers and duties as those conferred upon the Trustee by this Agreement.

- (g) Upon the appointment of the replacement Trustee becoming effective, the Trustee that has resigned or been removed shall immediately transfer title to and pay over all of the assets comprising the Fund to the replacement Trustee, less such reasonable amounts as the Trustee establishes are necessary to cover its unpaid fees and expenses and any other amount owing to it hereunder, and shall transfer all relevant books and records maintained by it for the purpose of its responsibilities under this Agreement to the replacement Trustee. The Trustee that has resigned or been removed shall have no duties, responsibilities or liability with respect to the acts or omissions of any replacement trustee appointed in accordance with the foregoing provisions.
- (h) An act of the Trustee is valid notwithstanding an irregularity in the appointment of the Trustee or a defect in the qualifications thereof.

ARTICLE 4
CONTRIBUTIONS AND DISTRIBUTIONS

4.1 Contributions

The Contributor shall make Contributions to the Trust from time to time of all amounts it collects as Abandonment Charges that are required to be contributed to the Trust and may from time to time contribute such other amounts to the Trust as may be required in order to comply with an NEB Decision or which the Contributor, in its discretion, decides to contribute to the Trust.

4.2 Distributions

Subject to section 13.3, no distributions or payments shall be made from the Fund by the Trustee other than as follows:

- (a) to pay Trust Expenses as and when due and payable;
- (b) to pay all taxes payable by the Trust under Applicable Law, including all taxes determined to be payable pursuant to the tax returns filed by the Trustee in compliance with Article 7;
- (c) to pay for Abandonment Work, on presentation by a Beneficiary of:
 - (i) an Abandonment Work Certificate substantially in the form attached as Appendix C requesting the release of the amount stated therein to the Beneficiary or to a named third party in order to pay or reimburse the Beneficiary or third party for the costs and expenses incurred or to be incurred to perform Abandonment Work; and
 - (ii) an NEB Decision confirming the release of funds from the Trust as set forth in the Abandonment Work Certificate, the timing of the disbursement and the identity of the Beneficiary or third party to receive the disbursement. .

Upon payment being made by the Trustee pursuant to this section 4.2, the amount thereof shall no longer constitute a part of the Fund.

ARTICLE 5
INVESTMENT

5.1 Investment of the Fund

- (a) The Contributor has on the date hereof established and delivered to the Trustee a statement of the investment policies and procedures to be applicable to the Trust and, subject to subsections (b) and (c), the Contributor may from time to time hereafter amend, modify, supplement or restate the policies and procedures and such policies and procedures as from time to time so amended, supplemented, restated or replaced are referred to herein as the **“Statement of Investment Policies and Procedures”**.
- (b) In all events and at all times, the Statement of Investment Policies and Procedures shall provide that the Fund may only be invested in Qualified Investments (without limiting the ability of the Contributor to specify in any Statement of Investment Policies and Procedures that the investments in which the Fund may be invested shall be further restricted).
- (c) Prior to amending, supplementing, restating or replacing the Statement of Investment Policies and Procedures, the Contributor shall provide prior written notice of such changes within the period and containing the information stipulated from time to time by the NEB.
- (d) The Trustee is responsible for receiving, holding, investing and releasing the Fund. The Trustee shall control and hold the Funds and, subject to section 5.2, have complete control of the Fund's investment management.
- (e) Subject to section 5.2, the Fund shall be held, invested and reinvested by the Trustee in accordance with the Statement of Investment Policies and Procedures from time to time in effect, whether or not any such investment is of a character authorized by laws concerning investments by trustees, provided that the Trustee shall ensure that at all times the Fund is invested solely in Qualified Investments. The Trustee shall invest the principal and income of the Fund without distinction between principal and income in such investments as it may select in accordance with the provisions hereof.
- (f) Provided that it has complied with the Statement of Investment Policies and Procedures and acted in accordance with the Standard of Care, the Trustee shall not be responsible for the title, validity or genuineness of any Property or evidence of title thereto received by it or any defect in ownership or title of any Property from time to time forming part of the Fund.

5.2 Investment Manager

The Trustee may from time to time, after consultation with the Contributor, appoint one or more Investment Managers:

- (a) To provide investment advice from time to time to the Discretionary Committee as to the Qualified Investments in which it recommends that the Fund or any portion thereof should be invested from time to time and, upon the Discretionary Committee making any investment decision with respect to all or any part of the Fund, carrying out such activities as may be necessary or appropriate to settle such investment decision made by the Discretionary Committee; or

- (b) to manage, on a fully discretionary basis, the investment of all or any specified portion of the Fund and, with respect to the Fund or such specified portion, to direct the Trustee with respect to settling investment transactions with respect to the Fund or such specified portion and to exercise such other powers of the Trustee hereunder as may be granted to such Investment Manager and set forth in a written instrument appointing the Investment Manager executed by the Trustee and accepted by such Investment Manager, a copy of which shall be provided to the Contributor.

With respect to any appointment made under subsection 5.2(b), such Investment Manager shall be required to have an office and personnel in the Province of Alberta and must ensure that all investment decisions in respect of the Fund are made in the Province of Alberta unless (i) the Trustee has obtained, at its expense, a binding advance ruling under all applicable Tax Legislation (including the Tax Act and the Tax Legislation of the jurisdiction where such Investment Manager proposes to make investment decisions affecting the Fund) to the effect that the manner and location in which the Investment Manager proposes to make such investment decisions will not subject the Trust, the Contributor or the Beneficiary to any Tax Obligations to which they would not have been subject if the Investment Manager had an office and personnel in the Province of Alberta and ensured that all investment decisions in respect of the Fund were made in the Province of Alberta (such advance ruling to be acceptable to the Contributor and Beneficiary, acting reasonably) and (ii) such Investment Manager at all times manages the Fund or such specified portion in compliance with the terms of such advance ruling.

With respect to the assets allocated to an Investment Manager under subsection 5.2(b), the Trustee shall have no liability for any investment made by or in accordance with Investment Instructions issued by the Investment Manager so long as the selection and retention of the Investment Manager was undertaken in accordance with the Standard of Care.

5.3 Fund to be Segregated

In carrying out its duties and obligations hereunder, the Trustee shall ensure that the Fund shall always be kept separate and distinct from the general assets of the Trustee, except to the extent expressly permitted by section 6.1(m). If the assets of the Fund become mixed with the assets of the Trustee, the resulting mixed fund shall be deemed to be held in trust on behalf of the Fund but only to the extent necessary to satisfy the Trust's claim on such mixed fund.

ARTICLE 6 **CONCERNING THE TRUSTEE**

6.1 General Powers and Duties

Subject to section 6.7, in administering and investing the Fund, the Trustee shall be specifically authorized, in respect of the following matters, to:

- (a) **Hold Investments.** Hold or cause to be held any Qualified Investment in nominee name, in bearer form, or in book entry form, in a clearinghouse corporation or in a depository (including an Affiliate of the Trustee), provided that the Trustee's records clearly indicate that the assets held are a part of the Fund and provided that the Trustee shall not be responsible for any losses resulting from the deposit or maintenance of any Qualified Investment (in accordance with market practice, custom or regulation) with any recognized domestic

clearing facility, book entry system, centralized custodial depository, or similar organization provided that it acts in accordance with the Standard of Care.

- (b) **Collect Income and Proceeds.** Collect and reinvest income payable to and distributions due to the Trust and sign on behalf of the Trust any declarations, affidavits, certificates of ownership and other documents required to collect income and principal payments, including but not limited to, tax reclamations, rebates and other withheld amounts and collect proceeds from any Qualified Investment, which may mature, provided that whenever a Qualified Investment offers the Trustee the option of receiving interest, dividends or other returns in cash or in shares or other Property, the Trustee shall select the cash option unless the Trustee is otherwise directed by the Statement of Investment Policies and Procedures then in effect.
- (c) **Redeem Securities.** Present for redemption or exchange any Qualified Investment which may be called, redeemed, withdrawn or retired provided that timely receipt of written notice of the same is received by the Trustee from the issuer.
- (d) **Employ Advisors.** Employ or retain Advisors for the purposes of fulfilling the Trustee's duties and obligations in respect of the Trust, and as part of its reimbursable expenses under this Agreement, pay their reasonable fees and expenses. The Trustee shall be responsible for selecting such Advisors in accordance with the Standard of Care.
- (e) **Execute Instruments.** Make, execute and deliver any and all documents, agreements or other instruments in writing as are necessary or desirable for the accomplishment of any of the powers and duties in this Agreement.
- (f) **Determine Value.** Determine the fair market value of the Fund as required for purposes of compliance with section 8.2 or as otherwise reasonably requested by the Contributor and/or the Beneficiary from time to time, in accordance with methods consistently followed and uniformly applied provided that in determining fair market value of the Fund or any portion thereof, the Trustee shall be entitled to rely on and shall be protected in relying on values provided by any Investment Manager appointed in respect of the Fund or such portion thereof pursuant to section 5.2.
- (g) **Resolution of Certain Disputes.** Dispute any obligations of the Trust except where the incurrence or payment of such obligations has been previously approved by a Contributor Direction. In particular, and without limiting the generality of the foregoing, where a Tax Obligation is levied or assessed against the Trustee in respect of the Fund, the Trustee shall give reasonable prior notice to the Contributor before paying or agreeing to pay such Tax Obligation. The Trustee may contest the validity of any such Tax Obligation on behalf of and at the expense of the Trust through such Advisors as it may elect to retain for such purpose if the Trustee determines that it is prudent to do so in accordance with the Standard of Care.
- (h) **Delivery of Securities.** Accept delivery of any Qualified Investment free of payment. With respect to any Investment Instruction from an Investment Manager to receive a Qualified Investment in a transaction not placed through the Trustee, the Trustee shall have no duty or responsibility to take any steps to obtain delivery of the Qualified Investment from brokers or others either against payment or free of payment except that the Trustee shall accept

delivery of the Qualified Investment in good, deliverable form in accordance with the applicable Investment Instruction when presented by a delivering party. If an Investment Instruction to receive a Qualified Investment has been given by the Investment Manager and such Qualified Investment has not actually been received by the Trustee, the Trustee shall use its best efforts to notify the Investment Manager of such non-receipt.

- (i) **Power to do any Necessary Act.** Generally take all action, whether or not expressly authorized, which the Trustee may deem necessary or advisable, acting reasonably, for the fulfillment of its duties hereunder. Without limiting the generality of the foregoing, this may include seeking, in accordance with the Applicable Laws, the advice and direction of the NEB or a Court with respect to:
 - (i) the Beneficiary or Beneficiaries of the Trust at any particular time where the Beneficiary has ceased to exist or a Default exists in respect of the Beneficiary; or
 - (ii) the distribution or division of the Fund in the event of the sale of the Pipeline or a portion thereof.
- (j) **Self Dealing.** Deal on behalf of the Trust with any person which is an Affiliate of the Trustee, in which event neither the Trustee nor the Affiliate shall be accountable for any profit earned in the course of such dealing, provided that when the Trustee directly retains or appoints a person at the expense of the Fund who is an Affiliate of the Trustee or does not otherwise deal at arm's length from the Trustee within the meaning of the Tax Act, the terms of such appointment, retainer, or other dealing shall be as provided herein or in a Contributor Direction and in any event be on a commercially reasonable basis.
- (k) **Purchase and Sale of Qualified Investments.** Purchase and sell and engage in other transactions, including receipts and deliveries, exchanges, exercises, conversions, subscriptions, and other voluntary corporate actions, with respect to Qualified Investments.
- (l) **Exercise of Owner's Rights.** Deal with any Qualified Investment which is held as part of the Fund. In doing so, the Trustee may exercise the voting rights attached to any Qualified Investment; give general or special proxies or powers of attorney with or without power of substitution with respect thereto; exercise any conversion privileges, subscription rights, or other options, and make any payments incidental thereto; oppose, or consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities that are Qualified Investments; and, subject to section 5.2, delegate discretionary powers and generally exercise any of the powers of an owner with respect to all Qualified Investments held as part of the Fund.
- (m) **Cash Deposits.** At any time, and from time to time, deposit cash forming part of the Fund in interest bearing accounts in the deposit department of the Trustee, or any banking Affiliate of the Trustee, provided such deposits qualify at all times as Qualified Investments; and provided further that any such cash of the Fund so deposited may be commingled with other trust funds held by the Trustee from time to time, but only to the extent that such commingling is not contrary to or inconsistent with any NEB Decision or section 2.5 (a).

- (n) **Pooled Funds.** Invest in any pooled or common investment fund, including a pooled or common investment fund maintained by the Trustee or any of its Affiliates, provided that such pooled or common investment fund is invested solely in Qualified Investments and an opinion of legal counsel is obtained by the Trustee that such method of investing in Qualified Investments is permitted for a Qualifying Environmental Trust.
- (o) **Dealing with Claims.** Settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust and commence or defend suits or legal or administrative proceedings and represent the Trust in all suits and legal and administrative proceedings in any court or before any other body or tribunal as the Trustee shall deem necessary to protect the Fund, provided that the Trustee shall not be obligated to do so until it has first been indemnified by the Contributor to its reasonable satisfaction against any fees and expenses or liabilities which it may incur as a result thereof.

Except as expressly provided in this section 6.1, the powers described in this section 6.1 may be exercised by the Trustee with or without a Contributor Direction, Beneficiary Direction or Investment Instruction, but where the Trustee acts strictly in accordance with a Contributor Direction, Beneficiary Direction or Investment Instruction, the Trustee shall be relieved of liability as described in section 6.6.

6.2 Proxies

The Trustee shall use reasonable efforts to submit or cause to be submitted, in a timely manner, to the Investment Manager, if any, charged with the investment responsibility for the asset to which the communication relates, for appropriate action any and all proxies, proxy statements, notices, requests, advice or other communications actually received by the Trustee (or its nominees) as the recorded owner of any Qualified Investment forming part of the Fund. If an Investment Manager has been appointed with respect to the relevant Qualified Investment, the Trustee shall be under no other duty to investigate, participate in or take affirmative action concerning attendance at meetings, voting, subscription, conversion or other rights attaching to or derived from any Qualified Investment forming part of the Fund or concerning any merger, consolidation, reorganization, receivership, bankruptcy or insolvency proceedings, compromise or arrangement or the deposit of any Qualified Investment in connection therewith or otherwise unless and to the extent it is instructed to do so by the Investment Manager appointed with respect to the relevant Qualified Investment.

6.3 Authorized Parties

- (a) The Contributor may provide approvals, authorizations or (solely in respect of those matters that, in accordance with the provisions hereof, the Contributor is empowered to give instructions or directions hereunder) instructions or directions to the Trustee from time to time (each a "**Contributor Direction**"). The Contributor shall from time to time furnish the Trustee with a written list of the names, signatures and extent of authority of all persons having the authority to provide Contributor Directions hereunder on behalf of the Contributor and otherwise act on behalf of the Contributor under the terms of this Agreement.
- (b) Upon an Investment Manager being appointed in writing under section 5.2, such Investment Manager may from time to time give Investment Instructions to the Trustee governing the investment of the Fund to the extent of its appointment. Each such Investment Manager shall furnish the Trustee upon such appointment and from time to time thereafter with a

written list of the names and signatures of the person or persons having the authority to issue Investment Instructions on behalf of the Investment Manager under this Agreement.

- (c) The Beneficiary may provide approvals, authorizations, instructions or directions to the Trustee from time to time with respect to distributions from the Fund and any matters affecting the Beneficiary's accounting and tax obligations (each a "**Beneficiary Direction**"). The Beneficiary shall from time to time furnish the Trustee with a written list of the names, signatures and extent of authority of all persons having the authority to provide Beneficiary Directions and Abandonment Work Certificates hereunder on behalf of the Beneficiary and otherwise act on behalf of the Beneficiary under the terms of this Agreement.
- (d) The Trustee shall be entitled to rely on, and shall be fully protected in giving effect to, Contributor Directions, Beneficiary Directions or Investment Instructions from persons identified in accordance with subsections (a), (b) or (c) until it has been notified in writing by the Contributor, Investment Manager or Beneficiary, as applicable, of a change of the identity or authority of such persons.
- (e) The NEB may issue NEB Decisions in the place and stead of Contributor Directions or Beneficiary Directions whenever a Default exists in respect of either the Contributor or Beneficiary, respectively, or as specified in section 3.3.

6.4 Directions and Instructions

- (a) The Trustee shall use reasonable efforts to monitor its facsimile communication and electronic transmission facilities but Investment Instructions, Contributor Directions or Beneficiary Directions shall be deemed not to be received until the earliest of: (i) the time they are brought to the attention of the officers of the Trustee to which they are addressed; (ii) 3:00 p.m. on the day of transmission if sent before 3:00 p.m. (Mountain time) on a Business Day; or (iii) 9:00 a.m. on the next Business Day if sent after 3:00 p.m. (Mountain time) on a Business Day or if sent on a day that is not a Business Day.
- (b) Unless otherwise expressly provided, each Contribution Direction, Beneficiary Direction or Investment Instruction shall continue in full force and effect until superseded or cancelled by another Contribution Direction, Beneficiary Direction or Investment Instruction, respectively.
- (c) No amounts shall be disbursed from the Fund to or at the direction of a Beneficiary in respect of which a Default exists and for so long as such Default is continuing except where the Beneficiary has previously undertaken and paid for Abandonment Work and the disbursement from the Fund is a reimbursement for that Abandonment Work.
- (d) No amounts shall be made payable by the Fund to a Beneficiary except pursuant to section 4.2.
- (e) The Trustee shall establish one or more custody accounts in the name of the Trustee for the account of the Trust as directed by Contributor Direction in which the Trustee shall deposit or cause to be deposited the assets of the Fund. The Trustee shall thereafter provide the Contributor with the applicable custody account(s) information. If so directed by Contributor Direction, the Trustee shall deposit or cause to be deposited the respective proportions of each Contribution in the custody accounts specified in the Contributor Direction.

6.5 Errors, Omissions in Directions or Instructions

Any Contributor Direction, Beneficiary Direction or Investment Instruction shall, as against the Contributor, the Beneficiary or the Investment Manager as the circumstances require, and in favour of the Trustee, be conclusively deemed to be effective for the purposes of this Agreement, notwithstanding any error in the transmission thereof or that such Direction or Instruction may not be genuine, if believed to be genuine by the Trustee acting in accordance with the Standard of Care. If the Trustee declines to give effect to any Contributor Direction, Beneficiary Direction or Investment Instruction as a result of its inadequacy of form or transmission, it shall immediately notify the Contributor, the Investment Manager or the Beneficiary, as the circumstances require, after it so declines.

6.6 No Duty

The Trustee shall be fully protected in acting in accordance with any Contributor Direction, Beneficiary Direction, Investment Instruction or NEB Decision and shall be under no liability for any application, or any actions in respect, of the Fund made by it pursuant thereto (provided that it has implemented any such Contributor Direction, Beneficiary Directions, Investment Instruction or NEB Decision in accordance with the Standard of Care). The duties of the Trustee in respect of the Trust shall be limited to the Property forming part of the Fund, and the Trustee shall have no duties or obligations hereunder with respect to Property held by any other person.

6.7 Restrictions on the Powers of the Trustee

Notwithstanding any other provision hereof, the Fund must at all times be invested only in Qualified Investments and the Trustee shall not, and is not authorized at any time to, borrow any funds on behalf of the Trust or to permit the Trust to be in an overdraft position.

ARTICLE 7

TAX OBLIGATIONS

7.1 Tax Obligations

- (a) The Beneficiary and the Trustee acknowledge that it is intended that the Fund will incur and pay Tax Obligations in relation to the Fund and that the Beneficiary may be required to pay or may incur taxes attributable to the income of the Fund.
- (b) The Trustee shall prepare and file or issue, on a timely basis, all income tax returns, elections and other forms which, by virtue of the Tax Legislation, the Trustee is required to file or issue in respect of each taxation year of the Trust, including the fiscal year ending on termination of the Fund, and, upon receipt of a Beneficiary Direction, such other returns and forms as may be required under Applicable Law. The Trustee may retain an Advisor in respect of all such returns and other filings, selected in accordance with the Standard of Care, provided that the Trustee shall be deemed to have met the Standard of Care if it retains the auditor of the Trust for such purpose.
- (c) The Trustee shall provide the Contributor and Beneficiary with drafts of all such filings at least 30 days before they are due in order to permit the Contributor and Beneficiary to comment thereon and shall provide copies of all such filings once made, to the Beneficiary and the Contributor.

- (d) Where a tax return, election or other form is required to be filed or issued or tax is payable as a result of any action of an Investment Manager, the Investment Manager shall inform the Trustee, the Contributor and the Beneficiary in writing that such return or form must be filed or issued or that such tax is payable. To the extent the Trustee is responsible under any Applicable Law for any Tax Obligation and the Trustee does not have the necessary information for the performance of its obligations hereunder, the Contributor, Investment Manager or Beneficiary, as applicable, shall promptly upon request provide the Trustee with all information required by the Trustee in respect of such Tax Obligations. The Trustee shall not be required to prepare, file or issue any return or form unless it has the information necessary to prepare, file or issue such return or form.
- (e) The Trustee shall use all reasonable efforts (not including the payment of money), based upon available information, to assist the Beneficiary with respect to any Tax Obligations imposed or asserted against the Beneficiary which relate to the Fund or the income of the Fund. Provided that the Trustee abides by the Standard of Care, the Trustee shall have no responsibility or liability for any assistance provided to the Beneficiary for any Tax Obligations now or hereafter imposed on the Beneficiary or the Fund or the Trustee in respect of the Fund by any taxing authorities.

ARTICLE 8

REPORTING AND RECORDKEEPING

8.1 Accounts and Records

The Trustee shall keep and maintain accurate records with respect to the Trust and such records as they relate to the Trust shall be open to inspection during reasonable business hours by persons duly authorized by the Contributor, the Beneficiary, the Investment Manager or the NEB provided that prior written notice is given to the Trustee and the Trustee may require that such inspection be conducted in the presence of a representative of the Trustee. To the extent the Trustee is legally obligated to permit any persons other than those authorized by the Contributor, the Beneficiary, the Investment Manager or the NEB to have such access or if the Trustee becomes subject to legal process designed to require or permit such access, the Trustee shall promptly provide the Contributor and the Beneficiary with written notice thereof. Except as required by Applicable Law, no person other than the Contributor, the Beneficiary, the Investment Manager or the NEB or a person acting by or through any of them shall have the right to demand or be entitled to any accounting in respect of the Fund or to bring any action against the Trustee with respect thereto.

8.2 Reports and Audit

- (a) The Trustee shall appoint an auditor of the Trust.
- (b) The Trustee shall provide financial and other reports to the Contributor or Beneficiary containing such information regarding the Fund and the investment thereof as the Contributor or Beneficiary may from time to time reasonably require in order to fulfill their own recordkeeping and financial reporting functions, at such time or times as the Contributor or Beneficiary may reasonably request in a Contributor Direction or Beneficiary Direction.
- (c) Without limiting the generality of subsection 8.2(b), the Trustee shall furnish (or, as applicable, cause the Investment Manager to furnish) to the Contributor and the Beneficiary

the financial information necessary to complete the annual reporting form that is required to be filed with the NEB by the Trust (as set forth in Appendix XV to the Reasons for Decision in MH-001-2013 released by the NEB in May 2014) within 15 days following the close of each Fiscal Year of the Trust, and within 15 days after the removal or resignation of the Trustee or termination of the Trust.

- (d) The Trustee shall furnish to the Contributor and the Beneficiary within **[60]** days following the close of each Fiscal Year of the Fund or such other period as may be agreed upon between the Trustee and the Contributor and the Beneficiary, and within **[60]** days after the removal or resignation of the Trustee or termination of the Trust, audited financial statements for the Trust together with a written statement of account setting forth all investments, receipts, disbursements and other transactions effected by it during such period, along with any other information as may be agreed between the Contributor and the Beneficiary and the Trustee from time to time.
- (e) Together with the audited financial statements, the Trustee (or, if an Investment Manager has been appointed in respect of the Fund, the Investment Manager) shall provide an annual report to the Contributor and the Beneficiary confirming that at no time during the relevant Fiscal Year of the Trust has any part of the Fund been held or invested otherwise than in Qualified Investments.
- (f) The Trustee (or, if applicable with respect to the annual report, the Investment Manager) shall provide drafts of the annual financial statements and annual report referred to in sections 8.2(c) and (d) to the Contributor and Beneficiary for comment at least 15 days before such statements and report are delivered pursuant to such sections.
- (g) The Trustee shall also provide (or cause the Investment Manager to provide) to the Contributor and the Beneficiary such other information or reports as may reasonably be requested by the Contributor or the Beneficiary from time to time.

ARTICLE 9

FORCE MAJEURE

9.1 Force Majeure

Notwithstanding anything in this Agreement to the contrary, the Trustee shall not be responsible or liable for its failure to perform under this Agreement or for any losses to the Fund resulting from any event beyond the reasonable control of the Trustee through its exercise of the Standard of Care, including but not limited to nationalization, strikes, expropriation, devaluation, seizure, or similar action by any governmental authority, de facto or de jure; or enactment, promulgation, imposition or enforcement by any such governmental authority of currency restrictions, exchange controls, levies or other charges affecting the Fund's Property; or the breakdown, failure or malfunction of any utilities or telecommunications systems; or any order or regulation of any banking or securities industry including changes in market rules and market conditions affecting the execution or settlement of transactions; or acts of war, terrorism, insurrection or revolution; or acts of God; or any similar or third party event. This section shall survive the termination of this Agreement.

9.2 Business Recovery

The Trustee shall, at all times that this Agreement is in force, maintain a commercially reasonable business recovery programme.

ARTICLE 10 COMPENSATION AND EXPENSES

10.1 Fees and Expenses

Pursuant to section 4.2 and this Article 10, as part of the expenses of the Trust, the Trustee may pay or cause to be paid reasonable fees, costs and expenses incurred in connection with the administration and management of the Trust and in connection with the discharge of any of the Trustee's duties herein at such rates and on such terms and conditions as the Contributor and the Trustee may from time to time agree in writing, including fees, costs and expenses of Advisors employed by or on behalf of the Trust. All costs, charges and expenses properly incurred by the Trustee on behalf of the Trust shall be payable out of the Fund unless otherwise expressly provided herein.

10.2 Right to Fees and Expenses

- (a) Upon presentation of an invoice to the Contributor, the Trustee is authorized by the Contributor to charge to the Trust any and all fees and expenses in connection with services provided by the Trustee hereunder, and any other amounts owing to the Trustee hereunder, on a monthly basis and to deduct such amount from the Trust's assets 30 days after presentation of such invoice or on such earlier date as the Contributor may from time to time agree in a Contributor Direction or other written agreement or instrument unless the Contributor disputes in writing that any such fee or expense or any portion thereof is due or payable.
- (b) In the event of a dispute between the Trustee and the Contributor over the amount of fees and expenses, or a part thereof, to which the Trustee is entitled, the Contributor shall notify the Trustee and, if such notification is received prior to the agreed date of debit, the Trustee shall delay the deduction of the disputed amount and, in any event, the Trustee and the Contributor shall both work diligently to resolve such dispute. If such dispute cannot be resolved between the parties, then either party may submit the dispute to commercial arbitration, and such arbitration shall be conducted in accordance with the *Arbitration Act* (Alberta).

ARTICLE 11 RESPONSIBILITIES OF THE TRUSTEE

11.1 Investment

The Trustee shall not be responsible for any loss or diminution of the Fund resulting from the making, retention or sale of any investment or reinvestment made by it (or by an Investment Manager appointed, in accordance with the Standard of Care, by the Trustee) in accordance with the Statement of Investment Policies and Procedures as herein provided.

11.2 Fund Administration

The Trustee shall not be responsible for the collection from the Contributor of Abandonment Charges or any contribution to the Fund or the compliance of the same with Applicable Laws or for the sufficiency of the Fund to meet and discharge any payments and liabilities under the Trust. Subject to Applicable Laws, the Trustee shall have no duty or responsibility for the determination of the amount of, or timing of, any contribution to the Fund. The Contributor shall be responsible for ensuring that no Contributor Directions shall permit or require the Trustee to use or divert any part of the Fund for purposes other than those which are in accordance with the terms of this Agreement.

11.3 Reliance on Advisors

The Trustee shall be permitted to rely upon and shall not be liable for actions taken or omitted to be taken on the advice or information of any expert including legal counsel, auditors, accountants, appraisers, agents or other professional advisors employed as herein provided ("**Advisors**"), provided that the Trustee has met the Standard of Care in the selection and continued retention of such Advisors.

11.4 Survival

The provisions of this Article 11 shall survive the termination of this Agreement and the Trust.

ARTICLE 12 STANDARD OF CARE

12.1 Standard of Care

The Standard of Care required of the Trustee in exercising its powers and carrying out its functions under this Agreement shall be that it exercise its powers and carry out its functions hereunder as Trustee honestly, in good faith with a view to the best interests of the Trust and the Beneficiaries and that in connection therewith it exercise that degree of care, diligence and skill that a reasonably prudent professional corporate trustee acting in like capacity would exercise in dealing with the property of another person (collectively, the "**Standard of Care**"). For all purposes hereof, the Trustee shall be deemed to have met the Standard of Care if and to the extent it has acted in accordance with a Contributor Direction or a Beneficiary Direction.

ARTICLE 13 AMENDMENT AND TERM AND TERMINATION OF THE FUND

13.1 Amendment

The Contributor and the Trustee may at any time, and from time to time, by an agreement in writing, amend or modify in whole or in part, any or all of the provisions of this Agreement, provided that:

- (a) no provision of this Agreement shall be deemed waived, amended or modified by any party unless such waiver, amendment or modification is in writing and signed by such party and accepted in writing by the other party;
- (b) no amendment or modification shall be effective to the extent that it is inconsistent with the Trust's purposes as set out in this Agreement;

- (c) the Trustee shall not withhold its consent to any such waiver, amendment or modification requested by the Contributor in writing unless the Trustee reasonably concludes that it will be adversely affected thereby; and
- (d) no waiver, amendment or modification will be effective without approval by an NEB Decision.

13.2 Termination of the Trust

- (a) Except where section 13.2(b) applies:
 - (i) The Trust shall terminate and be wound up upon the earlier of the following (the period from the date hereof until such termination being the "**Trust Term**"):
 - (A) the day prior to the expiration of twenty one (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 (the "**Permitted Term**"); and
 - (B) the date on which the Tribunal confirms in writing that all Abandonment Work as required under Applicable Law has been completed.
 - (ii) Not more than five years and not less than one year prior to the expiration of the Permitted Term, the Trustee shall (unless the Trust has already terminated under subsection (a)(i)(B)) pay the entirety of the Fund to the Beneficiary, provided that the following conditions are satisfied:
 - (A) the Trustee has requested and received a certificate of an officer of the Beneficiary that is an Authorized Party stating that: (1) to the best of the officer's knowledge, the Beneficiary is not in Default and no events or circumstances have occurred which would reasonably be expected to result in a Default within one year after the date the certificate is issued; and (2) the Beneficiary has established, with the approval of the Tribunal, a new irrevocable trust upon the same terms and subject to the same conditions as set out in this Agreement (the "**New Trust**"); and
 - (B) the Beneficiary has irrevocably covenanted that upon receipt of the Fund, the Beneficiary shall: (1) keep all of the Fund Property separate and distinct from other assets of the Beneficiary; and (2) immediately contribute or transfer the entirety of the Fund Property to the New Trust.
 - (iii) If, on or before one year prior to the expiration of the Permitted Term, the Trust has not terminated under subsection (a)(i)(B) nor has the entirety of the Fund been paid to the Beneficiary pursuant to subsection (a)(ii), then the Trustee shall notify the Tribunal thereof not later than ten months prior to the expiry of the Trust Term, and:
 - (A) if, not less than 90 days prior to the expiry of the Trust Term, the Tribunal provides direction to the Trustee with respect to the payment of the entirety of the Fund on termination of the Trust in accordance with the purpose and objects of this Agreement, the Trustee will pay the entirety

of the Fund in accordance with such direction and subject to Applicable Law; and

- (B) otherwise, the Trustee will pay the entirety of the Fund to Her Majesty in right of Canada prior to the expiry of the Trust Term.
- (b) If, after the date of this Agreement and prior to disbursement of the entirety of the Fund pursuant to section 13.2(a), the Perpetuities Act is amended with the result that the rules of law and enactments relating to perpetuities and accumulations no longer apply to the Trust, then (i) subsection 13.2(a) shall no longer apply, and (ii) the Trust shall instead terminate and be wound up at such time, if any, as the Tribunal confirms in writing that all Abandonment Work as required under Applicable Law has been completed.

13.3 Surplus Funds

If Trust is terminated pursuant to Section 13.2(b) and Property remains in the Fund after all Abandonment Work of the Beneficiaries has been completed and paid for, then the Trustee, with the approval of the NEB, may distribute the Fund or any part thereof among any of the Beneficiaries and, if applicable, an Orphan Pipeline Fund selected by the Trustee as the Trustee in its sole discretion sees fit.

13.4 Trust Irrevocable

Subject to the provisions of the *Trustee Act* (Alberta), the Trust may not be revoked by the Contributor, by the Beneficiaries acting as a whole or by the Trustee.

13.5 Transfer of the Pipeline; Change of Beneficiary

- (a) If the Company sells, transfers or assigns its ownership of the Pipeline or a portion thereof, and, as a result of such transaction, any other person becomes obligated to, or does, collect Abandonment Charges or becomes obligated to make Contributions to the Trust, whether pursuant to an NEB Decision or otherwise, the Contributor shall (subject to NEB approval and unless the NEB otherwise directs) ensure as part of such transaction that such person enters into an agreement in favour of the Trustee and approved by the NEB Decision agreeing to be bound by the provisions hereof applicable to the Contributor, with respect to the Pipeline or portion thereof, pursuant to which such person shall be bound hereby as Contributor, including being obligated to contribute all Abandonment Charges it collects in respect of the Pipeline (or portion thereof) to the Trust and to make any additional Contributions the NEB may require, and shall be entitled to exercise such rights and powers of the Contributor or Beneficiary hereunder as are specified therein.
- (b) If the Company sells, transfers or assigns its ownership of the Pipeline or a portion thereof and, as a result of such transaction, any other person thereafter becomes obligated pursuant to an NEB Decision to Abandon or otherwise to pay for the Reclamation Obligations in respect of the sites in Canada used by the Company for the operation of the Pipeline or that portion thereof in accordance with Applicable Law, then solely to the extent that such person has become so obligated and the NEB so directs, such person shall forthwith become (and the previously incumbent Beneficiary shall, if unconditionally released from all obligations to Abandon the Pipeline under Applicable Law and the NEB so directs, cease to be) the Beneficiary hereunder, and such person, the Beneficiary and the Trustee

shall enter into such amendments hereto as may reasonably be required to give effect to such principles, subject to prior approval of such amendments by the NEB.

- (c) If for any reason other than the sale, transfer or assignment of ownership of the Pipeline, the NEB or a Court determines, and the time for an appeal of such decision expires, that any person other than the then Beneficiary has become obligated to Abandon or otherwise pay for the Reclamation Obligations in respect of the sites in Canada used by the Company for the operation of the Pipeline (whether because of an Insolvency Event affecting the Beneficiary or otherwise) in the place and stead of the Beneficiary, then solely to the extent that such person has become so obligated and the NEB so directs, such person shall forthwith become (and the previously incumbent Beneficiary shall, if unconditionally released from all obligations to Abandon the Pipeline under Applicable Law and the NEB so directs, cease to be) the Beneficiary hereunder.

13.6 Consolidation of the Fund

- (a) The Trust may, subject to Applicable Laws (including obtaining all necessary regulatory approvals), be consolidated with one or more trusts each of which qualifies as a Qualifying Environmental Trust under Tax Legislation and continue as one trust with or without termination of the Trust or such other trust or trusts.
- (b) Subject to the Applicable Laws (including all necessary regulatory approvals), the terms of a consolidation described in section 13.6(a) may provide for,
 - (i) the termination or continuation of all or any part of the Trust;
 - (ii) the consolidation of the assets and liabilities of the merged trusts with or without any requirement to maintain a separate accounting in respect thereof; and
 - (iii) the application of the assets of the Trust or part thereof to the liabilities of such other trust with which it is merged.

The Contributor shall provide a Contributor Direction to the Trustee regarding the terms and means of effecting any consolidation described above and the effect of any such consolidation. The Contributor acknowledges and agrees that the Trustee may consult Advisors as to such matters as the Trustee may reasonably request in the circumstances prior to effecting any such consolidation.

13.7 Division of the Fund

- (a) The Trust may, subject to Applicable Laws (including obtaining all necessary regulatory approvals), be divided into two or more trust funds each of which qualifies as a Qualifying Environmental Trust under Tax Legislation.
- (b) The Contributor shall provide a Contributor Direction to the Trustee regarding the terms and means of effecting any division of the Fund described above and the effect of any such division. The Contributor acknowledges and agrees that the Trustee may consult Advisors as to such matters as the Trustee may reasonably request in the circumstances prior to effecting any such division.

13.8 Binding on Successor Contributor or Beneficiary

Unless otherwise agreed, any entity resulting from any merger or consolidation to which the Contributor, or the Beneficiary may be a party or which succeeds to the business of the Contributor or Beneficiary, or to which the Pipeline is transferred shall be the successor to the Contributor and/or the Beneficiary, as applicable, hereunder without any further act or formality with like effect as if such successor Contributor or Beneficiary had originally been named as the Contributor or the Beneficiary herein.

13.9 Successor Trustee

Any corporation which shall by merger, consolidation, purchase, or otherwise, succeed to substantially all of the business relevant to this Agreement of the Trustee or to which substantially all of the assets of the Trustee relevant to this Agreement may be transferred, shall be the successor to the Trustee as the trustee hereunder, without any further act or formality with like effect as if such successor trustee had originally been named as the trustee herein. As soon as practicable following any such merger, consolidation or transfer, the Trustee or successor trustee, as the case may be, shall provide written notice thereof to the Contributor and the Beneficiary agreeing to be bound hereby as Trustee and confirming that the representations of the Trustee remain true and correct in all material respects and that section 2.4 is being and will be complied with together with an opinion of legal counsel satisfactory to the Contributor and Beneficiary confirming compliance with this section to the satisfaction of the Contributor and the Beneficiary.

13.10 No Assignment

Except as provided in sections 13.6, 13.7, 13.8 and 13.9, neither party may assign this Agreement without the prior written consent of the other party hereto. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

ARTICLE 14

DEFAULT

14.1 Default Defined

- (a) A Default means with respect to any person:
 - (i) that an Insolvency Event has occurred in respect of such person; or
 - (ii) with respect to either the Contributor or the Beneficiary, that the NEB has given the Trustee written notice that it considers the Contributor or the Beneficiary, as applicable, to be in material and continuing default in performing its obligations in respect of Abandonment Charges, Contributions or Abandonment Work as established pursuant to applicable NEB Decisions, and such notice has not been withdrawn, rescinded or annulled.

14.2 Contributor or Beneficiary Default

- (a) While a Contributor is in Default and until such Default has been cured, the Contributor may not give Contributor Directions hereunder, provided that (subject to an NEB Decision to the contrary) any Investment Manager which is not an Affiliate of the Contributor may continue to give Investment Instructions.

- (b) Except where the Beneficiary has previously undertaken and paid for Abandonment Work and the disbursement from the Trust is a reimbursement for that Abandonment Work, while a Beneficiary is in Default, the Beneficiary may not give Beneficiary Directions hereunder and no distributions shall be made to the Beneficiary except in accordance with an NEB Decision.
- (c) The Trustee shall be under no duty to enquire or consider whether or not a Default exists hereunder and shall be entitled to assume that no Default exists with respect to either the Contributor or the Beneficiary hereunder unless it receives written notice thereof hereunder from the NEB, the Contributor or the Beneficiary that a Default exists or has actual knowledge of the Default.

ARTICLE 15
NOTICE

15.1 Notices to the Company, Other Contributors and Beneficiaries

Any notice, demand or other communication under this Agreement to the Company (including as Contributor or Beneficiary) shall be in writing addressed to the Company as follows:

Enbridge Pipelines Inc.
425 1st Street SW
Calgary, Alberta
T2P 3L8

Attention: **[insert name and title]**
Facsimile: **[insert fax number]**
Email: **[insert email]**

and to any successor Contributors or Beneficiaries at the address first provided by them to the Trustee in accordance with this Article.

15.2 Notices to Trustee

Any notice, demand or other communication under this Agreement to the Trustee shall be in writing addressed to the Trustee as follows:

CIBC Trust Corporation
301 8th Avenue SW, 3rd Floor
Hollingsworth Building
Calgary, Alberta
T2P 1C5

Attention: **[insert name and title]**
Facsimile: **[insert fax number]**
Email: **[insert email]**

15.3 Delivery

Notices, demands or other communications given pursuant to this Article 15 may be sent by personal delivery (including courier) during business hours or may be sent by ordinary mail, by facsimile or by email. Such notice shall be deemed to have been delivered at the time of personal delivery, or on the fifth (5th) Business Day following the day of mailing (unless delivery by mail is likely to be delayed by strike or slowdown of postal workers, in which case it shall be deemed to have been given when it would be delivered in the ordinary course of the mail allowing for such strike or slowdown), if sent by facsimile, on the day of receipt if sent before 3:00 p.m. (local time of the recipient) on a Business Day or on the next Business Day if sent after 3:00 p.m. or not on a Business Day, or if transmitted by email, will be deemed to have been received when the sender has received confirmation of receipt from the recipient by return email or other reliable means.

15.4 Notice of Change of Address

Any person mentioned in sections 15.1 or 15.2 may change its address for notices hereunder by giving notice to the other such persons in the manner set forth in this Article.

ARTICLE 16 MISCELLANEOUS

16.1 Power and Authority

Each party represents that it has the power and authority to enter into and perform its obligations under this Agreement, that the person or persons signing this Agreement on behalf of the named party are properly authorized and empowered to sign it and that the Agreement is valid and binding on the party and enforceable against the party in accordance with its terms. The Trustee represents and warrants that it meets the qualifications set forth in section 3.2 hereof and agrees that it will continue to so qualify so long as it remains the Trustee hereunder.

16.2 Entire Agreement

This Agreement as from time to time amended, supplemented or restated shall constitute the entire agreement between the parties with respect to all matters regarding the Trust.

16.3 Invalidity/Unenforceability

If any of the provisions of this Agreement becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired.

16.4 Necessary Parties

The Trustee reserves the right to seek a judicial or administrative determination as to its proper course of action under this Agreement. To the extent permitted by Applicable Laws, only the Trustee, the Contributor, and the Beneficiary shall be necessary parties in any application to the Courts for an interpretation of this Agreement, and no other person having any interest in the Fund shall be entitled to any notice or service of process. Any final judgment entered in such an action or proceeding shall, to the extent permitted by law, be conclusive upon all persons.

16.5 Execution in Counterparts

This Agreement may be executed by facsimile and in counterpart execution, with each such counterpart deemed to be an original and the counterparts taken together, constituting one and the same Agreement. Notwithstanding the foregoing, the parties agree to exchange one fully executed original copy within a reasonable period of time after counterpart execution.

16.6 Governing Law

This Agreement shall be construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein. The parties hereto irrevocably submit and attorn to the jurisdiction of the courts of the Province of Alberta.

16.7 Review of Agreement

This Agreement shall be reviewed by the parties and the NEB at least every five years, or earlier if directed by the NEB.

[Remainder of page left intentionally blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above by their duly authorized officers.

ENBRIDGE PIPELINES INC.

CIBC TRUST CORPORATION

By:

Name
Title

By:

Name
Title

By:

Name
Title

By:

Name
Title

APPENDIX A – DESCRIPTION OF PIPELINE

The Company system and the Lakehead system in the United States together transport liquid petroleum eastbound for delivery primarily to markets in the U.S. Midwest and in Ontario. Attached to this Appendix is a map illustrating the routes of the Company system and the Lakehead system.

The Company system includes:

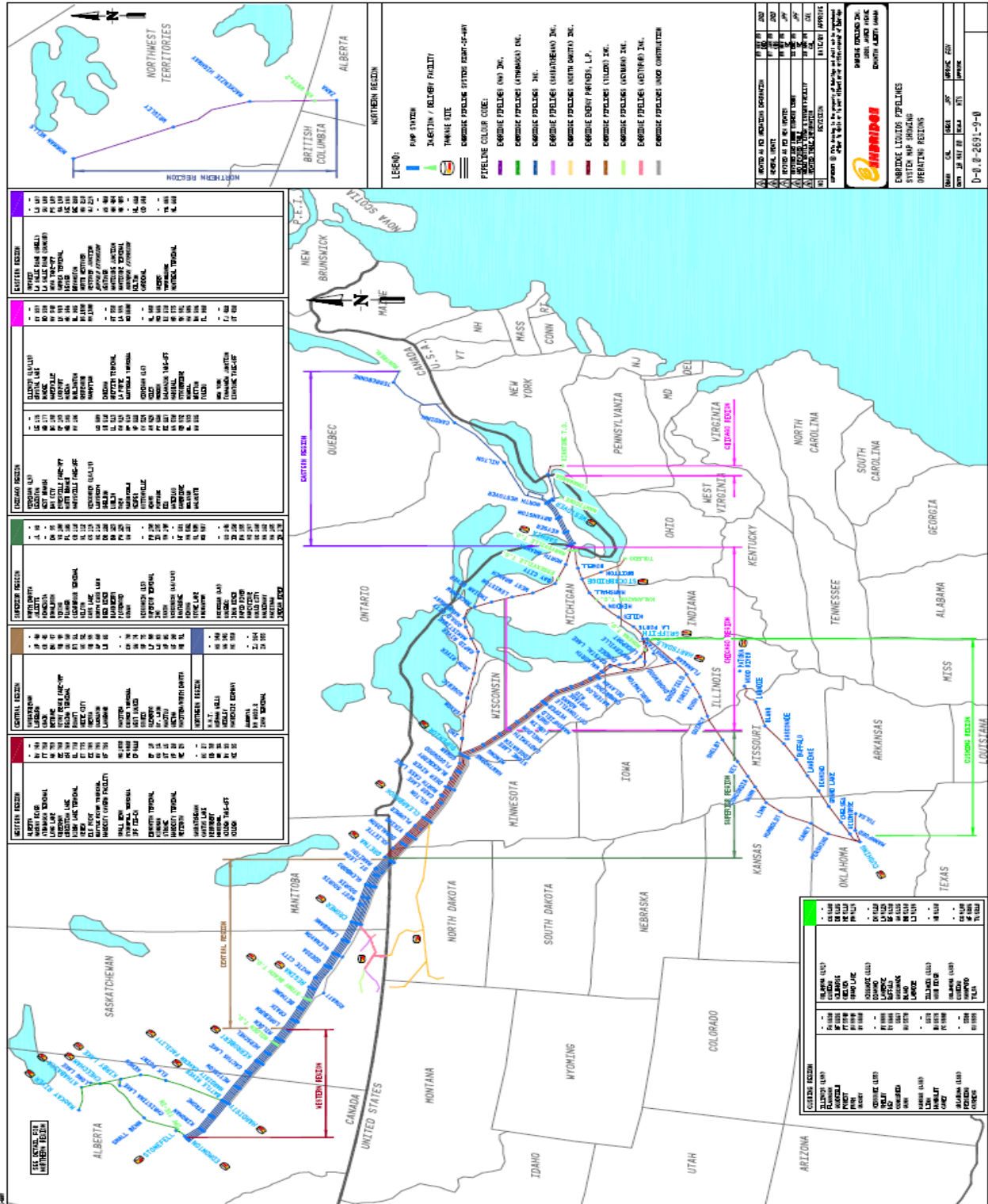
- Lines 1, 2, 3 and 4 (all originating in Edmonton, Alberta), Line 67 (Alberta Clipper, originating in Hardisty, Alberta), and Line 65 (Light Sour Capacity Replacement, originating in Cromer, Manitoba). All of these lines extend to the Canada/U.S. border near Gretna, Manitoba where they connect with the Lakehead system.
- The Canadian sections of Line 5 and Line 6B extend from connections with the Lakehead system on the Canada/U.S. border under the St. Clair River to Sarnia, Ontario.
- Line 7 extends from Sarnia to Westover (Hamilton), Ontario where it connects with Line 10 and Line 11. These two pipelines in turn extend from Westover to, respectively, the Canada/U.S. border under the Niagara River near Chippawa, Ontario and to Nanticoke, Ontario on the north shore of Lake Erie.
- Line 8 extends from Sarnia to Millgrove Junction in Hamilton, Ontario.
- Line 9 extends from Montreal, Quebec to Westover, Sarnia and Corunna, Ontario.
- The Shell lateral and Suncor lateral extend from takeoff points on Lines 5, 6B and 9 to the associated refineries in Sarnia, Ontario.

In addition to its active pipelines, the Company has a number of deactivated pipeline segments and terminals, all of which are included in the overall scope of the physical plans for abandonment. These include:

- Line 1 – Ten sections of medium diameter pipe located in Alberta, Saskatchewan and Manitoba (totaling 25.1 kilometres) as per Board Order XO-E101-12-2002;
- Line 7 – Westover Junction, Hamilton, Ontario to Bronte Junction, Oakville, Ontario as per Board Order MO-11-2006;
- Line 8 – Millgrove Junction, Hamilton, Ontario to Bronte Junction, Oakville, Ontario as per Board Order MO-J1-24-95;
- Line 12 and Bronte Lateral – Bronte Terminal, Oakville, Ontario to Clarkson Terminal, Oakville, Ontario as per Board Order MO-11-2006;
- Line 22 – Ninth Line Junction, Mississauga, Ontario to Clarkson Terminal, Oakville, Ontario as per Board Order MO-11-2006; and

- 20" (508 mm) mainline pipe lying between Clarkson Terminal, Oakville, Ontario and Port Credit, Oakville, Ontario as per Board approval D1793-J1-20.

ENBRIDGE PIPELINES INC. SYSTEM MAP



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APPENDIX B - INITIAL CONTRIBUTION

The Enbridge Pipelines Inc. Abandonment Trust will be established upon the initial contribution of \$100.00 to the Trust.

The Enbridge Pipelines Inc. Abandonment Trust will initially be comprised of two subaccounts – one for collections associated with Enbridge Pipelines Inc.'s Line 9 operations and one for the remainder of Enbridge Pipelines Inc.'s operations. This apportionment shall continue until the Trustee is advised otherwise by Enbridge Pipelines Inc. and all regulatory approvals, if any, have been received.

APPENDIX C - ABANDONMENT WORK CERTIFICATE

**ABANDONMENT WORK CERTIFICATE
FOR THE
ENBRIDGE PIPELINES INC. ABANDONMENT TRUST**

To: **[Trustee name]**

[Trustee Address in Alberta]

I, **[insert name]**, am **[insert title]** of **[insert name of Beneficiary]** (the "**Beneficiary**") and I certify that:

1. **[insert dollar amount]** (the "**Abandonment Cost Amount**") is currently required for the purposes of abandonment work ("**Abandonment Work**") as defined under the terms of that certain trust agreement between Enbridge Pipelines Inc. and **CIBC Trust Corporation** dated the ___ day of _____, 20___ (the "**Trust Agreement**") in relation to the Enbridge Pipelines Inc. Abandonment Trust (the "**Trust**").
2. All notices, permissions, consents, orders or directions required by applicable law or regulatory authorities (including without limitation those of the National Energy Board) to permit the disbursement of the Abandonment Cost Amount by the Trust have been given, obtained or received and true copies are attached hereto or have previously been provided to the Trustee pursuant to an Abandonment Work Certificate.
3. The Abandonment Cost Amount is required to be paid to **[insert name of payee]**.
4. **[No Default, as defined by the Trust Agreement, exists in respect of the Beneficiary and there are no reasonable grounds for believing that an Insolvency Event will occur in respect of the Beneficiary or, if different, the payee named in paragraph 3 during the twelve months immediately following the date hereof.]**

-OR-

5. **[Alternatively, if a Default does exist with respect to the Beneficiary or the statement regarding an Insolvency Event does not apply:**

The Beneficiary has previously undertaken and paid for Abandonment Work and the disbursement from the Trust is a reimbursement for that Abandonment Work.]

6. Any portion of the Abandonment Cost Amount which is not required for the Abandonment Work shall forthwith be repaid to the Trust.

[Remainder of page left intentionally blank.]

7. This Certificate is an Abandonment Work Certificate, as defined by the Trust Agreement.

Dated this ____ day of _____, _____.

Signature

Witness Signature

Witness's name (printed)

Signature

Witness Signature

Witness's name (printed)

APPENDIX D - QUALIFIED INVESTMENT

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) applies or
 - (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,
 - (ii) a corporation the shares of which are listed on a designated stock exchange outside Canada, or
 - (iii) an authorized foreign bank and payable at a branch in Canada of the bank,
- (c.1) debt obligations that meet the following criteria, namely,
 - (iv) 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,
 - (B) the debt obligations have an investment grade rating with a prescribed credit rating agency, 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
- (v) 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, 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
 - (A) another person or partnership holds significant interest (within the meaning assigned by subsection 207.01(4) with any modifications that the circumstances require) 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.

APPENDIX E - RESIDENCE, SITUS, MIND AND MANAGEMENT OF THE TRUST

A. Governance Structure

1. Trust Officer: An employee of the Trustee will be designated as the relationship manager (the "**Trust Officer**") for the Trust.
 - (a) Selection and Removal: The Discretionary Committee (as defined below) shall have exclusive authority over the selection, appointment and replacement of the Trust Officer in the capacity of relationship manager for the Trust.
 - (b) Qualification: The Trust Officer must be resident in Alberta and employed full-time out of the Trustee's Calgary office (the "**Calgary Office**").
 - (c) Powers and Responsibilities: The Trust Officer shall have sole responsibility for managing and maintaining the client relationship between the Trustee and the Company. All actions and decisions of the Trust Officer must be conducted exclusively out of the Calgary Office.
2. Discretionary Committee:
 - (a) Powers and Responsibilities: All powers and discretionary authority granted to the Trustee under the Trust Agreement shall be exclusively exercised by a committee ("**the Discretionary Committee**") and only upon affirmative approval by a majority of the members at a properly constituted meeting of the Discretionary Committee. In addition and without limiting the generality of the foregoing, the Discretionary Committee shall:
 - (i) Trust Investments: meet and review the investments of the Trust and all other important decisions that the Discretionary Committee has made concerning the Trust at least once per quarter;
 - (ii) Advisors: have exclusive authority over the selection, control of the relationship with and the provision of instructions and directions to any advisors (including, investment, accounting and legal advisors) engaged by the Trust; and
 - (iii) Financial Statements: shall review and shall have exclusive authority to approve financial statements for the Trust.

Prior to exercising any of the discretionary powers or authorities held by the Discretionary Committee, the Discretionary Committee shall obtain and review all the information and materials required to make a fully informed decision.
 - (b) Selection and Removal: the Trustee shall have exclusive authority over the selection, appointment and replacement of members of the Discretionary Committee.
 - (c) Composition and Qualification:
 - (i) The Discretionary Committee shall consist of three individuals, each of whom is resident and employed by the Trustee in Alberta and at least two of whom are employed out of the Calgary Office.

- (ii) An individual will automatically cease to be a member of the Discretionary Committee if he/she ceases to be resident in Alberta or if his/her employment with the Trustee is terminated. The Trustee shall appoint a replacement member to the Discretionary Committee as soon as reasonably practicable.

Members must possess the proper qualifications, knowledge, experience and competence to exercise the powers, duties and obligations granted to the Trustee under the Trust Agreement.

- (d) Meetings of the Discretionary Committee shall be held at least quarterly and shall be governed by the following:
 - (i) A meeting may be called by any member of the Discretionary Committee upon not less than 10 Business Days prior notice by sending a notice setting forth the matters to be considered at the meeting.
 - (ii) All meetings must be held at the Calgary Office.
 - (iii) A quorum for a meeting of the Discretionary Committee shall require the attendance of all members of the Discretionary Committee.
 - (iv) At least a majority of the members of the Discretionary Committee must attend the meetings in person. Members who cannot attend in person may participate via telephone or videoconference provided that they are participating from a location within the Province of Alberta.
 - (v) Written meeting minutes and/or resolutions shall be prepared and maintained in respect of all meetings of the Discretionary Committee, which set forth the matters considered, the decisions made and the considerations, information and materials upon which the decisions taken at the meeting were based. The meeting minutes and/or resolutions shall indicate the date of the meeting, the location of the meeting and the persons present and shall be retained in the Trust's minute book.
- (e) Delegation of Discretionary Powers: The Discretionary Committee shall not delegate any of the discretionary powers and authorities granted under the Trust Agreement, except as expressly provided for in the Trust Agreement.

3. **Trust Property**

- (a) A separate Trust account, including one or more sub-accounts, (collectively, the "**Trust Account**") should be established for the Trust. The Trust Account shall be opened under the direction of the Trust Officer and the Trust Officer shall have signing authority with respect to the Trust Account.
- (b) The Trust Account shall be opened and maintained at the Calgary Office.
- (c) Any physical assets of the Trust, including all certificates and other evidence, if any, of ownership of shares, bonds, debentures and other securities or investments held by the Trust, shall be held in safekeeping in the Calgary Office and under the control of the Trust Officer in Calgary.
- (d) If the Discretionary Committee appoints one or more custodian(s) to administer the Trust Property, it shall appoint a custodian who can: (1) provide asset servicing and custody

and (2) appoint a representative that is resident in Alberta that will act as the day-to-day contact for the Trustee out of Alberta.

4. **Books, Records and Accounts**

- (a) All books and records of the Trust must be held and maintained in the Calgary Office, including a minute book containing minutes of Discretionary Committee meetings, resolutions or other documentation of decisions of the Discretionary Committee.
- (b) A T3M trust return, even if it will be a nil return, shall be filed every year.