

THIS AMENDED AND RESTATED TRUST AGREEMENT made as of the 1st day of ~~September~~January, ~~2016~~2017.

BETWEEN:

VALIANT TRUST COMPANY, a licensed trust company continued under the laws of Canada with an office located in the City of Calgary in the Province of Alberta,
(the "**Trustee**")

AND:

POUCE COUPÉ PIPE LINE LTD., a corporation incorporated under the laws of Canada,
(~~the~~ "**Pouce Coupé** ")

WHEREAS ~~the~~ Pouce Coupé holds the regulatory authorization allowing it to operate the pipeline described in Schedule "A" to this trust agreement;

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

AND WHEREAS on 26 May 2009 the National Energy Board issued the RH-2-2008 Reasons for Decision, which required each person holding an authorization to operate a pipeline under the *National Energy Board Act* (Canada) or the *Canada Oil and Gas Operations Act* (Canada) to file a proposed process and mechanism to set aside funds to pay for the reclamation obligations in respect of the sites in Canada used for the operation of a pipeline;

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

AND WHEREAS on 29 May 2014, the National Energy Board ordered Pouce Coupé to set aside funds using a trust structure to pay for the reclamation obligations in respect of the sites in Canada used by Pouce Coupé for the operation of the pipeline described on Schedule "A" to this trust agreement;

AND WHEREAS in satisfaction of the requirements imposed by the National Energy Board, Pouce Coupé has created a trust ~~the~~ fund of which will be used to accumulate funds to meet the discharge of its reclamation obligations for the sites in Canada used by Pouce Coupé for the operation of the pipeline described on Schedule "A" to this agreement;

AND WHEREAS Pouce Coupé and the Trustee entered into a trust agreement dated January 1, 2015 (the "~~Prior~~Original Trust Agreement") to provide for the holding of the reclamation funds ~~and now wish to amend and restate the~~;

AND WHEREAS Pouce Coupé and the Trustee entered into an amended and restated trust agreement dated September 1, 2016 (the "**Prior Trust Agreement**") which amended and restated the Original Trust Agreement to reflect a more accurate description of the pipeline described in Schedule "A" for which the reclamation funds are being held in trust;

AND WHEREAS Pouce Coupé and the Trustee wish to amend and restate the Prior Trust Agreement as of the date hereof to include language as directed by the National Energy Board in Order MO-058-2016 (the "Order") that will correct an administrative error with respect to the Trust and allow for the exchange of funds between the Trust and the Pouce Coupé System Trust through a one-time transfer of funds, as further described in the Order;

AND WHEREAS the Trustee has agreed to hold the reclamation funds in accordance with the terms and conditions of this trust agreement;

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

ARTICLE 1: DEFINITIONS

1.01 In this trust agreement, the following words or phrases have the following meanings:

- (a) "**Abandon**" and "**Abandonment**" have the meaning set out in the definition of "abandon" in the *Onshore Pipeline Regulations* (Canada), as amended from time to time;
- (b) "**Agreement**" means this instrument, as amended from time to time, which instrument is the vehicle for the trust here created;
- (c) "**Annual Contribution Amount**" means the amount collected annually to pay for the future cost to Abandon the pipeline described in Schedule "A" to this Agreement;
- (d) "**Beneficiary**" and "**Beneficiaries**" mean the person or persons, including the "company" (as defined hereafter), having, while entitled to benefit from the "fund" (as defined hereafter), "reclamation obligations" (as defined hereafter), in respect of the "site" (as defined hereafter);
- (e) "**Business Day**" means any day except a Saturday, Sunday or a statutory holiday in the Province of Alberta;
- (f) "**Company**" means the person holding the regulatory authorization(s) for the time being to operate the pipeline described in Schedule "A" to this Agreement;
- (g) "**Company's Notice of Termination**" has the meaning set out in section 3.04 of this Agreement;
- (h) "**Deactivate**" and "**Deactivation**" mean the same thing as the definition of "deactivate" in the *Onshore Pipeline Regulations* (Canada), as amended from time to time;
- (i) "**Decommission**" and "**Decommissioning**" mean the same thing as the definition of "decommission" set out in the *Onshore Pipeline Regulations* (Canada), as amended from time to time;
- (j) "**Default**" has the meaning set out in section 4.05 of this Agreement;

- (k) "**Fund**" means collectively: (i) all amounts held from time to time by the "trustee", (as defined hereafter), in accordance with this Agreement, including any amounts paid to the "trustee" (as defined hereafter) under any section of this Agreement, including any amounts contributed to the Trust and (ii) any interest or return from investing such amounts;
- (l) "**Fund Property**" has the meaning set out in section 3.03 of this Agreement;
- (m) "**NEB Act**" means the *National Energy Board Act* (Canada), as amended from time to time;
- ~~(n) "**New Trust Fund**" has the meaning set out in section 2.05 of this Agreement (if applicable);~~
- (n) ~~(e)~~ "**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;
- (o) ~~(p)~~ "**Pipeline**" means the pipeline described in Schedule "A" to this Agreement;
- (p) "**Pouce Coupé System Trust**" means the trust formed pursuant to the amended and restated trust agreement dated January 1, 2017 between Pouce Coupé and the Trustee to provide for the holding of reclamation funds in respect of Pouce Coupé's Pouce Coupé System;
- (q) "**Qualified Investments**" means all or any of those investments that from time to time are qualified investments for a "qualifying environmental trust" as defined in the *Income Tax Act* (Canada), and for greater certainty, such qualified investments on the date hereof include only those types of property described in the definition of "qualified investment" in section 204 of the said Act that are not encompassed within the definition of "prohibited investment" in subsection 211.6(1) of the said Act as more particularly set out in Schedule "B";
- (r) "**Reclamation Obligations**" means:
- (i) the duty to carry out the physical Abandonment, Decommissioning or Deactivation of the Pipeline, including costs incurred to satisfy any conditions imposed by the ~~tribuna~~Tribunal (as defined hereafter) in any order or direction approving the Decommissioning or Deactivation of the Pipeline or granting leave to Abandon the Pipeline;
 - (ii) the duty to develop an Abandonment plan, and to prepare an application for leave to Abandon or for approval of the Deactivation or Decommissioning of the Pipeline; and
 - (iii) the duty to carry out post-abandonment monitoring and remediation of the "site" (as defined hereafter), where post-abandonment refers to the period of time after a Company has satisfied the conditions of an order or direction issued by the ~~tribuna~~Tribunal (as defined hereafter) granting leave to Abandon;

and all costs incurred and consequent thereon.

- (s) "Site" means the location or locations in Canada used by a company for the operation of the Pipeline;
- (t) "Tax Act" means the *Income Tax Act* (Canada), as amended from time to time;
- (u) "Tribunal" means the National Energy Board, a board established under the NEB Act or any successor administrative body having authority to regulate the Company in respect of the operation and Abandonment of the Pipeline;
- (v) "Trust" means the relationship between a ~~"trustee"~~ Trustee (as defined hereafter) and a Beneficiary or Beneficiaries, including the obligations of the ~~"trustee"~~ Trustee (as defined hereafter) towards the Beneficiary or Beneficiaries both personal and with regard to the Fund, and the corresponding rights of a Beneficiary, whether those obligations and rights are created at law or by the terms of this Agreement; and
- (w) "Trustee" means Valiant Trust Company, a trust company licenced under the *Trust and Loan Companies Act* (Canada) for the time being appointed under this Agreement to hold the office of trustee; ~~and~~
- ~~(x) "Trust Term" or "Term" shall have the meaning set out in section 2.05 of this Agreement, or any successor thereof.~~

ARTICLE 2: CREATION OF THE TRUST

2.01 Qualifying Environmental Trust:

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

2.02 The Trust: initial transfer and contributions

By the payment of a ten dollar Canadian bill (\$10.00) to the Trustee, the receipt and sufficiency of which the Trustee acknowledges, the Company hereby irrevocably establishes the Fund with the Trustee, and appoints the Trustee as trustee of the Fund, to be administered upon the terms and subject to the conditions set out in this Agreement. In furtherance of the foregoing, the Company agrees to contribute to the Trust, on an annual basis, an amount equivalent to the Annual Contribution Amount.

2.03 The Trust: discretionary as to two or more beneficiaries

The Fund is held by the Trustee in trust for the Beneficiary or Beneficiaries, if applicable. The Trustee may make payment to or for the benefit of the appointed Beneficiary, that is, either to a Beneficiary, or to a person or persons named by the Tribunal to conduct work in the reclaiming of the Site. Before making any discretionary payment the Trustee must receive the approval of the Tribunal for the payment, which

approval will cover both the reclamation need being addressed and that person or those persons that are instructed to carry out the reclamation.

2.04 The Trust: appropriation of surplus funds

If property remains in the Fund after all Reclamation Obligations of the Beneficiaries are discharged, then the Trustee may distribute the Fund or any part thereof among any of the Beneficiaries and Orphan Pipeline Fund as the Trustee, with the approval of the Tribunal.

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

This Agreement ~~terminates (the "Trust Term") no later than the expiration of a term ending at the conclusion of the perpetuity period as determined under relevant provisions the *Perpetuities Act* R.S.A. 2000, c. P-5. Not more than five years prior to the expiration of the Trust Term, and provided that the Company is not in Default, the Trustee shall pay the Fund to the Company, and the Company covenants upon receipt of the Funds, to establish, at once, a new irrevocable trust upon the terms and subject to the same conditions set out in this Agreement ("the New Trust Fund"), and to contribute to the New Trust Fund the entirety of the Fund.~~ shall have no specific term but shall commence on the date first mentioned above and shall continue until terminated in writing by the Company, with the approval of the Tribunal.

ARTICLE 3: APPOINTMENT, RESIGNATION, AND REMOVAL OF A TRUSTEE

3.01 Appointment

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

3.02 Resignation

A Trustee desiring to resign the office shall in writing notify the Company 30 days prior to the intended resignation date and during this period the Company, as provided in section 3.01, shall appoint a replacement Trustee with the approval of the Tribunal. The replacement Trustee shall take title or possession of the Fund and Fund Property without delay.

3.03 Obligation of Trustee upon termination

Following termination of the Trustee's appointment and subject to its rights hereunder, the Trustee shall continue to hold in trust:

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

3.04 Removal

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

ARTICLE 4: THE DUTIES AND POWERS OF THE TRUSTEE

4.01 Responsibilities of the Trustee

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

4.02 Trustee Receipt of Funds

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

4.03 Investment of Fund

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

The Trustee is authorized to delegate investment to a manager, and thereto the Trustee may appoint and retain Adroit Investment Management ("**Adroit**") or any of its affiliates or subsidiaries, or any successors thereof, or any corporation with which Adroit has amalgamated or as a result of any reorganization has become a part thereof, to assist in the investment and reinvestment of the Fund, and to exercise any powers or functions relating to the investment and reinvestment of such assets in such manner, on such terms and conditions, and for such remuneration payable from the Trust, as the Trustee, in the Trustee's absolute discretion, considers advisable, and as the Trustee shall specify in writing, including, without limitation, the power at any time and from time to time to choose, acquire, dispose of or change any such investments or reinvestments and to sub-delegate to another any such powers or functions so conferred on it by the Trustee. Subject to section 4.10 of this Agreement, the Trustee is hereby further authorized to act on the opinion, advice or information obtained from Adroit, or from any such affiliate, subsidiary or successor as hereinbefore described, and shall not be responsible for any loss occasioned by so acting or by not so acting as the case may be, nor shall the Trustee be responsible nor incur any liability for any loss that may be occasioned by any investment decision or delegation of investment decisions authorized herein and made by the Trustee, by Adroit, by any such affiliate, subsidiary or successor, or by any such sub- delegate.

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

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

- (c) Interest or other investment proceeds paid on the Fund shall be credited to the Fund.
- (d) Within sixty (60) days following the end of each calendar year during which the Trustee has held the Fund, the Trustee shall cause to be issued to the then Company a form T-5, or other form as appropriate pursuant to the *Tax Act*, in respect of any interest or other income earned on the Fund, during the previous calendar year.
- (e) All earnings received from the investment of the Fund shall be credited to, and shall become part of, the Fund (and any losses on such investments shall be debited to the Fund). The Trustee shall have no liability for any investment losses resulting from investments made by the Trustee in accordance with the terms of this Agreement, including any losses on any investment required to be liquidated prior to maturity in order to make a payment required pursuant to the terms of this Agreement, and any losses resulting from a loss of opportunity. The Trustee shall have no liability to any person should it be unable to invest all or any portion of the Fund as aforesaid for any period of time, provided that it has made commercially reasonable efforts to do so.

4.04 Funds to be Used for Reclamation

Subject to Article 5, all funds deposited by a company with the Trustee as required hereunder and all investments, reinvestments and accretions thereto, the Trustee shall draw upon solely for the purpose of funding the discharge of the Reclamation Obligations of the Beneficiaries of the Trust.

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

4.05 Release of Funds to a Beneficiary

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

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

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

4.06 Release of Funds to a Third Party

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

4.07 Duties of the Trustee Regarding Release of the Requested Funds

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

4.08 Sale of the Pipeline or a Portion Thereof

For greater certainty, monies from the Fund may be released in accordance with this Agreement upon the Tribunal's direction or order approving the sale, assignment, transfer or other disposition of the Pipeline or

a portion thereof from a Beneficiary to another person pursuant to paragraphs 74(1)(a), (b) and (c) of the NEB Act.

4.09 Books, Records and Accounts

- (a) The Trustee shall maintain proper and accurate books, records and accounts of all transactions affected or controlled by the Trustee hereunder including, without limitation, the receipt, investment, reinvestment and disbursement of monies from the Fund, and shall provide the Company with the following, on or before the 15th Business Day following the last day of each month:
 - (i) statement of account or report showing all funds transferred to the Trustee during the immediately preceding month;
 - (ii) statement of account or report showing all relevant information concerning the funds held by the Trustee including, without limitation, information detailing all investments made, reinvestment undertaken, investment income earned, and disbursement of funds during the immediately preceding month; and
 - (iii) any other report or information reasonably requested by the Tribunal or the Company; and
- (b) The Trustee shall, on reasonable prior notice and during normal business hours, make available to and permit the officers, employees and authorized agents of the Tribunal or the Company and/or the auditors of the Company to inspect all books, records and accounts required to be maintained by the Trustee, in connection with this Agreement or as required by law.

4.010 Standard of Care

In the exercise and discharge of its obligations and duties at law or hereunder, the Trustee shall act honestly and in good faith and shall:

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

4.011 Appointment of Agents

- (a) The Trustee may appoint such agents and employ or retain such legal counsel, accountants, appraisers or other experts or advisors as may be reasonably required for the purpose of discharging its duties hereunder and shall not be responsible for any misconduct on the part of any of them except as provided in section 4.10(c). The Trustee may pay out of the Fund reasonable remuneration for all services performed for it in the

discharge of its duties hereunder without taxation for costs or fees of any counsel, solicitor or attorney, including solicitor fees on a solicitor and own client basis.

- (b) Provided the agent was properly appointed by the Trustee in accordance with section 4.10, the Trustee may act in good faith on the opinion or advice of, or information obtained from, any agent, legal counsel, accountant, appraiser or other expert of advisor retained or employed by it, in relation to any matter arising in the performance of its duties under this Agreement.

4.012 Safekeeping of Funds

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

4.013 Acceptance of Obligations

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

4.014 Decision to Act or Not Act

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

4.015 Trustee Not to Expend Own Funds

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

[4.016 Erroneous Transfers](#)

[Further to National Energy Board Order MO-058-2016 and in accordance with specific directions from Pouce Coupé, the Trustee may identify and then exchange all funds transferred to the Trustee in trust for the Trust between February 27, 2015 and March 31, 2016 for the funds transferred to the Trustee in trust for the Pouce Coupé System Trust between February 27, 2015 and March 31, 2016.](#)

ARTICLE 5: REMUNERATION AND EXPENSES OF THE TRUSTEE

5.01 Trustee's Fees and Expenses of the Trustee

The Company and the Trustee shall, from time to time, agree to reasonable remuneration to be paid out of the Fund to the Trustee for its services hereunder and as of the date hereof. The Trustee is also entitled to be reimbursed out of the Fund for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration of its duties hereunder (including, without limitation, legal fees and

expenses on a solicitor and own client basis and the reasonable compensation and disbursements of all other advisers, agents or experts employed or retained pursuant to this Agreement), provided that the Trustee shall first deliver to the Company true copies of all invoices, statements or receipts in relation thereto or in evidence thereof.

5.02 Payment of Trustee Fees

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

5.03 Payment by the Trustee of Taxes

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

ARTICLE 6: INDEMNIFICATION OF THE TRUSTEE

6.01 Indemnity

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

ARTICLE 7: AMENDMENT AND TERMINATION OF THE TRUST

7.01 Amendment

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

7.02 Trust Irrevocable

The Trust, and the schedules thereto, which are hereby incorporated into the Trust, may not be revoked by the Company or Beneficiaries acting as a whole, or the Trustee, except that the Tribunal in its total discretion may direct a termination of the Trust, and order such successive arrangements as are appropriate.

ARTICLE 8: NOTICES

8.01 Acting on Written Notice

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

8.02 Mode of Giving Notice

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

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

8.03 Addresses of the Parties

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

To the Company:

Pouce Coupé Pipe Line Ltd.
4000, 585 8th Avenue SW
Calgary, Alberta T2P 1G1
Attn: VP Legal and General Counsel

To the Trustee:

Valiant Trust Company
[c/o Canadian Western Trust](#)
~~310, 606 4th Street SW~~ [300, 750 Cambie Street](#)
~~Calgary, Alberta T2P 1T1~~
[Vancouver, BC V6B 0A2](#)
Attn: Manager, Corporate Trust

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

8.04 Address of the Tribunal

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

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

ARTICLE 9: MISCELLANEOUS

9.01 Assignment and Enurement

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

9.02 Applicable Law

This Agreement (and any amendments hereto) shall be governed by the law of the Province of Alberta and the laws of Canada applicable therein.

9.03 Severability

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

9.04 Entire Agreement and Amendment

For greater ~~certainly~~certainty, this Agreement represents the entire agreement amongst the parties respecting the Trust, supersedes all prior discussions, agreements and understandings of every kind and nature amongst them and amends, restates and supersedes in its entirety the Prior Trust Agreement.

9.05 Right to disclose

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

9.06 Privacy

The parties acknowledge that Canadian federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "**Privacy Laws**") applies to obligations and activities under this Agreement. Despite any other provision of this Agreement, no party shall take or direct any action that would contravene, or cause the others to contravene, applicable Privacy Laws. The parties shall, prior to transferring or causing to be transferred personal information to the Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or

shall have determined that such consents either have previously been given upon which the parties can rely or are not required under the Privacy Laws. The Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Trustee agrees: (a) to have a designated chief privacy officer; (b) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing its services under or ancillary to this Agreement and not to use it for any other purpose except with the consent of or direction from the other parties or the individual involved; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.

9.07 Merger, Consolidation, Amalgamation

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

9.08 Review of Agreement

This Agreement shall be reviewed by the parties and the Tribunal at least every five (5) years, or earlier if directed by the Tribunal.

9.09 Third Party Interests

This Company represents to the Trustee that any account to be opened by, or interest to be held by the Trustee in connection with this Agreement, is not intended to be used by or on behalf of any non-specified third party or Beneficiary, unless directed by the Tribunal as set forth in Section 2.03 of this Agreement.

9.010 Right Not to Act

The Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Trustee, in its sole judgment, determine at any time that its acting under this Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on ten days written notice to the other parties to this Agreement, provided that: (a) the Trustee's written notice shall describe the circumstances of such non-compliance; and (b) if such circumstances are rectified to the Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

9.011 Counterparts

This Agreement may be executed in one or more counterparts (including by means of facsimile signature pages and copies delivered electronically in portable document format (PDF)), all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been executed and delivered by each of the parties.

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

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

VALIANT TRUST COMPANY

Per: _____
Name:
Title:

Per: _____
Name:
Title:

POUCE COUPÉ PIPE LINE LTD.

Per _____
Name:
Title:

Per: _____
Name:
Title:

Schedule "A"

- **Northern System** – Taylor to Belloy (Certificate OC-42)
- The Northern System consists of a 10" 171.7 km NGL-High Vapour Pressure (HVP) pipeline from 7-36-82-18 W6M (BC) to 2-5-78-2 W6M (AB) including all appurtenances, works and pumping facilities connected therewith.
- The Northern System is shown in red on the attached map.

Schedule "B"

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

- (a) money (other than money the fair market value of which exceeds its stated value as legal tender in the country of issuance or money that is held for its numismatic value) and deposits (within the meaning assigned by the *Canada Deposit Insurance Corporation Act* or with a branch in Canada of a bank) of such money standing to the credit of the trust,
- (b) debt obligations described in paragraph (a) of the definition "fully exempt interest" in subsection 212(3) [*being a bond, debenture, note, mortgage, hypothecary claim or similar debt obligation*]
 - (i) *of, or guaranteed (otherwise than by being insured by the Canada Deposit Insurance Corporation) by, the Government of Canada,*
 - (ii) *of the government of a province,*
 - (iii) *of an agent of a province,*
 - (iv) *of a municipality in Canada or a municipal or public body performing a function of government in Canada,*
 - (v) *of a corporation, commission or association to which any of paragraphs 149(1)(d)¹ to applies or of an educational institution or a hospital if repayment of the principal amount of the obligation and payment of the interest is to be made, or is guaranteed, assured or otherwise specifically provided for or secured by the government of a province],*
- (c) debt obligations issued by
 - (i) a corporation, mutual fund trust or limited partnership the shares or units of which are listed on a designated stock exchange in Canada,²
 - (ii) a corporation the shares of which are listed on a designated stock exchange outside Canada,³ or
 - (iii) an authorized foreign bank⁴ and payable at a branch in Canada of the bank,
- (c.1) debt obligations that meet the following criteria, namely,
 - (i) any of
 - (A) the debt obligations had, at the time of acquisition by the trust, an investment grade rating with a prescribed credit rating agency,⁵
 - (B) the debt obligations have an investment grade rating with a prescribed credit rating agency,⁶ or,
 - (C) the debt obligations were acquired by the trust in exchange for debt obligations that satisfied the condition in clause (A) and as part of a proposal to, or an arrangement with, the creditors of the issuer of the debt obligations that has been approved by a court under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act*, and

- (ii) either
 - (A) the debt obligations were issued as part of a single issue of debt of at least \$25 million, or,
 - (B) in the case of debt obligations that are issued on a continuous basis under a debt issuance program, the issuer of the debt obligations had issued and outstanding debt under the program of at least \$25 million,
- (d) securities (other than futures contracts or other derivative instruments in respect of which the holder's risk of loss may exceed the holder's cost) that are listed on a designated stock exchange,⁷
- ...
- (f) guaranteed investment certificates issued by a trust company incorporated under the laws of Canada or of a province.

¹ The relevant paragraphs of subsection 149(1)(d) read as follows:

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

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

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

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

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

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

(*d.5*) **[[municipally-owned corporation earning] income with boundaries of entities]** subject to subsections (1.2) and (1.3), a corporation, commission or association not less than 90% of the capital of

which was owned by one or more entities each of which is a municipality in Canada, or a municipal or public body performing a function of government in Canada, if the income for the period of the corporation, commission or association from activities carried on outside the geographical boundaries of the municipalities does not exceed ~~10~~10% of its income for the period;

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

- (i) if a qualifying owner is a municipality in Canada, or a municipal or public body performing a function of government in Canada, the geographical boundaries of each such qualifying owner,
- (ii) if paragraph (d.5) applies to a qualifying owner, the geographical boundaries of the municipality, or municipal or public body, referred to in that paragraph in its application to each such qualifying owner, and
- (iii) if this paragraph applies to a qualifying owner, the geographical boundaries of the municipality, or municipal or public body, referred to in subparagraph (i) or paragraph (d.5), as the case may be, in their respective applications to each such qualifying owner.

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

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

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

"foreign bank", subject to Section 12, means an entity incorporated or formed by or under the laws of a country other than Canada that is a bank according to the laws of any foreign country where it carries on business, (b) carries on a business in any foreign country that, if carried on in Canada, would be, wholly or to a significant extent, the business of banking, (c) engages, directly or indirectly, in the business of providing financial

services and employs, to identify or describe its business, a name that includes the word "bank", "banque", "banking" or "bancaire", either alone or in combination with other words, or any word or words in any language other than English or French corresponding generally thereto, (d) engages in the business of lending money and accepting deposit liabilities transferable by cheque or other instrument, (e) engages, directly or indirectly, in the business of providing financial services and is affiliated with another foreign bank, (f) controls another foreign bank, or (g) is a foreign institution, other than a foreign bank within the meaning of any of paragraphs (a) to (f), that controls a bank incorporated or formed under this Act, but does not include a subsidiary of a bank named in Schedule I as that Schedule read immediately before the day section 184 of the *Financial Consumer Agency of Canada Act* comes into force, unless the Minister has specified that subsection 378(1) no longer applies to the bank.

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

⁶ Ibid.

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)⁸ in the particular person or partnership, and
 - (B) the holder of that significant interest has contributed property to, or is a beneficiary under, the trust.

⁷ *Supra* note 2.

⁸ Subsection 207.01(4) reads:

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

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

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