

UTOPIA PIPELINE RECLAMATION TRUST AGREEMENT

made as of the

7th day of July, 2016

between

Kinder Morgan Utopia Ltd.

and

Valiant Trust Company

governing the Trust Fund

in respect of the

Reclamation of the Utopia Pipeline

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APPENDIX A: DESCRIPTION OF THE UTOPIA PIPELINE

APPENDIX B: QUALIFIED INVESTMENTS

THIS TRUST AGREEMENT is made as of the 7th day of July, 2016.

BETWEEN:

KINDER MORGAN UTOPIA LTD., a limited company organized under the laws of Alberta (hereinafter referred to as "**KMU**")

OF THE FIRST PART

AND:

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

OF THE SECOND PART

WHEREAS:

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

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

ARTICLE I
INTERPRETATION

1.1 Definitions

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

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

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

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

Fiscal Year:	shall mean with respect to the Trust Fund, the period commencing on the day and year first written above and ending on the immediately following December 31 and thereafter the same as a calendar year.
Investment Manager:	shall mean an Agent or a sub-delegate pursuant to section 10.2 hereof to manage the investment of all or a portion of the Trust Fund.
NEB:	shall mean the National Energy Board, established pursuant to the NEB Act, or any successor to the National Energy Board.
NEB Act:	shall mean the <i>National Energy Board Act</i> (Canada), as amended from time to time.
New Trust	shall have the meaning ascribed thereto in section 13.2.4.
Orphan Pipeline Fund:	shall mean a not-for-profit corporation that will be established pursuant to a statute of the Parliament of Canada and will maintain funds for the purpose of funding reclamation of abandoned pipelines in Canada, consistent with the NEB's Reasons for Decision MH-001-2013.
Person:	includes a partnership.
Pipeline:	shall have the meaning ascribed thereto in Appendix A hereof.
Property:	shall mean all tangible and intangible assets and rights of any nature or type and includes without limitation cash and Qualified Investments.

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

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

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

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

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

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

Standard of Care: shall have the meaning ascribed thereto in section 4.4.

Statement of Investment shall mean a written statement of investment policies and procedures approved by the Company prior to implementation, in respect of the Trust

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

1.2 Singular, Plural and Gender

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

1.3 Headings

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

1.4 Consultation

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

ARTICLE II

ESTABLISHMENT AND ACCEPTANCE OF TRUST FUND;

APPOINTMENT OF TRUSTEE AS CUSTODIAN

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

- 2.1.1 By the payment of a Ten (\$10.00) Dollar Canadian bill bearing serial number FEY1699209 to the Trustee, the receipt and sufficiency of which the Trustee acknowledges, the Company hereby establishes the PRT with the Trustee and hereby appoints the Trustee as trustee of the PRT consisting solely of such Property as shall from time to time be paid or delivered to the Trustee with respect to the PRT.
- 2.1.2 The Trustee hereby agrees to be the Trustee of the PRT and the Trustee hereby accepts the trust herein set out and agrees to hold, invest, distribute and administer the PRT and the Trust Fund upon the terms and conditions of this Agreement.
- 2.1.3 The Trustee shall have no liability or responsibility for any Property until it is in fact received by it or any Subcustodian.
- 2.1.4 The Company shall contribute, on an annual basis, the Annual Contribution Amount to the PRT as required by the NEB Act or an order or direction made by the NEB. Contributions made by the Company shall be irrevocable and shall not revert to the Company except as otherwise provided by this Agreement.
- 2.1.5 The Trustee shall establish a custody account or accounts in the name of the Trustee or the Subcustodian appointed under this Agreement, for the account of the Trust Fund in which the Trustee shall deposit or cause to be deposited

the Property of the Trust Fund as the Trustee may from time to time determine.

2.2 Purpose of the PRT

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

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

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

and these payments only.

2.3 The Trust: Discretionary as to Two or More Beneficiaries

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

2.4 Situs, Mind and Management

The Trustee shall:

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

2.4.2 only appoint trust officers who are resident in Alberta to have authority to make investment or administrative decisions respecting the Trust Fund;

2.4.3 to the extent reasonably possible, only appoint Agents who shall manage and administer the affairs of the PRT from offices in the Province of Alberta and shall comply with section 2.4.2 *mutatis mutandis*, and in any event, only delegate authority with regard to material investment or administrative decisions respecting the Trust Fund to Agents who shall manage the affairs of

the PRT from offices in the Province of Alberta and shall comply with section 2.4.2 *mutatis mutandis*;

- 2.4.4 hold meetings solely in the Province of Alberta as required concerning the affairs of the PRT, and keep appropriate minutes of such meetings;
- 2.4.5 keep all books and records pertaining to the Trust Fund in the Province of Alberta; and
- 2.4.6 take all other such steps as are reasonably possible to maintain the situs, mind and management of the PRT in the Province of Alberta.

2.5 Qualifying Environmental Trust

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

ARTICLE III **DISTRIBUTIONS**

3.1 Disbursement of Funds

The Trustee may disburse funds from the Trust Fund:

- 3.1.1 to a Beneficiary, solely for the purpose described in section 2.2.1, on presentation by a Beneficiary of:
 - (a) a written direction or an order from the NEB issued in the name of the Beneficiary confirming the amount to be disbursed from the Trust Fund and the timing of the disbursement; and
 - (b) a certificate of an officer of the Beneficiary confirming that the Beneficiary has not suffered an Event of Default, and that to the officer's knowledge, the Beneficiary will not suffer an Event of Default within a year following the date of the certificate of the officer;

3.1.2 to any third party designated by the NEB, for the purpose described in section 2.2.1, provided that the Trustee is in receipt of a written direction or an order from the NEB issued in the name of the third party, with such direction or order confirming the amount to be disbursed from the Trust Fund, and the timing of the disbursement; or

3.1.3 to pay such other amounts described in paragraphs (b) and (c) of section 2.2.2.

3.2 Payments from the Trust Fund

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

3.3 Sale of the Pipeline or a Portion Thereof

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

ARTICLE IV CONCERNING THE TRUSTEE

4.1 Full Power and Authority

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

4.2 Duties and Responsibilities of the Trustee

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

4.2.1 **Custody of the Trust Fund.** Hold as custodian or appoint or cause to be appointed domestic or foreign Subcustodians as to part or all of the Trust Fund.

4.2.2 **Recording of Assets.**

- (a) Register the Property of the Trust Fund in its own name as Trustee, or in the names of its nominees or in the name of, or nominees of, any Subcustodian or Sub-Subcustodian appointed under this Agreement, or hold the investment in bearer form if the investment is not registrable or if it would not be in the best interest of the Beneficiaries of the Trust Fund to do otherwise.

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

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

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

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

4.3 **No Implied Duties**

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

4.4 **Standard of Care**

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

4.5 **Trustee Limitation of Liability**

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

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

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

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

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

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

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

4.5.5 **Non Fund Assets.** The duties of the Trustee shall be limited to the Property held in the Trust Fund, and the Trustee shall have no duties or obligations with respect to Property held by any other person. The Company hereby

acknowledges that the Trustee shall not serve as, and shall not be deemed to be, a co-trustee under any circumstances.

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

4.6 Indemnification

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

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

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

ARTICLE V POWERS OF THE TRUSTEE

5.1 Powers of the Trustee

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

5.1.1 Purchase and Sale of Property.

(a) Subject to Article X, purchase and sell and engage in other transactions, including receipts and deliveries, exchanges, exercises,

conversions, subscriptions, and other voluntary corporate actions, with respect to any Property, whether income producing or not.

- (b) Sell or otherwise dispose of any Property held by it at any time (by any means considered reasonable by the Trustee) for cash or on credit, or partly for cash and partly on credit, and receive the consideration and grant discharges therefor.

5.1.2 **Exercise of Rights.**

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

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

- 5.1.3 **Dealing with Claims.** Commence, defend, adjust or settle suits, administrative or legal proceedings in connection with the Trust Fund, and represent the Trust Fund in any such suits, administrative or legal proceedings and keep the Company informed; provided, however, that the Trustee shall not be obliged or required to do so unless it has first been indemnified by the Company at the Company's expense to the Trustee's satisfaction against all expenses and liabilities which it may incur as a result thereof, except where such suits, administrative or legal proceedings directly result from a breach by the Trustee of the Standard of Care.
- 5.1.4 **Hold Property in Trust.** Hold in trust any Property that it may acquire hereunder and generally to exercise any of the powers of an owner with respect to the Property held in the Trust Fund.
- 5.1.5 **Foreign Exchange.** Enter into and settle foreign exchange transactions for the purpose of facilitating the transactions of the Trust Fund with such counterparties as the Trustee may determine, including its Affiliates.
- 5.1.6 **Asset Dispositions.** Dispose of any Property of the Trust Fund on such terms as the Trustee may determine, in order to pay any outstanding obligations imposed on the Trust Fund, provided that the Company has been provided with prior written notice of the Trustee's intention to do so.
- 5.1.7 **Agents.** Retain Agents, including for greater certainty, all Subcustodians and Investment Managers, provided that the Trustee shall not enter into, amend, terminate or waive performance under contracts or agreements for service with an Agent unless the Trustee has first consulted with the Company in regard thereto. For greater certainty, the Trustee is not authorized to retain as an Agent the Company, any Beneficiary or any Affiliate of the Company or Beneficiary.
- 5.1.8 **Redemption of Property.** Present for redemption or exchange any Property which may be called, redeemed, withdrawn or retired, provided that timely receipt of written notice of the same is received by the Trustee from the issuer.
- 5.1.9 **Executing Instruments.** Make, execute, acknowledge and deliver any and all deeds, conveyances, contracts, waivers, releases or other documents of transfer and any and all other instruments in writing that may be necessary or proper for the accomplishment of any of the powers herein granted.
- 5.1.10 **Power to do any Necessary Act.** Generally take all action, whether or not expressly authorized, which the Trustee may deem necessary or desirable, acting reasonably, for the fulfillment of its duties hereunder. Without limiting the generality of the foregoing, this may include seeking, in accordance with the Applicable Laws, the advice and direction of a court of competent jurisdiction with respect to any matter concerning the PRT.

5.1.11 **Powers Inexhaustible.** The exercise of any one (1) or more of the powers provided in this Article V or any combination thereof from time to time shall not be deemed to exhaust the rights of the Trustee to exercise such power or powers or combination of them thereafter from time to time.

5.2 Self-Dealing

5.2.1 The Trustee's services with respect to the PRT are not exclusive and, subject to the limitations otherwise provided in this Agreement on the power and authorities of the Trustee, the Trustee may from time to time in its discretion appoint, employ, invest in, contract or deal with any individual, firm, partnership, association, trust or body corporate, including without limitation, itself and any of its Affiliates whether on its own account or for the account of another (in a fiduciary capacity or otherwise), without being liable to account therefor and such actions in and of themselves shall not result in breach of this Agreement, provided always that the Trustee shall comply with the terms of this Agreement, including without limitation sections 2.2 and 2.5.

5.2.2 Without limiting the generality of and subject to the foregoing, the Trustee may act hereunder notwithstanding that the Trustee or any of its divisions, branches or Affiliates may:

- (a) have a material interest in the transaction or that circumstances are such that the Trustee may have a potential conflict of duty or interest including the fact that the Trustee or any of its Affiliates may:
 - (i) purchase, hold, sell, invest in or otherwise deal with Property of the same class and nature as may be held in the Trust Fund, whether on its own account or for the account of another (in a fiduciary capacity or otherwise);
 - (ii) act as a market maker for any Property that forms part of the Trust Fund;
 - (iii) act as financial advisor to the issuer of any Property that forms part of the Trust Fund;
 - (iv) provide brokerage services to other clients;
 - (v) act as agent for more than one (1) client with respect to the same transaction;
 - (vi) have a material interest in the issue of any Property that forms part of the Trust Fund;
 - (vii) use in other capacities, knowledge, procedures, systems, processes or other expertise gained in its capacity as Trustee hereunder, subject to the provisions of section 15.6 hereof;

provided that such use is not detrimental to the best interests of the Beneficiaries of the Trust Fund; and

(viii) invest the assets of the Trust Fund in the securities or other assets of any of its Affiliates; and

(b) earn profits from any of the activities listed herein;

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

5.3 Limitations - Borrowing

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

ARTICLE VI TAX OBLIGATIONS

6.1 Tax Obligations

6.1.1 The Company and the Trustee acknowledge that it is intended that Tax Obligations payable in relation to the Trust Fund, shall be paid by the Trustee out of the Trust Fund.

6.1.2 The Trustee shall prepare and file or issue, on a timely basis, all income tax returns, elections and other forms which, by virtue of the Tax Act or any other Tax Obligation, a trustee of the PRT is required to file or issue in respect of each taxation year of the PRT, including the Fiscal Year ending on termination of the PRT.

ARTICLE VII REPORTING AND RECORD KEEPING

7.1 Accounts and Records

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

(a) within fifteen (15) Business Days following the last day of each month, a statement of account or report showing all Property transferred to the Trustee during the immediately preceding month;

(b) within fifteen (15) Business Days following the close of:

- (i) each quarterly period,
- (ii) each Fiscal Year, and
- (iii) any part of a quarterly period in which the Trustee has resigned or been removed in accordance with Article XII or in which the PRT has been terminated in accordance with Article XIII,

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

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

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

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

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

7.1.3 No persons other than those described in section 7.1.2 shall have the right to demand or be entitled to an inspection of the books, records, and accounts required to be maintained by the Trustee, or bring any action against the Trustee with respect thereto.

7.2 Review of Reports

If, within one hundred and twenty (120) days after the Trustee sends to the Company a report with respect to the Trust Fund, the Company has not given the Trustee written notice of any exception or objection thereto, the report shall be deemed to have been approved.

7.3 Contractual Income

The Trustee shall credit the Trust Fund with income and maturity proceeds on any Property net of any taxes on the contractual payment date or upon actual receipt as determined by the Trustee. To the extent the Trustee credits income on a contractual payment date, the Trustee may reverse such accounting entries with back value to the contractual payment date if the Trustee reasonably believes that such amount shall not be received by it. The Trustee shall provide notice of such reversal in the next report to the Company.

7.4 Contractual Settlement

The Trustee shall attend to the settlement of transactions on the basis of either contractual settlement day accounting or actual settlement day accounting, as determined by the Trustee. To the extent the Trustee settles certain Property transactions on the basis of contractual settlement date accounting, the Trustee shall be entitled to reverse with back value to the contractual settlement day any entry relating to such contractual settlement where the related transaction remains unsettled in accordance with established procedures. The Trustee shall provide notice of such reversal in the next report to the Company.

ARTICLE VIII **THIRD PARTIES**

8.1 Liability for Agents

If the Trust Fund suffers a loss as a result of any act or omission of an Agent appointed by the Trustee, and if such loss is directly attributable to the failure of such Agent to comply with the standard of care specified by section 4.2.5 in the provision of any service to be provided by it with respect to this Agreement, or a breach of this Agreement, then the Trustee shall be liable for such loss, and shall indemnify the Trust Fund in accordance with section 4.6. For greater certainty, notwithstanding any other provision of this Agreement, the funds for such indemnification shall not be paid out of the Trust Fund. The Trustee shall not otherwise be liable for any act or omission of any Agent appointed by the Trustee, including without limitation liability related to the insolvency of any Agent.

8.2 Subcustodians

8.2.1 If assets of the Trust Fund are held by a Subcustodian, such assets of the Trust Fund shall be maintained and clearly recorded by the Subcustodian in an account holding property for clients only of the Trustee, and shall be transferred or dealt with by the Subcustodian only on the instructions of the Trustee.

8.2.2 Upon request by the Company, the Trustee shall provide the Company with a list of the Trustee's current Subcustodians.

8.3 Depositories

- 8.3.1 The Trustee may utilize the services of one (1) or more Depositories on the terms of business of the operators of such Depositories, and may effect settlement and hold Property in accordance with the customary or established trading and processing practices and procedures in the jurisdiction or market in which any transaction in respect of the Trust Fund occurs.
- 8.3.2 In the event that a Depository is used to hold assets of the Trust Fund, such assets of the Trust Fund shall be identified by that Depository in its books as being held for the account of the Trustee on behalf of its clients. In the event that a Subcustodian uses a Depository to hold assets of the Trust Fund, such assets of the Trust Fund shall be identified by that Depository in its books as being held for the account of the Subcustodian on behalf of its clients.

ARTICLE IX **CONCERNING THE COMPANY**

9.1 Full Power and Authority

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

9.2 Responsibilities of the Company

The Company shall:

- 9.2.1 promptly notify the Trustee of any material change to Applicable Laws which may affect the Trustee's administration of the PRT and are related to either Reclamation Obligations or the distribution of Property from the PRT in that regard; and
- 9.2.2 promptly notify the Trustee of any change in the tax relationships contemplated in subparagraphs (b)(ii) and (iii) of the definition of "prohibited investment" in section 211.6 of the Tax Act, including without limitation:
- (a) persons with whom it is related, as defined in the Tax Act;
 - (b) partnerships with whom it is affiliated, as defined in the Tax Act; and
 - (c) persons or partnerships in which it holds a significant interest, as defined in the Tax Act.

ARTICLE X
INVESTMENTS

10.1 Investment of Trust Fund

10.1.1 The Trustee shall hold, invest and reinvest the Trust Fund in Qualified Investments and in accordance with Applicable Laws and the Statement of Investment Policies and Procedures, and for greater certainty, shall have and be vested with the powers regarding investment of the Trust Fund described in Article V.

10.1.2 The Trust shall consult with the Company respecting the investment of the Trust Fund from time to time as required by the Company.

10.2 Appointment of Investment Manager

The Trustee may from time to time delegate and approve the sub-delegation of the investment of any portion of the Trust Fund by appointing one or more Investment Managers to manage the investment of any portion of the Trust Fund, including any Affiliate of the Trustee; delegates may perform such tasks as the Trustee considers appropriate with respect to such portion. The Trustee, for the purposes of this section, shall in no circumstances appoint the Company or a Beneficiary or any Affiliates of either. The Trustee shall give prompt written notice to the Company of any such appointment.

10.3 Cash Balances

The Trustee may retain any cash balance in the Trust Fund and may, but need not, invest same in Qualified Investments; or hold the same in its deposit department or in the deposit department of one of the Trustee's Affiliates; but the Trustee and its Affiliates shall not be liable to account for any profit to the Company other than at the commercially reasonable client rate established from time to time by the Trustee or its Affiliates.

10.4 Settlement of Transactions

Settlements of transactions may be effected in accordance with trading and processing practices customary in the jurisdiction or market where the transaction occurs. The Company acknowledges that this may, in certain circumstances, require the delivery of cash, securities, or other Property without the concurrent receipt of cash, securities or other Property, and, subject to section 4.6.2, in such circumstances, the Trustee and its Agents shall have no responsibility for non-delivery (or late delivery) of securities or other Property, or for non-receipt of payment (or late payment) by the counterparty.

ARTICLE XI
COMMUNICATIONS

11.1 Authorized Parties

The Company shall from time to time furnish the Trustee with a written list of the names, signatures and extent of authority of all persons authorized to act on behalf of the Company under the terms of this Agreement.

11.2 Methods of Communication

11.2.1 All communications hereunder must be given by one of the following methods of communication:

- (a) personal or courier delivery;
- (b) prepaid ordinary mail;
- (c) authenticated telex;
- (d) facsimile;
- (e) one of the Trustee's secured client access channels; or
- (f) directly between electromechanical or electronic terminals (including, subject to section 11.4, the internet or unsecured lines of communication).

11.2.2 Communications should be addressed, as applicable, as follows:

- (a) in the case of the Trustee:

Valiant Trust Company
Suite 3000, 10303 Jasper Avenue
Edmonton, Alberta, T5J 3X6
Attention: Randy Garvey, CEO
Phone: 780-441-2245
Fax: 780-969-1503
Email: randy.garvey@valianttrust.com

- (b) in the case of the Company:

Kinder Morgan Utopia Ltd.
Suite 2700, 300-5th Avenue SW
Calgary, AB T2P 5J2
Attention: Assistant General Counsel
Fax: 403-514-6622

or at such other address and number as the party to whom such communication is to be given shall have last notified the party giving the same in the manner provided in this section.

- 11.2.3 Any notice or other document required to be given or delivered to the NEB shall be addressed to:

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

11.3 Deemed Delivery

- 11.3.1 Any communication delivered personally shall be deemed to have been given and received on the day it is so delivered (or if that day is not a Business Day, on the next succeeding Business Day). Subject to disruptions in the postal service, any communication sent by prepaid ordinary mail shall be deemed to have been given and received on the fifth Business Day following the date of mailing. Any communication given by authenticated telex, facsimile, one of the Trustee's secured client access channels, or directly between electromechanical or electronic terminals (including, subject to section 11.4, the internet or unsecured lines of communication) shall be deemed to have been given and received on the Business Day it is transmitted provided that it was received before 3:00 p.m. (Mountain time), and, if received after 3:00 p.m. (Mountain time), it shall be deemed to have been given and received on the Business Day following the day of transmission provided in each case that confirmation of transmission is available from the party giving the communication.
- 11.3.2 Nothing in this Agreement shall create an obligation for the Trustee to constantly monitor its electronic communication equipment, provided that reasonable monitoring is performed within business hours of the Trustee where communications are sent and the Trustee will not be held liable for an omission to act from not receiving electronically transmitted communications. In the event of any disagreement as to whether electronic communications have been received by the Trustee, the sender will have the onus of proving that such electronic communications have been so received.

11.4 Internet

The parties agree that communications given through the internet, or any other electronic means of communication which is not secure, may only be validly given hereunder if the Company, as applicable, has first provided the Trustee with a letter consenting to such means of communication in a form satisfactory to the Trustee.

ARTICLE XII
RESIGNATION, REMOVAL, APPOINTMENT OF SUCCESSOR,
QUALIFICATIONS, AND REMUNERATION OF TRUSTEE

12.1 Resignation

In addition to its right to resign as provided in section 15.4, and subject to section 12.4, the Trustee may resign at any time after giving ninety (90) days' notice in writing to the Company, or after such shorter notice as may be mutually agreed by the Company and the Trustee.

12.2 Removal Without Notice

The Company shall have power exercisable in writing, to remove the Trustee without notice, at any time that:

- (a) the Trustee has failed to perform its obligations under this Agreement or under Applicable Laws;
- (b) ownership of the Pipeline has changed;
- (c) the parties disagree over the amount of compensation paid to the Trustee or expenses incurred by the Trustee;
- (d) the Trustee is convicted of an offence involving dishonest conduct;
- (e) the Trustee shall be declared bankrupt or shall be insolvent;
- (f) the assets or the business of the Trustee shall become liable to seizure or confiscation by any public or governmental authority; or
- (g) the Trustee shall cease to have the qualifications set out in section 12.6 hereof.

12.3 Removal With Notice

The Company may remove the Trustee for any reason at any time upon ninety (90) days' notice in writing or upon such shorter period of notice as may be mutually agreed upon by the Company and the Trustee.

12.4 Successor Trustee

12.4.1 In the event of resignation or removal of the Trustee under this Agreement or in the event a vacancy shall otherwise arise in the trusteeship of the Trust Fund, the Company shall, effective upon the receipt of written approval of the NEB, appoint a successor to the Trustee and shall ensure that such successor has the qualifications set out in section 12.6 hereof.

- 12.4.2 If a successor trustee has not been appointed at the conclusion of the period of notice required hereunder for resignation or removal of the Trustee, the Trustee may apply to the NEB to be relieved of its obligations under this Agreement.
- 12.4.3 Any corporation that has the qualifications set out in section 12.6 hereof, and which by merger, consolidation, purchase, or otherwise, succeeds to substantially all of the business relevant to this Agreement of the Trustee, as either or both the trustee or the custodian, or to which substantially all of the assets relevant to this Agreement of the Trustee, as either or both the trustee or the custodian, may be transferred, shall be the successor to the Trustee as the trustee or the custodian, as the case may be, hereunder, without any further act or formality with like effect as if such successor trustee or custodian had originally been named as the trustee or custodian herein. As soon as practicable following merger, consolidation or transfer, the Trustee or successor trustee, or the successor custodian, as the case may be, shall provide written notice thereof to the Company.

12.5 Obligations Upon Resignation or Removal

In the event of the resignation or removal of the Trustee, the Trustee shall, upon receiving written notice from the Company that a successor trustee has been appointed in accordance with the terms of this Agreement, transfer title to and pay over to the successor trustee appointed under section 12.4 hereof, all of the Property of the Trust Fund and all relevant books and records maintained by the Trustee for the purpose of its responsibilities under this Agreement. Upon such transfer, the Trustee shall be relieved of all future responsibilities under this Agreement.

12.6 Qualifications of Trustee

No person shall at any time be eligible to be appointed as Trustee hereunder other than a corporation resident in Canada that is licensed or otherwise regulated under the *Trust and Loan Companies Act* (Canada) in addition to the laws of a Province of Canada or of Canada, to carry on in Canada the business of offering to the public its services as a trustee, and provided that such corporation has undertaken in writing to discharge all of the obligations and responsibilities of the Trustee hereunder.

12.7 Fees and Expenses

- 12.7.1 To the extent permitted by Applicable Laws, the Trustee shall be paid from the Trust Fund for all services under this Agreement, the fees and expenses as agreed from time to time in writing by the Trustee and the Company, including, for greater certainty, those fees and expenses payable in accordance with the Agreement dated July 24, 2014, between the Trustee and the Company.
- 12.7.2 The Trustee, and every Agent, including any Investment Manager referred to under section 10.2, is to ensure that every expense item about to be incurred in

the discharge of a Trustee duty or the exercise of a Trustee power is necessarily incurred and is demonstratively reasonable in cost, the intent of such prudence being to maximize the Trust Fund resources that are available for Reclamation Obligations.

ARTICLE XIII
AMENDMENT AND TERMINATION

13.1 Amendment

The Company, and the Trustee, may, with the written approval of the NEB, 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 herein, provided that 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 the parties hereto and approved by the NEB and no amendment or modification shall be effective to the extent that it is inconsistent with the PRT's purposes as set out in section 2.2.1 or not approved by the NEB. The Company and the Trustee, shall not unreasonably withhold their written consent to any such waiver, amendment or modification.

13.2 Duration of the Trust

13.2.1 The PRT may not be revoked by the Company or Beneficiaries, acting as a whole, or the Trustee, provided that the NEB in the exercise of its statutory authority may direct the termination of the PRT, and order such successive arrangements as are appropriate in view of fulfilling the purpose of the PRT. For greater certainty, the rule in *Saunders v. Vautier* shall not be applicable to the PRT or the Trust Fund.

13.2.2 This Agreement shall have no specific term but shall commence on the date first mentioned above and shall continue until terminated in writing by the Company, with the approval of the NEB.

13.2.3 In the event that the rule against perpetuities applies to the PRT under the laws of Alberta, the PRT shall continue for a term ending at the conclusion of the perpetuity period as determined under the "wait and see" provisions of the *Perpetuities Act*, R.S.A. 2000, c. P-5, as amended.

13.2.4 In the event that

- (a) the PRT ceases to qualify as a Qualifying Environmental Trust in circumstances other than those contemplated by section 13.3, or
- (b) the Trustee is of the view that the period permitted by the perpetuity legislation of Alberta may expire in not more than five years,

then, as soon as practicable,

- (c) if there is no Event of Default with respect to the Company, the Trustee shall pay the Trust Fund to the Company, and the Company covenants upon receipt of the Trust Fund, to settle, at once, a new irrevocable trust that qualifies as a Qualifying Environmental Trust upon terms and conditions approved by the NEB (the "New Trust"), and to contribute to the New Trust an amount equal to the value of the entirety of the Trust Fund, and
- (d) in any other circumstance, the Trustee shall seek directions from the NEB on the successive arrangements which are appropriate in the circumstances in accordance with section 13.2.1 and
- (e) thereafter this Agreement and the trusts hereunder shall terminate.

13.3 The Apportionment of Surplus Funds.

If Property remains in the Trust Fund after all Reclamation Obligations are discharged, then the Trustee, with the approval of the NEB, may distribute the Trust Fund or any part thereof among any of the Beneficiaries, including the Orphan Pipeline Fund, or, where such is the case, a single Beneficiary and the said Orphan Pipeline Fund as the Trustee in its sole discretion sees fit.

ARTICLE XIV DEFAULT

14.1 Default

The Trustee shall not be required to act in accordance with an Event of Default with respect to a Company under this Agreement until the Trustee has received notice of such event, or otherwise becomes aware of same.

ARTICLE XV MISCELLANEOUS

15.1 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 and the Company 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 Trust 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.

15.2 Limitation of Accounts

No account opened by, or interest to be held by the Trustee in connection with this Agreement, shall be used by or on behalf of any party not specified herein.

15.3 Severance of Illegal or Invalid Provision

If any term, provision or part of this Agreement shall be held illegal, invalid or unenforceable in whole or in part for any reason by a court of competent jurisdiction, such determination shall not affect the validity or enforcement of any other term, provision or part of this Agreement and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable term, provision or part had never been inserted herein.

15.4 Right Not to Act

15.4.1 The Trustee shall retain the right not to act and shall not be 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.

15.4.2 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, acting reasonably, 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, acting reasonably, 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 (10) days written notice to the other party 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 ten (10) day period, then such resignation shall not be effective.

15.5 Assignment

No party may assign this Agreement or any benefits or obligations hereunder without the prior written consent of the other party hereto and without the approval of the NEB. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

15.6 Confidentiality and Privacy

15.6.1 The Trustee shall hold in confidence all information relating to the Trust Fund and may only release such information to others where required by Applicable Laws.

15.6.2 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.

15.7 Execution in Counterparts

This Agreement may be executed by facsimile and in counterparts each of which when so executed shall be deemed to be an original and all counterparts together shall constitute one agreement. Notwithstanding the foregoing, the parties agree to exchange one fully executed original copy within a reasonable period of time after counterpart execution.

15.8 Governing Law

This Agreement shall be construed, administered and enforced according to the laws of the Province of Alberta and the laws of Canada applicable therein.

15.9 Force Majeure

Notwithstanding anything to the contrary herein, the Trustee shall not be liable or responsible for any loss or damages, whatsoever, resulting from official action (including nationalization and expropriation), currency restrictions or devaluations, acts or threat of war or terrorism, insurrection, revolution or civil disturbance, acts of God, strikes or work stoppages, inability of any settlement system to settle transactions, interruptions in postal, telephone, telex and/or other

communication systems or in power supply, or any other event or factor beyond the reasonable control of the Trustee.

15.10 Business Recovery Plan

The Trustee shall, at all times that this Agreement is in force, maintain a commercially reasonable Business Recovery Plan.

15.11 Review of Agreement

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

15.12 Residence

Each of the Company and Valiant represents that it is a resident of Canada within the meaning of the Tax Act.


15.13 Entire Agreement

This Agreement and any appendices hereto, which are hereby incorporated into the Agreement, constitute the whole and entire agreement between the parties in respect of the subject matter hereof and cancel and supersede any prior written or verbal agreements including undertakings, declarations or representations made with respect thereto.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

KINDER MORGAN UTOPIA LTD.

VALIANT TRUST COMPANY

Per: 
Scott Stoness
Director

Per: _____
Name:
Title:

Per: _____
Name:
Title:

communication systems or in power supply, or any other event or factor beyond the reasonable control of the Trustee.

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The Trustee shall, at all times that this Agreement is in force, maintain a commercially reasonable Business Recovery Plan.

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

15.12 Residence

Each of the Company and Valiant represents that it is a resident of Canada within the meaning of the Tax Act.

15.13 Entire Agreement

This Agreement and any appendices hereto, which are hereby incorporated into the Agreement, constitute the whole and entire agreement between the parties in respect of the subject matter hereof and cancel and supersede any prior written or verbal agreements including undertakings, declarations or representations made with respect thereto.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

KINDER MORGAN UTOPIA LTD.

Per: _____
Scott Stoness
Director

VALIANT TRUST COMPANY

Per: _____
Name: R. W. GARDEY
Title: EVP, CUB +
CEO, Valiant Trust

Per: _____
Name: Summer Bradko
Title: Asst. Corporate Secretary

APPENDIX A

DESCRIPTION OF THE UTOPIA PIPELINE

The Utopia Pipeline consists of an approximately 1.28 miles (2.1 km) pipeline from near Detroit, Michigan to Windsor, Ontario. The Pipeline extends from part of Farm Lot 58 and part of Farm Lot 59 to points on the international boundary between Canada and the United States being points in the bed of the Detroit River in front of Farm Lot 59, all in Concession 1, Township of Sandwich West.



APPENDIX B

QUALIFIED INVESTMENTS

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

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

¹ The relevant paragraphs read as follows:

- (d) **[corporations owned by the Crown]** - a corporation, commission or association all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;
- (d.1) **[corporations 90% owned by the Crown]** - a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a Province;
- (d.2) **[wholly-owned [by Crown corporation] corporations]** - a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or paragraph (d) applies for the period;
- (d.3) **[90% [Crown] owned corporations]** - a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by: (i) one or more persons each of which is Her Majesty in right of Canada or a Province or a person to which paragraph (d) or (d.2) applies for the period, or (ii) one or more municipalities in Canada in combination with one or more persons each of which is Her Majesty in right of Canada or a Province or a person to which paragraph (d) or (d.2) applies for the period;
- (d.4) **[combined [Crown] ownership]** - a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or any of paragraphs (d) to (d.3) applies for the period;
- (d.5) **[municipally-owned corporation earning] income with boundaries of entities]** - subject to subsections (1.2) and (1.3), a corporation, commission or association not less than 90% of the capital of which was owned by one or more entities each of which is a municipality in Canada, or a municipal or public body performing a function of government in Canada, if the income for the period of the corporation, commission or association from activities carried on outside the geographical boundaries of the entities does not exceed 10% of its income for the period;
- (d.6) **[subsidiaries of municipal corporations]** - subject to subsections (1.2) and (1.3), a particular corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more 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

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

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.

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

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

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

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

⁶ *Ibid.*

⁷ *Supra* note 2.

- (B) the holder of that significant interest has contributed property to, or is a beneficiary under, the trust.

⁸ Subsection 207.01(4) reads:

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

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