

Tel: 416 592-5984
Lubna.Ladak@opg.com

February 28, 2018

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

Re: EB-2018-0102 – Ontario Power Generation – Fair Hydro Plan 2017 General Fee Application

Attached please find an Application by Ontario Power Generation (“OPG”), acting as the Financial Services Manager (“FSM”) of the Fair Hydro Plan (or the Fair Hydro Trust), for an order approving the general fee for the period beginning June 1, 2017 and ending on December 31, 2017.

The Application is guided by the *Ontario Fair Hydro Plan Act, 2017* (the “Act”) and Section 10 of *Ontario Regulation 206/17* (the “FHP Regulation”). Pursuant to the Act, the FSM is required to establish a general fee related to performing its duties. Pursuant to the FHP Regulation, the FSM is required to submit the proposed fee for the period beginning June 1, 2017 and ending on December 31, 2017, for review by the Ontario Energy Board (the “Board”), on or before February 28, 2018.

OPG requests a written hearing given the immaterial financial impact of the Application to customers, as well as the fact that the evidence is accompanied by written confirmation from an external auditor pursuant to the requirements of the FHP Regulation to assist the Board in making its determination.

If you have any questions on this matter, please do not hesitate to contact me at (416)-592-5984.

Sincerely,

[Original Signed By]

Lubna Ladak

cc. Ian Richler, Ontario Energy Board
Andrew Bishop, Ontario Energy Board
Leslie Wong, OPG
Randy Pugh, OPG

1 **ONTARIO ENERGY BOARD**

2
3 **IN THE MATTER OF** the *Ontario Fair Hydro Plan Act*,
4 2017 (the “Act”) and *Ontario Regulation 206/17* (the “FHP
5 Regulation”);
6

7 **AND IN THE MATTER OF** an application by Ontario Power
8 Generation Inc., in its capacity as the Financial Services
9 Manager under the Act, for an order or orders approving
10 fees pursuant to subsection 19(4) of the Act and section
11 10.2 of the FHP Regulation, for the period beginning on
12 June 1, 2017 and ending on December 31, 2017 (the
13 “Application”).
14

15
16 **APPLICATION**
17

- 18 1. Ontario Power Generation Inc. (“OPG”) is a corporation, incorporated under the
19 *Ontario Business Corporations Act*, with its head office in the City of Toronto. OPG is
20 appointed under section 18 of the Act as the Financial Services Manager (“FSM”) for
21 the purposes of the Act. OPG, in its capacity as the FSM, is hereby applying to the
22 Ontario Energy Board (the “Board”) for approval of fees pursuant to subsection 19(4)
23 of the Act and section 10.2 of the FHP Regulation, for the period beginning on June 1,
24 2017 and ending on December 31, 2017.
- 25 2. Under the Act, the FSM has the authority and responsibility for, among other things,
26 establishing and managing one or more entities (referred to in the Act as “financing
27 entities”) to raise debt financing (referred to in the Act as “funding obligations”) for the
28 purposes of the Act. The Fair Hydro Trust (the “FH Trust”) is one such financing entity
29 that was established on December 20, 2017. In accordance with subsection 19(3) of
30 the Act, the FSM may establish and charge fees to financing entities in relation to
31 prescribed matters¹.

¹ FHP Regulation, s. 10.1 (1)

3. Pursuant to subsection 78.1(3) of the *Ontario Energy Board Act, 1998*, the activities of OPG which are carried out in relation to the Act, including costs it incurs and fees it receives in connection with the performance of its duties as FSM², are separate from and shall not be considered by the Board when the Board sets payment amounts for OPG in respect of its prescribed generation facilities³.

4. The FHP Regulation contemplates the FSM filing applications with the Board for approval of fees in respect of several different time periods. OPG filed the EB-2017-0375 application on December 15, 2017 for a proposed fee for the period beginning January 1, 2018 and ending on March 31, 2019. This application is for a proposed fee reflecting a return payable on services provided by the FSM and specified costs and expenditures in respect of prescribed matters⁴ for the period beginning on June 1, 2017 and ending on December 31, 2017 (the "Application Term").

5. Subsequent applications for approval of fees are required on or before February 28, 2019 and by the same date in each subsequent year for the periods beginning on April 1 and ending on March 31 of the corresponding years⁵. Distinct methodologies will apply, in accordance with the FHP Regulation, for determining fees in respect of those future applications for the corresponding periods.

6. Pursuant to section 10.2(2) the FHP Regulation, the FSM's general fee for 2017 is established as the sum of (1) \$3.1M, reflecting the amount of return payable on services provided by the FSM in relation to prescribed matters during the period beginning on June 1, 2017 and ending on December 31, 2017, and (2) the amount of any costs and expenditures incurred and paid by the FSM in relation to prescribed matters during the period, which is a proposed amount of approximately \$2.6M

² OEB Act, Section 78.1 (3.1), part 2

³ OEB Act, Section 78.1 (3)

⁴ FHP Regulation, s. 1 defines "prescribed matters" as matters relating to the establishment, management and administration of financing entities and the investment asset, including but not limited to matters in relation to, (a) financing entities that are established or that are planned to be established, and (b) funding obligations that have been incurred or that are planned to be incurred by financing entities

⁵ FHP Regulation, s. 10.8 (1)

1 (together, the "2017 General Fee"). The total proposed 2017 General Fee is
2 approximately \$5.7M.

3
4 7. In accordance with subsection 10.3(1) of the FHP Regulation, upon reviewing the
5 Application, the Board may either (i) subject to subsection 10.3(2) of the FHP
6 Regulation, approve or refuse to approve the \$3.1M portion of the 2017 General Fee;
7 and (ii) subject to subsection 10.3(3) of the FHP Regulation, approve or refuse to
8 approve the amount of any costs and expenditures incurred and paid by the FSM in
9 relation to prescribed matters. For each of these two components of the 2017 General
10 Fee, the Board's review requirements established in the FHP Regulation and a
11 description of the written evidence filed to assist the Board in its review is provided
12 below.

13
14 8. Pursuant to subsection 10.3(2) of the FHP Regulation, the Board shall approve the
15 \$3.1M portion of the 2017 General Fee if it is of the view that both the following
16 conditions are met: (1) the FH Trust was established during the Application Term, and
17 (2) any funding obligations were incurred during the Application Term, or work was
18 substantially completed during the Application Term. OPG's written evidence included
19 with this Application confirms that the FH Trust was established on December 20, 2017
20 and that funding obligations were incurred by the FH Trust prior to the end of the
21 Application Term.

22
23 9. Pursuant to subsection 10.3(3) of the FHP Regulation, the Board may refuse to
24 approve an amount of a cost or expenditure if the Board is of the view that the cost or
25 expenditure was not incurred by the FSM in relation to prescribed matters during the
26 Application Term or that the cost or expenditure was not paid by the FSM during the
27 Application Term. OPG's written evidence included with this Application confirms that
28 specified costs and expenditures were incurred by the FSM in relation to the defined
29 prescribed matters and were paid by the FSM during the Application Term. Specifically,
30 in accordance with section 10.2(4) of the FHP Regulation, the Application is required
31 to include a written report from an external auditor on the following: (1) the amounts of

1 the costs and expenditures that the FSM seeks to recover through fees, as set out in
2 the submission, are accurate; (2) the amounts of the costs and expenditures, as set
3 out in the submission, were incurred by the FSM; and (3) except in the case of amounts
4 referred to in paragraph 9 of section 10.2(3) of the FHP Regulation relating to direct
5 costs for employees exclusively dedicated to provisions of services to the FH Trust,
6 the amounts were paid to third parties. OPG, as the FSM, engaged Ernst & Young LLP
7 ("EY"), FH Trust's external auditor to provide a Specified Procedures Report, which
8 has been included and discussed in the written evidence.

9
10 10. OPG believes that the written evidence provided with this Application⁶ provides direct,
11 clear independent verification that the return, costs and expenditures incurred by the
12 FSM meet the requirements of the FHP Regulation 10.2 (as set out above) for inclusion
13 in the 2017 General Fee. As the financial impact of the 2017 General Fee
14 (approximately \$5.7M) is not material, OPG believes that the review of this application
15 does not merit the expense and process of an oral hearing. OPG therefore requests
16 that the OEB determine the Application through a written hearing

17
18 11. OPG further applies to the Board pursuant to the provisions of the *Ontario Energy*
19 *Board Act, 1998* and the Board's Rules of Practice and Procedure for such orders and
20 directions as may be necessary in relation to the Application and the proper conduct
21 of this proceeding.

22
23 12. The persons affected by this Application are specified consumers as defined in the Act.
24 It is impractical to set out the names and addresses of the specified consumers
25 because they are too numerous.

26
27 13. OPG requests that copies of all materials filed with the Board in connection with this
28 Application be served on the Applicant and the Applicant's counsel as follows:
29

⁶ OPG may supplement or amend the evidence filed with this Application from time to time prior to the Board's final decision on the Application.

(a) The Applicant: Ms. Lubna Ladak
Ontario Power Generation Inc.

Mailing address: H18 A17
700 University Avenue
Toronto, ON. M5G 1X6

Telephone: 416-592-5984

Facsimile: 416-592-4189

Electronic mail: Lubna.Ladak@opg.com

(b) The applicant's Counsel: Mr. Leslie Wong
Ontario Power Generation

Mailing Address: H18 G26.1
700 University Avenue
Toronto ON. M5G 1X6

Telephone: 416-592-3110

Facsimile: 416-592-1466

Electronic mail: Leslie.Wong@opg.com

Dated at Toronto, Ontario, this 28th day of February, 2018.

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6

Ontario Power Generation Inc.

[Original signed by]

Lubna Ladak,

Vice-President, Treasury - Fair Hydro Plan

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Fair Hydro Plan Act, 2017* (the “Act”) and *Ontario Regulation 206/17* (the “FHP Regulation”);

AND IN THE MATTER OF an Application by Ontario Power Generation Inc., acting as the Financial Services Manager under the Act, for an order or orders approving fees pursuant to subsection 19(4) of the Act and section 10.2 of the FHP Regulation, for the period beginning on June 1, 2017 and ending on December 31, 2017 (the “Application”).

**GENERAL FEE SUPPORTING EVIDENCE
FOR JUNE 1, 2017 TO DECEMBER 31, 2017**

1.0 Background

In June 2017, the Government of Ontario (the “Province”) enacted the Act, to establish a framework under which the costs and benefits associated with the Province’s clean energy initiatives are to be fairly allocated between present and future consumers of electricity under Ontario’s Fair Hydro Plan (“FHP”). The objective of the Act is to reduce average electricity bills for specified consumers by 25 per cent commencing on July 1, 2017. The total bill reduction of 25 per cent is comprised of an 8 per cent reduction of the Provincial portion of the harmonized sales tax, with the remaining 17 per cent achieved by decreasing energy rates for specified consumers paying the Regulated Price Plan rate and providing a global adjustment reduction credit for other specified consumers. The reduction in electricity bills have resulted in shortfalls in the Independent Electricity System Operator’s (“IESO”) monthly collections, which will need to be financed in order to pay the underlying global adjustment costs. The objective of the FHP program is to refinance a portion of the deferred global adjustment costs over a longer period of time.

1 Under the Act, OPG is appointed as the Financial Services Manager (“FSM”) and is
2 given the authority to, among other things, establish and manage one or more financing
3 entities to raise debt financing (referred to as “funding obligations”) for purposes of the
4 Act. The Act requires the Minister of Energy (“MOE”) to calculate the Fair Allocation
5 Amount¹ and for the FSM to incur funding obligations that, subject to refinancing,
6 reasonably align with the Fair Allocation Amount, as adjusted by any readjustment
7 amount.

8
9 The Fair Hydro Plan Trust (the “FH Trust”) is a financing entity that was established on
10 December 20, 2017. For purposes of subsection 19(3) of the Act, the fees established
11 and charged by the FSM may be charged to the FH Trust. Certain elements of these
12 fees are subject to review by the Ontario Energy Board (the “Board”).

13
14 The FHP Regulation was enacted in support of the Act. Section 10 of the FHP
15 Regulation addresses the setting, review, and charging of fees to financial entities for
16 three specific time periods: (i) 2017, (ii) January 1, 2018 to March 31, 2019, and
17 (iii) subsequent years. The FHP Regulation provisions differ for each of these three
18 periods.

19
20 The FSM is required to perform the duties assigned to it under the Act and as may be
21 prescribed under the applicable regulation. These include, but are not limited to, the
22 FSM’s responsibility for providing services to the FH Trust related to acquiring,
23 administering, and selling investments, as well as issuing debt to finance these
24 transactions. In addition, the FSM is responsible for preparing financing plans,
25 forecasting cash flow requirements of the FH Trust, acting as custodian of investment
26 records, and entering and executing various program agreements associated with
27 these activities. The FSM also has a monitoring role related to the collection of clean

¹ The Act, s. 20(1).

1 energy adjustments by local distribution companies/electricity vendors from specified
2 consumers, as required by program agreements.

3 4 **2.0 PURPOSE**

5 OPG is applying, in its capacity as the FSM, to the Board for approval to charge the
6 FH Trust the proposed fee required by section 10.2(1) of the FHP Regulation for the
7 period beginning on June 1, 2017 and ending on December 31, 2017 (the "Application
8 Term").

9 10 **3.0 OVERVIEW**

11 Section 10.2(2) of the FHP Regulation defines the proposed fee for the Application
12 Term as the sum of a return payable on services provided by the FSM of \$3.1M (the
13 "Return") plus costs and expenditures described in Section 10.2(3) of the Regulation
14 incurred and paid by the FSM ("Application Term Costs"), which is a proposed amount
15 of \$2,633,684.11. The review requirements established in the FHP Regulation and a
16 description of the written evidence filed to assist the Board in its review of the Return
17 is provided in Section 4.0 and of the Application Term Costs is provided in Section 5.0.
18 OPG requests the Board approve recovery of the Return and Application Term Costs
19 (together, the "2017 General Fee") of \$5,733,684.11.

20 21 **4.0 THE RETURN**

22 Pursuant to subsection 10.3(2) of the FHP Regulation, the Board shall approve the
23 Return if it is of the view that both the following conditions are met: (1) the FH Trust
24 was established during the Application Term, and (2) any funding obligations were
25 incurred during the Application Term or work was substantially completed during the
26 Application Term. As discussed below, both of these conditions are met.

27

1 The FH Trust was established during the Application Term:

2 The FH Trust was established on December 20, 2017. Attached as Appendix A is a
3 copy of the Declaration of Trust executed by the issuer trustee, Computershare Trust
4 Company of Canada.

5
6 Funding obligations were incurred by the FH Trust during the Application Term

7 In support of this requirement, OPG submits the redacted Transfer Notice², included
8 herein as Appendix B, which shows the IESO's offer to transfer \$1.179B of investment
9 interest to FH Trust and the FH Trust's acceptance of the offer. The Transfer Notice
10 shows a closing date of December 21, 2017, which is within the Application Term.

11
12 **5.0 APPLICATION TERM COSTS**

13 Pursuant to subsection 10.3(3) of the FHP Regulation, the Board may refuse to
14 approve certain Application Term Costs if the Board is of the view that they were not
15 incurred by the FSM in relation to prescribed matters³ during the Application Term or
16 that they were not paid by the FSM during the Application Term. Subsection 10.2(3)
17 specifies 11 different cost or expenditure types that are included⁴ in prescribed matters
18 as defined above. OPG's proposed Application Term Costs were incurred and paid in
19 relation to 4 of the 11 specified types of costs and expenditures summarized in Table
20 1 and described in Notes 1 to 4 of Table 1.

21

² Confidential banking details have been redacted. OPG has filed a confidential unredacted version in accordance with the Board's Practice Direction on Confidential Filings, October 28, 2016.

³ FHP Regulation s. 1 defines "prescribed matters" as matters relating to the establishment, management and administration of financing entities and the investment asset, including but not limited to matters in relation to, (a) financing entities that are established or that are planned to be established, and (b) funding obligations that have been incurred or that are planned to be incurred by financing entities.

⁴ Pursuant to subsection 10.2(3) of the FHP Regulation, costs and expenditures incurred and paid in respect of prescribed matters are not limited to the 11 specific cost and expenditure types referenced in the subsection.

Table 1: Summary of Proposed Application Term Costs

FHP Regulation s. 10.2(3) cost type (paragraph)	Description of Cost	Note	Proposed Amount (\$)
5	Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns	1	224,306.25
6	Fees of legal counsel	2	2,006,828.04
9	Direct costs of the FSM for employees whose work for the FSM consists exclusively of the provision of services to financing entities in relation to prescribed matters	3	402,446.28
10	Costs and expenditures incurred on behalf of any financing entity in connection with the FSM's duties under the Act in relation to the Financing Entity	4	103.53
	Total Proposed Application Term Costs		\$2,633,684.11

Note 1: Accounting advice from OPG's external auditors to gain concurrence on management's conclusion in respect of the accounting for the FH Trust.

Note 2: Fees to effect the establishment, management, and administration of the FH Trust and the investment asset for prescribed matters described above. Legal advice provided on all aspects of implementing the Act, including, but not limited to, establishing the FH Trust, reviewing and drafting regulations, negotiating and developing numerous program agreements to establish the financing program and other agreements for the day-to-day management and administration of the FH Trust.

Note 3: Fully-burdened labour costs of four employees that exclusively provided services to the FH Trust during the Application Term summarized in Appendix C.

Note 4: Expenses related primarily to local travel costs incurred by exclusively dedicated FH Trust employees to attend meetings with stakeholders during the Application Term to negotiate program agreements.

1 Evidence of Application Term Costs Recoverability

2 Subsection 10.2(4) of the FHP Regulation requires written confirmation from an
3 external auditor that the proposed Application Term Costs are accurate, incurred by
4 the FSM and were paid to third parties⁵. OPG engaged Ernst & Young LLP (“EY”), FH
5 Trust’s external auditor, to assist OPG’s management in fulfilling the requirements
6 under this subsection. The procedures EY performed to assist management in meeting
7 the requirements of this subsection, as well as the corresponding results for each
8 procedure, are outlined in EY’s report (the “Specified Procedures Report”). EY issued
9 this report under *Canadian Auditing Standards 9100 – Reports on the Results of*
10 *Applying Specified Auditing Procedures to Financial Information Other than Financial*
11 *Statements*.⁶ In the course of performing the specified procedures, EY is required to
12 report each finding, whether immaterial or not. The Specified Procedures Report is
13 provided in Appendix D, with the results summarized below.

14
15 Five specified procedures were conducted by EY in support of their Specified
16 Procedures Report. Procedure 1 recalculates the 2017 General Fee by general cost
17 type (i.e., the \$3.1M Return, third-party costs related to accounting advice and legal
18 fees, direct labour costs, and other incurred costs) to verify the sum of the components
19 of the 2017 General Fee as reflected by OPG in this Application. The proposed
20 Application Term Costs described in Notes 1 to 4 of Table 1 were examined through
21 the performance of specified procedures 2 to 5 as summarized in Table 2 below:

22

⁵ Direct costs of the FSM for employees whose work for the Financial Services Manager consists exclusively of the provision of services to financing entities in relation to prescribed matters are excluded from the requirement that cost and expenditures be paid to third parties pursuant to FHP Regulation s. 10.2(4) paragraph 3.

⁶ The procedures performed do not constitute an audit.

Table 2: Summary of Specified Procedures Applied to Proposed Application

Term Costs

FHP Regulation s. 10.2(3) cost type (paragraph)	Application Term Costs Description	Specified Procedures Applied
5	Note 1 of Table 1	Procedures 2 and 3
6	Note 2 of Table 1	Procedures 2 and 3
9	Note 3 of Table 1	Procedure 4
10	Note 4 of Table 1	Procedure 5

Specified procedures 2 to 5 and the results of their application are summarized below. Each of these four specified procedures involves several more specific tests, for a total of 19 tests. In the Specified Procedures Report, EY's findings specifically state that "no exceptions were noted" for 15 of the 19 tests. EY provides a detailed description of each of the four minor exceptions in the Specified Procedures Report. The exceptions are a result of the strict application of specific tests and do not imply that the Application Term Costs proposed for recovery are incorrect. The four minor exceptions are discussed within the context of the procedures themselves and are summarized below.

Procedure 2: Examined whether the Application Term Costs were: a) relevant (i.e., related to defined prescribed matters), b) accurately reflected in the listing of Application Term Costs proposed for recovery (i.e., the pre-tax invoice amount was used to determine the Application Term Costs), c) incurred during the Application Term, d) incurred by OPG, and e) accurately summarized in the total costs proposed for recovery. For the five tests described above, EY found one exception as the pre-tax amount was not included on the vendor's invoice. EY calculated the pre-tax amount and concluded that the pre-tax amount is included in the Application Term Costs, not the after-tax amount per the invoice. Therefore, the exception was a result of the way the vendor prepared its invoice, and does not impact the accuracy of the amount OPG proposes to recover.

1 **Procedure 3:** Examined whether invoiced amounts proposed for recovery were:
2 a) reflected in bank statements as paid, b) paid to third parties, c) paid during the
3 Application Term, and d) accurately paid in Canadian dollars for U.S. dollar invoices.
4 There were three tests, two involving three sub-tests each. For the five of the seven
5 tests/sub-tests summarized above, EY found no exceptions. For the remaining two of
6 the seven tests/sub-tests, exceptions were noted as described below.

7 One exception was an overpayment of \$20,575.35 with respect to the invoiced amount;
8 however, EY noted in their findings for test 3a(i) that “[t]he invoice amount before
9 applicable taxes agreed to the Invoice Listing per the results noted in Procedure 2 b)”.
10 Therefore, while it is an exception with respect to the application of the procedure⁷, it
11 does not impact the accuracy of the amount being proposed for recovery.

12 The other exception identified by EY relates to the timing of payments of proposed
13 Application Term Costs. EY noted two cheques that were issued by OPG within the
14 Application Term that were not cashed by the vendor until early January 2018 and
15 consequently did not clear the bank until January 2nd and 4th, respectively. For these
16 two items, OPG submits that it met the requirements of sections 10.2(2) paragraph 2
17 and 10.3(3) of the FHP Regulation to pay the expenses within the Application Term as
18 the cheques were issued within the Application Term. The timing of when vendors
19 choose to cash a cheque is outside of OPG's control.

20 EY also noted one cheque that was issued by OPG on January 2, 2018. The last
21 business day in the Application Term was December 29, 2017. January 2nd was the
22 first business day of 2018 following December 29th. In this circumstance, OPG
23 believes that one business day delay is immaterial and it has properly incurred an
24 expense related to prescribed matters. Accordingly, it has included the amount of
25 \$57,999.74, in pre-tax Canadian dollars⁸, in the proposed Application Term Costs.

⁷ OPG corrected this payment amount error within the Application Term and did not include the amount in the proposed Application Term Costs. OPG received the refund from the vendor in January 2018.

⁸ Amount determined as the Canadian equivalent of the \$50,999.74 U.S. dollar invoice amount in Appendix D, test 3a)(iii).

1 **Procedure 4:** Examined OPG's direct labour costs to determine whether a) employees
2 listed were exclusively involved in work directly related to the Fair Hydro Plan and/or
3 global adjustment, b) standard rates were applied consistently with the employees' pay
4 band, c) direct labour was correctly determined for the exclusively dedicated staff using
5 hours worked and the corresponding standard labour rates, d) sickness, accident,
6 vacation and holiday costs are allocated at a standard rate of 23 per cent of regular
7 labour costs, e) labour costs were incurred for the Application Term and
8 f) labour costs were accurately calculated. No exceptions were noted by EY for any of
9 these six tests. Additional details on the direct labour costs OPG is seeking for
10 recovery is provided in Appendix C.

11
12 **Procedure 5:** Examined whether cost or expenditure amounts were a) supported by
13 receipts, b) reflective of the Input Tax Credit (ITC) and Recapture of ITC amounts
14 derived using management provided formulas, c) related to exclusively dedicated FH
15 Trust employees described in Procedure 4, d) incurred during the Application Term,
16 and e) accurately reflected in the Application Term Costs. No exceptions were noted
17 for four of the five tests, with the sole exception being a \$0.01 calculation difference in
18 determining the ITC and Recapture of ITC amount for one expense. The recalculated
19 amount which is \$0.01 less than the incurred expense as determined by OPG is
20 reflected in the proposed Application Term Costs.

21 22 **Summary**

23 Based on the finding in EY's Specified Procedures Report as summarized above,
24 OPG, as the FSM, asserts that the proposed Application Term Costs are accurate,
25 incurred by the FSM, and were paid to third parties (as applicable), which are all
26 consistent with subsection 10.2(4) of the FHP Regulation and the review requirements
27 of subsection 10.3(3) of the FHP Regulation.

COMPUTERSHARE TRUST COMPANY OF CANADA

as Issuer Trustee of

FAIR HYDRO TRUST

DECLARATION OF TRUST

Made as of December 20, 2017

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THIS DECLARATION OF TRUST is made as of December 20, 2017 by Computershare Trust Company of Canada, a trust company established under the laws of Canada (the “**Issuer Trustee**”).

WHEREAS the Government of Ontario has enacted the *Ontario Fair Hydro Plan Act, 2017* (the “**Act**”) for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers (as defined below);

AND WHEREAS the Issuer Trustee has determined, at the request of OPG, to establish a Trust (as defined below) for the purpose of carrying on the activities of a financing entity (as defined in the Act) as hereinafter described for the benefit of the Unitholders (as defined below);

NOW THEREFORE the Issuer Trustee hereby declares that it holds in trust as trustee the sum of TEN DOLLARS (\$10.00) now contributed by it and all property of every nature and kind which it may acquire in its capacity as trustee of the Trust, and all income therefrom, for the benefit of the Unitholders, in accordance with and subject to the provisions of this Declaration of Trust.

ARTICLE 1

INTERPRETATION

1.1 Definitions

In this Declaration of Trust, the following terms have the following meanings:

“**Act**” has the meaning ascribed thereto in the Recitals.

“**Adjusted Redemption Price**” has the meaning ascribed thereto in subsection 4.1(3).

“**Affiliate**” means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, “**control**” when used with respect to any specified Person means the power to direct the management and policies of such specified Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing.

“**Agency Agreement**” means an agency agreement made between the Trust and one or more Persons acting on behalf of the Trust, providing for the sale and distribution of Notes on an agency basis.

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are, or the office of the Indenture Trustee is, authorized or obligated by law, regulation or executive order to be closed.

“**Change of Law Protection Agreement**” means the Change of Law Protection Agreement to be entered into between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance, the Indenture Trustee and the Trust.

“Claim” has the meaning ascribed thereto in Section 7.3.

“Co-Owner Agreement” means any agreement between, *inter alia*, the Trust and any other owner or owners of an Investment Interest.

“Dealer” means one or more Persons (other than the Issuer Trustee or the Manager) who have entered into an agreement with the Trust for the purpose of facilitating the sale and distribution of Funding Obligations.

“Declaration of Trust” means this declaration of trust.

“Derivative Agreement” means any agreement evidencing an interest rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into by the Trust in connection with or related to, and at the time of or prior to, the issuance of Funding Obligations or acquisition of Investment Interests by the Trust in accordance with and subject to the terms of the Program Agreements.

“Designated Beneficiary” has the meaning ascribed thereto in section 3.6.

“Eligible Investments” means investments permitted to be made by the Trust under the Indenture.

“Excess Income on Redemption” has the meaning ascribed thereto in subsection 11.1(2).

“Funding Obligation” means a payment obligation incurred by or on behalf of the Trust to fund its ownership of an Investment Interest or a payment obligation that meets such other criteria as may be prescribed by the Regulations.

“GAAP” or **“generally accepted accounting principles”** means generally accepted accounting principles in Canada.

“Governmental Authority” means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

“IESO” means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998.

“IESO Security Agreement” means the security agreement made by the IESO in favour of the Trust to secure certain of its obligations under the Master Transfer and Servicing Agreement.

“Income of the Trust” for any taxation year of the Trust means the net income for the year determined pursuant to the provisions of the ITA having regard to the provisions thereof

which relate to the calculation of income for the purposes of determining the “taxable income” of a trust, without reference to paragraph 82(1)(b) and subsection 104(6) thereof, less any non-capital losses of the Trust carried forward from prior taxation years that are deductible in the taxation year, and taking into account such other adjustments as may be determined in the discretion of the Issuer Trustee; provided, however, that capital gains and capital losses will be excluded from the computation of net income.

“**Indenture**” means the master trust indenture to be entered into between the Trust and the Indenture Trustee.

“**Indenture Trustee**” means BNY Trust Company of Canada, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors under the Indenture.

“**Investment Interest**” has the meaning ascribed to the term “investment interest” in the Act.

“**Issuer Trustee**” means Computershare Trust Company of Canada and any successor thereto appointed pursuant to Article 6.

“**ITA**” means the *Income Tax Act* (Canada) and the regulations promulgated thereunder.

“**Management Agreement**” means the management agreement to be entered into between the Manager and the Trust.

“**Manager**” means OPG, in its capacity as manager appointed under the Management Agreement.

“**Master Transfer and Servicing Agreement**” means the master transfer and servicing agreement to be entered into between the Trust and the IESO.

“**MTSA Acknowledgement**” means the acknowledgement and indemnity agreement to be given by the IESO in favour of the Indenture Trustee.

“**Net Realized Capital Gains of the Trust**” for any taxation year means the amount, if any, by which the aggregate amount of the realized capital gains of the Trust for the year, calculated in accordance with the provisions of the ITA, exceeds the aggregate of: (i) the aggregate amount of any realized capital losses of the Trust for the year, calculated in accordance with the provisions of the ITA; and (ii) the amount determined by the Issuer Trustee in respect of any net capital losses of the Trust carried forward from prior taxation years that are deductible in the taxation year; provided that in the discretion of the Issuer Trustee, the Net Realized Capital Gains of the Trust for a taxation year may be calculated without subtracting the full amount of the net capital losses of the Trust carried forward from prior years.

“**Net Realized Capital Gains of the Trust Allocated on Redemption**” has the meaning ascribed thereto in subsection 4.1(5).

“New Holder” has the meaning ascribed thereto in subsection 3.6(1).

“Note” or **“Notes”** means any note or notes of any class, series or tranche created pursuant to Supplemental Indentures and authenticated and delivered from time to time under the Indenture.

“OPG” means Ontario Power Generation Inc.

“Person” means any individual, corporation, limited liability company, unlimited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Government Authority.

“Program Agreements” means the Indenture, each Supplemental Indenture, this Declaration of Trust, the Management Agreement, the Master Transfer and Servicing Agreement, the MTSA Acknowledgement, each Transfer Notice, any Co-Owner Agreements, the IESO Security Agreement, the Change of Law Protection Agreement, the Notes, any derivative agreements, credit enhancement agreements, liquidity agreements, loan agreements, Underwriting Agreements, Agency Agreements and note purchase agreements and all other documents and certificates delivered in connection therewith.

“Rating Agencies” means, at any time, the credit rating agencies which at the request of the Trust are rating the Funding Obligations at such time.

“Rating Agency Condition” has the meaning ascribed thereto in the Indenture.

“Records” means all contracts, books, records and other documents and information, including, without limitation, data and information, including any stored on computer-related or other electronic media, computer programs, data processing software and related property and rights, maintained with respect to, but solely to, the assets of the Trust.

“Redemption Price” has the meaning ascribed thereto in subsection 4.1(3).

“Regulations” means the regulations promulgated under the Act.

“Specified Consumer” has the meaning ascribed to the term “specified consumer” in the Act.

“Specified Creditors” has the meaning ascribed thereto in the Indenture.

“Specified Unitholder” means a Unitholder that is either: (a) a taxable Canadian corporation (as defined in subsection 89(1) of the ITA), or (b) a corporation that is exempt from tax under the ITA and in respect of which no amounts paid or payable from the Trust are subject to the special payments under Part VI the *Electricity Act, 1998* (Ontario).

“Supplemental Indenture” means any supplemental indenture to the Indenture.

“Transfer” has the meaning ascribed to the term “transfer” in the Act.

“Transfer Notice” means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to the Master Transfer and Servicing Agreement and delivered pursuant to such Program Agreement.

“Trust” means Fair Hydro Trust, a trust established under the laws of the Province of Ontario pursuant to this Declaration of Trust.

“Trust Activities” means the activities of the Trust described in Section 2.1.

“Trust Company” means a federally or provincially established trust company licensed to carry on business in all provinces and territories of Canada and which is resident in Canada for purposes of the ITA.

“Trust Property” means, as of any particular time, all assets of the Trust and all property, real, personal or otherwise, tangible or intangible, which have been transferred, conveyed or paid to, or acquired by the Trust, including all income, earnings, profits and gains therefrom, and which at such time are owned or held by the Trust.

“Underwriting Agreement” means an agreement providing for the purchase of Notes from the Trust by one or more Persons as principals for the purpose of resale.

“Unitholders” means at any time, the holders at such time of one or more Units, and **“Unitholder”** means any such holder.

“Units” means the units of beneficial interest of the Trust authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof.

1.2 Interpretation

In this Declaration of Trust, unless otherwise expressly stated or the context otherwise requires:

- (a) references to “herein”, “hereby”, “hereunder”, “hereof” and similar expressions are references to this Declaration of Trust and not to any particular Article or Section of this Declaration of Trust;
- (b) references to an “Article” or “Section” are references to an Article or Section of this Declaration of Trust;
- (c) words importing the singular shall include the plural and vice versa, and words importing gender shall include the masculine, feminine and neuter genders;
- (d) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;
- (e) the words “includes” and “including”, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as

referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;

- (f) references to any Person include such Person's successors and permitted assigns;
- (g) any reference to a statute, regulation, policy, rule or instrument shall include, and shall be deemed to be a reference also to, all amendments made to such statute, regulation, policy, rule or instrument and to any statute, regulation, policy, rule or instrument that may be passed which has the effect of supplementing or superseding the statute, regulation, policy, rule or instrument so referred to;
- (h) any reference to this Declaration of Trust or any other agreement, document or instrument shall be construed as a reference to this Declaration of Trust or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated or supplemented;
- (i) in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day; and
- (j) unless otherwise specified, all references to "\$" or "dollars" are to lawful currency of Canada.

1.3 Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Declaration of Trust, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as the Issuer Trustee otherwise determines, be made in accordance with GAAP applied on a consistent basis.

1.4 References to Acts of the Trust

For greater certainty, where any reference is made in this Declaration of Trust to an act to be performed or not by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to either (i) the Trust; or (ii) the Issuer Trustee, such reference will be construed and applied for all purposes as if it referred to an act to be performed by or not, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to, the Issuer Trustee in its capacity as trustee of the Trust, and not in any other capacity.

ARTICLE 2 THE TRUST

2.1 Purpose and Activities of the Trust

The purpose of the Trust is to establish and carry on activities for the exclusive benefit of the Unitholders and to distribute the Trust Property upon termination of those activities by the Trust in accordance with Article 11. The Trust is permitted to engage in any activity, undertaking, transaction or event authorized or permitted by the Act (the “**Trust Activities**”), including:

- (a) issuing Units;
- (b) redeeming Units;
- (c) acquiring, owning, holding, administering or entering into agreements regarding the acquisition and servicing of Investment Interests, along with certain other related assets;
- (d) managing, selling, assigning, pledging and collecting amounts due on or otherwise deal with Investment Interests and the other related assets to be so acquired in accordance with the terms of the Program Agreements;
- (e) negotiating, authorizing, executing, delivering, assuming the obligations under, and performing its duties under, the Program Agreements and any other agreement or instrument or document relating to the activities set forth in clauses (c) and (d) above; provided, that the Trust shall be permitted to incur additional indebtedness or other liabilities payable to service providers and trade creditors in the ordinary course of business in connection with the foregoing activities;
- (f) filing with any applicable securities commission one or more prospectuses, offering memoranda or registration statements, and filing such applications, reports, irrevocable consents, appointments of attorney for service of process and other papers and documents necessary or desirable to register one or more series of Funding Obligations under the securities laws of any applicable jurisdiction;
- (g) authorizing, executing, delivering, issuing and registering one or more series of Funding Obligations;
- (h) making payments on the Funding Obligations;
- (i) pledging its interest in Investment Interests and related assets to the Indenture Trustee in order to secure the Funding Obligations; and
- (j) engaging in any lawful act or activity and exercise any powers permitted to trusts formed under the laws of the Province of Ontario that, in each case, are incidental to, or necessary, suitable or convenient for the accomplishment of the above-mentioned purposes.

The Trust shall engage only in any activities related to the foregoing purposes or required or authorized by the terms of the Program Agreements or other agreements referenced above.

2.2 Limitation on Certain Activities

Notwithstanding any other provision of this Declaration of Trust or the Management Agreement, at any time that any Funding Obligations remain outstanding, the consent of the Indenture Trustee shall be required for the Trust to:

- (a) take any action to wind-up or dissolve the Trust; or
- (b) institute any voluntary proceedings to be adjudicated bankrupt or insolvent, or consent to the institution of any bankruptcy or insolvency proceedings against it, or file a petition seeking or consent to any assignment, petition, application or proceeding under any applicable bankruptcy or insolvency law, or consent to the appointment of a receiver, liquidator, assignee, trustee or other similar official of the Trust or a substantial part of its property, or make any assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take any similar action in respect of the Trust.

2.3 Name and Head Office

The English form of the name of the Trust is “Fair Hydro Trust” and the French form of the name of the Trust is “Fiducie pour des frais d’électricité équitables”. The Trust may use and may be legally designated by either the English form or the French form of its name. Should the Issuer Trustee determine that the use of such name is not practicable, legal or convenient, it may use such other designation or adopt such other name for the Trust as it deems proper and the Trust may hold property and conduct the Trust Activities under such other designation or name. The head office, chief executive office, chief place of business and situs of administration of the Trust will initially be situated at the offices of the Issuer Trustee situated at 100 University Avenue, 11th Floor, Toronto, Ontario M5J 2Y1.

2.4 Nature of the Trust

The Trust is an unincorporated open-ended unit trust established for the purposes specified in Section 2.1. The Trust shall be governed by the general law of trusts, except as such general law of trusts has been or is from time to time modified, altered or abridged for the Trust by:

- (a) applicable laws and regulations or other requirements imposed by applicable securities or other regulatory authorities, including the Act and Regulations; and
- (b) the terms, conditions and trusts set forth in this Declaration of Trust.

The beneficial interest and rights generally of the Unitholders in the Trust shall be limited to the right to participate in distributions when and as declared by the Issuer Trustee and distributions upon the termination of the Trust. The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Issuer Trustee or the

Unitholders or any of them for any purpose be, or be deemed to be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The Issuer Trustee shall not be, or be deemed to be, an agent of the Unitholders. The relationship of the Unitholders to the Issuer Trustee, to the Trust and to the Trust Property shall be solely that of beneficiaries in accordance with this Declaration of Trust.

2.5 Rights of Unitholders

No Unitholder shall be entitled to call for any partition or division of the Trust Property or for a distribution of any particular asset forming part of the Trust Property or of any particular monies or funds received by the Issuer Trustee. The legal ownership of the Trust Property and the right to conduct the activities of the Trust are vested exclusively in the Issuer Trustee, and no Unitholder has or is deemed to have any right of ownership in any of the Trust Property, except as specifically provided herein. Except as specifically provided herein, no Unitholder or Unitholders shall be entitled to interfere with or give any direction to the Issuer Trustee with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Issuer Trustee under this Declaration of Trust. The Units shall be personal property and shall confer upon the holders thereof only the interest and rights, and impose upon the holders thereof only those liabilities and obligations, specifically set forth in this Declaration of Trust.

ARTICLE 3 UNITS

3.1 Nature of Units

The beneficial interests in the Trust shall be divided into a single class of Units. Each Unit represents an equal undivided beneficial interest in any distributions by the Trust, whether of Income of the Trust, Net Realized Capital Gains of the Trust (other than Net Realized Capital Gains of the Trust Allocated on Redemption to redeeming Unitholders), or other amounts, and, in the event of termination or winding up of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities. All Units rank equally among themselves and rateably without discrimination, preference or priority. Each Unit will entitle the Unitholder of record thereof to one vote at all meetings of the Unitholders or in respect of any written resolution of the Unitholders. Each Unit, when issued, shall vest indefeasibly in the holder thereof.

The number of Units which the Trust may issue is unlimited. The issued and outstanding Units may be subdivided or consolidated from time to time by the Issuer Trustee without notice to or approval of the Unitholders. Unless the Issuer Trustee determines otherwise, immediately after any *pro rata* issuance of additional Units to all Unitholders pursuant to subsection 11.3(3), the number of outstanding Units will automatically be consolidated such that each such holder will hold after the consolidation the same number of Units as such holder held before the issuance of additional Units.

3.2 Consideration of Units

A Unit will not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Unit will be paid in money or in property (including, without limitation, a debt instrument issued to the Trust) or in past services received

by the Trust that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Issuer Trustee may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust. In no case will a Unit be issued to a Designated Beneficiary.

3.3 No Pre-Emptive Rights

No Person shall be entitled, as a matter of right, to subscribe for or purchase any Units of the Trust. There are no pre-emptive rights attaching to the Units.

3.4 Fractional Units

If as a result of any act of the Issuer Trustee hereunder, any Person becomes entitled to a fraction of a Unit, such Person will not be entitled to receive a certificate therefor. Fractional Units will not, except to the extent that they may represent in the aggregate one or more whole Units, entitle the holders thereof to notice of or to attend or to vote at meetings of the Unitholders. Subject to the foregoing, such fractional Units will have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

3.5 Allotment and Issue

Subject to Section 3.6, the Issuer Trustee may allot and issue Units at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to reinvestment by the Unitholders of distributions of the Trust in Units) and to such Person, Persons or class of Persons as the Issuer Trustee in its sole discretion will determine. The price or the value of the consideration for which Units may be issued and the terms and conditions of issuance of the Units will be determined by the Issuer Trustee in its sole discretion. Not restricting the generality of the foregoing, the Issuer Trustee may accept amounts received from a Unitholder as a prepayment in respect of the obligation of the Unitholder to pay all or any part of the subscription price of Units to be issued at a later date by the Issuer Trustee. In such circumstances, such prepayment will form part of the Trust Property. In the event that Units are issued in whole or in part for a consideration other than money, the resolution of the Issuer Trustee allotting and issuing such Units will express the fair equivalent in money of the other consideration received.

3.6 Prohibited Issuances and Transfers

- (1) Notwithstanding any other provision in this Declaration of Trust, at no time, may Units be issued or transferred to a Person who would be a “designated beneficiary” within the meaning of Part XII.2 of the ITA (“**Designated Beneficiary**”), and the Issuer Trustee will not accept a subscription for Units from, or issue or register a transfer of Units to, a Person unless the Person provides a declaration to the Issuer Trustee that it would not be a Designated Beneficiary and covenants to maintain such representation true for as long as it continues to hold one or more Units. If, notwithstanding the foregoing, the Issuer Trustee determines that a Person has purported to become or remain a Unitholder in breach of the above mentioned declaration or covenant, or if the Unitholder fails to provide, upon request, a declaration in form and content satisfactory to the Issuer Trustee that it is not a

Designated Beneficiary, (i) the Issuer Trustee will require such Person to dispose of the Units within a specified period not to exceed 60 days to a Person who does not contravene the above mentioned limitation on ownership (“**New Holder**”), and (ii) effective immediately prior to the breach, such Person will be deemed to have ceased to be a holder of such Units, the voting and distribution rights attached to such Units will be suspended and such Units will be deemed not to be outstanding until acquired by a New Holder (provided that holders of other Units will not be entitled to any portion of the distributions that may have been paid in respect of Units that have been so deemed not to be outstanding) and such Person’s rights in respect of such Units will be limited to receiving the net proceeds of the sale thereof. If such Person has not, within such period, sold such Units or provided the Issuer Trustee with a declaration in form and content satisfactory to the Issuer Trustee that it is not a Designated Beneficiary, the Issuer Trustee may sell such Units on behalf of such Person (and the Issuer Trustee will have the power of attorney of such Person to do so), and such Person’s rights in respect of such Units will be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Units.

- (2) Subject to this section 3.6, and until the Issuer Trustee will have been required to do so under the terms hereof, the Issuer Trustee will not be bound to do or take any proceeding or action with respect to this section 3.6 by virtue of the powers conferred on it hereby. The Issuer Trustee will have the sole right and authority to make any determination required for the administration of the provisions of, or contemplated under this section 3.6, and without limiting the generality of the foregoing, if the Issuer Trustee considers that there are reasonable grounds for believing that a contravention of the above mentioned limitation on ownership has occurred or may occur, the Issuer Trustee will make a determination with respect to the matter. Any such determination will be conclusive, final and binding for the purposes of this section 3.6 except to the extent modified by any subsequent determination by the Issuer Trustee. The Issuer Trustee may require declarations as to whether a Unitholder is a Designated Beneficiary or as to factual information that will enable the Issuer Trustee to determine whether a Unitholder or a prospective transferee of a Unit may be a Designated Beneficiary. In any situation where it is unclear whether Units may be held by a Person who may be a Designated Beneficiary, the Issuer Trustee may exercise its discretion in determining whether such Person is or is not a Designated Beneficiary, and any such exercise by it of its discretion will be binding for the purposes of this section 3.6.

3.7 Liability of Unitholders

No Unitholder of the Trust, in its capacity as such, will incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind, to any Person in connection with: (i) the Trust Property or the ownership, use, operation, acquisition or disposition thereof or exercise or enjoyment of the rights, privileges, conditions or benefits attached thereto, associated therewith or derived therefrom; (ii) the obligations, liabilities, activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Issuer Trustee or any other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (iv) any actual or alleged act or omission of the Issuer Trustee or any other Person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Issuer Trustee or such other Person in respect of the activities or affairs of the Trust (whether or not authorized by

or pursuant to this Declaration of Trust); (v) any transaction entered into by the Issuer Trustee or by any other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Issuer Trustee or by any other Person (except the Unitholders to the extent required by applicable tax laws) on behalf of or in connection with the activities or affairs of the Trust. No Unitholder will be liable to indemnify the Issuer Trustee or any other Person with respect to any such liability or liabilities incurred by the Issuer Trustee or by any such other Person or Persons or with respect to any taxes payable by the Trust or by the Issuer Trustee or any other Person on behalf of or in connection with the Trust. To the extent that any such liabilities of the Unitholders may arise, they will be enforceable only against, and will be satisfied only out of, the Trust Property to the full extent of such liability and the costs of any litigation or other proceedings in which such liability will have been determined, including without limitation, the fees and disbursements of counsel.

ARTICLE 4 REDEMPTION OF UNITS

4.1 Redemption of Units

Each Unitholder will be entitled to require the Trust to redeem at any time and from time to time at the demand of such Unitholder all or any part of the Units held by such Unitholder as follows:

- (1) The Unitholder will give notice in writing to the Trust at its head office of its intention to redeem Units and the number of Units to be redeemed.
- (2) Upon receipt by the Trust of such notice from the Unitholder to redeem Units, the Unitholder will be entitled to receive, subject to subsection 4.1(3), an amount equal to the aggregate fair market value of such Units immediately before the redemption (the “**Redemption Price**”) established by the Issuer Trustee, acting reasonably, payable by certified cheque or via wire transfer of funds.
- (3) In the event that the Trust has insufficient funds to make the payment required pursuant to subsection 4.1(2) or such payment is restricted under the terms of the Indenture, the Trust will satisfy the Redemption Price, subject to compliance with any regulatory requirements, by either issuing a promissory note to the Unitholder, which note shall have a principal amount equal to the Redemption Price and such other terms as is determined at the time of issuance by the Issuer Trustee, or by distributing to the redeeming Unitholder *in specie* a proportionate amount of the Trust Property, the fair market value of which, as determined by the Issuer Trustee, acting reasonably, is equal to the Redemption Price. In the event that property is distributed *in specie*, the amount of Net Realized Capital Gains of the Trust Allocated on Redemption as contemplated by subsection 4.1(5) payable in connection with the redemption of Units shall be payable to the Unitholder in kind, and to the extent of the amount thereof, the Redemption Price of the Units being redeemed shall be reduced accordingly (the “**Adjusted Redemption Price**”).

- (4) Upon satisfaction of the Redemption Price or the Adjusted Redemption Price, as the case may be, the redeeming Unitholder will not be entitled to any rights or benefits, including voting and the right to receive distributions, in connection with the Units redeemed.
- (5) Where the Trust distributes Trust Property *in specie* as contemplated in subsection 4.1(3), the Issuer Trustee shall designate and pay to the redeeming Unitholder such part of the Net Realized Capital Gains of the Trust as is realized by the Trust in connection with such *in specie* distribution, provided that the amount of the Net Realize Capital Gains on the Trust so allocated shall not exceed the amount, if any, by which the Redemption Price of the particular Units being redeemed exceeds the aggregate adjusted cost base of such Units to the Unitholder for the purpose of the ITA immediately before the redemption (the “**Net Realized Capital Gains of the Trust Allocated on Redemption**”). If the total Net Realized Capital Gains of the Trust Allocated on Redemption determined by the Issuer Trustee pursuant to the preceding sentence for all redeeming Unitholders in any taxation year exceeds the Net Realized Capital Gains of the Trust for that year, the Net Realized Capital Gains of the Trust for that taxation year shall be allocated rateably to all redeeming Unitholders for the year based on the Net Realized Capital Gains of the Trust Allocated on Redemption as otherwise determined pursuant to the preceding sentence. The Net Realized Capital Gains of the Trust Allocated on Redemption designated and paid on the redemption of Units as determined under this subsection shall be deemed to be a distribution of Net Realized Capital Gains of the Trust for the particular taxation year in which the redemption occurs. If the Issuer Trustee is required to deduct or withhold an amount from such distribution, the Unitholder shall make the cash payment described in Section 11.7 to the Issuer Trustee on or prior to the date the Units are to be redeemed.

ARTICLE 5 RIGHTS AND POWERS OF ISSUER TRUSTEE

5.1 General Rights and Powers

Subject to the specific restrictions and limitations set forth in this Declaration of Trust and notwithstanding the provisions of the *Trustee Act* (Ontario) or any other similar legislation in any jurisdiction, the Issuer Trustee will have, without the necessity of authorization by, and free from any power or control on the part of, the Unitholders, full, exclusive and absolute power, control and authority over the Trust Property and the Trust Activities to the same extent as if the Issuer Trustee were the sole and absolute owner thereof in its own right including, without limitation, such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the Trust Activities in accordance with the Program Agreements with such powers of delegation as may be permitted by this Declaration of Trust, including the right, power and authority to amend this Declaration of Trust subject to and in accordance with the terms hereof and to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary, appropriate or desirable for the transaction of the Trust Activities, including for the administration of the Trust. The Issuer Trustee shall exercise the functions of the trustee of the Trust in Ontario, Canada. For greater certainty, the powers of the Issuer Trustee that may be exercised as aforesaid include the powers set forth in Section 5.2 to and including Section 5.18. The enumeration of any specific power or authority in this Declaration of Trust will not be construed as limiting the aforesaid power or authority or any other specific power

or authority. Subject only to the express limitations contained in this Declaration of Trust, every discretion or power hereby conferred on the Issuer Trustee is an absolute and uncontrolled discretion or power.

5.2 Acquisition of Assets and Deposit of Funds

Subject to Section 2.1, the Issuer Trustee will have the power to acquire Investment Interests in accordance with the Program Agreements. Subject to compliance with the terms of the Program Agreements, the Issuer Trustee will have the power to deposit any money forming part of the Trust Property with any bank (which bank may be an Affiliate of the Issuer Trustee) licensed under the laws of Canada or any trust company (which includes the Issuer Trustee) licensed under the laws of any province of Canada and to withdraw such deposits in accordance with the Program Agreements. The Issuer Trustee will have no liability for any loss which may occur by reason of the failure of any depository with whom such money has been deposited or for the depreciation of any investment.

5.3 Legal Title and Custody

The Issuer Trustee will have the power to cause any and all Trust Property to be held by and/or registered in the name of any Person.

5.4 Disposition of Trust Property

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to sell, convey, transfer and assign all Trust Property free and clear of any and all trusts hereby established, at public or private sale, for cash or on terms, with or without advertisement and subject to such restrictions, stipulations, agreements and reservations as it may deem proper.

5.5 Management of Trust Property

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to own, manage, use, invest and hold the Trust Property (including, without limitation, the power to make investments in Eligible Investments) and to enter into agreements in respect of the Trust Property or its use including, without limitation, agreements to modify, amend, extend, renew or terminate any grant or agreement relating to the Trust Property and to waive compliance with any of the terms and conditions thereof, all, in each case, without the approval of or notice to the Unitholders.

5.6 Power to Borrow Money and Issue Funding Obligations

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

- (a) borrow or in any other manner raise money and to evidence the same by the issuance of Funding Obligations, by private placement, public offering or otherwise;

- (b) reacquire or redeem Funding Obligations;
- (c) execute and deliver any trust indenture or supplement thereto, security agreement, mortgage, pledge, hypothec, assignment or other instrument to secure Funding Obligations, and amendments, modifications, restatements or replacements thereof, whether by fixed or floating charge or by assignment or by the granting of a security interest, free and clear of any and all trusts hereby established and, in lieu of or in addition to granting any security, to grant to any Person a negative pledge whereby the Issuer Trustee agrees not to encumber any Trust Property and such other covenants as may be consistent with those set out in the Program Agreements or as may otherwise be specified by any applicable Rating Agency in accordance with the foregoing; and
- (d) execute and/or deliver any agreement, instrument, certificate, direction or other document necessary or desirable in order to permit or give effect to the provisions of this Section 5.6, including, without limitation, prospectuses, offering memoranda, regulatory filings, dealer agreements, Underwriting Agreements, Agency Agreements, subscription agreements, letters of representation, consent letters, and any instruments ancillary thereto.

5.7 Derivative Agreements

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to enter into Derivative Agreements in connection with or related to the borrowing or other raising of money by the Issuer Trustee or the purchase or ownership of Investment Interests, provided that such Derivative Agreements may be entered into only at or prior to the time that such securities are sold, or such borrowing, other raising of money or purchase takes place, as applicable, or as otherwise expressly permitted in the Management Agreement; provided, however, that amendments, modifications or novations of or to a Derivative Agreement may be entered into at any time after the original Derivative Agreement was executed.

5.8 Execution of Instruments

Every deed, transfer, assignment, hypothec, agreement, certificate, direction, instrument, prospectus, or any other document which is necessary or desirable to be executed by the Trust, including, without limitation, any document evidencing Funding Obligations or relating to the issuance of Funding Obligations, will be signed on behalf of the Trust by the Issuer Trustee or its duly appointed agent, including the Manager.

5.9 Facsimile Signatures

The Issuer Trustee may authorize the use of facsimile signatures on the documents evidencing Funding Obligations, provided, however, that where facsimile signatures are so used, documents evidencing Funding Obligations will be manually countersigned or certified by a transfer agent, trustee, registrar or similar Person. If a Funding Obligation contains a printed or mechanically reproduced signature of a Person, the Issuer Trustee may issue the Funding Obligation notwithstanding that the Person has ceased to be a director, officer or signing officer of

the Issuer Trustee, and the Funding Obligation will be as valid as if the Person were a director, an officer or a signing officer at the date of its issue.

5.10 Taxes

The Issuer Trustee will have the power to pay all taxes or assessments of whatever kind or nature imposed upon the Issuer Trustee and/or the Trust in connection with the Trust Property or the Trust Activities or upon or against the income from the Trust Activities or any part thereof, to settle and compromise disputed tax liabilities and, for the foregoing purposes, to make such returns and do all such other acts and things as may be deemed by the Issuer Trustee necessary or desirable. The Issuer Trustee will have the power to deduct and remit any taxes which are required by law to be deducted and remitted from any payment made by the Issuer Trustee under any Program Agreements or otherwise.

5.11 Collection

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

- (a) collect, receive, give receipts for and sue for all sums of money or other property due to the Trust;
- (b) consent to extensions of time for payment of, or the renewal of, any securities or obligations of the Trust;
- (c) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise deal with or settle any actions, suits, proceedings, disputes, claims, demands or things relating to the Trust Property or the Trust Activities;
- (d) exercise any and all remedies available to it under any Program Agreements or otherwise, including any power of foreclosure or sale available to the Issuer Trustee at law or pursuant to any agreement and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured or unsecured thereunder or such other security;
- (e) extend the time, with or without security, for the payment or delivery of any debts or property and to execute and enter into releases, agreements and other instruments; and
- (f) pay or satisfy any debts or claims upon any evidence that the Issuer Trustee determines to be sufficient.

5.12 Expenses and Compensation of Issuer Trustee

- (a) The Issuer Trustee will have the power to incur and make payment of any charges or expenses which in the opinion of the Issuer Trustee are necessary or incidental

to or proper for carrying out any of the purposes of this Declaration of Trust and the Trust Activities, and to pay appropriate compensation or fees from the Trust Property to Persons with whom the Trust has contracted or transacted business including, without limitation, any charges, expenses, compensation or fees payable under or in connection with the Program Agreements.

- (b) The Issuer Trustee will be entitled to be paid from the funds of the Trust, without any requirement of a passing of accounts in respect thereof or approval of the Unitholders, such fees as the Issuer Trustee and the Manager may agree to from time to time for its services hereunder and all reasonable expenses, disbursements and advances incurred or made by the Issuer Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of its counsel and all other advisers and assistants not regularly in its employ) until all the duties of the Issuer Trustee under the trusts hereby created shall be finally and fully performed, except any such expense, disbursement or advance as may arise from or in connection with the dishonesty, bad faith, wilful misconduct, negligence or reckless disregard of any duty or the failure to comply with the standard of care referred to in Section 7.1 by the Issuer Trustee, its officers, employees or agents. All such amounts will be payable at such times as the Issuer Trustee and the Manager may agree from time to time. All such amounts shall be exclusive of any applicable taxes and any applicable taxes shall be paid to the Issuer Trustee in addition to such amounts. Any amount not paid when due shall bear interest at a rate per annum equal to the rate designated by the Issuer Trustee as the then current rate charged by the Issuer Trustee or its successors from time to time to its corporate customers, payable on demand. After default and unless otherwise provided in the Indenture and any documents contemplated thereunder, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Issuer Trustee or its successors in the trusts hereunder in priority to any payments to other Specified Creditors.

5.13 Allocation

The Issuer Trustee will have the power to determine conclusively whether money or other assets received by the Trust or expenses or disbursements made by the Trust will be charged or credited to income or capital or allocated between income and capital, provided, however, that such determination will not be inconsistent with calculation of income in accordance with the ITA at the time the determination is made.

5.14 Fiscal Year and Form of Accounts

The fiscal year of the Trust will end on December 31. The Issuer Trustee will have the power to determine and from time to time change the method or form in which the accounts of the Trust will be kept, provided such method or form reasonably complies with Canadian generally accepted accounting principles as applicable from time to time.

5.15 Power to Contract

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary or desirable for the transaction of the Trust Activities and may transfer assets to such Person and, save and except for such matters as are listed in Section 2.2, delegate to such Person any or all of the discretionary powers given to the Issuer Trustee with respect to the management of the Trust Property. Without in any way limiting the generality of the foregoing, the Issuer Trustee will have the power to:

- (a) enter into, execute, deliver, perform the obligations of the Trust under, and grant security as provided for in, the Program Agreements;
- (b) appoint, employ or contract with the Manager or any other Person who, under the supervision of the Manager, may, among other things: (i) furnish and supervise or cause to be furnished and supervised the performance of the clerical and administrative services necessary to the administration of the Trust and the Trust Property including, without limitation, the provision of office space, office equipment and personnel for the performance of such services, property management, administration and servicing, the maintenance of documents, books and Records for the Trust (including those described in Section 8.1), the receipt and disbursement of Trust Property, the servicing and payment of debt and other obligations and generally all matters relating to the obtaining of and the administration and servicing of Trust Property, including, without limitation, as provided in the Management Agreement; (ii) serve as an advisor to the Issuer Trustee, furnish reports to the Issuer Trustee and provide research, economic and statistical data in connection with the Trust Activities; (iii) act as consultant, accountant, correspondent, lender, technical advisor, counsel, broker and dealer, underwriter, fiscal agent, corporate fiduciary, escrow agent, depository, custodian or agent for collection from obligors, loan administrator, appraiser, bank, insurer or insurance agent, transfer agent or registrar or issuing and paying agent for Funding Obligations or in any other capacity deemed by the Issuer Trustee necessary or desirable; (iv) act as attorney or agent in the purchase or sale or other disposition of the Trust Property or the property secured thereby and the handling, prosecution or settling of any claims of the Trust and assist in the performance of such functions necessary in the management of the Trust as may be agreed upon with the Issuer Trustee; and (v) execute and deliver the Program Agreements. For greater certainty, the appointment by the Issuer Trustee of the Manager under the Management Agreement will, where applicable, be deemed to constitute adequate supervision by the Issuer Trustee for purposes of the *Trustee Act* (Ontario) and this Declaration of Trust of any Person thereby engaged in connection with the foregoing activities; and
- (c) investigate, select and conduct negotiations with Persons acting in the capacities referred to in Section 5.15(b) and pay appropriate fees to, and enter into appropriate contracts with, employ or retain the services of, any of them in connection with the Trust Property or property secured thereby, other assets and any security related

thereto funded, acquired, sold or otherwise disposed of, or committed, negotiated or contemplated to be funded, acquired, sold, or otherwise disposed of in connection with Funding Obligations.

5.16 Indemnification

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to indemnify or enter into agreements with respect to indemnification with any Person with whom the Issuer Trustee or the Trust deals to such extent as the Issuer Trustee determines necessary or desirable.

5.17 Further Powers

Subject to Section 2.1, the Issuer Trustee will have the power to perform and do all such other acts and things and to execute itself (or have executed by any Person appointed by it pursuant to Section 5.15) all such deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents whatsoever as it deems necessary, proper or desirable in order to carry on the Trust Activities in accordance with and subject to the Program Agreements notwithstanding that such acts, things, deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents are not herein specifically mentioned. Any determination as to what is necessary, proper or desirable in order to carry on the Trust Activities in accordance with the Program Agreements or otherwise, provided it is made by the Issuer Trustee honestly and in good faith, will be conclusive. Any construction of this Declaration of Trust or the existence of any power or authority hereunder, made honestly and in good faith by the Issuer Trustee upon the advice of counsel, will be conclusive to the extent consistent with the law. In construing the provisions of this Declaration of Trust, there will be a presumption in favour of a grant of power to the Issuer Trustee.

5.18 Auditors

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power from time to time to select and appoint and discharge and reappoint an auditor of the Trust in its discretion and to negotiate and fix the fees of any such auditor.

5.19 Defect in Appointment

Notwithstanding anything to the contrary herein contained, no action taken by the Issuer Trustee will be invalid by reason only of any defect that is thereafter discovered in its appointment.

5.20 Status

The Issuer Trustee shall not have the status of bankrupt and shall be resident in Canada for purposes of the ITA.

ARTICLE 6

REPLACEMENT OF ISSUER TRUSTEE

6.1 Resignation of Issuer Trustee

- (a) If the Issuer Trustee desires to resign and be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust, it will provide 120 days written notice (or such shorter period of notice as the Unitholders, the Indenture Trustee and the Rating Agencies may agree to) thereof to the Unitholders, the Indenture Trustee and the Rating Agencies provided that no such voluntary resignation shall be effective until a replacement Issuer Trustee acceptable to the Unitholders and the Indenture Trustee has been appointed and has executed a written agreement whereby such replacement Issuer Trustee agrees to assume the obligations of the Issuer Trustee hereunder, under the Program Agreements and under any other contract pursuant to which the Issuer Trustee is obligated.
- (b) The Issuer Trustee shall resign if a material conflict of interest arises in its role as a trustee under this Declaration of Trust that is not eliminated within 90 days after the Issuer Trustee becomes aware that it has such a material conflict of interest. Forthwith after the Issuer Trustee becomes aware that it has such a material conflict of interest, it shall provide the Unitholders, the Indenture Trustee and the Rating Agencies with written notice of the nature of such material conflict of interest. Upon such resignation, the Issuer Trustee shall (subject to Section 6.6) be discharged from its office under this Declaration of Trust. If, notwithstanding the foregoing provisions of this Section 6.1(b), the Issuer Trustee has such a material conflict of interest, the validity and enforceability of this Declaration of Trust and any agreement entered into by the Issuer Trustee shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Issuer Trustee contravenes the foregoing provisions of this Section 6.1(b), the Unitholders, may apply, on notice to the Rating Agencies, to a court of competent jurisdiction for an order that the Issuer Trustee be replaced as Issuer Trustee hereunder.

6.2 Removal of Issuer Trustee

The Issuer Trustee may be removed from its office under this Declaration of Trust by the Unitholders, at any time by notice in writing delivered to the Issuer Trustee not less than 90 days prior to the date that such removal is to take effect.

6.3 Vacancy

In the event of the bankruptcy or insolvency of the Issuer Trustee or the inability of the Issuer Trustee to exercise its duties under this Declaration of Trust, the Unitholders may forthwith terminate the term of office of the Issuer Trustee as trustee and, in such instance, a vacancy will occur. No vacancy (including upon a resignation of the Issuer Trustee pursuant to Section 6.1(b)) shall operate to annul this Declaration of Trust or affect the continuity of the Trust or terminate the appointment of the Manager under the Management Agreement.

6.4 Appointment of New Issuer Trustee

If, pursuant to this Article 6, the Issuer Trustee resigns or a vacancy occurs in the office of the Issuer Trustee for any reason, the Unitholders may, subject to the satisfaction of the Rating Agency Condition, by instrument in writing appoint a Trust Company, which has risk-based capital of at least \$50,000,000 or, in the case of an entity that is not subject to risk-based capital adequacy requirements, has a combined capital and surplus of at least \$50,000,000, in order to replace the Issuer Trustee. If the Unitholders fail to make such appointment within 60 days of the occurrence of any such resignation, removal or vacancy, then the Issuer Trustee may make an application, on notice to the Rating Agencies, to a court of competent jurisdiction to appoint a successor Issuer Trustee hereunder. If the Issuer Trustee elects not to make such an application, the Unitholders may do so on notice to the Rating Agencies. If the Issuer Trustee and the Unitholders elect not to make such an application, the Indenture Trustee may do so on notice to the Rating Agencies if so directed in accordance with the Indenture. The expense of any act, document, deed or other instrument or thing required under this Section 6.4 will be satisfied from the Trust Property.

6.5 Merger, Consolidation and Amalgamation

Any company into which the Issuer Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Issuer Trustee is a party or any company succeeding to the corporate trust business of the Issuer Trustee will be a successor Issuer Trustee under this Declaration of Trust without any further action on the part of the Issuer Trustee, provided that such company shall be a Trust Company.

6.6 Vesting in Successor Issuer Trustee

Any successor Issuer Trustee will become vested with all the estates, properties, rights, powers, duties, responsibilities and trusts of its predecessors in the trusts hereunder as if it had been originally named as Issuer Trustee pursuant to this Declaration of Trust. In furtherance of the foregoing, upon written request of the successor Issuer Trustee, the Issuer Trustee ceasing to act will do, make, execute, deliver or cause to be done, made, executed or delivered all such acts, documents, deeds or other instruments and things as may be necessary or desirable in order to more effectively assign, transfer and deliver to, and vest in, the successor Issuer Trustee, upon the trusts herein expressed, all the rights, powers and trusts of, and all property and money held by the Issuer Trustee so ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 6.6 will be satisfied from the Trust Property.

6.7 Confidentiality

At all times (including, without limitation, at any time the Issuer Trustee should resign or be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust), the Issuer Trustee (or the trustee so resigning and being discharged, as the case may be) will treat as confidential all information relating to the Trust, the Trust Activities and the transactions contemplated by the Program Agreements obtained by it in its capacity as Issuer Trustee.

6.8 Right to Disclose

The Issuer Trustee shall have the right to disclose any information disclosed or released to it if in the opinion of legal counsel to the Issuer Trustee it is required to disclose under any applicable laws, court order or directions of Governmental Authorities or if it is requested by a Rating Agency. The Issuer 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 or in any way relating to such disclosure.

ARTICLE 7

STANDARD OF CARE, LIMITATION OF LIABILITY OF ISSUER TRUSTEE AND OTHER MATTERS

7.1 Standard of Care

The Issuer Trustee will exercise its powers and carry out its obligations hereunder as Issuer Trustee honestly, in good faith and in the best interests of the Trust and the Unitholders and in connection therewith will exercise that degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances. To the extent that the Issuer Trustee has delegated or subcontracted the performance of all or a portion of its duties to the Manager as contemplated by Section 5.15, it will be deemed to have satisfied the aforesaid standard of care. Unless otherwise required by law, the Issuer Trustee will not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Issuer Trustee will not be required to devote its entire time to the Trust Activities. For greater certainty, the entering into of any Program Agreement by the Trust and the performance by the Trust of its obligations thereunder will be deemed to be in the best interests of the Unitholders and the Trust.

7.2 Limitation of Liability of Issuer Trustee

The Issuer Trustee has entered into this Declaration of Trust solely in its capacity as trustee of the Trust and not in its personal capacity, and any and all of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations made on the part of the Issuer Trustee herein are made and intended not as personal representations, warranties, undertakings, covenants, indemnities, agreements and other obligations by the Issuer Trustee or for the purpose or with the intention of binding the Issuer Trustee in its personal capacity, but are made and intended for the purpose of binding only the Trust Property or a specific portion thereof. No property or assets of the Issuer Trustee, whether owned beneficially by it in its personal capacity or otherwise (other than the Trust Property), will be subject to levy, execution or other enforcement procedures with regard to any of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Trust or the Issuer Trustee hereunder, and no recourse may be had or taken, directly or indirectly, against the Issuer Trustee in its personal capacity, any Unitholder or any Affiliate, shareholder, director, officer, representative, employee or agent of the Issuer Trustee or any predecessor or successor of the Issuer Trustee with regard to the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Trust or the Issuer Trustee hereunder; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with the wilful misconduct, gross negligence or the failure to comply with the standard of care referred to in Section 7.1. Notwithstanding any other provision of this Article 7, but subject

to the Indenture, each Specified Creditor is entitled to recourse to the Trust Property to satisfy in full the obligations of the Trust to it even if the Issuer Trustee has no right, or only an impaired right, to seek indemnification from the Trust Property or to apply the Trust Property in satisfaction of such obligations.

7.3 Indemnification of the Issuer Trustee

The Issuer Trustee, its directors, officers, agents, representatives and employees will at all times be indemnified and saved harmless out of the Trust Property from and against all claims (including any claim arising out of the assessment of any tax on income by a taxing authority), demands, levies, penalties, suits, losses, actions, causes of action, costs, charges, fees and expenses, damages and liabilities whatsoever, including, without limitation, those arising out of or related to actions taken or omitted to be taken by any agent of the Issuer Trustee, including, without limitation, the Manager, as contemplated hereby, legal fees and disbursements on a substantial indemnity basis and costs and expenses incurred in connection with the enforcement of this indemnity (each, a “**Claim**”), which the Issuer Trustee, its directors, officers, representatives and employees may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of its duties as Issuer Trustee or which it sustains or incurs in or about or in relation to the Trust Property and the Trust Activities. Further, the Issuer Trustee will not be liable to the Trust, to any Unitholder or to any other Person for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust Property. The foregoing provisions of this Section 7.3 do not apply to the extent that in any circumstances there has been wilful misconduct, gross negligence or the failure to comply with standard of care referred to in Section 7.1 on the part of the Issuer Trustee, its directors, officers, agents, representatives or employees excluding the other parties to the Program Agreements. Notwithstanding any other provision hereof, this indemnity will survive the removal or resignation of the Issuer Trustee, the termination of this Declaration of Trust and the termination of any trust created hereby.

7.4 Reliance upon Advice

The Issuer Trustee may rely and act upon any statement, notice, report or opinion prepared by or any advice received from the Manager or from the auditors, counsel or other professional advisors of the Issuer Trustee and will not be responsible or held liable for any loss or damage resulting from so relying or acting if the Issuer Trustee acted reasonably and in good faith relied upon the advice received and if the professional advisor was aware that the Issuer Trustee was receiving the advice in its capacity as Issuer Trustee. The Issuer Trustee is entitled to be reimbursed from the Trust Property for all costs, charges and expenses it incurs in connection with obtaining any such statement, notice, report, opinion or advice. The Issuer Trustee is entitled to rely and act upon the genuineness and authenticity of any writing submitted to it that it in good faith believes to be genuine.

7.5 Retain Experts

The Issuer Trustee may appoint such agents and employ or retain such counsel, accountants, engineers, appraisers or other experts or advisers as it may reasonably require for the

purpose of discharging its duties hereunder and shall not be responsible for any misconduct on the part of any of them. The Issuer Trustee may pay remuneration out of the Trust Property for all services performed for it in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

7.6 Reliance on Experts

The Issuer Trustee may act and rely and shall be protected in acting in good faith on the opinion or advice of or information obtained from any agent, counsel, accountant, engineer, appraiser or other expert or adviser in relation to any matter arising in the performance of its duties under the Program Agreements.

7.7 Provisions Regarding Liability

Any written instrument creating an obligation of the Issuer Trustee will be conclusively deemed to have been executed by the Issuer Trustee only in its capacity as Issuer Trustee. Any written instrument creating an obligation of the Issuer Trustee will contain a provision to the effect that the obligations thereunder are not binding upon the Issuer Trustee except in its capacity as Issuer Trustee, nor will recourse be had to the property of the Issuer Trustee except in its capacity as Issuer Trustee, but that the Trust Property or a specific portion thereof only will be bound, and may at the request of the Issuer Trustee make specific provision to the foregoing effect and contain any further provisions which the Issuer Trustee may deem appropriate, but the omission of any such provisions will not operate to invalidate any such instrument or to impose liability on the Issuer Trustee, except as aforesaid. The Issuer Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of its duties hereunder.

ARTICLE 8 RECORDS

8.1 Records to be Kept

The Issuer Trustee will keep or cause to be kept at the head office of the Trust a copy of this Declaration of Trust, a register of Unitholders, minutes of meetings and resolutions of Unitholders, minutes of meetings and resolutions of the Issuer Trustee, and such Records as are by law or good business practice necessary. The Records may be kept at the office of any Person whom the Issuer Trustee has appointed to maintain the same, provided that the Issuer Trustee has access to the Records on one Business Day's notice to such Person.

8.2 Segregation of Assets

The Issuer Trustee shall maintain the Trust Property separate from all other property in its possession.

8.3 Method of Keeping Records

Where this Declaration of Trust requires the Issuer Trustee to cause a Record to be kept, it may be kept in bound or loose-leaf form or by means of a mechanical, electronic or other device.

8.4 Annual Financial Statements

A copy of the annual financial statements of the Trust, signed by the Issuer Trustee, shall be mailed or otherwise made available within 120 days following the end of a fiscal year to which they relate to each Unitholder. The financial statements shall include all information required to be included in annual financial statements of the Trust by applicable laws.

ARTICLE 9 MEETINGS OF UNITHOLDERS AND DECISION OF UNITHOLDERS

9.1 Annual Meeting

There will not be an annual meeting of the Unitholders.

9.2 Other Meetings

The Issuer Trustee will have power at any time to call meetings of the Unitholders at such time and place as the Issuer Trustee may determine. Unitholders holding in the aggregate not less than a majority of the outstanding Units may requisition the Issuer Trustee in writing to call a meeting of the Unitholders for the purposes stated in the requisition. The requisition shall state in reasonable detail the business proposed to be transacted at the meeting and will be sent to the Issuer Trustee at the address of the Issuer Trustee. Upon receiving the requisition, the Issuer Trustee will call a meeting of the Unitholders to transact the business referred to in the requisition. If the Issuer Trustee does not within 10 days after receiving the requisition call a meeting, any Unitholder who signed the requisition may call the meeting.

9.3 Quorum and Voting

A quorum for any meeting of the Unitholders will be persons present being Unitholders or representing by proxy Unitholders who hold in the aggregate a majority of the total number of outstanding Units. Unitholders may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Unit will be entitled to one vote at all meetings of the Unitholders. Any action to be taken by the Unitholders will, except as otherwise required by this Declaration of Trust, or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. The chairman of any such meeting will not have a second or casting vote.

9.4 Written Resolution

Any business which may be conducted at a meeting of the Unitholders may be approved by a resolution in writing in lieu thereof. Notice of such resolution will be given to all Unitholders and approval of such resolution will be evidenced by the signature on any such resolution or counterpart thereof by the required percentage of Unitholders for the matter to be determined.

ARTICLE 10 AMENDMENT

10.1 Amendment

Subject to Section 2.1 and compliance with the terms of the applicable Program Agreements, the Issuer Trustee may, from time to time, amend, vary, supplement, replace or restate the provisions of this Declaration of Trust without the consent or approval of the Unitholders or any court as follows:

- (a) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to ensure compliance with, or to remove any conflicts or other inconsistencies which may exist between any term of this Declaration of Trust and the provisions of, any applicable law in effect from time to time;
- (b) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to make any change or correction in this Declaration of Trust which is a typographical change or correction or which the Issuer Trustee has been advised by legal counsel is required for the purpose of curing any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error contained herein, or
- (c) subject to the satisfaction of the Rating Agency Condition, to the extent deemed necessary or desirable in the sole discretion of the Issuer Trustee to permit or facilitate the carrying on of the Trust Activities, including the accommodation of requests made by the Rating Agencies or regulatory authorities in relation to the issuance of Funding Obligations.

However, any such amendment may be made only if: (i) it will not materially adversely affect the interest of any Unitholder, unless that Unitholder has also approved of the amendment in writing and (ii) in respect of any material amendment, the Rating Agency Condition has been satisfied. The Issuer Trustee will immediately upon the entering into thereof, provide the Rating Agencies and the Indenture Trustee with a copy of any amendment, variation, supplement, replacement or restatement of this Declaration of Trust.

10.2 Automatic Amendment

Upon the Issuer Trustee ceasing to be a trustee of the Trust, this Declaration of Trust will be automatically amended to delete any reference to the name of the trustee so ceasing to be a trustee of the Trust and to substitute therefor the name of the successor trustee of the Trust. Notice of any change in the Issuer Trustee may be endorsed upon or attached to this Declaration of Trust and signed by the successor Issuer Trustee and every such notice will be sufficient evidence to any Person dealing with the Issuer Trustee under this Declaration of Trust as to the facts to which it relates.

10.3 Supplemental Declaration of Trust

The Issuer Trustee is authorized to execute any supplemental declaration of trust to give effect to amendments to this Declaration of Trust made pursuant to this Article 10. The Issuer Trustee shall not be obligated to enter into any such supplemental declaration if it adversely affects the Issuer Trustee's rights, duties or immunities under this Declaration of Trust or otherwise. No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 10 or otherwise, shall be construed as a termination of the Trust or the settlement or establishment of a new trust.

ARTICLE 11 DISTRIBUTION OF TRUST PROPERTY

11.1 Distributions

- (1) The Issuer Trustee may declare to be payable and make distributions, from time to time, out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Issuer Trustee may determine, to the Unitholders at the record date for such distribution. The Issuer Trustee may declare such amounts to be payable or authorize such distributions in advance by way of a standing resolution that is effective for a period not exceeding 12 months after the date of the resolution.
- (2) Where the Trust proposes to distribute Trust Property in specie to a redeeming Unitholder as contemplated in subsection 4.1(3), and the Issuer Trustee reasonably expects that such in specie distribution will give rise to Income of the Trust and / or Net Realized Capital Gains of the Trust in excess of the amount of the Net Realized Capital Gains of the Trust Allocated on Redemption to the particular Unitholder whose Units are being redeemed (collectively, the **"Excess Income on Redemption"**), the Issuer Trustee shall declare to be payable and make a distribution, on the record date that is one Business Day before the redemption, to Unitholders at such record date in an amount equal to the estimated Excess Income on Redemption. Such distribution will be satisfied by the issuance of additional Units, or fractions of Units, having a fair market value equal to the amount of such distribution. If the Issuer Trustee is required to deduct or withhold an amount from such distribution, the applicable Unitholder shall make the cash payment described in Section 11.7 to the Issuer Trustee on or prior to the date the distribution.
- (3) If the Issuer Trustee declares to be payable or makes a distribution pursuant to subsections 11.1(1) or 11.1(2) without determining the portion of such distribution that is payable out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, such allocation shall be made pursuant to subsection 11.2(2).
- (4) The Issuer Trustee intends to make payable to Unitholders all of the Income of the Trust and Net Realized Capital Gains of the Trust for each taxation year throughout which all Unitholders are Specified Unitholders so that the Trust will not have any liability for tax under Part I of the ITA in any such taxation year (other than alternative minimum tax or taxes payable under the "SIFT trust" rules in the ITA). Unless the Issuer Trustee, in its sole

discretion determines otherwise, the following amounts will, without any further actions on the part of the Issuer Trustee, be due and payable to the Unitholders of record on the last day in each taxation year throughout which all Unitholders are Specified Unitholders:

- (a) an amount equal to the amount, if any, by which the Income of the Trust for such year exceeds the aggregate of (A) the aggregate of the portions of the distributions paid or payable by the Trust which have been determined by the Issuer Trustee to have been payable by the Trust out of the Income of the Trust for such year, if any, and (B) the aggregate of the portions of distributions deemed by subsection 11.2(2)(a) to be paid or payable by the Trust out of the Income of the Trust for such year; and
- (b) an amount equal to the amount, if any, by which the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of (A) any amount of the Net Realized Capital Gains of the Trust Allocated on Redemption for the year payable to redeeming Unitholders pursuant to subsection 4.1(5), (B) the aggregate of the portions of the distributions paid or payable by the Trust which have been determined by the Issuer Trustee to have been payable by the Trust out of Net Realized Capital Gains of the Trust for such year, if any, and (C) the aggregate of the portions of distributions deemed by subsection 11.2(2)(b) to be paid or payable by the Trust out of the Net Realized Capital Gains of the Trust for such year, if any.

Any determinations by the Issuer Trustee not to make a distribution described in this subsection 11.1(4) must be exercised by the Issuer Trustee in writing prior to December 31 of the applicable taxation year.

- (5) The Issuer Trustee retains discretion to make payable to Unitholders all of the Income of the Trust and Net Realized Capital Gains of the Trust for each taxation year not described in subsection 11.1(4) above, but any such distribution would require the consent of all Unitholders in such year (other than a Unitholder described in paragraph (a) of the definition of Specified Unitholder).
- (6) The proportionate share of each Unit of the amount of any distribution made pursuant to this section will be determined by dividing such amount by the number of issued and outstanding Units on the applicable record date in respect of a distribution pursuant to subsections 4.1(5), 11.1(1) or 11.1(2) and on the last day of the taxation year in respect of a distribution pursuant to subsection 11.1(4). Each Unitholder's share of the amount of any such distribution will be an amount equal to the proportionate share of each Unit of such amount multiplied by the number of Units owned of record by each such Unitholder on such applicable record date or the last day of the taxation year, as the case may be, and such Unitholder shall, on such date, be entitled to enforce payment of the Unitholder's share. Subject to subsections 4.1(5) and 11.1(2) and section 11.3, amounts which are payable to Unitholders will be paid in cash.

11.2 Allocation

- (1) Subject to subsection 11.2(2), distributions payable to the Unitholders pursuant to Article 11 will be deemed to be distributions of Income of the Trust (including dividends), Net Realized Capital Gains of the Trust, returns of capital of the Trust or other items in such amount as the Issuer Trustee in its absolute discretion determines and will be allocated to the Unitholders in the same proportions as distributions received by the Unitholders.
- (2) If the Issuer Trustee has declared to be payable or made one or more distributions in a taxation year pursuant to subsection 11.1(1) without determining the portion of such distributions that is payable out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, such distributions shall be deemed to be paid or payable out of:
 - (a) first, the Income of the Trust for such year to the extent, if any, that the Income of the Trust for such year exceeds the aggregate of the amounts in subsection 11.1(4)(a)(A);
 - (b) second, the Net Realized Capital Gains of the Trust for such year to the extent, if any, that the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of the amounts in subsection 11.1(4)(b)(A) and 11.1(4)(b)(B); and
 - (c) as to any balance, the capital of the Trust;and such amounts will be allocated to the Unitholders in the same proportions as such distributions were received by the Unitholders.
- (3) For greater certainty it is hereby declared that any distribution of Net Realized Capital Gains of the Trust will include the non-taxable portion of the capital gains of the Trust which are included in such distribution.

11.3 Payment of Distributions

- (1) Distributions to a Unitholder (other than distributions described in subsections 4.1(5) and 11.1(2)) will be made by cash, wire transfer or cheque payable to or to the order of the Unitholder or by such other manner provided for in subsection 11.3(3). The payment, if made by cheque, will be conclusively deemed to have been made upon hand delivery of a cheque to the Unitholder or to its agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at its address set out in the records of the Issuer Trustee unless the cheque is not paid on presentation, or in any other manner determined by the Issuer Trustee in its discretion. The Issuer Trustee may issue a replacement cheque if it is satisfied that the original cheque has not been received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other document in connection therewith that the Issuer Trustee may in its discretion consider necessary.
- (2) The Issuer Trustee may, in its sole discretion, transfer temporarily from capital to income within the Trust sufficient cash to facilitate payments of Income of the Trust to Unitholders.

A permanent transfer from capital to income may be effected if payments made by and /or expenses of the Trust in any year exceed the aggregate of the net income and Net Realized Capital Gains of the Trust in such year.

- (3) Without limiting the generality of the foregoing, a distribution to a Unitholder may be paid (i) by the issuance of additional Units, or fractions of Units having a fair market value equal to the amount of such distribution, (ii) by the issuance of a promissory note for a principal amount equal to the amount of such distribution and/or (iii) *in specie* by the transfer of Trust Property having a fair market value equal to the amount of such distribution, all as may be determined by the Issuer Trustee, acting reasonably. The Issuer Trustee acknowledges and agrees that it will elect to make payment to a Unitholder of the amount of a distribution in the manner described in this subsection 11.3(3) only if it has received prior written notice from the Unitholder that such payment method is acceptable, and the Unitholder makes the cash payment described in Section 11.7 to the Issuer Trustee, which written notice may be revoked in writing by the Unitholder at any time. If the Issuer Trustee elects to make payment of the amount of a distribution by the issuance of a promissory note, such promissory note shall bear interest at a fixed or floating rate, shall be repayable on demand or on the expiry of a stated term, and shall contain such other terms all of which may be determined by the Issuer Trustee such that the fair market value of such promissory note is equal to the amount of the distribution. Any such promissory note or additional Units issued, or Trust Property transferred, by the Trust shall constitute absolute and unconditional payment in full of the distribution and, by becoming a Unitholder, each Unitholder hereby acknowledges that any such note, additional Units or transfer of Trust Property will be accepted by the Unitholder as such absolute and unconditional payment of the distribution payable to the Unitholder.

11.4 Legal Rights

For greater certainty, it is hereby declared that the Unitholders shall have the legal right to enforce payment of any amount to be distributed or payable hereunder at the time such amount is due and payable.

11.5 Income Tax Matters

In reporting income for income tax purposes, the Trust will claim the maximum amount available to it as deductions under the relevant law, unless the Issuer Trustee determines otherwise.

11.6 Designations

In accordance with and to the extent permitted by the ITA, the Issuer Trustee will, in each taxation year, make such designations for income tax purposes in respect of amounts paid or payable or deemed to be paid to the Unitholders for such amounts that the Issuer Trustee considers to be reasonable in all circumstances, including designations relating to taxable dividends received or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains of the Trust in the year and foreign source income of the Trust and foreign taxes in respect of such foreign source income for the year, if any.

11.7 Withholding Taxes

The Issuer Trustee will deduct or withhold from distributions or other amounts payable under this Declaration of Trust amounts required by law to be deducted or withheld from such distributions or payments, whether such distributions or payments are satisfied in the form of cash, cheque, promissory note, additional Units or otherwise. To the extent that any amounts are deducted or withheld from payments made by cash, cheque or wire transfer, including those described in subsection 11.3(1), such deducted or withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of the distribution or other amount payable, provided that such deducted or withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority. In the event that the Issuer Trustee makes a distribution or payment that is satisfied in a manner other than cash, cheque or wire transfer, including those described in subsections 4.1(3), 4.1(5) or 11.3(3), the recipient of the payment shall provide cash to the Issuer Trustee in amount equal to any required deduction or withholding, which the Issuer Trustee shall forthwith remit to the appropriate taxing authority on behalf of the Unitholder.

ARTICLE 12 TERMINATION OF THE TRUST

12.1 Termination

- (a) The Trust will continue in full force and effect for a period of twelve months from the date hereof and thereafter for so long as any Funding Obligations remain outstanding and until the Trust has satisfied all of its obligations under the Program Agreements or otherwise for the purposes of carrying on the Trust Activities. Notwithstanding the foregoing, the Issuer Trustee may, with the unanimous approval of Unitholders, wind-up the affairs of the Trust and terminate the Trust and distribute the Trust Property then remaining to the Unitholders in proportion to the number of Units held by each Unitholder no later than the date that is one day prior to the 21st anniversary of the death of the last surviving lineal descendent of Queen Elizabeth, II of England living at the date this declaration is made.
- (b) Subject to Section 12.1(a), the Issuer Trustee may, with the unanimous approval of the Unitholders, wind up the affairs of the Trust and terminate the Trust. To the fullest extent permitted by law, and notwithstanding any duty otherwise existing at law or in equity, the Issuer Trustee shall consider only the interests of the Trust, including its creditors, in acting on the matters referred to in this Section 12.1. On the date the Trust is terminated, the Issuer Trustee will, upon receipt of such releases, indemnities and refunding agreements as the Issuer Trustee may deem necessary for its protection, distribute the remaining Trust Property, after payment of all other obligations of the Trust, in cash or in kind, or partly in each, to the Unitholders in proportion to the number of Units held by each Unitholder

ARTICLE 13 GENERAL

13.1 Acknowledgement of Indenture

The Issuer Trustee (i) acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Indenture including, without limitation, Sections 7.04 through 7.11 and 8.13 (Payment Priorities), Section 7.12 (Payments Held in Trust), Section 8.11 (Control by Controlling Class Creditors), Section 8.12 (Limitation on Suits), Section 8.14 (Limited Recourse), Article IX (Indenture Trustee) (including all limitations of liability thereunder), Section 9.14 (Communications to Specified Creditors) and Section 16.01 (No Petition) of the Indenture; (ii) irrevocably authorizes and directs the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in Article VI, Article VII and Section 8.13 of the Indenture, and appoints the Indenture Trustee as its agent for any and all such purposes; and (iii) consents, requests and authorizes the Trust and the Indenture Trustee to (X) add the Issuer Trustee (or its agent) to the register of Specified Creditors described in Section 13.13 of the Indenture and (Y) disseminate the notice details of the Issuer Trustee to other Specified Creditors for the purposes set out in subsection 9.14(b) of the Indenture.

13.2 Irrevocability

The Trust shall be irrevocable.

13.3 Change of Office

The Issuer Trustee may at any time and from time to time during the existence of the trusts hereby created change the head office, chief executive office, chief place of business and situs of the administration of the Trust to another location within Ontario or have such other offices or places of administration within Canada as the Issuer Trustee may from time to time determine is necessary or desirable.

13.4 Execution of Instruments

The Issuer Trustee shall have power from time to time to appoint any Person or Persons on behalf of the Trust either to sign instruments in writing generally or to sign specific instruments in writing.

13.5 Manner of Giving Notice

Except as otherwise permitted herein, any notice required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder or the Issuer Trustee shall be deemed conclusively to have been given if given either by delivery or by prepaid first-class mail addressed to each Unitholder at its address shown on the register of Unitholders or to the Issuer Trustee at the last address provided by the Issuer Trustee for such purpose. Any notice so given shall be deemed to have been given on the day of hand delivery or the day following that on which the notice was mailed.

13.6 Taxation Information

On or before March 30 in each year, or such earlier day as is required by applicable legislation or regulation, the Issuer Trustee will provide to Unitholders who received distributions from the Trust in the prior calendar year such information regarding the Trust required by applicable law to be submitted to Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of the prior calendar year.

13.7 Severability

The provisions of this Declaration of Trust are severable and if any provisions are in conflict with any applicable law, the conflicting provisions shall be deemed never to have constituted a part of this Declaration of Trust and shall not affect or impair any of the remaining provisions thereof. If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

13.8 Governing Law

This Declaration of Trust shall be interpreted and governed by and take effect exclusively in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any and all disputes arising under this Declaration of Trust, whether as to interpretation, performance or otherwise, shall be subject to the exclusive jurisdiction of the courts of the Province of Ontario and the Issuer Trustee hereby irrevocably attorns, and each Unitholder shall be deemed to hereby irrevocably attorn, to the exclusive jurisdiction of the courts of such province.

13.9 Language

Les parties aux présentes ont exigés que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en la langue anglaise.
The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

IN WITNESS WHEREOF the Issuer Trustee has caused this Declaration of Trust to be executed as of the day and year first above written by its duly authorized signatories.

**COMPUTERSHARE TRUST COMPANY
OF CANADA,**
as Issuer Trustee

By: _____

Name: Mircho Mirchev
Title: Corporate Trust Officer

By: _____

Name: Ann Samuel
Title: Associate Trust Officer

TRANSFER NOTICE

TO: Fair Hydro Trust
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: Vice President, Fair Hydro Plan
Email: FHT@opg.com

This Transfer Notice is delivered to you pursuant to Section 2.1 of a master transfer and servicing agreement made as of December 21, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Master Transfer and Servicing Agreement**”) between **FAIR HYDRO TRUST**, a trust formed under the laws of the Province of Ontario (the “**Issuer**”), the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** (“**Transferor**” in its capacity as transferor, “**Servicer**”, in its capacity as servicer, and “**IESO**” in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario. All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Master Transfer and Servicing Agreement.

The Transferor hereby gives notice to the Issuer of its offer to transfer to the Issuer on the Closing Date set out below, the Specified Portion of the Regulatory Asset referred to below, all in accordance with the terms and conditions of the Master Transfer and Servicing Agreement. In consideration for (i) the Transferor’s Transfer to the Issuer of the Specified Portion of the Regulatory Asset referred to below, the Issuer shall deliver or cause to be delivered to the Transferor on the Closing Date set out below, by wire transfer or electronic funds transfer in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set out below.

Upon receipt by the Transferor of the Purchase Price on the Closing Date the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price, and the Regulatory Asset shall be adjusted accordingly.

Specified portion of Regulatory Asset: \$1,179,000,000.00

Purchase Price: \$1,179,000,000.00

Closing Date: December 21, 2017

The Transferor hereby represents, warrants and confirms that:

- (i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;

- (ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and
- (iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

The closing shall take place at 9:00 a.m. (Toronto time) on the Closing Date referred to above at the offices of Torys LLP, except as may be otherwise mutually agreed. The Purchase Price shall be paid on that date by wire transfer or electronic funds transfer to:

Bank Account Name: Independent Electricity System Operator

Beneficiary Address: 1600-120 Adelaide Street West, Toronto, ON M5H 1T1

Bank: TD Bank

Bank Address: 55 King Street West, Toronto, ON, M5K 1A2

Bank ID: [REDACTED]

Transit: [REDACTED]

Account: [REDACTED]

Swift: TDOMCATTOR .

DATED this 21st day of December, 2017.

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR
as Transferor**

By: K. Marshall
Name: Kim Marshall
Title: VP, Corporate Services & CFO

By: _____;
Name: _____
Title: _____

The undersigned hereby accepts the foregoing offer.

DATED this 21st day of December, 2017.

**FAIR HYDRO TRUST, by its Manager,
ONTARIO POWER GENERATION
INC.**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR
as Transferor**

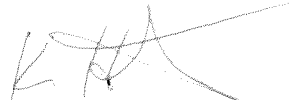
By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

The undersigned hereby accepts the foregoing offer.

DATED this 21st day of December, 2017.

**FAIR HYDRO TRUST, by its Manager,
ONTARIO POWER GENERATION
INC.**

By: 
Name: Ken Hartwick
Title: Chief Financial Officer and
Senior Vice President

By: 
Name: Tom Lee
Title: Vice President - Treasurer

Appendix C

Direct costs of labour for exclusively dedicated FH Trust employees

Internal costs of approximately \$0.4 million relating to direct labour costs for employees whose work for the FSM consists exclusively of the provision of services to financing entities in relation to prescribed matters have been included in the proposed 2017 General Fee. The amount represents the fully-burdened costs OPG incurred including an allocated provision of 23 per cent of the base labour costs for sickness, accident, vacation and holidays ("SAVH"). The proposed 2017 General Fee includes the fully-burdened direct labour costs for the following four employees¹:

1. Employee #215415 – Senior Manager level, permanent full-time – this employee joined the Treasury group in July 2017 specifically to work for the Fair Hydro Plan group. The fully-burdened labour costs included in the Application for this employee is \$127,815.
2. Employee #494214 – Vice President level, permanent full-time – this employee joined the Treasury group in October 2017 specifically to work for the Fair Hydro Plan group. The fully-burdened labour costs included in the Application for this employee is \$84,349.
3. Employee #207157 – Director level, temporary full-time – this employee was hired as an external contractor on a temporary basis in April 2017 and was exclusively dedicated to the Fair Hydro Plan group from October 2017 to mid-December 2017 when the employment contract was terminated. The labour costs for temporary employees do not include any provisions for SAVH and totalled \$36,800.

¹ For privacy concerns, the employee numbers have been provided.

1 4. Employee #792883 – Director level, permanent full-time – this employee is an
2 incumbent in the Treasury department and was fully dedicated to prescribed
3 matters during the period from March 2017 to December 2017. The fully-
4 burdened labour costs for this employee included in the Application are
5 \$153,483.

6
7 Approximately \$0.7 million of unrecoverable other direct labour costs have been
8 expended by OPG during 2017 but were not included in the Application as the
9 employees did not work exclusively on prescribed matters, as required by the FHP
10 Regulation.

REPORT ON SPECIFIED PROCEDURES

To: Ontario Power Generation Inc.

As specifically agreed, the procedures we performed were to solely assist management (Ontario Power Generation Inc.) in fulfilling the requirement under section 10.2(4) of the *Ontario Regulation 206/17 General*, for the proposed general fee of OPG as the Financial Services Manager under the *Ontario Fair Hydro Plan Act*, 2017 for the period beginning on 1 June 2017 and ending on 31 December 2017 (the “Specified Procedures”), reported to the Ontario Energy Board (the “Specified Party”).

The procedures are outlined below in Appendix A.

As a result of applying the following procedures, we found no exceptions other than as reported in Appendix A.

However, these procedures do not constitute an audit of the proposed general fee of OPG as the Financial Services Manager and therefore we express no opinion on the financial information.

Toronto, Canada
February 15, 2018

Ernst & Young LLP (Signed)
Chartered Professional Accountants,
Licensed Public Accountants

APPENDIX A

The following is a summary of the specified procedures and EY's findings/conclusions:

Procedures and Findings/Conclusions
<u>Procedure 1</u> For the proposed 2017 General Fee schedule provided by OPG, recalculate that the total amount OPG (or "management"), as the Financial Services Manager ("FSM"), seeks to recover is equal to the sum of: a) \$3,100,000; b) Total of all third party incurred costs included in the Invoice Listing¹ provided by OPG for the period of 1 June 2017 to 31 December 2017; c) Total of all direct costs related to labour included in the Labour Costs Listing¹ provided by OPG for the period of 1 June 2017 to 31 December 2017; and d) Total of all other costs included in the Other Costs and Expenditures Listing¹ provided by OPG for the period of 1 June 2017 to 31 December 2017.
<u>Results of Procedure 1</u> We recalculated that the total amount management seeks to recover of \$5,733,684.11 is equal to the sum of: a) \$3,100,000; b) The total of all third party incurred costs for the period of 1 June 2017 to 31 December 2017 of \$2,231,134.29; c) The total of all direct costs related to labour for the period of 1 June 2017 to 31 December 2017 of \$402,446.28; and d) The total of all other costs for the period of 1 June 2017 to 31 December 2017 of \$103.53. No exceptions were noted.
<u>Procedure 2</u> For third-party costs and expenditures, obtain the Invoice Listing provided by management and perform the following procedures for each invoice included in the Invoice Listing: a) Agree that the type of costs and expenditures are related to Fair Hydro Plan matters ("prescribed matters") by reading that the details provided in the invoice and/or other supporting schedules provided by management includes in the description a reference to services provided in relation to the Fair Hydro Plan and/or the Global Adjustment; b) Compare whether the invoice amount, before any applicable taxes, recorded by management on the Invoice Listing agrees to the invoice provided by management; c) Note whether the time period for which the expense is related to is between the period of 1 June 2017 to 31 December 2017 based on the details provided in the invoice and/or other supporting schedules provided by management;

¹ Refer to the Definitions section at the end of Appendix A.

- d) Note whether the invoice is addressed to OPG; and
- e) Test the clerical accuracy of the Invoice Listing by recalculating all applicable fields.

Results of Procedure 2

- a) We obtained the Invoice Listing and agreed that the type of costs and expenditures are related to prescribed matters by reading that the details provided in the invoice and/or other supporting schedules provided by management includes in the description a reference to services provided in relation to the Fair Hydro Plan and/or the Global Adjustment. No exceptions were noted.
- b) We compared that the invoice amount, before any applicable taxes, recorded by management on the Invoice Listing agrees to the invoice provided by management. No exceptions were noted except for the following finding: EY noted that invoice #1411445 only showed the after-tax amount of \$10,105.00. As a result, EY recalculated the pre-tax amount of \$8,942.48 by performing the following calculation: $\$10,105.00 / 1.13 = \$8,942.48$. EY's recalculated pre-tax amount agreed to the Invoice Listing.
- c) We noted that the expenses were related to the time period of 1 June 2017 to 31 December 2017 based on the details provided in the invoice and/or supporting schedules provided by management. No exceptions were noted.
- d) We noted that the invoices provided by management are addressed to OPG. No exceptions were noted.
- e) We tested the clerical accuracy of the Invoice Listing by recalculating all applicable fields. No exceptions were noted.

Procedure 3

For each invoice included in the Invoice Listing:

- a) Obtain the supporting bank statement details for the relevant batch payment to test the following:
 - i. the invoice number and amount, including all applicable taxes agree to supporting documentation provided by management which outlines the cheque number, the cheque number is included in the relevant batch payment support, for each batch provided by management;
 - ii. the amount paid is to a third party, per reference to the relevant check register or batch payment information provided by management; and
 - iii. the invoice has been paid during the period of 1 June 2017 to 31 December 2017; or
- b) Obtain the supporting bank statement details for the relevant cheque payment to test the following:
 - i. the invoice number and amount, including all applicable taxes agree to supporting documentation provided by management which outlines the cheque number;
 - ii. the amount paid is to a third party, per reference to the relevant check register or batch payment information provided by management; and
 - iii. the invoice has been paid during the period of 1 June 2017 to 31 December 2017.
- c) For each invoice denominated in US dollars, recalculate the equivalent amount in Canadian dollars recorded in the Invoice Listing using the exchange rate provided by management.

Results of Procedure 3

- a) For each invoice included in the Invoice Listing, we obtained the supporting bank statement details for the relevant batch payment and tested the following:

i) The invoice number and amount, including all applicable taxes agree to supporting documentation provided by management which outlines the cheque number, the cheque number is included in the relevant batch payment support, for each batch provided by management. One exception was noted:

Invoice Number	Invoice Amount (Including all applicable taxes)	Cheque Number	Amount per Cheque
1407795 & 1407796	\$210,101.61	20172499	\$230,676.96

The invoice amount before applicable taxes agreed to the Invoice Listing per results noted in Procedure 2 b).

ii) The amount paid is to a third party, per reference to the relevant check register or batch payment information provided by management. No exceptions were noted.

iii) The invoice had been paid during the period of 1 June 2017 to 31 December 2017. The following exceptions were noted:

Invoice Number	Cheque Date	Invoice Amount (including all applicable taxes)	Date that Cheque Cleared the Bank
1177678	December 27, 2017	\$23,324.06	January 4, 2018
1411445	December 22, 2017	\$10,105.00	January 2, 2018
1414027	January 2, 2018	\$50,999.74	January 9, 2018

b) For each invoice included in the Invoice Listing, we obtained the supporting bank statement details for the relevant cheque payment and tested the following:

i) The invoice number and amount, including all applicable taxes agree to supporting documentation provided by management which outlines the cheque number. No exceptions were noted.

ii) The amount paid is to a third party, per reference to the relevant check register or batch payment information provided by management. No exceptions were noted.

iii) The invoice had been paid during the period of 1 June 2017 to 31 December 2017. No exceptions were noted.

c) For each invoice denominated in US dollars, we recalculated the equivalent amount in Canadian dollars using the exchange rate provided by management. No exceptions were noted.

Procedure 4

For direct costs of OPG as FSM related to labour, obtain the Labour Costs Listing provided by management and perform the following procedures for each employee included in the Labour Costs Listing included in the column 'Post June 1st':

- a) Trace the employee number(s) included in the "Labour Costs listing" to the supporting evidence of employee name(s) provided by management; Agree the employee(s) included in the Labour Costs Listing to the 'Fair Hydro Group' within the OPG's Treasury organizational structure provided by management; or where the employee is not included in the Fair Hydro Group, obtain supporting schedule from management of the hours incurred directly related to the Fair Hydro Plan and/or Global Adjustment;
- b) Compare the standard labour rate by employee band to OPG's labour rate schedule provided by management;
- c) Recalculate the labour costs by multiplying the total hours by month to the employee's standard labour rate;
- d) Recalculate that the Sickness, Accident, Vacation and Holidays (SAVH) allocation is equal to 23% of the regular labour costs;
- e) Note whether the labour costs included in the 'post-June 1st' column relate to the period between 1 June 2017 and 31 December 2017; and
- f) Test the clerical accuracy of the Labour Costs Listing by recalculating all applicable fields.

Results of Procedure 4

- a) We obtained the "Labour Costs Listing". For each employee included in the Labour Costs Listing included in the column 'Post June 1st', we traced the employee number to the supporting schedule of employee names provided by management. We agreed the employees included in the Labour Costs Listing to the 'Fair Hydro Group' within the OPG's Treasury organizational structure provided by management. Where the employee is not included in the Fair Hydro Group, we obtained the supporting schedule from management of the hours incurred directly related to the Fair Hydro Plan and/or Global Adjustment. No exceptions were noted.
- b) We compared the standard labour rate by employee band to OPG's labour rate schedule. No exceptions were noted.
- c) We recalculated each employee's labour costs by multiplying the total hours by month to the employee's standard labour rate. No exceptions were noted.
- d) We recalculated that the Sickness, Accident, Vacation and Holidays (SAVH) allocation is equal to 23% of the regular labour costs. No exceptions were noted.
- e) We noted that the labour costs included in the "post-June 1st" column related to the period between 1 June 2017 and 31 December 2017. No exceptions were noted.
- f) We tested the clerical accuracy of the Labour Costs Listing by recalculating all applicable fields. No exceptions were noted.

Procedure 5

For all other costs and expenditures, obtain the Other Costs and Expenditures Listing provided by management and perform the following procedures for each item:

- a) Obtain the supporting receipts from management and agree the expensed gross amount to the receipt provided by management;
- b) Recalculate the proposed fee using the formula provided by management, whereby the proposed fee is equal to the Expensed Gross Amount less the Input Tax Credit (ITC) plus Recapture of ITC (RITC), where applicable. The ITC and RITC formulas provided by management are as follows:
 - i. For all other costs, excluding telecommunications, management's formula for ITC is equal to Expensed Gross Amount x 12/112; or
 - ii. For telecommunications costs, management's formula applies both the ITC and RITC to the expense and the formula is equal to Expensed Gross Amount x 12/112 (for ITC) + (12/112)/13*2 (for RITC);
- c) Note whether the expense is incurred by an employee included in the 'Fair Hydro Group' within the OPG organizational structure provided by management;
- d) Note whether the other costs and expenditures included in the 'post-June 1st' column relate to the period between 1 June 2017 and 31 December 2017 per reference to the supporting receipts provided by management; and
- e) Test the clerical accuracy of the Other Costs and Expenditures Listing by recalculating all applicable fields.

Results of Procedure 5

- a) We obtained the Other Costs and Expenditures Listing and the supporting receipts and agreed the expensed gross amount to the receipts provided by management. No exceptions were noted.
- b) i) No exceptions were noted.
ii) We recalculated the proposed fees using the formula provided by management described in procedure 5b. One exception was noted:

Proposed fee per management per the "Other Costs and Expenditures Listing"	EY recalculation of the proposed fee using the formula provided by management	Difference
\$2.67	\$2.66	\$0.01

- c) We noted that the expense is incurred by an employee included in the 'Fair Hydro Group' within the OPG organizational structure provided by management. No exceptions were noted.
- d) We noted that the other costs and expenditures included in the 'post-June 1st' column relate to the period between 1 June 2017 and 31 December 2017 per reference to the supporting receipts provided by management. No exceptions were noted.
- e) We tested the clerical accuracy of the Other Costs and Expenditures Listing by recalculating all applicable fields. No exceptions were noted.

General Procedure
Where EY is unable to perform any of the Specified Procedures, or an exception occurs, EY will document this in our Report.
Results of General Procedure
Refer to the exceptions noted within our report in Procedures 2b, 3a (i), 3a (iii), and 5b (ii).

Definitions:

The Invoice Listing is defined as the list of invoices related to third-party costs and expenditures detailing, among other things, the invoice date, amount of each invoice, and the service period covered by the invoice, included as part of the proposed 2017 General Fee. The listing provided by management is the tab entitled 'Invoice Listing'.

The Labour Costs Listing is defined as the list of direct labour costs and expenditures, detailing employee identification, employee band, fiscal period and amount of labour cost included as part of the proposed 2017 General Fee. The listing provided by management is the tab entitled 'Labour Cost Listing'.

The Other Costs and Expenditures Listing is defined as the list of other costs and expenditures, detailing the cost type, vendor name, fiscal period, and amount of each item included as part of the proposed 2017 General Fee. The listing provided by management is the tab entitled 'Other Costs and Exp Listing'.