



## EXHIBIT 5 – COST OF CAPITAL

2020 Cost of Service

Algoma Power Inc.  
EB-2019-0019

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## 5.2 COST OF CAPITAL AND CAPITAL STRUCTURE

In this Exhibit, API presents evidence regarding its capital structure, its debt financing and the calculation of its cost of capital for the 2020 Test Year.

API acknowledges that the OEB will likely update its cost of capital parameters later in 2019 for rates changes effective in 2020, and therefore commits to updating its Application to reflect the revised cost of capital parameters as new information is issued, to the extent that updated information is applicable to the Application.

API seeks to recover a weighted average cost of capital of 6.48% through rates in the 2020 Test Year. API has followed the Report of the Board on Cost of Capital for Ontario's Regulated Utilities, December 11, 2009 (the "OEB Cost of Capital Report"), in determining the applicable cost of capital.

### 5.2.1 CAPITAL STRUCTURE

In calculating the cost of capital, API has used the OEB's deemed capital structure of 56% long-term debt, 4% short-term debt, and 40% equity. API's proposed capital structure for the 2020 Test Year is unchanged from its 2015 Board Approved structure. Table 1 provides a comparison between API's actual capital structure for the 2020 Test Year, and its deemed capital structure for rate-making purposes for the 2020 Test Year. As described in Section 5.2.2, in December 2018, API secured an additional \$12,750,000 in affiliated debt so that its actual capital structure would more closely match the OEB deemed structure.

A completed OEB Appendix 2-OA for each of 2015 OEB-Approved and 2020 Test Year is included in Section 5.3 and a completed Appendix 2-OB for each of the 2015-2018 historical years, the 2019 Bridge Year and the 2020 Test Year is included in Section 5.4.

**Table 1 - Overview of Capital Structure**

	<b>Actual Capitalization Ratio</b>		<b>Deemed Capitalization Ratio</b>		<b>Difference</b>	
			(%)	(\$)		
<b>Debt</b>						
Long-term Debt	54.02%	\$64,750,000	56.00%	\$67,129,125	1.98%	\$2,379,125
Short-term Debt	0.00%	\$ -	4.00%	\$4,794,938	4.00%	\$4,794,938
<b>Total Debt</b>	<b>54.02%</b>		<b>60.00%</b>	<b>\$71,924,063</b>	<b>5.98%</b>	<b>\$7,174,063</b>
<b>Equity</b>						
Common Equity	45.98%	\$55,123,438	40.00%	\$47,949,375	-5.98%	(\$7,174,063)
Preferred Shares	0.00%	\$ -	0.00%	\$ -	0.00%	\$ -
<b>Total Equity</b>	<b>45.98%</b>		<b>40.00%</b>	<b>\$47,949,375</b>	<b>-5.98%</b>	<b>(\$7,174,063)</b>
<b>Total</b>	<b>100.00%</b>	<b>\$119,873,438</b>	<b>100.00%</b>	<b>\$119,873,438</b>	<b>0.00%</b>	<b>\$ -</b>

Table 1 confirms a notional debt (difference between actual and deemed debt) of \$7,174,063.  
Table 2 confirms that the total deemed debt amount of \$71,924,063, comprising API's actual debt plus this notional debt, attracts the weighted average cost of debt rate.

### 5.2.2 COST OF CAPITAL

Table 2 below summarizes API's proposed 2020 Test Year cost of capital, based on the capital structure outlined in Section 5.2.1, the cost of capital parameters in the OEB's letter of November 22, 2018, the guidelines for treatment of third party vs. affiliated in the "OEB Cost of Capital Report", and API's actual debt rates. The balance of this Section 5.2.2 provides the support for each of the cost rates listed in Table 2.

**Table 2 – 2020 Test Year Cost of Capital**

	<b>Capitalization Ratio</b>		<b>Cost Rate</b>	<b>Return</b>
	(%)	(\$)	(%)	(\$)
<b>Debt</b>				
Long-term Debt	56.00%	\$67,129,125	4.95%	\$3,322,892
Short-term Debt	4.00%	\$4,794,938	2.82%	\$135,217
<b>Total Debt</b>	<u>60.00%</u>	<u>\$71,924,063</u>	<u>4.81%</u>	<u>\$3,458,109</u>
<b>Equity</b>				
Common Equity	40.00%	\$47,949,375	8.98%	\$4,305,854
Preferred Shares	0.00%	\$ -	0.00%	\$ -
<b>Total Equity</b>	<u>40.00%</u>	<u>\$47,949,375</u>	<u>8.98%</u>	<u>\$4,305,854</u>
<b>Total</b>	<u>100.00%</u>	<u>\$119,873,438</u>	<u>6.48%</u>	<u>\$7,763,963</u>

### **Weighted Average Cost of Capital (WACC)**

API's 2020 Weighted Average Cost of Capital (WACC) is 6.48%, as calculated in Table 2 above.

### **Return on Equity ("ROE")**

As a placeholder for the 2020 Test Year, API has used the ROE of 8.98% for 2019 rate applications, as established by the OEB's Cost of Capital Parameter update letter of November 22, 2018. API acknowledges that the OEB may adjust the ROE applicable to rate changes effective in 2020, and therefore commits to updating its Application to reflect the revised 2020 ROE rate, if required.

### **Weighted Average Cost of Debt**

API's 2020 weighted average cost of debt is 4.81%, as calculated in Table 2 above.

**Long-Term Debt**

API has embedded third party long-term debt of \$52 million. These senior unsecured notes were issued on December 16, 2011 and bear interest of 5.118% and are repayable at maturity on December 16, 2041. The OEB confirmed in the OEB Cost of Capital Report (page 52) that *“the Board will primarily rely on the embedded or actual cost for existing long-term debt instruments.”* API has used the embedded debt rate of 5.118% plus the debt issue costs which are amortized over the term of the debt. A copy of the Trust Indenture providing for the issue of the senior unsecured notes is attached as Appendix A to this Exhibit.

API also utilizes affiliated debt to support its capital program spending requirements until the balance is sufficient to replace it with the issuance of third party long-term debt. In December 2018, API issued a promissory note to its parent company, FortisOntario, in the amount \$12.75 million. This debt has a variable rate that matches the Board’s deemed long-term debt rate as amended from time to time. The OEB Cost of Capital Report (page 53) provides that *“For debt that has a variable rate, the deemed long-term debt rate will be a ceiling on the rate allowed for that debt. This applies whether the debt holder is an affiliate or a third-party.”* Accordingly, API has used the deemed long-term debt rate of 4.13% for 2020 Test Year, as established by the Board’s Cost of Capital parameters letter dated November 22, 2018. API acknowledges that the OEB may adjust the deemed debt rates applicable to rate changes effective in 2020, and therefore commits to updating its Application to reflect the revised 2020 long-term debt rate for the promissory note, if required.

API has not forecasted a redemption of debt or preference shares, or an issuance of additional debt, in either the 2019 Bridge Year or the 2020 Test Year.

The calculation of API’s blended long-term debt rate of 4.95% is summarized in Table 3 below, consistent with the calculation in OEB Appendix 2-OB for 2020 that is included in Section 5.4.

1 **Table 3 – 2020 Blended Long-Term Debt Rate**

Description	Term	Principal	Rate (%)	Interest	Notes
Senior Unsecured Notes	30	\$ 52,000,000	5.118%	\$ 2,661,360	
Debt Issue Costs	0	\$ -	0.000%	\$ 16,632	\$498,968 over 30 years
Promissory Note	Demand	\$ 12,750,000	4.130%	\$ 526,575	
<b>Total</b>		<b>\$ 64,750,000</b>	<b>4.95%</b>	<b>\$ 3,204,567</b>	

2  
3 **Short-Term Debt**

4 As a placeholder for the 2020 Test Year, API has used the deemed short-term debt rate of 2.82%  
5 for 2019 rate applications, as established by the OEB's Cost of Capital Parameter update letter of  
6 November 22, 2018. API acknowledges that the OEB may adjust the deemed debt rates  
7 applicable to rate changes effective in 2020, and therefore commits to updating its Application  
8 to reflect the revised 2020 short-term debt rate, if required.



### 5.3 OEB APPENDIX 2-OA CAPITAL STRUCTURE / COST OF CAPITAL

Appendix 2-OA, reproduced below, presents API's capital structure for 2015 Board Approved and the 2020 Test Year.

Year: **2015** Board Approved

Line No.	Particulars	Capitalization Ratio		Cost Rate	Return
		(%)	(\$)	(%)	(\$)
	<b>Debt</b>				
1	Long-term Debt	56.00%	\$54,920,225	5.15%	\$2,828,392
2	Short-term Debt	4.00%	\$3,922,873	2.16%	\$84,734
3	<b>Total Debt</b>	60.0%	\$58,843,099	4.95%	\$2,913,126
	<b>Equity</b>				
4	Common Equity	40.00%	\$39,228,732	9.30%	\$3,648,272
5	Preferred Shares		\$ -		\$ -
6	<b>Total Equity</b>	40.0%	\$39,228,732	9.30%	\$3,648,272
7	<b>Total</b>	100.0%	\$98,071,831	6.69%	\$6,561,398

Year: **2020** Test Year

Line No.	Particulars	Capitalization Ratio		Cost Rate	Return
		(%)	(\$)	(%)	(\$)
	<b>Debt</b>				
1	Long-term Debt	56.00%	\$67,129,125	4.95%	\$3,322,892
2	Short-term Debt	4.00%	\$4,794,938	2.82%	\$135,217
3	<b>Total Debt</b>	60.0%	\$71,924,063	4.81%	\$3,458,109
	<b>Equity</b>				
4	Common Equity	40.00%	\$47,949,375	8.98%	\$4,305,854
5	Preferred Shares		\$ -		\$ -
6	<b>Total Equity</b>	40.0%	\$47,949,375	8.98%	\$4,305,854
7	<b>Total</b>	100.0%	\$119,873,438	6.48%	\$7,763,963

## 5.4 OEB APPENDIX 2-OB COST OF DEBT INSTRUMENTS

Appendix 2-OB, reproduced below, provides details of API's debt instruments for all required historical years (2015-2018), as well as forecasts for the 2019 Bridge Year and the 2020 Test Year.

Year 2020

Row	Description	Lender	Affiliated or Third-Party Debt?	Fixed or Variable-Rate?	Start Date	Term (years)	Principal (\$)	Rate (%) (Note 2)	Interest (\$) (Note 1)	Additional Comments, if any
1	Senior Unsecured Notes	Life Insurance Cos.	Third-Party	Fixed Rate	16/Dec/11	30	\$ 52,000,000	5.118%	\$2,661,360.00	
2	Debt Issue Costs								\$ 16,632.00	\$498,968 over 30 yrs
3	Promissory Note	FortisOntario Inc.	Affiliated	Variable Rate	17/Dec/18	Demand	\$ 12,750,000	4.130%	\$ 526,575.00	
Total							\$ 64,750,000	4.95%	\$3,204,567.00	

Year 2019

Row	Description	Lender	Affiliated or Third-Party Debt?	Fixed or Variable-Rate?	Start Date	Term (years)	Principal (\$)	Rate (%) (Note 2)	Interest (\$) (Note 1)	Additional Comments, if any
1	Senior Unsecured Notes	Life Insurance Cos.	Third-Party	Fixed Rate	16/Dec/11	30	\$ 52,000,000	5.118%	\$2,661,360.00	
2	Debt Issue Costs								\$ 16,632.00	\$498,968 over 30 yrs
3	Promissory Note	FortisOntario Inc.	Affiliated	Variable Rate	17/Dec/18	Demand	\$ 12,750,000	4.130%	\$ 526,575.00	
Total							\$ 64,750,000	4.95%	\$3,204,567.00	

Year 2018

Row	Description	Lender	Affiliated or Third-Party Debt?	Fixed or Variable-Rate?	Start Date	Term (years)	Principal (\$)	Rate (%) (Note 2)	Interest (\$) (Note 1)	Additional Comments, if any
1	Senior Unsecured Notes	Life Insurance Cos.	Third-Party	Fixed Rate	16/Dec/11	30	\$ 52,000,000	5.118%	\$2,661,360.00	
2	Debt Issue Costs								\$ 16,632.00	\$498,968 over 30 yrs
Total							\$ 52,000,000	5.15%	\$2,677,992.00	

Year 2017

Row	Description	Lender	Affiliated or Third-Party Debt?	Fixed or Variable-Rate?	Start Date	Term (years)	Principal (\$)	Rate (%) (Note 2)	Interest (\$) (Note 1)	Additional Comments, if any
1	Senior Unsecured Notes	Life Insurance Cos.	Third-Party	Fixed Rate	16/Dec/11	30	\$ 52,000,000	5.118%	\$2,661,360.00	
2	Debt Issue Costs								\$ 16,632.00	\$498,968 over 30 yrs
Total							\$ 52,000,000	5.15%	\$2,677,992.00	

Year 2016

Row	Description	Lender	Affiliated or Third-Party Debt?	Fixed or Variable-Rate?	Start Date	Term (years)	Principal (\$)	Rate (%) (Note 2)	Interest (\$) (Note 1)	Additional Comments, if any
1	Senior Unsecured Notes	Life Insurance Cos.	Third-Party	Fixed Rate	16/Dec/11	30	\$ 52,000,000	5.118%	\$2,661,360.00	
2	Debt Issue Costs								\$ 16,632.00	\$498,968 over 30 yrs
Total							\$ 52,000,000	5.15%	\$2,677,992.00	

Year 2015

Row	Description	Lender	Affiliated or Third-Party Debt?	Fixed or Variable-Rate?	Start Date	Term (years)	Principal (\$)	Rate (%) (Note 2)	Interest (\$) (Note 1)	Additional Comments, if any
1	Senior Unsecured Notes	Life Insurance Cos.	Third-Party	Fixed Rate	16/Dec/11	30	\$ 52,000,000	5.118%	\$2,661,360.00	
2	Debt Issue Costs								\$ 16,632.00	\$498,968 over 30 yrs
Total							\$ 52,000,000	5.15%	\$2,677,992.00	

1 **APPENDICES**

2

Appendix 5A	Trust Indenture
Appendix 5B	Promissory Note

3



# Appendix 5A

Algoma Power Inc.

2020 Cost of Service

EB-2019-0000

**ALGOMA POWER INC.**

**- and -**

**COMPUTERSHARE TRUST COMPANY OF CANADA**

**TRUST INDENTURE  
PROVIDING FOR THE ISSUE OF  
SENIOR UNSECURED NOTES**

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**December 16, 2011**

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Schedule "D"	-	Form of Certificate of Compliance
Schedule "5.1(j)"	-	Litigation and Other Proceedings
Schedule "5.1(o)"	-	Indebtedness
Schedule "5.1(p)"	-	Simplified Corporate Structure
Schedule "5.1(q)"	-	Compliance with Laws

## **TRUST INDENTURE**

THIS TRUST INDENTURE made the 16th day of December, 2011,

B E T W E E N:

**ALGOMA POWER INC.,**  
a corporation existing under the laws of the  
Province of Ontario,

(hereinafter called the "**Corporation**"),

- and -

**COMPUTERSHARE 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 each province of Canada,

(hereinafter called the "**Trustee**").

WHEREAS the Corporation wishes to provide for the creation and issuance from time to time of Notes in one or more Series in the manner hereinafter provided;

AND WHEREAS the Corporation, under its constating documents and the laws relating thereto, is duly authorized to create and issue the Notes to be issued as herein provided;

AND WHEREAS all necessary corporate proceedings of the Corporation have been duly enacted, passed and/or confirmed and other proceedings taken and conditions complied with to make the execution and delivery by the Corporation of this Indenture, and the creation and issuance of the Series 11-1 Notes to be issued hereunder by the Corporation, legal, valid and binding on the Corporation in accordance with their respective terms;

AND WHEREAS the foregoing recitals are made as representations and statements of fact by the Corporation and not by the Trustee;

NOW THEREFORE THIS INDENTURE WITNESSETH and it is hereby covenanted, agreed and declared as follows:

### **ARTICLE 1** **INTERPRETATION**

#### **1.1        Definitions**

In this Indenture and in the Notes the following terms shall have the following meanings, respectively:

**"Acquisition Date"** has the meaning set out in Section 6.2(b);

**"Additional Notes"** has the meaning set out in Section 3.3;

**"Affiliate"** of any person means any other person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such person. For the purpose of this definition, "control" when used with respect to any person, means the power to direct the management and policies of such 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;

**"Applicable Redemption Price"** means, (a) with respect to any redemption of any principal amount of Series 11-1 Notes, a price equal to the greater of the principal amount thereof to be redeemed and the Canada Yield Price, together with accrued but unpaid interest to but excluding the Redemption Date and (b) with respect to any other Series of Notes, the price determined pursuant to Section 4.1(a);

**"Applicable Spread"** means (a) in determining the Canada Yield Price of the Series 11-1 Notes, 50 basis points (0.50%) and (b) in determining the Canada Yield Price of any other Series of Notes, the percentage, if any, designated as such in the Supplemental Indenture authorizing such Series;

**"Asset Sale"** means the sale, lease, securitization, conveyance, transfer or other disposition of any assets (including without limitation a sale by way of shares) other than the sale of current assets in the ordinary course of business, sales of property or equipment that become worn-out, obsolete or damaged or are otherwise unsuitable for use in the business of the Corporation or the Subsidiary, and transfers by the Corporation or a Subsidiary to another Subsidiary or to the Corporation (which will be deemed to not be an Asset Sale);

**"Authorized Investments"** has the meaning set out in Section 11.8(a);

**"Beneficial Owner"** means, (a) with respect to a Book-Entry Only Note, the person who is the beneficial owner of such Note as reflected on the books of a Participant or (b) with respect to a Note other than a Book-Entry Only Note, a person who is an owner of such Note as reflected on the Register;

**"Book-Entry Only Notes"** means Notes issued by the Corporation in "book-entry" form in the Depository's book-entry registration system pursuant to Section 2.4(a) and held by or on behalf of the Depository for the Participants pursuant to the operating rules and procedures of the Depository in force from time to time;

**"Business Day"** means a day, other than a Saturday or Sunday, on which banks in Toronto, Ontario are generally open for business and are not authorized or obligated by law to close;

**"Canada Yield"** means, on any date, the yield to maturity on such date as determined by the arithmetic average (rounded to three decimal places) of the yields quoted at 10:00 a.m. (Toronto time) by two major Canadian investment dealers selected by the Corporation in accordance with Section 4.11, assuming semi-annual compounding and calculated in accordance with generally accepted financial practice, which a non-callable Government of Canada bond would carry if issued in Canadian dollars in Canada at 100% of its principal amount on such date with a term to maturity approximately equal to the remaining term to maturity of the particular Series of Notes in respect of which the Canada Yield Price is being determined;

**"Canada Yield Price"** means the price, in respect of the principal amount of the Notes of a particular Series, calculated as of the Business Day immediately prior to the Business Day on which the Corporation gives a Notice of Redemption in respect of such Notes pursuant to Section 4.3 equal to the net present value of all scheduled payments of interest (other than accrued and unpaid interest) and principal on such Notes from the Redemption Date to the Maturity Date using as a discount rate the sum of the Canada Yield on such Business Day plus the Applicable Spread;

**"Capital Lease"** means any lease of any property that would be classified and accounted for as a capital lease on the balance sheet of the lessee in accordance with GAAP;

**"Capital Lease Obligation"** means a Capital Lease, provided that such Capital Lease is incurred or assumed within 18 months after the acquisition of real property or fixtures or the completion of construction, installation or improvement, as the case may be, and includes any extension, renewal or refunding of any such Capital Lease, so long as the principal amount thereof outstanding on the date of extension, renewal or refunding is not increased, and for purposes hereof the amount of Capital Lease Obligations shall be the capitalized amount thereof, determined in accordance with GAAP;

**"CDS"** means CDS Clearing and Depository Services Inc. and its successors;

**"Certificate of Compliance"** has the meaning set out in Section 11.12(d);

**"Certificate of the Corporation", "Written Order of the Corporation", "Written Request of the Corporation" and "Written Direction of the Corporation"** mean, respectively, a certificate, written order, written request and written direction signed in the name of the Corporation by any two officers of the Corporation;

**"Certified Board Resolution"** means a copy of a resolution certified by the Secretary, an Assistant Secretary, a Vice-President or the President of the Corporation to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification;

**"Consolidated Net Worth"** means, as at any date, the consolidated shareholders' equity of the Corporation and its Subsidiaries as at such date determined in accordance with GAAP at such time;

**"Consolidated Senior Indebtedness"** means, at any particular time, the amount of Senior Indebtedness of the Corporation and its Subsidiaries determined on a consolidated basis in accordance with GAAP at such time;

**"Corporate Trust Offices"** means the offices of the Trustee at which at any particular time its corporate trust business shall be administered, which offices at the date of original execution of this Indenture are located at the Principal Corporate Trust Office, except that, with respect to the presentation of Notes for payment or registration of transfers and exchanges and the location of the Register, such term means the offices or agencies of the Trustee at which at any particular time its corporate agency business shall be conducted, which at the date of original execution of this Indenture are located in Toronto, Ontario, at the Principal Corporate Trust Office, in Toronto, Ontario at 100 University Avenue, 9<sup>th</sup> Floor, Toronto, Ontario M5J 2Y1;

**"Corporation"** means Algoma Power Inc. and includes any Successor Entity to or of the Corporation which shall have complied with Section 6.2(b);

**"Corporation's Auditors"** or **"Auditors of the Corporation"** means a nationally recognized independent firm of chartered accountants duly appointed as auditors of the Corporation;

**"Counsel"** means a barrister and solicitor or a firm of barristers and solicitors retained or employed by the Trustee or retained or employed by the Corporation and acceptable to the Trustee, as applicable;

**"Default"** means any event which, after the giving of notice, or passage of time, or both, would constitute an Event of Default;

**"Depository"** means CDS or such other nationally recognized clearing agency as is designated in writing by the Corporation to act as depository in respect of one or more Series of Book-Entry Only Notes;

**"director"** means a director of the Corporation for the time being and **"directors"** or **"Board of Directors"** means the board of directors of the Corporation or, if duly constituted and whenever duly empowered, the executive committee of the board of directors of the Corporation for the time being, and reference to action by the directors means action by the directors of the Corporation as a board or action by the said executive committee as such committee;

**"Distribution"** means:

- (a) any dividend or other distribution (other than a stock dividend) on (or declaration thereof or any setting aside payment thereof), purchase, redemption or other acquisition for value of, or reduction of capital or other distribution or payment (in cash, property or obligation) in respect of the shares of the Corporation;
- (b) any payment of principal or interest on any Subordinated Indebtedness of the Corporation;

- (c) any loan or investment by the Corporation or a Subsidiary in any entity that is not a Subsidiary;
- (d) any payment, repayment, redemption, retraction or other retirement or purchase for cancellation of securities of the Corporation or of any option, warrants or other rights to acquire such securities; and
- (e) any payment of Management Fees, in aggregate, in excess of \$1,000,000 per year, to an Affiliate of either the Corporation or any of the Subsidiaries, other than to any Subsidiary, and other than reimbursements, on a cost basis, for shared services and expenses provided by an Affiliate to the Corporation or its Subsidiaries.

**"Event of Default"** has the meaning set out in Section 7.1;

**"Experience Threshold"** has the meaning set out in Section 6.2(b);

**"Extraordinary Resolution"** has the meaning set out in Section 9.14(a);

**"Financial Instrument Obligations"** means, with respect to any person, obligations arising under any agreement relating to derivatives, including:

- (a) interest rate swap agreements, forward rate agreements, floor, cap or collar agreements, futures or options, insurance or other similar agreements or arrangements, or any combination thereof, entered into or guaranteed by the person where the subject matter thereof is interest rates or the price, value or amount payable thereunder is dependent or based upon interest rates or fluctuations in interest rates in effect from time to time (but excluding conventional floating rate indebtedness);
- (b) currency swap agreements, cross-currency agreements, forward agreements, floor, cap or collar agreements, futures or options, insurance or other similar agreements or arrangements, or any combination thereof, entered into or guaranteed by the person where the subject matter thereof is currency exchange rates or the price, value or amount payable thereunder is dependent or based upon currency exchange rates or fluctuations in currency exchange rates in effect from time to time;
- (c) any agreement for the making or taking of any commodity (including coal, natural gas, oil and electricity), swap agreement, floor, cap or collar agreement or commodity future or option or other similar agreement or arrangement, or any combination thereof, entered into or guaranteed by the person where the subject matter thereof is any commodity or the price, value or amount payable thereunder is dependent or based upon the price or fluctuations in the price of any commodity; or any other similar transaction, including any option to enter into any of the foregoing, or
- (d) any combination of the foregoing;

in each case to the extent of the net amount due or accruing due by the person under the obligations determined by marking the obligations to market in accordance with their terms;

**"GAAP"** means, at any given time, generally accepted accounting principles (including IFRS, as applicable) as in effect at such time, at the option of the Corporation, in Canada or the United States of America;

**"Global Note"** has the meaning set out in Section 2.4(a);

**"IESO"** means the Independent Electricity System Operator, an independent system operator appointed to hold such position under the *Electricity Act, 1998* and any successor thereto who performs a similar function on behalf of the Province of Ontario whether or not appointed under the *Electricity Act, 1998*;

**"IFRS"** means, at any given date, International Financial Reporting Standards, which include standards and interpretations adopted by the International Accounting Standards Boards (IASB) or any successor body;

**"Indebtedness"** means, with respect to the Corporation and the Subsidiaries,:

- (i) all obligations for borrowed money including obligations with respect to bankers' acceptances and contingent reimbursement obligations relating to letters of credit and other financial instruments;
- (ii) all preferred shares and other securities ranking in priority to common shares (except if issued directly by the Corporation);
- (iii) all subordinated indebtedness (except Subordinated Indebtedness);
- (iv) all obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired;
- (v) all guarantees of obligations of entities other than the Corporation or its Subsidiaries; and
- (vi) all Capital Leases and Purchase Money Obligations;

but in any event shall not include accounts payable, income taxes payable, accrued liabilities, deferred revenue, deferred income taxes and non-controlling interests;

**"Indenture"** means this trust indenture, as amended, supplemented, restated or replaced from time to time;

**"Indenture Legislation"** has the meaning set out in Section 11.1(a);

**"interest"** means the interest payable on a Note prior to or after the Maturity Date or an Event of Default in accordance with the terms of such Note, or as set forth herein or in a Supplemental Indenture;

**"Interest Payment Date"** means the Stated Payment Date of an instalment of interest on a Note;

**"laws"** means all laws, by-laws, statutes, codes, ordinances, regulations, rules, policies, treaties, judgments, decrees, directives, consents, authorizations, orders and policies to the extent that the foregoing have the force of law by being directly enforceable by a governmental or regulatory authority or by a court;

**"Liens"** means, with respect to any property or assets, any security interest, mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge, assignment, adverse claim, defect of title in, on or of such property or assets, the interest of a vendor or a lessor under any conditional sales contract, hire-purchase agreement, chattel mortgage, title retention agreement or capital lease (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such property or assets and any other arrangement having the effect of providing security;

**"Management Fees"** means management, advisory or other similar fees (but excludes payments for rental of facilities and insurance);

**"Material Adverse Effect"** means, when used with reference to any event or circumstance, an event or circumstance that has had or would reasonably be expected to have: (a) a material adverse effect on the business, assets, property, capital, operations, condition (financial or otherwise) or prospects of the Corporation and its Subsidiaries, taken as a whole, but excluding any circumstance resulting in losses, costs or expenses where such amount would reasonably be expected to be recoverable by the Corporation and/or the Subsidiaries from their customers pursuant to future rate orders issued by the OEB, or (b) a material adverse effect on the ability of the Corporation to perform its obligations under this Indenture or the Notes, or (c) an adverse effect on the validity or enforceability of this Indenture or the Notes or the rights and remedies of any of the Noteholders under this Indenture or the Notes not attributable solely to the fault or neglect of the Noteholders;

**"Maturity Date"** means, in respect of a Note, the stated date upon which the final principal payment in respect of such Note is required to be made pursuant to the terms thereof and, in respect of the Series 11-1 Notes, means the date set out in Section 3.1(c);

**"Non-Recourse Indebtedness"** means any Indebtedness incurred to finance the creation, development, construction or acquisition of an asset of such person (and any extensions, renewals or refunding of any such Indebtedness) provided that the recourse of the obligee thereof against such person is limited in all circumstances (other than in respect of false or misleading representations or warranties) to the asset (including all rights and benefits related to or arising out of the asset);



**"Non-Speculative Financial Instrument Obligations"** means, with respect to a person, Financial Instrument Obligations of the person entered into by the person in the ordinary course of business for risk management purposes and not for speculative or capital raising purposes.

**"Noteholder"** means, when used with respect to any Note at any particular time, the person in whose name the Note is registered in the Register at such time;

**"Noteholder Approval"** means the approval of Noteholders holding an aggregate of more than 25% of the principal amount of Notes or, if applicable, any Series of Notes then outstanding;

**"Noteholders' Request"** means an instrument requesting the Trustee to take or refrain from taking some action or proceeding specified therein, signed in one or more counterparts by the Noteholder or Noteholders representing not less than 25% of the total principal amount of all Notes or, if applicable, any Series of Notes then outstanding;

**"Notes"** means the debentures of the Corporation issued, certified and outstanding hereunder from time to time;

**"Notice of Redemption"** has the meaning set out in Section 4.3;

**"OEB"** means the Ontario Energy Board, an independent, quasi-judicial tribunal which is responsible for, among other things, the regulation of the transmission and distribution sectors of Ontario's electricity industry and includes any successor body or tribunal thereto;

**"outstanding"** has the meaning set out in Section 1.4;

**"Participants"** means institutions that participate directly in the Depository's book-entry registration and book-based securities transfer system administered by the Depository;

**"Participants List"** means the list of Participants maintained by the Depository;

**"Paying Agent"** means any person, which may include the Trustee, authorized by the Corporation to pay the principal of and Premium, if any, and interest on any Notes on behalf of the Corporation;

**"Permitted Liens"** means any or all of the following:

- (a) any Security Interest granted by the Corporation to secure the Notes;
- (b) any Security Interest that secures the obligations of a Subsidiary which existed prior to the date on which it became a Subsidiary and which (i) was not incurred in contemplation of such person becoming a Subsidiary and (ii) is not applicable to the Corporation or any other Subsidiary or the properties or assets of the Corporation or any other Subsidiary;

- (c) any Purchase Money Security Interest or any Security Interest with respect to Capital Lease Obligations of the Corporation or a Subsidiary for assets acquired after the date hereof;
- (d) any Security Interest on a property or asset acquired by the Corporation or a Subsidiary that secures the obligations of a person (whether or not such obligation is assumed by the acquiring person) which Security Interest exists at the time such property or asset is acquired and which (i) was not incurred in contemplation of such property or asset being acquired, and (ii) is not applicable to the Corporation or any Subsidiary or the properties or assets of the Corporation or any Subsidiary;
- (e) any Security Interest granted by a Subsidiary in favour of the Corporation or a wholly-owned Subsidiary;
- (f) any Security Interest on or against cash or marketable debt securities pledged to secure Non-Speculative Financial Instrument Obligations which hedges Indebtedness of the Corporation or a Subsidiary;
- (g) any Security Interest for taxes, payments in lieu of taxes, assessments, government charges or claims that are being contested in good faith and in respect of which appropriate provision is made in the consolidated financial statements of the Corporation in accordance with GAAP;
- (h) Security Interests securing appeal bonds or other similar Security Interests arising in connection with contracts, bids, tenders or court proceedings (including, without limitation, surety bonds, security for costs of litigation where required by law and letters of credit) or any other instruments serving a similar purpose;
- (i) a Security Interest in cash or marketable debt securities in a sinking fund account established by the Corporation in support of a Series;
- (j) a lien or deposit under workers' compensation, social security or similar legislation or good faith deposits in connection with bids, tenders, leases, contracts or expropriation proceedings, or deposits to secure public or statutory obligations or deposits of cash or obligations to secure surety and appeal bonds;
- (k) a lien or privilege imposed by law, such as builders', carriers', warehousemen's, landlords', mechanics', and material men's liens and privileges, and any lien or privilege arising out of judgments or awards with respect to which the Corporation or a Subsidiary at the time is prosecuting an appeal or proceedings for review and with respect to which it has secured a stay of execution pending such appeal or proceedings for review; or liens for taxes, assessments or governmental charges or levies not at the time due and delinquent or the validity of which is being contested at the time by the Corporation or a Subsidiary in good faith; or undetermined or inchoate liens, privileges and charges incidental to current operations which have not at such time been filed pursuant to law against the Corporation or a Subsidiary or which relate to obligations not due or

delinquent; or the deposit of cash or securities in connection with any lien or privilege referred in this paragraph (k);

- (l) any defect or irregularity in title or minor encumbrance, including, without limitation, easements, rights-of-way, servitudes or other similar rights in land granted to or reserved by other persons, rights-of-way for sewers, electric lines, telegraph and telephone lines and oil and natural gas pipe lines and other similar purposes, or zoning or other restrictions as to the use of real properties, which encumbrances, easements, servitudes, rights-of-way or other similar rights and restrictions do not in the aggregate materially detract from the value of such properties or materially impair their use in the operation of the business of the Corporation or a Subsidiary;
- (m) any right reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, license, franchise, grant or permit acquired by the Corporation or a Subsidiary, or by any statutory provision, to terminate any such lease, license, franchise, grant or permit or to purchase assets used in connection therewith or to acquire annual or other periodic payments as a condition to the continuance thereof;
- (n) a lien or right of distress reserved in or exercisable under any lease for rent and for compliance with the terms of such lease;
- (o) any Security Interest granted by the Corporation or a Subsidiary to a public utility or any municipality or governmental or other public authority when required by such utility, municipality or other authority in connection with the operations of the Corporation or such Subsidiary;
- (p) any reservation, limitation, proviso or condition, if any, expressed in any original grants to the Corporation or a Subsidiary from the Crown;
- (q) any extension, renewal, alteration, substitution or replacement, in whole or in part, of a Security Interest referred to in the foregoing clauses (a) through (p), provided the extension, renewal, alternation, substitution or replacement of such Security Interest is limited to all or any part of the same property that secured the Security Interest extended, renewed, altered, substituted or replaced, the principal amount of the obligations secured thereby is not thereby increased, the terms of the Indebtedness secured thereby is not shortened and the terms and conditions thereof are no more restrictive in any material respect than the Security Interest so extended;
- (r) any encumbrance provided in support of letters of credit issued in favour of the IESO, Hydro Quebec or any other wholesale market administrator to meet prescribed prudential requirements in the wholesale market for electricity administered by such party;
- (s) Security Interests created by any Subsidiary from time to time on any on any of its properties or assets which secure Indebtedness permitted by Section 6.2(b);

- (t) any Security Interest in an asset, other than Principal Property, created or assumed by the Corporation or a Subsidiary to secure Non-Recourse Indebtedness of the Corporation or a Subsidiary in respect of such asset; and
- (u) any other encumbrances not referred to above, subject to an aggregate cap of 10% of the sum of Consolidated Net Worth and Subordinated Indebtedness of the Corporation;

**"Permitted Indebtedness"** means (i) to the extent not already borrowed, short or medium term operating facilities of the Corporation and/or its Subsidiaries not exceeding 10% of the sum of Consolidated Net Worth and Subordinated Indebtedness of the Corporation, in aggregate, (ii) Indebtedness of the Corporation and Subsidiaries up to \$1,000,000 in aggregate in each fiscal year for expenditures directed by the OEB or any other regulatory authority, (iii) any Indebtedness of the Corporation or a Subsidiary incurred to extend, renew, refund or refinance any Indebtedness at maturity so long as the principal amount thereof outstanding on the date of extension, renewal, refunding or refinancing is not increased, (iv) Non-Speculative Financial Instrument Obligations of the Corporation and its Subsidiaries, (v) contingent reimbursement obligations of the Corporation and its Subsidiaries relating to letters of credit and other financial instruments issued to meet Prudential and Credit Support Obligations, (vi) Subordinated Indebtedness, and (vii) Indebtedness of a wholly-owned Subsidiary to the Corporation;

**"person"** shall be broadly interpreted and shall include any individual, corporation, company, partnership, association, unincorporated organization, trust, government or governmental authority, and pronouns referring to a person have a similarly extended meaning;

**"Premium"** means, in respect of any principal amount of Notes of a particular Series, the portion of the Applicable Redemption Price, excluding accrued and unpaid interest up to the Redemption Date, in excess of 100% of the outstanding principal amount of such Notes;

**"Principal Corporate Trust Office"** means 100 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario M5J 2Y1;

**"Principal Property"** means any of the Corporation's and its Subsidiaries' fixed assets used for the transformation or distribution of electricity and any revenues and rights associated with such fixed assets;

**"pro forma basis"** means a *pro forma* determination of the relevant financial calculation in accordance with GAAP unless otherwise provided for in this Indenture;

**"Prudential and Credit Support Obligations"** means all contingent obligations of the Corporation or its Subsidiaries relating to letters of credit, guarantees and other financial instruments incurred, provided or assumed by the Corporation or its Subsidiaries in the ordinary course of business to satisfy or otherwise comply with prescribed prudential and credit support arrangements required by the IESO or any other governmental authority or administrator in the electricity wholesale market;

**"Purchase Money Obligations"** means indebtedness of the Corporation or a Subsidiary incurred or assumed to finance the purchase price, in whole or in part, of any real or tangible personal property (except any indebtedness which constitutes Indebtedness and which was incurred or assumed to finance the purchase price, in whole or in part, of any shares, bonds or other securities) or incurred to finance the cost, in whole or in part, of construction or installation of or repairs, alteration or improvements to any real property or fixtures provided that such indebtedness is incurred or assumed within 18 months after the purchase of such real or tangible personal property or the completion of such construction, installation, repairs, alteration or improvements, as the case may be, and includes any extension, renewal or refunding of any such indebtedness, so long as the principal amount thereof outstanding on the date of extension, renewal or refunding is not increased;

**"Purchase Money Security Interest"** means any Lien on real or tangible personal property which is created, issued or assumed by the Corporation or any Subsidiary to secure the Purchase Money Obligation in respect of such property and includes any extension, renewal or refunding thereof so long as the principal amount outstanding on the date of such extension, renewal or refunding is not increased; provided that such Lien is limited to the property acquired in connection with the issuance, incurring or assumption of such Purchase Money Obligation;

**"Ratings Threshold"** has the meaning set out in Section 6.2(b);

**"Redemption Date"** has the meaning set out in Section 4.3;

**"Register"** has the meaning set out in Section 2.9(a);

**"Sale and Leaseback Transaction"** means an arrangement with a person by the Corporation or a Subsidiary providing for the leasing by it of personal property from such person that has been previously sold or transferred to such person by it;

**"Securities"** means any stock, shares, units, instalment receipts, voting trust certificates, bonds, debentures, notes, other evidences of indebtedness, or other documents or instruments commonly known as securities or any certificates of interest, shares or participations in, temporary or interim certificates for, receipts for, guarantees of, or warrants, options or rights to subscribe for, purchase or acquire, any of the foregoing;

**"Security Interest"** means any assignment, mortgage, charge (whether fixed or floating), hypothec, pledge, Lien, or other encumbrance on or interest in property or assets that secures payment of Indebtedness or obligation;

**"Senior Indebtedness"** means all Indebtedness except Subordinated Indebtedness;

**"Series"** means and refers to any series of Notes certified and delivered pursuant to this Indenture or any Supplemental Indenture and designated as a series of Notes;

**"Series 11-1 Notes"** means the 5.118% Senior Unsecured Notes due December 16, 2041 described in Section 3.1;

**"Stated Payment Date"** means, when used with respect to a Note or any instalment of interest thereon, the date specified in such Note as the fixed date on which the principal of such Note or the Applicable Redemption Price on a Redemption Date in respect of such Note or such instalment of interest, as applicable, is due and payable;

**"Subordinated Indebtedness"** means Indebtedness of the Corporation which (i) is subordinated in all rights to the Notes, (ii) has no rights of acceleration until 180 days following an event of default under such subordinated Indebtedness, (iii) has no rights to initiate remedies unless the Noteholders fail to initiate remedies within 120 days of being permitted to do so, (iv) does not permit any payments to be made in respect thereof at any time when monies are due and payable with respect to the Notes and (v) does not enjoy any credit support from a Subsidiary;

**"Subsidiary"** means:

- (a) any corporation of which Securities, having by the terms thereof ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time shares of any other class or classes of such corporation might have voting power by reason of the happening of any contingency, unless the contingency has occurred and then only for as long as it continues), are at the time directly, indirectly or beneficially owned or controlled by the Corporation or one or more of its Subsidiaries, or the Corporation and one or more of its Subsidiaries;
- (b) any partnership of which the Corporation, or one or more of its Subsidiaries, or the Corporation and one or more of its Subsidiaries: (i) directly, indirectly or beneficially owns or controls more than 50% of the income, capital, beneficial or ownership interest (however designated) thereof; and (ii) is a general partner, in the case of a limited partnership, or is a partner that has the authority to bind the partnership in all other cases; or
- (c) any other person of which at least a majority of the legal, beneficial or ownership interest (however designated) is at the time directly, indirectly or beneficially owned or controlled by the Corporation, or one or more of its Subsidiaries or the Corporation and one or more of its Subsidiaries;

**"Successor Entity"** has the meaning set out in Section 6.2(d);

**"Supplemental Indenture"** means an indenture supplemental to this Indenture pursuant to which, among other things, Additional Notes may be authorized for issue or the terms and conditions of this Indenture may be amended in the manner provided for in Article 12;

**"Taxes"** means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax, including Canada Pension Plan and Québec Pension

Plan contributions, employment insurance payments and workers' workplace, health, safety and compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties with respect thereto, imposed by any governmental authority (including federal, provincial, municipal and foreign governmental authorities), and whether disputed or not;

**"Total Consolidated Capitalization"** means, at any time and from time to time, without duplication, the sum of:

- (a) the principal amount of all Consolidated Senior Indebtedness at the time outstanding;
- (b) the principal amount of all Subordinated Indebtedness at the time outstanding;
- (c) the Consolidated Net Worth at such time;
- (d) the accumulated provision for deferred income taxes (net after deferred income tax credits) of the Corporation and its Subsidiaries at such time; and
- (e) the amount of any minority interest of the Corporation and its Subsidiaries at such time;

**"Trustee"** means Computershare Trust Company of Canada and its successor or successors as trustee hereunder;

**"United States"** has the meaning set forth in Regulation S under the U.S. Securities Act;

**"U.S. Global Note"** means a Global Note issued pursuant to Section 3.7(a);

**"U.S. Person"** means a person who is a "U.S. person" as defined in Regulation S under the U.S. Securities Act;

**"U.S. Securities Act"** means the United States *Securities Act of 1933*, as amended, and the rules and regulations promulgated by the United States Securities and Exchange Commission thereunder; and

**"U.S. Securities Act Legend"** has the meaning set out in Section 2.10(f).

## **1.2            Sections and Headings**

The division of this Indenture into Articles and Sections and the insertion of headings and a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Indenture. The terms "this Indenture", "hereof", "herein", "hereunder" and similar expressions refer to this Indenture and not to any particular Article, Section or other portion hereof and include any and every Supplemental Indenture. Unless otherwise specified, any reference herein to an Article, Section or Schedule refers to the specified Article or Section of or Schedule to this Indenture.

### 1.3 **Rules of Construction**

In this Indenture:

- (a) words importing the singular number only shall include the plural and *vice versa* and words importing the masculine gender shall include the feminine and neuter genders and *vice versa*;
- (b) the words "include", "includes" and "including" mean "include", "includes" or "including", in each case, "without limitation";
- (c) reference to any agreement or other instrument in writing means such agreement or other instrument in writing as amended, modified, replaced or supplemented from time to time;
- (d) unless otherwise indicated, reference to a statute shall be deemed to be a reference to such statute as amended, re-enacted or replaced from time to time; and
- (e) unless otherwise indicated, time periods within which a payment is to be made or any other action is to be taken hereunder shall be calculated by including the day on which the period commences and excluding the day on which the period ends.

### 1.4 **Meaning of "outstanding" for Certain Purposes**

Every Note certified and delivered by the Trustee hereunder shall be deemed to be outstanding until it shall be cancelled or delivered to the Trustee for cancellation or a new Note shall be issued in substitution therefor in accordance with the terms and conditions hereof or monies for the payment or redemption thereof shall have been set aside under Section 4.5 or 8.2, as the case may be, provided that:

- (a) a Note which has been partially redeemed or purchased or the principal of which has been partially repaid shall be deemed to be outstanding only to the extent of the part of the principal amount thereof that remains unpaid;
- (b) when a new Note has been issued in substitution for a Note which has been lost, stolen or destroyed, only the principal amount of one of such Notes shall be counted for the purpose of determining the aggregate principal amount of Notes outstanding;
- (c) for the purposes of any provision of this Indenture entitling Noteholders of outstanding Notes to vote, sign consents, requisitions or other instruments or take any other action under this Indenture, a Note owned legally or equitably by the Corporation or any Affiliate shall be disregarded, except that:
  - (i) for the purpose of determining whether the Trustee shall be protected in relying on any such vote, consent, requisition or other instrument or action, only a Note which the Trustee knows is so owned shall be so disregarded; and



- (ii) a Note so owned which has been pledged in good faith other than to the Corporation or an Affiliate shall not be so disregarded if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Note in its discretion free from the control of the Corporation or any Affiliate; and
- (d) the Corporation shall, upon the Trustee's written request, file with the Trustee a Certificate of the Corporation setting forth as at the date of such certificate the total principal amount of Notes owned legally or equitably by the Corporation or any Affiliate.

#### **1.5 Language**

(a) Les parties aux présentes ont exigé 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 Indenture and all documents and notices related hereto and/or resulting herefrom be prepared in English.

(b) Any request, demand, authorization, direction, notice, consent, election or waiver required or permitted under this Indenture shall be in the English language (or in the French language in the Province of Québec, but only to the extent required by law), except that, for countries other than Canada, if the Corporation so elects, any published notice may be in an official language of the country of publication.

#### **1.6 Time of Essence**

Time shall be of the essence of this Indenture.

#### **1.7 Successors and Assigns**

All covenants and agreements of the Corporation in this Indenture and the Notes shall bind its successors and assigns, whether so expressed or not. All covenants and agreements of the Trustee in this Indenture shall bind its successors.

#### **1.8 Severability**

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, such provision shall be deemed to be severed herefrom or therefrom and the validity, legality and enforceability of the remaining provisions shall not in any way be affected, prejudiced or impaired thereby.

#### **1.9 Entire Agreement**

This Indenture and all Supplemental Indentures and all Schedules hereto and thereto, and the Notes issued hereunder and thereunder, together constitute the entire agreement between the parties hereto with respect to the Indebtedness created hereunder and thereunder and under the Notes and supersedes as of the date hereof all prior memoranda, agreements,

negotiations, discussions and term sheets, whether oral or written, with respect to the Indebtedness created hereunder or thereunder and under the Notes.

**1.10 Benefits of Indenture**

Nothing in this Indenture or in the Notes, express or implied, shall give to any person, other than the parties hereto, and the Noteholders, any benefit or any legal or equitable right, remedy or action hereunder or in respect of the Notes.

**1.11 Applicable Law and Attornment**

This Indenture, any Supplemental Indenture and the Notes shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as Ontario contracts. With respect to any suit, action or proceedings relating to this Indenture, any Supplemental Indenture or any Note, the Corporation, the Trustee and each Noteholder irrevocably submit and attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

**1.12 Currency of Payment**

Unless otherwise indicated in a Supplemental Indenture with respect to any particular Series of Notes, all payments to be made under this Indenture or a Supplemental Indenture shall be made in Canadian dollars.

**1.13 Per Annum Calculations**

Unless otherwise stated, wherever reference is made in this Indenture to a rate of interest "per annum", or a similar expression is used, the interest shall be calculated on the basis of a calendar year of 365 days or 366 days, as the case may be.

**1.14 Non-Business Days**

Whenever any payment to be made hereunder shall be due, any period of time would begin or end, any calculation is to be made or any other action is to be taken on, or as of, or from a period ending on, a day other than a Business Day, such payment shall be made, such period of time shall begin or end, such calculation shall be made and such other action shall be taken, as the case may be, unless otherwise specifically provided herein, on or as of the next succeeding Business Day and, in the case of the payment of any amount, the extension of time shall be included for the purpose of the computation of interest, if any, thereon.

**1.15 Accounting Terms**

Except as hereinafter provided or as otherwise indicated in this Indenture, all calculations required or permitted to be made hereunder pursuant to the terms of this Indenture shall be made in accordance with GAAP.

## **1.16 Schedules**

The following Schedules are incorporated into and form part of this Indenture:

Schedule "A"	-	Form of Global Note - Series 11-1 Notes
Schedule "B"	-	U.S. Securities Act Legend
Schedule "C"	-	Form of Declaration for Removal of Legend
Schedule "D"	-	Form of Certificate of Compliance
Schedule "5.1(j)"	-	Litigation and Other Proceedings
Schedule "5.1(o)"	-	Indebtedness
Schedule "5.1(p)"	-	Simplified Corporate Structure
Schedule "5.1(q)"	-	Compliance with Laws

In the event of any inconsistency between the provisions of any Section of this Indenture and the provisions of the Schedules which form a part hereof, the provisions of this Indenture shall prevail to the extent of the inconsistency.

## **ARTICLE 2** **THE NOTES**

### **2.1 No Fixed Limitation**

The aggregate principal amount of all Series of Notes authorized to be issued under this Indenture is unlimited but Notes may be issued only upon and subject to the terms and conditions herein provided. All Notes now or hereafter issued under this Indenture shall, subject to the terms and conditions of this Indenture, be equally and rateably entitled to the benefits hereof, whatever may be the actual dates or terms of issue of the same.

### **2.2 Issuance in Series**

(a) The Notes may be issued in one or more Series, subject to compliance with the terms and conditions set forth herein. The Notes of any such Series (other than the Series 11-1 Notes, which shall have the attributes set out in this Indenture) may be limited to such aggregate principal amount, shall bear such date or dates, and mature on such date or dates, shall bear interest at such rate or rates, may be issued in such denominations, may be redeemable before maturity in such manner and subject to payment of such premium, or without premium, may be payable as to principal, interest and premium, if any, at such place or places and in such currency or currencies, may be repayable at the option of the holder on such date or dates, may provide for such sinking fund, if any, may contain such provisions for the exchange or transfer of Notes of the same Series of different denominations or forms, and may contain such other provisions, not inconsistent with the provisions of this Indenture, as may be determined by the Corporation at or prior to the time of issue thereof and expressed in a Supplemental Indenture providing for the issuance of the Notes of such Series.

(b) Subject to the terms and conditions of this Indenture, and subject to any limitations as to the maximum principal amount of Notes of any particular Series, Notes may be issued as part of any Series previously issued.

### **2.3 Notes to Rank *Pari Passu***

All Notes shall be direct, senior unsecured unsubordinated obligations of the Corporation, shall rank *pari passu* with all other Notes and with all other present and future unsecured and unsubordinated Indebtedness of the Corporation (except as to sinking fund provisions applicable to different Series of Notes, if applicable), and shall have priority over all Subordinated Indebtedness (irrespective of whether any such Subordinated Indebtedness is secured or not).

### **2.4 Book-Entry Only Notes**

(a) Except as otherwise provided in a Supplemental Indenture applicable to a Series of Notes, each Series of Notes, including the Series 11-1 Notes, shall be issued as Book-Entry Only Notes represented by one or more fully registered global Notes (each, a "**Global Note**"). Each Global Note certified in accordance with this Indenture or any Supplemental Indenture shall be registered in the name of the Depository designated for such Global Note or a nominee thereof and delivered to the Depository or a nominee thereof as custodian therefor, and each such Global Note shall constitute a single Note for all purposes of this Indenture and all Supplemental Indentures. Beneficial interests in a Global Note will not be shown on the Register or the records maintained by the Depository but will be represented through book-entry accounts of Participants on behalf of the Beneficial Owners having an interest in such Global Note. None of the Corporation, the Trustee nor any other Paying Agent, if any, shall have any responsibility or liability for any aspects of the records relating to or payments made by the Depository or any Participant on account of the beneficial interests in any Global Note. Except as provided in Section 2.4(e), neither the Corporation nor the Trustee shall be under any obligation to deliver to Beneficial Owners or Participants, nor shall the Beneficial Owners or Participants have any right to require the delivery of, individual registered Notes in definitive form registered in the names of the Beneficial Owners.

(b) Each purchaser of an interest in a Book-Entry Only Note will receive a customer confirmation of purchase from the Participant from whom the interest in the Book-Entry Only Notes is purchased in accordance with the practices and procedures of such Participant.

(c) All references herein to actions by, notices given or payments made to Noteholders shall, when Book-Entry Only Notes are represented by a Global Note, refer to actions taken by the Depository upon instruction from the Participants in accordance with the Depository's rules and procedures or notices given or payments made to the Depository, as applicable. The rights of Beneficial Owners shall be limited to those established by applicable law and the applicable agreements between the Depository and the Participants and between such Participants and Beneficial Owners, and must be exercised through a Participant in accordance with the operating rules and procedures of the Depository in effect from time to time. Each of the Corporation and the Trustee may deal with the Depository for all purposes (including the making of payments) as the authorized representative of the respective Beneficial Owners

and such dealing with the Depository shall constitute satisfaction or performance, as applicable, of their respective obligations hereunder.

(d) An interest in a Book-Entry Only Note may be transferred or exchanged only through a Participant pursuant to Section 2.11. In such case, the Trustee shall deal with the Depository and Participants as representatives of the Beneficial Owners of such Note for purposes of exercising the rights of Noteholders hereunder, as provided in this Indenture. Requests and directions from, and votes of, such representatives shall not be deemed to be inconsistent if they are made with respect to different Beneficial Owners.

(e) Notwithstanding any other provision in this Indenture or any provision in any Supplemental Indenture, no Global Note may be exchanged in whole or in part for fully registered Notes in definitive form, and no transfer of a Global Note in whole or in part may be registered, in the name of any person other than the Depository for such Global Note or a nominee thereof unless:

- (i) the Depository notifies the Corporation that it is unwilling or unable to continue to act as depository in connection with the Global Note and the Corporation is unable to locate a qualified successor;
- (ii) the Corporation determines that the Depository is no longer willing, able or qualified to discharge properly its responsibilities as Noteholder of the Global Note and the Corporation is unable to locate a qualified successor;
- (iii) the Corporation executes and delivers to the Trustee a Written Order of the Corporation to the effect that all or a part of such Global Note shall be so exchangeable;
- (iv) the Depository ceases to be a clearing agency or otherwise ceases to be eligible to be a depository and the Corporation is unable to locate a qualified successor;
- (v) the Corporation determines that the Notes shall no longer be held as Book-Entry Only Notes through the Depository;
- (vi) if, after the occurrence of an Event of Default, the Depository advises the Trustee that it received written notification from Participants, acting on behalf of Beneficial Owners representing, in the aggregate, more than 50% of the aggregate principal amount of outstanding Notes that the continuance of the Depository's book-entry registration system in respect of the Notes is no longer in their best interests; or
- (vii) such right is required by applicable law as determined by the Corporation;

following which Notes in fully registered form shall be issued to the Beneficial Owners of interests in such Global Note or their nominees. All such Notes issued in exchange for a Global Note or any portion thereof shall be registered in such names as the Depository for such Global Note shall direct and shall be entitled to the same benefits and subject to the same terms and

conditions (except insofar as they relate specifically to Global Notes) as the Global Note or portion thereof surrendered upon such exchange.

(f) If the Beneficial Owners of interests in a Global Note are entitled to exchange such interests for fully registered Notes in definitive form of like tenor and principal amount of any authorized form and denomination, as contemplated herein, then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Corporation shall deliver to the Trustee definitive Notes in fully registered form in aggregate principal amount equal to the principal amount of such Global Note. On or after the earliest date on which such interests may be so exchanged, the Global Note shall be surrendered by the Depository, and in accordance with instructions given to the Trustee and the Depository, as shall be specified in the Written Order of the Corporation with respect thereto to the Trustee, as the Corporation's agent for such purpose, shall be exchanged, in whole or in part, for definitive Notes without charge. The Trustee shall certify and make available for delivery, in exchange for each portion of such surrendered Global Note, a like aggregate principal amount of definitive Notes of authorized denominations and of like tenor as the portion of such Global Note to be exchanged which shall be in the form of definitive Notes; provided that such definitive Notes shall be registered in such name or names as the Depository or the applicable Participant shall instruct the Corporation and the Trustee.

(g) Every Note authenticated and delivered upon registration of transfer of a Global Note, or in exchange for or in lieu of a Global Note or any portion thereof, whether pursuant to this Section 2.4 or otherwise, shall be certified and delivered in the form of, and shall be, a Global Note, unless such Note is registered in the name of a person other than the Depository for such Global Note or a nominee thereof.

(h) Notwithstanding any provision of this Indenture, the Corporation and the Trustee may elect to terminate the arrangements with the Depository with respect to Notes for any reason and appoint a successor Depository. Upon such termination and appointment, the Trustee shall cause the Depository to surrender the Global Note(s) to the Trustee and to provide the Trustee with written information on the interest of Participants in the Notes represented by such Global Note. Upon receiving such information, the Trustee shall authenticate and deliver to the successor Depository a replacement Global Note in accordance therewith.

## **2.5 Form of Notes**

(a) The Notes of any Series may be of different denominations and forms and may contain such variations of tenor and effect, not inconsistent with the provisions of this Indenture, as are incidental to such differences of denomination and form, including variations in the provisions for the exchange of Notes of different denominations or forms and in the provisions for the registration or transfer of Notes, and any Series of Notes may consist of Notes having different dates of issue, different dates of maturity, different rates of interest, different redemption prices (if any) and different sinking fund provisions (if any) than Notes of any other Series. The Notes of each particular Series shall be designated and numbered in any manner prescribed by the Corporation with the approval of the Trustee.

(b) The Global Note in respect of the Series 11-1 Notes shall be substantially in the form set out in Schedule "A", with such appropriate insertions, omissions, substitutions and variations as the Trustee may approve, with such approval in each case to be conclusively evidenced by the Trustee's certification of such Global Note. In the event that Notes are issued other than as Book-Entry Only Notes as contemplated in Section 2.4(e), they shall be substantially in the same form as the Global Notes with appropriate insertions, omissions, substitutions and variations as may be required or permitted by the terms of this Indenture and shall bear such distinguishing letters and numbers as the Trustee may approve, with such approval conclusively evidenced by the Trustee's certification of such Notes in definitive form.

(c) The Notes may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Indenture as may be necessary or desirable to comply with the rules of any securities regulatory authority or otherwise, as may be determined by the Corporation prior to the certification and delivery thereof. Every Global Note of each Series of Notes certified and delivered by the Trustee shall bear a legend in substantially the following form:

*"This Note is a Global Note within the meaning of the Trust Indenture hereinafter referred to and is registered in the name of a Depository or nominee thereof. Unless this certificate is presented by an authorized representative of the Depository to the Corporation or its agent for registration of transfer, exchange or payment, and any certificate issued in respect thereof is registered in the name of the Depository or its nominee, or in such other name as is requested by an authorized representative of the Depository (and any payment is made to the Depository or its nominee or to such other entity as is requested by an authorized representative of the Depository), any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful since the registered holder hereof, the Depository, has an interest herein."*

(d) The Notes of any Series may be engraved, lithographed, printed or typewritten, or partly in one form and partly in another, as the Corporation may determine; provided that if the Notes of any Series are issued in typewritten form, the Corporation will on demand of any Noteholder thereof make available to such Noteholder within a reasonable time after such demand without expense to such Noteholder Notes which are engraved, lithographed or printed in exchange therefor.

## **2.6            Signature of Notes**

All Notes shall be signed (either manually or by facsimile signature) by the President or any Vice-President together with the Secretary of the Corporation. A facsimile signature upon any of the Notes shall for all purposes of this Indenture be deemed to be the signature of the person whose signature it purports to be and to have been signed at the time such facsimile signature is reproduced and, notwithstanding that any person whose signature, either manual or in facsimile, may appear on the Notes is not, at the date of this Indenture or at the date of the Notes or at the date of the certifying and delivery thereof, the President, a Vice-President or the Secretary of the Corporation, as the case may be, any such Notes shall be valid and binding upon the Corporation and entitled to the benefits of this Indenture.

## **2.7            Certification**

(a) No Note shall be issued or, if issued, shall be obligatory or shall entitle the Noteholder to the benefits of this Indenture, until it has been certified by or on behalf of the Trustee substantially in the form of the certificate provided for the Notes for the Series being issued or in such other form as may be approved by the Trustee, whose approval shall be conclusively evidenced by the certification thereof by or on behalf of the Trustee. Such certification on any Note shall be conclusive evidence as against the Corporation that such Note has been duly issued and is a valid and binding obligation of the Corporation and that the Noteholder is entitled to the benefits hereof.

(b) The certificate of the Trustee signed on the Notes shall not be construed as a representation or warranty by the Trustee as to the validity of this Indenture or of the Notes (except the due certification thereof and any warranties implied by law) and the Trustee shall in no respect be liable or answerable for the use made of the Notes or any of them or the proceeds thereof. The certificate of the Trustee signed on the Notes shall, however, be a representation and warranty by the Trustee that the Notes have been duly certified by or on behalf of the Trustee pursuant to the provisions of this Indenture.

## **2.8            Concerning Interest**

Every Note issued hereunder, whether issued originally or in exchange for previously issued Notes, shall bear interest (i) from and including the later of its date of issue (or from such other date as may be expressed in such Note) and the last Interest Payment Date on which full interest shall have been paid or made available for payment on the outstanding Notes of the same Series, (ii) to but excluding the next Interest Payment Date. Whenever in this Indenture there is mention, in any context, of the payment of interest, such mention shall be deemed to include the payment of interest on amounts in default.

## **2.9            Registration of Notes**

(a) The Corporation shall, at all times while any Notes are outstanding, cause to be kept by the Trustee at the Corporate Trust Office in Toronto, Ontario, a central register (the "**Register**") in which shall be entered the names and last known addresses of the Noteholders and the other particulars of the Notes held by them respectively and of all transfers of Notes as herein provided. Such registration shall be noted on the Notes by the Trustee. The Trustee shall, when requested to do so by the Corporation, provide to the Corporation a list of the names and addresses of the Noteholders entered on the Register maintained by the Trustee and showing the principal amounts and serial numbers of the Notes held by each such Noteholder.

(b) The Register shall at all reasonable times and upon prior written request be open for inspection by the Corporation and any Noteholder and any Beneficial Owner having a beneficial interest in a Global Note provided that such Beneficial Owner delivers a sworn affidavit confirming such beneficial ownership.



## 2.10 Transfer of Notes

(a) No transfer of a Note shall be valid unless made on the Register by the Noteholder thereof or his executors, administrators or other legal representatives or his or their attorney duly appointed by an instrument in writing in form and execution satisfactory to the Trustee, upon compliance with all applicable laws and such reasonable requirements as the Trustee may prescribe, and unless the name of the transferee shall have been duly entered on the Register and/or duly noted on such Note by the Trustee.

(b) A Noteholder shall not transfer a Note or any portion thereof if the aggregate principal amount of such Note being transferred to a transferee, or the portion thereof to be transferred, is less than the minimum permitted denomination of Notes of such Series.

(c) Neither the Corporation nor the Trustee shall be required (i) to transfer or exchange any Notes on any Interest Payment Date or during a period of 10 Business Days immediately preceding any such date, (ii) to transfer or exchange any Notes on the day of any selection by the Trustee of any Notes to be redeemed or purchased or during the 10 preceding Business Days or thereafter until after the mailing of any Notice of Redemption or purchase (provided that this provision shall not be applicable to a transfer of Notes between a corporation and its direct or indirect wholly-owned subsidiaries), or (iii) to transfer or exchange any Note selected or called for redemption in whole or in part unless upon due presentation thereof such Note or part thereof called for redemption shall not be redeemed.

(d) The transferee of a Note shall, after the appropriate form of transfer is lodged with the Trustee, and upon compliance with all other conditions in that behalf required by this Indenture or by law, be entitled to be entered on the Register as the Noteholder of such Note free from all equities or rights of set-off or counter-claim between the Corporation and the transferor or any previous Noteholder of such Note.

(e) Neither the Trustee nor the Corporation shall be charged with notice of or be bound to see to the execution of any trust, whether express, implied or constructive, in respect of any Note and may transfer any Note on the direction of the Noteholder thereof, whether named as trustee or otherwise, as though that person were the beneficial owner thereof.

(f) An interest in the U.S. Global Note or a fully registered Note in definitive form bearing the U.S. securities legend (the "**U.S. Securities Act Legend**") set out in Schedule "B" may be transferred only (A) to the Corporation, (B) outside the United States in accordance with Rule 904 of Regulation S under the U.S. Securities Act or (C) in accordance with (i) Rule 144A under the U.S. Securities Act, (ii) the exemption from registration under the U.S. Securities Act provided by Rule 144 thereunder, if available, or (iii) another available exemption from the registration requirements of the U.S. Securities Act, in each case in accordance with applicable state securities laws in the United States or the applicable securities laws of any other jurisdiction and, in the case of proposed transfers pursuant to (B) above, after providing a declaration to the Trustee in the form attached hereto as Schedule "C" (or such other form as the Trustee or the Corporation may prescribe from time to time) and, in the case of proposed transfers pursuant to clause (C) of this Section 2.10(f), after providing an opinion of counsel of recognized standing reasonably satisfactory to the Corporation to the effect that, or such certification or other

information as the Trustee may reasonably require to determine that, the proposed transfer may be effected without registration under the U.S. Securities Act.

(g) If, at any time within the 40-day period following the date on which a Series of Notes was first offered to the public, a Beneficial Owner of an interest in a Global Note representing that Series and not bearing the U.S. Securities Act Legend wishes to transfer its interest to a person in the United States or to or for the account or benefit of a U.S. Person, either the Depository will be instructed by the Trustee to make appropriate entries in the book entry accounts established and maintained by the Depository or its nominee for the Participants on behalf of the Beneficial Owners to increase the principal amount of the U.S. Global Note or the Corporation shall execute and deliver to the Trustee for authorization and registration a fully registered Note in definitive form bearing the U.S. Securities Act Legend in principal amount equal in amount to the principal amount of the beneficial interest being transferred and, in either event, the Depository will be instructed to reduce the principal amount of the Global Note not bearing the U.S. Securities Act Legend by a corresponding amount.

## **2.11 Transfer of Book-Entry Only Notes**

(a) Transfers and registrations of Global Notes will only be made to another nominee of the Depository or to a successor Depository or a nominee of such successor Depository.

(b) The Corporation and the Trustee understand that, notwithstanding anything herein to the contrary, transfers of ownership in any Book-Entry Only Note represented by a Global Note will be effected only:

- (i) with respect to the interest of Participants, through records maintained by the Depository or its successor or a nominee for the Global Note; and
- (ii) with respect to interests of Beneficial Owners, through records maintained by Participants. Beneficial Owners who are not Participants but who desire to purchase, sell or otherwise transfer ownership of or other interest in Book-Entry Only Notes represented by Global Notes may do so only through a Participant.

## **2.12 Persons Entitled to Payment**

(a) Unless otherwise required by law, the Noteholder or Noteholders in whose name any Note is registered shall be deemed to be and regarded as the owner or owners thereof for all purposes of this Indenture and payment of or on account of the principal of and Premium, if any, and interest on a Note shall be made only to the Noteholder thereof or to such Noteholder's nominee or, in the case of joint Noteholders, to such joint Noteholders or the nominee indicated to the Corporation in writing by all such joint Noteholders and such payment shall be a good and sufficient discharge to the Corporation, the Trustee and any Paying Agent, if any, for the amounts so paid. In the case of the death of one or more joint Noteholders, the principal of and Premium, if any, and interest on a Note may be paid to the survivor or survivors of such Noteholders whose receipt therefor shall constitute a valid discharge to the Corporation, the Trustee and any Paying Agent, if any.

(b) Subject to Section 2.12(d) in the case of a Book-Entry Only Note, as interest becomes due on each Note (except interest payable at maturity or on redemption, which shall be paid on presentation and surrender of such Note for payment), the Corporation or a Paying Agent, if any, will send or cause to be sent, at least three Business Days prior to each Interest Payment Date, by prepaid first-class mail (or, in the event of mail service interruption, by such other means as the Corporation and the Trustee, acting reasonably, shall determine), to the Noteholder for the time being at such Noteholder's address appearing on the Register, or in the case of joint Noteholders to the one whose name appears first on such Register, a cheque dated the applicable Interest Payment Date for such interest (less any Taxes required by law to be deducted and remitted to a taxing authority) payable to the order of such Noteholder, or in the case of joint Noteholders to the order of all such joint Noteholders, and negotiable at par at each of the places at which interest upon such Note is expressed to be payable.

(c) The delivery to the Corporation by a Noteholder of a Note or the receipt of such Noteholder for the principal monies, Premium, if any, and interest evidenced by such Note, respectively, shall be a good discharge to the Corporation, the Trustee and any Paying Agent, if any, each of which shall not be bound to enquire into the title of such Noteholder, save as ordered by a court of competent jurisdiction or as required by statute. Neither the Corporation, any Paying Agent, if any, nor the Trustee shall be bound to see to the execution of any trust affecting the ownership of any Note nor be affected by notice of any equity that may be subsisting in respect thereof.

(d) Notwithstanding any other provisions of this Indenture, payments of principal of and Premium, if any, and interest on each Book-Entry Only Note will be made by the Corporation or a Paying Agent, if any, to the Depository or its nominee, as the case may be, as Noteholder of the Global Note. Interest payments on the Global Note (less any Taxes required by law to be deducted and remitted to a taxing authority) will be made by wire transfer to the Depository of immediately available funds by 11:00 a.m. (EST) on the applicable Interest Payment Date (or such earlier date as may be agreed upon by the Corporation and the Depository and provided that interest payable at maturity or on redemption shall be paid on presentation and surrender of such Global Note). Principal payments and Premium, if any, on a Book-Entry Only Note will be made by wire transfer to the Depository of immediately available funds by 11:00 a.m. (EST) on the Stated Payment Date (or such earlier date as may be agreed upon by the Corporation and the Depository) against surrender by the Depository to the Trustee of the Global Note. As long as the Depository or its nominee is the registered owner of a Global Note, the Depository or its nominee, as the case may be, will be considered the sole owner of the Book-Entry Only Notes for the purposes of receiving payment on such Book-Entry Only Notes and for all other purposes under this Indenture and the Notes. For so long as the Depository is the registered holder of the Global Note, the record date for any payment to be made on any Stated Payment Date shall, unless otherwise notified to the Trustee and the Depository by the Corporation, be the 10th day preceding the applicable Stated Payment Date.

(e) If a definitive Note is issued in exchange for any portion of a Book-Entry Only Note prior to the relevant Interest Payment Date, interest will not be payable to the Depository on such Interest Payment Date or proposed date for payment, as the case may be, in respect of such Note, but will be payable on such Interest Payment Date or proposed date for payment, as

the case may be, only to the person to whom interest in respect of such portion of such Book-Entry Only Note is payable in accordance with the newly issued Note.

(f) Unless otherwise specified herein, the forwarding of a cheque or the initiation of a wire transfer by the Corporation, a Paying Agent, if any, or the Trustee, as the case may be, in accordance with the terms hereof will satisfy and discharge the liability for any amounts due to the extent of the sum or sums represented thereby (plus the amount of any Taxes deducted as aforesaid) unless such cheque is not honoured on presentation or such wire transfer is not completed; provided that in the event of the non-receipt of such cheque by the payee, or the loss or destruction thereof, or the non-completion of a wire transfer, the Corporation, a Paying Agent, if any, or the Trustee, as the case may be, upon being furnished with reasonable evidence of such non-receipt, loss or destruction and an indemnity reasonably satisfactory to it, will issue to such payee a replacement cheque for the amount of such cheque or initiate a new wire transfer for the amount of the original wire transfer.

(g) For greater certainty, the Trustee or any Paying Agent shall not be required to mail any cheques or wire any funds towards any payment unless and until the Trustee or any Paying Agent, as the case may be, is in receipt of such funds from the Corporation.

#### **2.13            Exchange**

(a) Notes of any denomination may be exchanged for Notes of any other authorized denomination or denominations, any such exchange to be for an equivalent aggregate principal amount of Notes. Any exchange of Notes may be made at any one of the Corporate Trust Offices of the Trustee. Any Notes tendered for exchange shall be surrendered to the Trustee and shall be cancelled. The Corporation shall execute, and the Trustee shall certify, all Notes necessary to carry out such exchanges.

(b) Notes issued in exchange for Notes which at the time of such issue have been selected or called for redemption at a later date shall be deemed to have been selected or called for redemption in the same manner and shall have noted thereon a statement to that effect.

#### **2.14            Mutilation, Loss, Theft or Destruction**

In case any of the Notes issued and certified hereunder shall become mutilated or be lost, stolen or destroyed, the Corporation shall issue, and thereupon the Trustee shall certify and deliver, a new Note upon surrender and cancellation of the mutilated Note or, in the case of a lost, stolen or destroyed Note, in lieu of and in substitution for the same, and the substituted Note shall be in a form approved by the Corporation and the Trustee, the execution by the Corporation and certification by the Trustee shall constitute conclusive evidence of such approval, and shall be entitled to the benefits of this Indenture equally with all other Notes issued or to be issued hereunder without preference or priority of one over another. The applicant for a new Note pursuant to this Section 2.14 shall bear the cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation and to the Trustee such evidence of ownership and of loss, destruction or theft of the Note so lost, destroyed or stolen as shall be satisfactory to the Corporation and to the Trustee in their discretion and such applicant may also be required to furnish an indemnity in amount and form

satisfactory to them in their discretion and shall pay the reasonable charges of the Corporation and the Trustee in connection therewith.

**2.15            Trustee Not Bound to Make Enquiries**

The Trustee, prior to the certification and delivery of any Notes under any of the provisions of this Article 2, shall not be bound to make any enquiry or investigation as to the correctness of the matters set out in any of the resolutions, opinions, certificates or other documents required by the provisions of or delivered in connection with this Indenture, but shall be entitled to accept, rely and act upon the said resolutions, opinions, certificates and other documents. The Trustee may nevertheless, in its discretion, require further proof in cases where it deems further proof desirable.

**2.16            Charges for Exchange and Transfer**

Except as herein otherwise provided, upon any exchange of Notes of any denomination for other Notes and upon any transfer of Notes, the Trustee may make a sufficient charge to reimburse it for any stamp or security transfer taxes or other governmental charge required to be paid and payment of the said charge shall be made by the party requesting such exchange or transfer as a condition precedent thereto.

**ARTICLE 3  
ISSUANCE AND DELIVERY OF NOTES**

**3.1            Series 11-1 Notes**

The first Series of Notes to be issued hereunder shall be the Series 11-1 Notes and shall:

- (a) be designated as "5.118% Senior Unsecured Notes due December 16, 2041";
- (b) be dated as of the 16th day of December, 2011;
- (c) mature on the 16th day of December, 2041;
- (d) bear interest (subject to Section 1.13 and Section 2.8) from and including the 16th day of December, 2011 at the rate of 5.118% per annum, payable semi-annually in arrears in equal instalments on June 16 and December 16 in each year, commencing on June 16, 2012, such interest to be payable after as well as before maturity and after as well as before default and judgment, with interest on amounts in default payable at the same rate;
- (e) be redeemable in accordance with Article 4;
- (f) be issued only as Book-Entry Only Notes in denominations of integral multiples of \$1,000; and

- (g) be substantially in the form of the Global Note attached as Schedule "A" with such distinguishing letters and numbers and other appropriate insertions, deletions, substitutions and variations as the Trustee may approve, with such approval to be conclusively evidenced by the Trustee's certification of such Global Note.

### **3.2 Issuance and Delivery of Series 11-1 Notes**

Series 11-1 Notes in the aggregate principal amount of \$52,000,000 are hereby created and shall be executed by the Corporation and, forthwith after such execution, shall be delivered to the Trustee. Upon receipt by the Trustee of an opinion of Counsel to the Corporation to the effect that all requirements imposed by this Indenture, by Indenture Legislation or by other applicable laws have been met in respect of the issue of such Notes, the aggregate principal amount of such Notes represented by Global Notes shall be certified by the Trustee and deposited with the Depository pursuant to a Written Direction of the Corporation without any further act or formality on the part of the Corporation and without the Trustee receiving any consideration therefor.

### **3.3 Issuance of Additional Notes**

Notes other than and in addition to the Series 11-1 Notes (the "**Additional Notes**") may from time to time be executed and issued by the Corporation and certified by the Trustee hereunder subject to this Section 3.3 and the requirements and restrictions provided in this Indenture. The Trustee shall certify and deliver Additional Notes pursuant to the Written Order of the Corporation but only upon the receipt of:

- (a) a Certificate of the Corporation stating that, after giving effect to the creation and issuance of such Additional Notes, no Default or Event of Default shall have occurred and be continuing;
- (b) a Written Order of the Corporation requesting the certification of such Additional Notes in the principal amount applied for and specifying the person or persons to whom such Additional Notes shall be delivered;
- (c) a Certified Board Resolution authorizing the issuance and requesting the certification of Additional Notes of such Series in the principal amount applied for and specifying the Series thereof and the particulars and provisions to be expressed in or which are to relate to such Additional Notes in accordance with the provisions of this Indenture;
- (d) a duly executed Supplemental Indenture in form and terms approved by the Trustee, acting reasonably, providing for the issuance of such Additional Notes and the terms thereof; and
- (e) an opinion or opinions of Counsel to the Corporation, dated the date of the Written Order of the Corporation described in Section 3.3(b), to the effect that:

- (i) the Corporation is a corporation existing under the laws of its jurisdiction of incorporation;
- (ii) the Corporation has all necessary corporate power and authority to enter into and carry out the provisions of the Supplemental Indenture and the Additional Notes applied for and such Supplemental Indenture and Additional Notes have been duly authorized, executed and delivered by the Corporation and constitute valid, legally binding and enforceable obligations of the Corporation;
- (iii) the Additional Notes applied for have been validly authorized, executed, issued and delivered by the Corporation and, when certified by the Trustee pursuant to the provisions of this Indenture, will be valid, legally binding and enforceable obligations of the Corporation; and
- (iv) all requirements imposed by the terms of this Indenture, the Supplemental Indenture, Indenture Legislation or other applicable laws for the issuance, delivery and certification of the Additional Notes applied for have been complied with.

#### **3.4 No Additional Notes to Be Issued During Default**

No Additional Notes shall be certified and delivered if the Corporation is at the time, to the knowledge of the Trustee, in default under any of the provisions of this Indenture, or if at the time, to the knowledge of the Trustee, any Default has occurred and is continuing. Any certification and delivery of any Additional Notes by the Trustee shall be conclusive evidence of the absence of knowledge on the part of the Trustee, relying on the Certificate of the Corporation delivered in accordance with Section 3.3(a), of any such default at the time of such certification and delivery.

#### **3.5 Trustee Not Bound to Make Enquiries**

The Trustee, prior to the certification and delivery of any Notes under any of the provisions of this Indenture, shall not be bound to make any enquiry or investigation into the correctness of the matters set forth in any of the resolutions, opinions, certificates or other documents required by the provisions hereof, but shall be entitled to accept and act upon the said resolutions, opinions, certificates and other documents; provided that the Trustee may in its discretion cause to be made such independent investigation as it may see fit.

#### **3.6 No Approval Required**

Notwithstanding any other provision of this Indenture, provided the terms and conditions of Section 3.3 shall have been satisfied, there shall be no requirement for any approval of the Noteholders in connection with such issuance of Additional Notes.

**3.7                    Notes Issued in the United States or to or for the account or benefit of U.S. Persons**

(a)        Notes issued by the Corporation, including any portion of the principal amount of the Series 11-1 Notes, in the United States or to or for the account or benefit of a U.S. Person, shall also be issued as fully registered Notes in definitive form or as Book-Entry Only Notes represented by one or more Global Notes substantially in the form of the Global Note set out in Schedule "A" for Series 11-1 Notes; provided that any fully registered Note or such Global Note shall also bear the U.S. Securities Act Legend.

(b)        The Corporation shall ensure that in the event fully registered Notes in definitive form are required to be issued pursuant to Section 2.4(e) to holders of interests in a U.S. Global Note, such definitive Notes shall also bear the U.S. Securities Act Legend.

(c)        If an interest in a U.S. Global Note or any fully registered Note in definitive form bearing the U.S. Securities Act Legend is sold outside the United States in accordance with Rule 904 of Regulation S under the U.S. Securities Act, and provided that the Corporation is a "foreign issuer" as defined in Regulation S under the U.S. Securities Act at the time of sale, the U.S. Securities Act Legend may be removed by providing a declaration to the Trustee, as registrar and transfer agent, to the effect set forth in Schedule "C" (or in such other form as the Trustee may from time to time prescribe). If an interest in a U.S. Global Note or any fully registered Note in definitive form bearing the U.S. Securities Act Legend is sold pursuant to Rule 144 under the U.S. Securities Act or, upon the request of a Noteholder, after (x) the date which is one year, or such shorter period of time as permitted by Rule 144 under the U.S. Securities Act or any successor provision thereunder, after the later of the date of the original issue of the Notes and the last date on which the Corporation or any of its Affiliates were the owner of such Noteholder's Note(s), or any predecessor thereof, or (y) such later date, if any as may be required by applicable law, such legend may be removed after the Trustee has received either a written opinion of U.S. counsel of recognized standing reasonably satisfactory to the Corporation to the effect that or such certificate or other information as the Trustee may reasonably require to determine that, such legend is no longer required under applicable requirements of the U.S. Securities Act or state securities laws in the United States.

(d)        Except as provided in Section 3.7(c), if any fully registered Note in definitive form that bears the U.S. Securities Act Legend is tendered for transfer, the Note issued to such transferee shall also bear the U.S. Securities Act Legend.

**ARTICLE 4**  
**REDEMPTION AND PURCHASE OF NOTES**

**4.1                    Redemption of Notes**

(a)        The Corporation shall have the right, at its option, to redeem either in whole at any time or in part from time to time before maturity, Notes issued hereunder of any Series or part of a Series which by their terms are made so redeemable, at such rate or rates of premium, if any, and at such date or dates and on such terms and conditions as shall have been determined at the time of issue of such Notes and as shall be expressed in this Indenture and/or in the Notes



and/or in the Supplemental Indenture authorizing or providing for the issue thereof. Notes of any Series which are redeemable before their maturity shall be redeemable in accordance with Article 4 of this Indenture, subject to the provisions of any Supplemental Indenture relating to the Notes of such Series.

(b) The Series 11-1 Notes shall be redeemable at any time prior to their Maturity Date, in whole or in part, at the option of the Corporation at a price equal to the Applicable Redemption Price. The Trustee shall be entitled to rely and act on a Certificate of the Corporation as to the determination of such Applicable Redemption Price.

#### **4.2 Partial Redemption**

(a) If less than all of the Notes of a particular Series for the time being outstanding are to be redeemed at any time, the Corporation shall in each such case, at least five days before the date upon which the Notice of Redemption in respect of such Notes is proposed to be given, notify the Trustee by Written Direction of the Corporation of its intention to redeem Notes of such Series and of the aggregate principal amount of Notes so to be redeemed. The Notes so to be redeemed shall be selected by the Trustee on a *pro rata* basis, unless, following such *pro rata* selection, a Noteholder would hold a Note in a denomination of less than \$1,000, in which case the Notes to be redeemed by the Corporation will be selected by the Trustee by lot, or in such other manner as the Trustee may deem equitable; provided that in no case shall a Note be redeemed in part unless the remaining principal amount is at least \$1,000. For this purpose the Trustee may make, and from time to time amend, regulations with respect to the manner in which Notes may be so selected and regulations so made shall be valid and binding upon all Noteholders, notwithstanding the fact that, as a result thereof, one or more of such Notes may become subject to redemption in part only. The Trustee shall promptly notify the Corporation in writing of the Notes selected for redemption and, in the case of any Notes selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Notes shall relate, in the case of any Notes redeemed or to be redeemed only in part, to the portion of the principal of such Notes which has been or is to be redeemed.

(b) The Noteholder of any Note called for redemption in part only, upon surrender of such Note for payment as required by Section 4.8, shall be entitled to receive, and shall receive, without expense to such Noteholder, a new Note of the same Series for the unredeemed part of the Note so surrendered, and the Corporation shall execute and the Trustee shall certify and deliver, at the expense of the Corporation, such new Note upon receipt of the Note so surrendered.

#### **4.3 Notice of Redemption**

Notice of the intention of the Corporation to redeem any Note (a "**Notice of Redemption**") of a particular Series shall be given by or on behalf of the Corporation to the Trustee and the Noteholders of the Notes which are to be redeemed not more than 60 days and not less than 30 days prior to the date fixed for redemption (the "**Redemption Date**"), in the manner provided by Sections 10.2 and 10.3. The Notice of Redemption shall be irrevocable and shall, unless all the Notes then outstanding are to be redeemed, specify the distinguishing letters,

numbers and Series of the Notes which are to be redeemed and, in case a Note is to be redeemed in part only, shall specify that part of the principal amount thereof so to be redeemed. The Notice of Redemption shall also specify the Redemption Date, the Applicable Redemption Price and the date upon which the Applicable Redemption Price was determined and places of payment and shall state that all interest thereon shall cease from and after such Redemption Date and, in the case of Book Entry Only Notes, that the redemption shall take place in such manner as may be agreed by the Depository, the Trustee and the Corporation. Failure to give notice by mailing in the manner provided to the Noteholder of Notes designated to be redeemed, or any defect in the notice to any such Noteholder, shall not affect the validity of the proceedings for the redemption of any other Notes or portion thereof.

#### **4.4 Notes Due on Redemption Dates**

Upon a Notice of Redemption having been given, all of the Notes so called for redemption shall thereupon be and become due and payable at the Applicable Redemption Price on the Redemption Date specified in such notice, in the same manner and with the same effect as if it were the Maturity Date, anything therein or herein to the contrary notwithstanding. From and after such Redemption Date, if the monies necessary to redeem such Notes shall have been deposited as provided in Sections 4.5 and 4.6 and affidavits or other proof satisfactory to the Trustee as to the giving of the required Notices of Redemption shall have been provided to it, such Notes shall not be considered as outstanding hereunder and interest upon such Notes shall cease to accrue on and after the Redemption Date. In case any question shall arise as to whether any Notice of Redemption has been given as provided above and any such deposit made, such question shall be decided by the Trustee, whose decision shall be final and binding upon all parties in interest.

#### **4.5 Deposit of Redemption Monies**

Upon Notes having been called for redemption pursuant to Section 4.3, the Corporation shall deposit with the Trustee or any Paying Agent, if any, to the order of the Trustee or such Paying Agent, if any, in trust for the Noteholders of the Notes called for redemption, on or before the Redemption Date fixed in the Redemption Notice, such sums as may be sufficient to pay the Applicable Redemption Price of the Notes so to be redeemed. The Corporation shall also deposit with the Trustee, or such Paying Agent, if any, if required by the Trustee, a sum sufficient to pay the estimated charges and expenses to be incurred in connection with such redemption. From the sums so deposited, the Trustee shall promptly following deposit, but subject to the surrender of the Notes called for redemption by the Noteholders thereof, pay or cause to be paid to the Noteholders of such Notes the principal of and Premium, if any, and accrued and unpaid interest to which they are respectively entitled on redemption.

#### **4.6 Failure to Surrender Notes Called for Redemption**

In case the Noteholder of any Notes called for redemption shall within 30 days from the Redemption Date fail to surrender any of its Notes registered in its name or shall not within such time period accept payment of the Applicable Redemption Price payable in respect thereof or give such receipt therefor, if any, as the Trustee may require, such redemption monies shall be set aside in trust for such Noteholder, either in the deposit department of the Trustee or

in a Canadian chartered bank approved by the Corporation at such rate of interest as the Trustee or such Canadian chartered bank may allow, and such setting aside shall for all purposes be deemed a payment to the Noteholder of the sum so set aside, and to that extent such Noteholder shall have no right except to receive payment out of the monies so paid and deposited upon surrender and delivery of its Note or Notes of the Applicable Redemption Price of such Note or Notes, plus such interest thereon, if any, as the Trustee or such Canadian chartered bank may allow.

#### **4.7            Cancellation of Notes**

Subject to Section 4.2 as to Notes redeemed in part, all Notes redeemed under this Article 4 shall forthwith be delivered to the Trustee and shall be cancelled by it and no Notes shall be issued in substitution therefor. All matured Notes of which the Corporation may regain possession shall likewise be delivered to the Trustee and cancelled by it and no Notes shall be issued in substitution therefor.

#### **4.8            Surrender for Cancellation**

If all of the principal monies due upon any Note issued hereunder shall become payable by redemption or otherwise before the Maturity Date, the person presenting such Note for payment shall surrender the same for cancellation.

#### **4.9            Purchase for Cancellation**

(a) The Corporation, when not in default of any provision of this Indenture, may at any time purchase all, or from time to time any, of the outstanding Notes in the market (which shall include purchase from or through an investment dealer, a Participant or a firm holding membership in a recognized stock exchange) or by invitation for tenders or by private contract at such prices as may be determined by the Board of Directors, provided, however, that any such purchase for cancellation of Series 11-1 Notes shall be at a price that shall not exceed the Applicable Redemption Price;

(b) If, upon an invitation for tenders, more Notes are tendered at the same lowest price than the Corporation is prepared to accept, the Notes to be purchased by the Corporation at the same lowest price shall be selected by the Trustee on a *pro rata* basis and to the nearest multiple of \$1,000 in accordance with the principal amount of Notes registered in the name of each such Noteholder unless, following such *pro rata* selection, a Noteholder would hold a Note in a denomination of less than \$1,000, in which case the Notes to be purchased by the Corporation will be selected by the Trustee by lot, or in such other manner as the Trustee may deem equitable; provided that in no case shall a Note be purchased in part unless the remaining principal amount is at least \$1,000. For this purpose, the Trustee may make, and from time to time amend, regulations with respect to the manner in which Notes may be so selected and regulations so made shall be valid and binding upon all Noteholders, notwithstanding the fact that, as a result thereof, one or more of such Notes becomes subject to purchase in part only.

(c) The Trustee shall promptly notify the Corporation in writing of the Notes selected for purchase and, in the case of any Notes selected for partial purchase, the principal amount thereof to be purchased.

(d) All Notes purchased in their entirety under this Section 4.9 shall forthwith be delivered to the Trustee and shall be cancelled by it and no Notes shall be issued in substitution therefor. The Noteholder of any Note purchased under this Section 4.9 for cancellation in part only, upon surrender for payment as required by Section 4.8, shall be entitled to receive, and shall receive, without expense to such Noteholder, a new Note for the part of the Note so surrendered which is not purchased, and the Corporation shall execute and the Trustee shall certify and deliver, at the expense of the Corporation, such new Note upon receipt of the Note so surrendered.

#### **4.10            Redemption on Liquidation**

In the event of proceedings being instituted for the voluntary liquidation of the Corporation before the Maturity Date (except in the course of carrying out or pursuant to a transaction in respect of which the conditions of Section 6.2(b) are duly observed and performed), all the Notes shall be redeemed by the Corporation at the respective prices at which the Corporation could redeem the same on the date on which the resolution was passed for the voluntary liquidation of the Corporation.

#### **4.11            Canada Yield**

For the purposes of the determination of the Canada Yield on a given date:

- (a) two major Canadian investment dealers contemplated by the definition of Canada Yield shall be any two of the following or their respective successors (in each case, designated for these purposes by the Corporation): CIBC World Markets Inc., BMO Nesbitt Burns Inc., RBC Dominion Securities Inc., Scotia Capital Inc. and TD Securities Inc., or any other member of the Investment Industry Regulatory Organization of Canada or, if such association shall have ceased to exist, such other investment dealer as the Corporation may designate; provided that where another member of the Investment Industry Regulatory Organization of Canada is designated by the Corporation or where the Corporation designates another investment dealer if the Investment Industry Regulatory Organization of Canada has ceased to exist, such other investment dealer shall be designated with the consent of the Trustee, acting reasonably; and
- (b) the two investment dealers selected in accordance with Section 4.11(a) shall confer with respect to such determination and shall report to the Corporation and the Trustee the percentage figure they have determined for the Canada Yield in accordance with the definition thereof.

### **ARTICLE 5** **REPRESENTATIONS AND WARRANTIES**

#### **5.1            Representations and Warranties**

The Corporation hereby represents and warrants as at the date hereof to the Trustee, for the benefit of the Trustee and the Noteholders, as follows:

- (a) Corporate Existence. The Corporation and each of its Subsidiaries is a corporation validly existing under the laws of its jurisdiction of incorporation.
- (b) Power to Carry on Business. The Corporation and each of its Subsidiaries has full corporate power, capacity and authority to own its property and assets and conduct its business as presently conducted. The Corporation has full corporate power and authority to authorize, execute and deliver this Indenture, the Series 11-1 Notes and each of the documents contemplated hereunder and to perform its obligations hereunder and thereunder.
- (c) Authority. The execution, delivery and performance by the Corporation of its obligations under this Indenture and the Series 11-1 Notes and each of the documents contemplated hereunder and thereunder to which the Corporation is a party have been or will be, when executed and delivered, duly authorized by all necessary corporate action, including any required shareholder approval.
- (d) Execution and Delivery of Indenture and Notes. This Indenture and the Series 11-1 Notes have been or will be, when executed and delivered, duly executed and delivered by the Corporation.
- (e) No Contravention. The execution, delivery and performance by the Corporation of this Indenture and the Series 11-1 Notes and the documents contemplated hereunder and thereunder and the performance by the Corporation of its obligations hereunder and thereunder:
  - (i) do not or will not contravene, breach or result in any default under any material contract or under the articles, by-laws, constating documents or other organizational documents of the Corporation or under any legally binding instrument, permit or applicable law to which the Corporation is a party or is subject;
  - (ii) will not oblige the Corporation to grant any Security Interest to any person or result in or require the creation of any encumbrance upon any of its property under any agreement or instrument; and
  - (iii) will not result in or permit the acceleration of the maturity of any Indebtedness, liability or obligation of the Corporation under any legally binding instrument of the Corporation.
- (f) No Consents. No authorization, acknowledgement, direction, agreement, consent or approval of, or filing with or notice to any person is required that has not been given or received, as applicable, in connection with the execution, delivery or performance of this Indenture by the Corporation.
- (g) Enforceability. This Indenture and the Series 11-1 Notes are, or will be when executed and delivered, legal, valid and binding obligations of the Corporation, enforceable against the Corporation in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other

similar laws affecting creditors' rights generally and by moratorium laws from time to time in effect and by the fact that equitable remedies may only be available at the discretion of the courts.

- (h) Title to Assets. The Corporation and each of its Subsidiaries has good and valid title to all of its real and personal property with all material rights of ingress and egress or use necessary for the operation of their business in the ordinary course and free from material defects to title that would prevent them from conducting their business, except to the extent such failure would not reasonably be expected to have a Material Adverse Effect and, except for Permitted Liens, such real and personal property and the revenues of the Corporation and its Subsidiaries are not subject to any Liens.
- (i) Financial Condition. The audited annual financial statements of the Corporation for the fiscal year ended December 31, 2010:
  - (i) have been prepared in accordance with GAAP applied on a consistent basis; and
  - (ii) fairly and accurately present in all material respects the financial condition of the Corporation as at the date thereof and the results of its operations for the period covered thereby.

Since the date of such financial statements, there has been no event which would reasonably be expected to result in a Material Adverse Affect.

- (j) Litigation and Other Proceedings. Except as disclosed in Schedule "5.1(j)", there are no actions, suits, litigation or other legal or regulatory proceedings pending or, to the knowledge of the Corporation, threatened against or involving the Corporation or any of its Subsidiaries which, if determined adversely to the Corporation or any of its Subsidiaries, would reasonably be expected to have a Material Adverse Effect. There is no judgment or similar order of any governmental body against the Corporation or any Subsidiary that would have a Material Adverse Effect.
- (k) Events of Default. No Default or Event of Default has occurred which is continuing.
- (l) Location of Property. Neither the Corporation nor any of its Subsidiaries has any property or assets located in a jurisdiction other than the Province of Ontario that in aggregate are material to the business of the Corporation, considered as a whole.
- (m) Environmental Matters. Except to the extent that such matter, individually and in the aggregate, could not reasonably be expected to have a Material Adverse Effect, the Corporation and each of its Subsidiaries (i) is in compliance with all environmental laws applicable to it or its properties, (ii) has obtained, maintained and complied with all permits, licences and other approvals required under

applicable environmental law, and (iii) has not received notice of any claim with respect to any material environmental liability.

- (n) Taxes: The Corporation and each of its Subsidiaries have filed all tax returns required to be filed by them in all applicable jurisdictions and have paid all taxes required to have been paid by them, other than Taxes that are being contested in good faith by appropriate proceedings and for which adequate reserves have been set aside on its books, except where failure to do so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.
- (o) Indebtedness: The Corporation and its Subsidiaries individually do not have any Indebtedness owing to any one creditor in excess of \$2,000,000, other than Indebtedness listed in Schedule "5.1(o)".
- (p) Corporate Structure: The corporate structure of the Corporation and its Subsidiaries is set out in Schedule "5.1(p)".
- (q) Compliance with Laws. Except as disclosed in Schedule "5.1(q)", the Corporation and each of its Subsidiaries: (i) is in compliance with all applicable laws and the requirements of any applicable regulatory authority, including the OEB, except to the extent failure to so comply has not had and would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (ii) has all consents, authorizations, approvals, orders, certificates and permits from, and has made all filings with all governmental authorities to conduct its business in compliance with applicable laws, except to the extent that any consent, authorization, approval, order, certificate or permit which it does not have or any filing which has not been made would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.
- (r) Aboriginal Claims: To the knowledge of the Corporation, there are no actions, litigation, suits or proceedings underway, pending or threatened by a First Nations group against the Corporation.

## **5.2 Survival**

The representations and warranties set out in this Article 5 shall survive the execution and delivery of this Indenture.

## **5.3 Deemed Repetition of Representations**

The representations and warranties set out in Section 5.1 shall be deemed to be repeated on and as of the date of the creation and issuance of any Series of Additional Notes as if they are made on and as of such date except that: (a) the representation and warranty set out in Section 5.1(i) regarding financial statements shall be deemed to refer to the most recently audited consolidated financial statements of the Corporation; and (b) the reference to Series 11-1 Notes in Sections 5.1(b), (c), (d), (e) and 5.1(g) shall be to such Additional Notes.

## **ARTICLE 6**

### **COVENANTS OF THE CORPORATION**

#### **6.1 Affirmative Covenants of the Corporation**

Unless otherwise provided with respect to any particular Series of Additional Notes in the applicable Supplemental Indenture, the Corporation hereby covenants and agrees with the Trustee for the benefit of the Trustee and the Noteholders that so long as any Notes remain outstanding:

- (a) Punctually Pay Principal, Premium and Interest. The Corporation shall duly and punctually pay or cause to be paid to every Noteholder, without deduction or any right of set-off, the principal of and interest accrued on the Notes of which it is the Noteholder, and Premium, if any, thereon, on the dates, at the places, in the monies and in the manner mentioned herein and in the Notes (for certainty, any amount withheld and paid on account of Taxes to a taxing authority on behalf of a Noteholder in accordance with the provisions of this Indenture or the applicable Supplemental Indenture will be considered to have been paid to the Noteholder).
- (b) Conduct of Business. Subject to the rights of the Corporation contained in Section 6.2(b), the Corporation shall, and shall cause its Subsidiaries to, at all times: (i) maintain its corporate existence; (ii) carry on and conduct its business in a proper and efficient manner in accordance with good business practice and in compliance with all requirements of agreements, applicable laws and the OEB and all other applicable regulatory authorities to the extent applicable to the activities of the Corporation or its Subsidiaries, the non-compliance with which would have a Material Adverse Effect; and (iii) keep proper books of account and make or cause to be made therein accurate entries of all its dealings and transactions in relation to its business and the business of its Subsidiaries, as the case may be, all in accordance with GAAP.
- (c) Preservation of Material Authorizations. The Corporation will, and will cause its Subsidiaries to, preserve and maintain all permits, licences and authorizations material to the conduct of its business except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect;
- (d) Reporting Requirements. The Corporation will provide to the Trustee for delivery to the Noteholders copies of:
  - (i) annual audited consolidated financial statements of the Corporation prepared in accordance with GAAP within 120 days after each fiscal year end of the Corporation;
  - (ii) quarterly unaudited consolidated financial statements of the Corporation prepared in accordance with GAAP within 60 days after the end of each of the first three fiscal quarters of the Corporation, and



- (iii) annual Certificates of Compliance within 120 days after the end of each fiscal year, confirming compliance with this Indenture and in each case demonstrating compliance with any applicable financial covenant (or if not in compliance outlining any plans of the Corporation to cure the non-compliance).
- (e) Notice Requirements. The Corporation will, as soon as practicable after it become aware of the same, give notice to the Trustee of the following events:
  - (i) any change in its fiscal year;
  - (ii) any development that would reasonably be expected to have a Material Adverse Effect;
  - (iii) any Event of Default; and
  - (iv) any litigation or other proceeding (other than rate hearings and other regulatory proceedings in the ordinary course of business), that would, if determined adversely to the Corporation or a Subsidiary, have a Material Adverse Effect.
- (f) Pay Taxes. The Corporation will, and will cause each of its Subsidiaries to, from time to time pay, or cause to be paid all taxes, rates, levies, assessments (ordinary or extraordinary), government fees or dues properly and lawfully levied, assessed or imposed upon or in respect of its respective property or any part thereof or upon its income and profits as and when the same become due and payable, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.
- (g) Insurance. The Corporation will, and will take all necessary corporate actions to ensure that each of its Subsidiaries will, maintain in force such policies of insurance in such amounts issued by insurers of recognized standing covering the properties and operations of the Corporation and its Subsidiaries as are customarily held by entities engaged in the same or similar businesses.
- (h) Core Business. The Corporation and its Subsidiaries will operate only in the regulated electrical and gas energy distribution and transmission businesses, except that the Corporation and its Subsidiaries may operate in ancillary businesses to the extent that the Corporation and its Subsidiaries do not acquire or construct any material assets or dispose of any assets other than in the normal course of business if, on a *pro forma* basis following such transaction, the consolidated revenues or consolidated fixed assets of the regulated electrical and gas distribution and transmission businesses of the Corporation and its Subsidiaries, taken as a whole, would be not less than 85% of consolidated revenues or not less than 85% of consolidated fixed assets of the Corporation and its Subsidiaries, taken as a whole. For greater certainty, ancillary businesses shall include renewable energy and other generation facilities which are qualifying

facilities that electricity distributors will be permitted to own under the *Green Energy and Green Economy Act, 2009* (Ontario) or similar legislation.

- (i) Environmental Compliance. The Corporation will, and will cause each of its Subsidiaries to, operate its business in compliance with all applicable environmental laws and environmental permits, except to the extent that non-compliance would not reasonably be expected to have a Material Adverse Effect, provided that if a breach occurs the Corporation or its Subsidiary will be in compliance with this covenant if it promptly assesses and satisfies any material remedial obligation or contests such obligation.
- (j) Inspection Rights. At any time upon the occurrence and continuation of a Default or Event of Default, the Corporation shall, and shall cause each of its Subsidiaries to, permit the Trustee, any Noteholder, or any representative or nominee of either, upon giving at least 24 hours' prior written notice to the Corporation, to (i) visit and inspect its assets or properties, (ii) inspect and make extracts from and copies of its books and records, and (iii) discuss with appropriate representatives of senior management of the Corporation or any of its Subsidiaries, its businesses, property, financial condition and prospects.
- (k) Pay Trustee's Remuneration. The Corporation shall (i) pay the Trustee remuneration for its services as Trustee hereunder (including reimbursement for out-of-pocket fees and expenses of the Trustee's Counsel) and (ii) repay the Trustee on demand all monies which shall have been paid by the Trustee in and about the execution of the trusts hereby created, with interest at such reasonable rate as shall have been agreed to by the Trustee from time to time, from the date of expenditure until repayment, with a reasonable rate of interest to be charged by the Trustee on any overdue accounts of the Corporation, and such moneys and the interest thereon, including the Trustee's remuneration, shall be payable out of any funds coming into the possession of the Trustee in priority to the payment of any principal or interest on any of the Notes. The said remuneration shall continue to be payable until the trusts hereof are finally wound up and whether or not the trusts of this Indenture shall be in course of administration by or under the direction of the court.
- (l) Use of Proceeds of Series 11-1 Notes. The Corporation shall use the net proceeds from the issuance of the Series 11-1 Notes to refinance Indebtedness owed by the Corporation to its Affiliates and for general corporate purposes.

## **6.2 Negative Covenants of the Corporation**

The Corporation hereby covenants and agrees with the Trustee for the benefit of the Trustee and the Noteholders that so long as any Notes remain outstanding, unless otherwise provided with respect to any particular Series of Additional Notes in the applicable Supplemental Indenture.

- (a) Negative Pledge. The Corporation will not, and will not permit any Subsidiary to, create, assume or suffer to exist any Security Interest on any of its assets to secure any obligation unless at the same time the Corporation shall secure or cause to be secured equally and rateably therewith all the Notes then outstanding, provided that this section shall not apply to or operate to prevent Permitted Liens.
- (b) Limitation on Additional Indebtedness and Operating Leases. The Corporation will not, and will ensure that each of its Subsidiaries does not, directly or indirectly incur, issue, assume, guarantee or otherwise become liable for or in respect of any Indebtedness, other than Permitted Indebtedness, or enter into any material operating lease unless after giving effect to such guarantee, incurrence, issuance, liability, or material operating lease (including the application or use of the net proceeds therefrom) calculated on a *pro forma* basis:
  - (i) the aggregate principal amount of its Consolidated Senior Indebtedness does not exceed:
    - (A) 75% of its Total Consolidated Capitalization, if FortisOntario Inc. or an Affiliate thereof beneficially owns or controls not less than 50% of the voting Securities of the Corporation;
    - (B) 75% of its Total Consolidated Capitalization, if a person, other than FortisOntario Inc. or an Affiliate thereof, beneficially owns or controls not less than 50.1% of the voting Securities of the Corporation, and:
      - (I) such person (or its direct or indirect parent) is in the regulated electricity business in Canada (the "**Experience Threshold**"); and
      - (II) any outstanding indebtedness of such person (or its direct or indirect parent) is rated at least "BBB" or its equivalent by one of Standard & Poor's Rating Services (a division of The McGraw-Hill Companies (Canada) Corporation), DBRS Limited or Moody's Investors Service, Inc. (the "**Ratings Threshold**"); and
    - (C) 65% of its Total Consolidated Capitalization, if a person, other than FortisOntario Inc. or an Affiliate thereof, beneficially owns or controls not less than 50.1% of the voting Securities of the Corporation, and such person satisfies either the Experience Threshold or the Ratings Threshold, but not both, on the date of acquisition of beneficial ownership or control of not less than 50.1% of the voting Securities of the Corporation (the "**Acquisition Date**"); provided, however, that, subject to the consent of Noteholders of not less than 66⅔% of the principal amount of the Notes then outstanding, such consent not to be

unreasonably withheld, at any time following the third anniversary of the Acquisition Date, and provided that the Corporation has completed a rebasing to establish rates with the OEB following the Acquisition Date and provided further that the Ratings Threshold is satisfied, the maximum aggregate principal amount of the Consolidated Senior Indebtedness of the Corporation shall be increased to 75% of its Total Consolidated Capitalization; and

- (ii) no Default or Event of Default shall have occurred and be continuing at the time of, or as a consequence of, such additional Indebtedness having been incurred or such operating lease having been entered into.
- (c) Limitation on Change of Control. The Corporation will not permit a transfer of voting Securities if, as a result of such transfer, a person, other than FortisOntario Inc., Fortis Inc. or an Affiliate thereof, would beneficially own or control not less than 50.1% of the voting Securities of the Corporation unless:
  - (i) the Noteholders of not less than 66⅔% of the principal amount of the Notes then outstanding consent to such transfer;
  - (ii) the Corporation offers to purchase all of the principal amount of the Notes then outstanding for a purchase price equal to the Applicable Redemption Price at such time; or
  - (iii) the person (or its direct or indirect parent) which would beneficially own or control not less than 50.1% of the voting Securities of the Corporation after giving effect to such transfer satisfies either the Experience Threshold or the Ratings Threshold or both.
- (d) Restrictions on Successor Entities. The Corporation will not merge, consolidate or amalgamate with another person, or take part in any corporate reorganization, or any transaction, proceeding or arrangement similar in nature to any of the foregoing unless (i) no Default or Event of Default is continuing or will occur as a result of such transaction, (ii) the entity resulting from such transaction (the "**Successor Entity**") is incorporated or established under the laws of Canada or a province therein, (iii) the Successor Entity assumes all of the covenants and obligations of the Corporation under the Trust Indenture, (iv) such transaction is on such terms as to preserve the rights and powers of the Noteholders under the Trust Indenture, (v) the Corporation is entitled to issue additional Indebtedness in the principal amount of at least \$1.00, and (vi) customary legal opinions and documentation are delivered to the Trustee in connection with such transaction.
- (e) Restrictions on Distributions. The Corporation will not make any Distributions, unless after giving effect to such Distribution, (i) no Default or Event of Default shall have occurred and be continuing and (ii) the aggregate principal amount of Consolidated Senior Indebtedness does not exceed 75% of its Total Consolidated Capitalization, calculated on a *pro forma* basis.

- (f) Limitation on Asset Sales. The Corporation will not, and will ensure that each of its Subsidiaries does not, enter into an Asset Sale unless, after giving effect to such action, the Corporation could incur at least \$1.00 of additional Indebtedness pursuant to the covenant described under "Limitation on Additional Indebtedness and Operating Leases".
- (g) Limitations on Sales and Leasebacks. The Corporation will not, and will ensure that each of its Subsidiaries does not, engage in one or more Sale and Leaseback Transactions unless the Corporation is entitled to issue additional Indebtedness in the principal amount of at least the amount of the Sale and Leaseback.
- (h) Limitations on Transactions with Affiliates. The Corporation will not, and will ensure that each of its Subsidiaries does not, engage in any material transaction with any Affiliate on terms that, on an overall basis, are materially non compliant with the OEB's Affiliates Relationship Code.
- (i) Limitations on Financial Instrument Obligations. The Corporation will not, and will ensure that each of its Subsidiaries does not, enter into any Financial Instrument Obligations other than Non-Speculative Financial Instrument Obligations.

### **6.3 Trustee May Perform Covenants**

If the Corporation shall fail to perform any covenant on its part herein contained, the Trustee may notify the Noteholders of such failure on the part of the Corporation promptly after receiving notice of the same, and may, upon the receipt of Noteholder Approval or any Noteholders' Request, perform any of said covenants capable of being performed by it (and shall promptly notify the Corporation of any such performance) but will be under no obligation to do so or to notify the Noteholders. If any such covenant requires the payment or expenditure of money, the Trustee may require the Corporation to make such payment or expenditure with its own funds, or with money borrowed by or advanced to it for such purposes, but the Trustee shall be under no obligation to so notify the Corporation. All sums required to be expended or advanced in connection with the Trustee's performance of the said covenants shall be repayable by the Corporation in the manner provided in Section 6.1(k) with interest thereon at a rate determined by the Trustee from time to time; provided that such rate of interest shall not be greater than the rate of interest charged by the Trustee in accordance with its usual and customary practices in similar circumstances. Notwithstanding the foregoing, no such performance or payment by the Trustee shall be deemed to relieve the Corporation from any default or its continuing obligations hereunder.

## **ARTICLE 7 EVENTS OF DEFAULT**

### **7.1 Events of Default**

Unless otherwise provided with respect to any particular Series of Additional Notes in the applicable Supplemental Indenture, the occurrence of any one or more of the

following events (each such event being hereinafter referred to as an "**Event of Default**") shall constitute a default under this Indenture:

- (a) if the Corporation shall default in payment of any principal or Premium, if any, on any Notes when the same becomes due and payable under any provision hereof or of such Notes (including, for greater certainty, a default in payment relating to a redemption of all or part of such Notes) and such default continues for a period of two Business Days;
- (b) if the Corporation shall default in payment of any interest on any Notes when the same becomes due and payable under any provision hereof or of any Notes and such default continues for a period of five Business Days;
- (c) if the Corporation shall fail to comply with its covenant in Section 6.2(d);
- (d) if the Corporation shall neglect to observe or perform in any material respect any covenant or condition (other than those referred to in Section 7.1(a), (b) or (c)) contained in this Indenture or any Note on its part to be observed or performed and, after notice in writing has been given by the Trustee to the Corporation (which notice the Trustee may, in its discretion, independently provide and shall provide upon receipt of a Noteholders' Request) specifying such default and requiring the Corporation to remedy such default, the Corporation shall fail to remedy such default within a period of 30 days provided that if such default cannot reasonably be cured within such 30 day period and the Corporation is acting diligently to cure such default, then the Corporation shall have an additional 30 days to cure such default unless the Trustee receives a Noteholders' Request objecting to the extension of the cure period;
- (e) if any representation or warranty made by the Corporation herein, in any Note or in any Supplemental Indenture is found to be false or incorrect so as to make it materially misleading when made or deemed to be made unless such incorrect representation or warranty is capable of being corrected and the Corporation cures such default within a period of 30 days following the receipt of written notice from the Trustee (which notice the Trustee may, in its discretion, independently provide and shall provide upon receipt of a Noteholders' Request) specifying the incorrect representation and warranty, provided that if such default cannot reasonably be cured within such 30 day period and the Corporation is acting diligently to cure such default, then the Corporation shall have an additional 30 days to cure such default unless the Trustee receives a Noteholders' Request objecting to the extension of the cure period;
- (f) if at any time a default is made by the Corporation or any of its Subsidiaries, whether as primary obligor or guarantor or surety, with respect to any Indebtedness (excluding amounts due to the Noteholders under the Notes), where the aggregate principal amount of such Indebtedness exceeds, in the aggregate, the greater of \$5,000,000 and an amount equal to 10% of the Consolidated Net Worth at such time and (i) if the default is a payment default, such default

continues to exist beyond any applicable cure period; provided that if the payment obligation to which the default relates is accelerated, then the default shall constitute an Event of Default immediately following such acceleration, and (ii) if the default is not a payment default, then as a result of the default and the passing of any applicable cure period, the maturity of the obligation is accelerated; provided that, in each case, if the default is cured prior to acceleration of the Notes, then the Event of Default shall be deemed to have been cured;

- (g) if a resolution is passed for the winding-up or liquidation of the Corporation or a Subsidiary, except in the course of carrying out or pursuant to a transaction in respect of which the conditions of Section 6.2(d) are duly observed and performed, or if the Corporation or a Subsidiary institutes proceedings to be adjudicated a bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it under the *Bankruptcy and Insolvency Act* (Canada) or any other bankruptcy, insolvency or analogous laws, or of any substantial part of the property of the Corporation or its Subsidiaries, or makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due or takes corporate action in furtherance of any of the aforesaid purposes, unless, in the case of a Subsidiary, such winding-up or liquidation of the Subsidiary or proceedings or other event affecting a Subsidiary, would not reasonably be expected to have a Material Adverse Effect;
- (h) if a proceeding is instituted against the Corporation with respect to the appointment of a liquidator, trustee in bankruptcy, custodian, receiver or receiver and manager or other person with similar powers with respect to the Corporation or any material part of the property of the Corporation and such proceeding has not been dismissed, discharged, stayed or restrained within 60 days of the institution thereof, provided that during such 60-day period, the proceeding is being defended in good faith by the Corporation and the position of the Noteholders is not being prejudiced in any material respect;
- (i) if a proceeding is instituted against a Subsidiary with respect to the appointment of a liquidator, trustee in bankruptcy, custodian, receiver or receiver and manager or other person with similar powers with respect to the Subsidiary or any material part of the property of the Subsidiary, such proceeding would reasonably be expected to have a Material Adverse Effect and such proceeding has not been dismissed, discharged, stayed or restrained within 60 days of the institution thereof, provided that during such 60-day period, the proceeding is being defended in good faith by the Subsidiary and the position of the Noteholders is not being prejudiced in any material respect;
- (j) if an encumbrancer takes possession of property, other than property that is subject to a Security Interest with respect to Non-Recourse Indebtedness, of the Corporation or a Subsidiary that constitutes a substantial part of the property of the Corporation and its Subsidiaries considered on a consolidated basis, or any execution is levied or enforced upon property that constitutes a substantial part of

the property of the Corporation and its Subsidiaries considered on a consolidated basis, which execution remains unsatisfied for such period of time as would permit such property to be sold thereunder unless such execution is in good faith being contested by the Corporation or a Subsidiary.

## **7.2            Acceleration on Event of Default**

If any Event of Default has occurred and is continuing, the Trustee may in its discretion, and shall upon receipt of a Noteholders' Request, subject to Section 7.4 and Section 9.13(d), by notice in writing to the Corporation (except in respect of an Event of Default set forth in Section 7.1(g) or 7.1(h) in respect of which the principal of and interest on the Notes then outstanding and any other amounts owing hereunder shall automatically become due and payable without presentment, demand, protest or notice of any kind), declare the principal of and interest on the Notes then outstanding and any other monies payable hereunder (including any amounts due to the Trustee hereunder) to be due and payable and the same shall forthwith become immediately due and payable notwithstanding anything contained therein or herein to the contrary, and the Corporation shall forthwith pay to the Trustee for the benefit of the Noteholders the principal of, and accrued and unpaid interest (including interest on amounts in default) and Premium, if any (calculated as if such Notes were being redeemed and the Redemption Date was the date such amounts become due and payable), together with interest at the rate borne by the Notes on such principal, interest and such other monies from the date of the said declaration until payment is received by the Trustee. Such payment when made shall be deemed to have been made in discharge of the Corporation's obligations hereunder and any monies so received by the Trustee shall be applied in the manner provided in Section 7.8.

Notwithstanding any other provision of this Indenture (including Section 7.4 and Article 9), at any time after a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided in this Article 7, the Noteholders of a majority in principal amount of the Notes outstanding, by written notice to the Corporation and the Trustee, may rescind and annul such declaration and its consequences if:

- (a) the Corporation has paid or deposited, or caused to be paid or deposited, with the Trustee a sum sufficient to pay,
  - (i) all overdue interest on all outstanding Notes,
  - (ii) all unpaid principal of any outstanding Notes which has become due and payable otherwise than by such declaration of acceleration, and interest on such unpaid principal at the rate borne by the Notes,
  - (iii) to the extent that payment of such interest is lawful, interest on overdue interest at the rate borne by the Notes, and
  - (iv) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee and its Counsel; and



- (b) all Events of Default, other than the non-payment of amounts of principal of or interest on Notes which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 7.4.

No such rescission shall affect any subsequent Default or Event of Default or impair any right consequent thereon.

### **7.3            Notice of Events of Default**

(a) If an Event of Default shall occur and be continuing the Trustee shall, as soon as is reasonably practicable but in any event within five days after it receives knowledge of the occurrence of such Event of Default, give notice of such Event of Default to the Noteholders in the manner provided in Section 10.2; provided that notwithstanding the foregoing, unless the Trustee shall have received a Noteholders' Request, the Trustee will not be required to give such notice if the Trustee in good faith shall have decided that the withholding of such notice is in the best interests of the Noteholders and shall so advise the Corporation in writing.

(b) Where notice of the occurrence of an Event of Default has been given and the Event of Default is thereafter cured, notice that the Event of Default is no longer continuing shall be given by the Trustee to the Noteholders in the manner provided in Section 10.2 within a reasonable time, but not exceeding five Business Days, after the Trustee becomes aware that the Event of Default has been cured.

### **7.4            Waiver of Default**

Upon the happening of any Default or Event of Default hereunder, the Noteholders of not less than 66⅔% of the principal amount of the Notes then outstanding (or not less than 100% of the principal amount of the Notes then outstanding in the case of a failure to make payment of principal amounts then due) shall have the power (in addition to the powers exercisable by Extraordinary Resolution as hereinafter provided) by requisition in writing to instruct the Trustee to waive any Default or Event of Default and/or to cancel any declaration made by the Trustee pursuant to Section 7.2 and the Trustee shall thereupon waive the Default or Event of Default and/or cancel such declaration upon such terms and conditions as shall be prescribed in such requisition, provided that no act or omission either of the Trustee or of the Noteholders shall extend to or be taken in any manner whatsoever to affect any subsequent Default or Event of Default or the rights resulting therefrom. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; provided that no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

### **7.5            Enforcement by the Trustee**

(a) Subject to Sections 7.4 and 11.2 and to the provisions of any Extraordinary Resolution that may be passed by the Noteholders, in case the Corporation shall fail to pay to the Trustee, forthwith after the same shall have become or been declared to be due and payable under Section 7.2, the principal of and Premium, if any, and interest on all Notes then outstanding, together with any other amounts due hereunder, the Trustee may in its discretion and shall upon receipt of a Noteholders' Request and upon being indemnified to its reasonable

satisfaction against all costs, expenses and liabilities to be incurred, proceed in its name as Trustee hereunder to obtain or enforce payment of the said principal of and Premium, if any, and interest on all the Notes then outstanding together with any other amounts due hereunder by such proceedings authorized by this Indenture or by law or equity as the Trustee in such request shall have been directed to take, or if such request contains no such direction, or if the Trustee shall act without such request, then by such proceedings authorized by this Indenture or by suit at law or in equity as the Trustee shall deem expedient.

(b) The Trustee shall be entitled and empowered, either in its own name or as trustee of an express trust, or as attorney-in-fact for the Noteholders and Beneficial Owners, or in any one or more of such capacities, to file such proof of indebtedness, claim, petition or other document as may be necessary or advisable in order to have the claims of the Trustee and of the Noteholders and Beneficial Owners allowed in any insolvency, bankruptcy, liquidation or other judicial proceedings relative to the Corporation or its creditors or relative to or affecting its property. The Trustee is hereby irrevocably appointed (and the successive respective Noteholders by taking and holding the Notes shall be conclusively deemed to have so appointed the Trustee) the true and lawful attorney-in-fact of the respective Noteholders and Beneficial Owners with authority to make and file in the respective names of the Noteholders and Beneficial Owners or on behalf of the Noteholders and Beneficial Owners as a class, subject to deduction from any such claims of the amounts of any claims filed by any of the Noteholders and Beneficial Owners themselves, any proof of indebtedness, claim, petition or other document in any such proceedings and to receive payment of any sums becoming distributable on account thereof, and to execute any such other papers and documents and to do and perform any and all such acts and things for and on behalf of such Noteholders and Beneficial Owners, as may be necessary or advisable in the opinion of the Trustee or the Noteholders and Beneficial Owners, in order to have the respective claims of the Trustee and of the Noteholders and Beneficial Owners against the Corporation or its property and assets allowed in any such proceeding, and to receive payment of or on account of such claims; provided that nothing contained in this Indenture shall be deemed to give to the Trustee, unless so authorized by Extraordinary Resolution, any right to accept or consent to any plan of reorganization or otherwise by action of any character in such proceeding or to waive or change in any way any right of any Noteholder or Beneficial Owner.

(c) The Trustee shall also have power at any time and from time to time to institute and to maintain such suits and proceedings as it may be advised shall be necessary or advisable to preserve and protect its interests and the interests of the Noteholders and Beneficial Owners.

(d) All rights of action hereunder may be enforced by the Trustee without the possession of any of the Notes or the production thereof at the trial or other proceedings relative thereto. Any such suit or proceeding instituted by the Trustee shall be brought in the name of the Trustee as trustee of an express trust, and any recovery of judgment shall be for the rateable benefit of the Noteholders and Beneficial Owners subject to the provisions of this Indenture. In any proceeding brought by the Trustee (and also any proceeding in which a declaratory judgment of a court may be sought as to the interpretation or construction of any provision of this Indenture, to which the Trustee shall be a party) the Trustee shall be held to represent all the Noteholders and Beneficial Owners, and it shall not be necessary to make any Noteholders or Beneficial Owners of the Notes parties to any such proceeding.

## **7.6 Control by Noteholders**

Subject to Section 11.2, the Noteholders of not less than a majority in principal amount of the outstanding Notes shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, provided that:

- (a) such direction shall not, in the opinion of Counsel to the Trustee, be in conflict with any rule of law or with this Indenture;
- (b) subject to Indenture Legislation, the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction;
- (c) the Trustee need not take any action which might involve it in personal liability; and
- (d) if such direction directs the Trustee to take proceedings out of court, the Trustee may in its discretion take judicial proceedings in lieu thereof.

## **7.7 Noteholders Right to Enforce Payment**

A Noteholder shall have the right, on behalf of all Noteholders of a Series, to institute an action, suit or proceeding at law or in equity for the purpose of enforcing payment of the principal of or any Premium or interest on the Notes of such Series or for the appointment of a liquidator or receiver or receiver and manager or for a receiving order under the *Bankruptcy and Insolvency Act* (Canada) or to have the Corporation wound up or to file or prove a claim in any liquidation or bankruptcy proceeding or for any other remedy hereunder, provided that: (a) such Noteholder shall previously have given to the Trustee written notice of the happening of an Event of Default hereunder; (b) the Trustee shall have received a Noteholders' Request that such Noteholder take such action on behalf of the Noteholders of such Series; (c) no other Noteholder has previously taken action pursuant to this Section 7.7 in respect of such Series or such actions have been discontinued or such other Noteholder shall have failed to diligently pursue such action; and (d) the Trustee shall not have previously commenced enforcement in respect of such default pursuant to Section 7.5; it being understood and intended that no one or more Noteholders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Noteholders, or to obtain or to seek to obtain priority or preference over any other Noteholders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and rateable benefit of all the Noteholders. Except as otherwise provided in this Section 7.7, no Noteholder shall have any right to institute any action, suit or proceeding at law or in equity for the purpose of enforcing payment of the principal of or any Premium or interest on the Notes or for the execution of any trust or power hereunder or for the appointment of a liquidator or receiver or receiver and manager or for a receiving order under the *Bankruptcy and Insolvency Act* (Canada) or to have the Corporation wound up or to file or prove a claim in any liquidation or bankruptcy proceeding or for any other remedy hereunder.

## **7.8            Application of Monies by Trustee**

Except as herein otherwise expressly provided, any monies arising from any enforcement of the Notes or this Indenture, whether by the Trustee or the Noteholders pursuant to the foregoing provisions of this Article 7, or as a result of legal or other proceedings or from any trustee in bankruptcy or liquidator of the Corporation, shall be applied, together with any other monies in the hands of the Trustee available for such purpose, as follows:

- (a) first, in payment or in reimbursement to the Trustee of the amount contemplated by Section 6.1(k), including the compensation, reasonable costs, charges, expenses, borrowings, advances or other monies furnished or provided by or at the instance of the Trustee in or about the execution of its trusts under, or otherwise in relation to, this Indenture, with interest thereon as herein provided;
- (b) second, but subject as hereinafter provided in this Section 7.8, in payment, rateably and proportionately to the Noteholders, of the principal of and Premium, if any, and accrued and unpaid interest and interest on amounts in default on the Notes which shall then be outstanding in the priority of principal first and then Premium, if any, and then accrued and unpaid interest and interest on amounts in default unless otherwise directed by Extraordinary Resolution and in that case in such order or priority as between principal, Premium and interest as may be directed by such resolution; and
- (c) third, in payment of the surplus, if any, of such monies to the Corporation or its assigns;

provided that no payment shall be made pursuant to Section 7.8(b) in respect of the principal of and Premium, if any, or interest on any Note held, directly or indirectly, by or for the benefit of the Corporation or any of its Affiliates (other than any Note pledged for value and in good faith to a person other than the Corporation or any of its Affiliates but only to the extent of such person's interest therein) except subject to the prior payment in full of the principal on and Premium, if any, and interest (together with interest on amounts in default) on all Notes which are not so held.

## **7.9            Distribution of Proceeds**

Payments to Noteholders pursuant to Section 7.8(b) shall be made as follows:

- (a) at least 15 days' notice of every such payment shall be given in the manner provided in Section 10.2 specifying the time when and the place or places where the Notes are to be presented and the amount of the payment and the application thereof as between principal, Premium and interest;
- (b) payment of any Note shall be made upon presentation thereof at any one of the places specified in such notice and any such Note thereby paid in full shall be surrendered, otherwise a memorandum of such payment shall be endorsed thereon; and

- (c) from and after the date of payment specified in the notice, interest shall accrue only on the amount owing on each Note after giving credit for the amount of the payment specified in such notice, unless the Note in respect of which such amount is owing duly presented on or after the date so specified and payment of such amount not made.

#### **7.10 Persons Dealing with Trustee**

No person dealing with the Trustee or any of its agents shall be required to enquire whether an Event of Default has occurred, or whether the powers which the Trustee is purporting to exercise have become exercisable, or whether any monies remain due under this Indenture or on the Notes, or to see to the application of any monies paid to the Trustee; and in the absence of fraud on the part of such person, such dealing shall be deemed to be within the powers hereby conferred and to be valid and effective accordingly.

#### **7.11 Remedies Cumulative**

No remedy herein conferred upon or reserved to the Trustee, or upon or to the Noteholders, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now existing or thereafter to exist by law.

#### **7.12 Delay or Omission Not Waiver**

No delay or omission of the Trustee or of any Noteholder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article 7 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Noteholders, as the case may be.

#### **7.13 Judgment Against the Corporation**

The Corporation covenants and agrees with the Trustee that, in case of any judicial or other proceedings to enforce the rights of the Noteholders, judgment may be rendered against it in favour of the Noteholders or in favour of the Trustee, as trustee for the Noteholders, for any amount which may remain due in respect of the Notes and the interest thereon and any other monies owing hereunder.

#### **7.14 Trustee Appointed Attorney**

The Corporation hereby irrevocably appoints the Trustee, upon the occurrence of an Event of Default which is continuing, to be the attorney of the Corporation in the name and on behalf of the Corporation to execute any instruments and do any acts and things which the Corporation ought to execute and do, and has not executed or done, under the covenants and provisions contained in this Indenture and generally to use the name of the Corporation in the exercise of all or any of the powers hereby conferred on the Trustee, with full powers of substitution and revocation. The parties hereto acknowledge that such appointment is coupled

with an interest and shall not be revoked or terminated by any insolvency, bankruptcy, incapacity, reorganization, arrangement, composition, dissolution, liquidation, winding-up or similar proceeding involving or affecting the Corporation or for any other reason.

## **ARTICLE 8**

### **SATISFACTION AND DISCHARGE**

#### **8.1            Cancellation and Destruction**

All matured Notes shall forthwith after payment thereof be cancelled. All Notes cancelled or required to be cancelled under this or any other provision of this Indenture shall be destroyed by the Trustee and, if required by the Corporation, the Trustee shall furnish to it a destruction certificate setting out the designating numbers of the Notes so destroyed.

#### **8.2            Non-Presentation of Notes**

In case a Noteholder shall fail to present a Note for payment on the date on which the principal thereof and Premium, if any, thereon and/or the interest thereon or represented thereby becomes payable either on the Maturity Date or otherwise or shall not accept payment on account thereof and give such receipt therefor, if any, as the Trustee may require:

- (a) the Corporation shall be entitled to pay to the Trustee and direct it to set aside; or
- (b) in respect of monies in the hands of the Trustee which may or should be applied to the payment of the Notes, the Corporation shall be entitled to direct the Trustee to set aside; or
- (c) if the payment is in respect of a redemption pursuant to notice given by the Trustee, the Trustee may itself set aside;

the principal monies and the Premium, if any, and/or the interest, as the case may be, in trust to be paid to the Noteholder upon due presentation or surrender of the Note in accordance with the provisions of this Indenture; and thereupon the principal monies and Premium, if any, and/or the interest payable on or represented by each Note in respect whereof such monies have been set aside shall be deemed to have been paid and the Noteholder thereof shall thereafter have no right in respect thereof except that of receiving payment of the monies so set aside by the Trustee upon due presentation and surrender thereof, subject always to Section 8.3.

#### **8.3            Repayment of Unclaimed Monies**

Any monies set aside under Section 8.2 and not claimed by and paid to Noteholders as provided in Section 8.2 within six years after the date of such setting aside shall be repaid to the Corporation by the Trustee on demand, and thereupon the Trustee shall be released from all further liability with respect to such monies, and thereafter the Noteholders in respect of which such monies were so repaid to the Corporation shall have no rights in respect thereof except to obtain payment of the monies due thereon from the Corporation up to such time

as the right to proceed against the Corporation for recovery of such monies has become statute barred under the laws of the Province of Ontario.

#### **8.4            Discharge of Indenture**

The Trustee shall at the written direction and at the expense of the Corporation cancel and discharge this Indenture and release the Corporation from the covenants herein contained (except as to the provisions relating to the indemnification of the Trustee) upon being furnished with evidence satisfactory to it that the Corporation has (a) paid the principal monies of, the Premium, if any, and the interest due or to become due on, all of the Notes for the time being outstanding hereunder, and also all monies payable hereunder by the Corporation (including payment of all unpaid Trustee fees and expenses), or (b) in a manner satisfactory to the Trustee, made due provision for payment of all of the principal monies of, the Premium, if any, and the interest due or to become due on, all of the Notes for the time being outstanding hereunder at the times and in the manner therein and herein provided, and also all other monies payable hereunder by the Corporation (including payment of all unpaid Trustee fees and expenses), and provided also that the principal of all the Notes then outstanding has matured or will mature, either by passage of time and/or by call for redemption, within a period not exceeding 12 months from the time a cancellation and discharge of this Indenture is requested by the Corporation. All monies payable to the Noteholders shall be promptly paid to the Noteholders upon receipt thereof by the Trustee from the Corporation or a Paying Agent, if any.

### **ARTICLE 9**

#### **MEETINGS OF NOTEHOLDERS**

#### **9.1            Right to Convene Meeting**

The Trustee may at any time and, from time to time, and the Trustee shall on receipt of a Written Request of the Corporation or a Noteholders' Request and upon being indemnified to its reasonable satisfaction by the Corporation or by the Noteholders signing such request against the fees and costs which may be incurred in connection with the calling and holding of such meeting, convene a meeting of the Noteholders. In the event of the Trustee failing within 30 days after receipt of any such request and such indemnity to give notice convening a meeting, the Corporation or such Noteholders, as the case may be, may convene such meeting. Every such meeting shall be held in the City of Toronto or at such other place as may be approved or determined by the Trustee.

#### **9.2            Series Meetings**

If, in the opinion of the Trustee, acting reasonably, upon the advice of Counsel acceptable to the Trustee, any business to be transacted at a meeting of Noteholders, or any action to be taken or power to be exercised by instrument in writing under Section 9.19, especially affects the rights of the Noteholders of Notes of one or more Series in a manner or to an extent differing from that in which it affects the rights of the Noteholders of Notes of any other Series, then:

- (a) reference to such fact, indicating the Notes of each Series so especially affected, shall be made in the notice of such meeting and the meeting shall be and is herein called a "series meeting";
- (b) the Noteholders of Notes of a Series so especially affected shall not be bound by any action taken or power exercised at a series meeting unless in addition to the other provisions of this Article 9:
  - (i) there are present in person or by proxy at the said meeting Noteholders of at least 25% (or 50% for the purpose of passing an Extraordinary Resolution) in principal amount of the outstanding Notes of such Series; and
  - (ii) the resolution is passed by the favourable votes of the Noteholders of at least a majority (or in the case of an Extraordinary Resolution not less than 66⅔%) of the principal amount of Notes of such Series voted on the resolution; and
- (c) the Noteholders of Notes of a Series so especially affected shall not be bound by any action taken or power exercised by instrument in writing under Section 9.19 unless in addition to the other provisions of this Article 9 such instrument is signed in one or more counterparts by the Noteholders of 66⅔% of the principal amount of outstanding Notes of such Series.

Notwithstanding anything herein contained, any covenant or other provision contained herein or in any Supplemental Indenture which is expressed to be effective only so long as any Notes of one or more particular Series remain outstanding or which is enacted for the exclusive benefit of the Noteholders of the Notes of one or more particular Series may be modified by the requisite resolution or consent of the Noteholders of the Notes of such Series in the same manner as if the Notes of such Series were the only Notes outstanding hereunder.

### **9.3            Notice of Meetings**

At least 21 days' but not more than 50 days' notice of any meeting shall be given to the Noteholders in the manner provided in Section 10.2 and a copy thereof shall be sent by registered mail to the Trustee, unless the meeting has been called by it, and to the Corporation, unless the meeting has been called by it. Such notice shall state the time when and the place where the meeting is to be held and shall state briefly the general nature of the business to be transacted thereat and it shall not be necessary for any such notice to set out the terms of any resolution to be proposed or any of the provisions of this Section 9.3. The accidental omission to give notice of a meeting to any Noteholder shall not invalidate any resolution passed at any such meeting.

### **9.4            Distribution of Proxy Material to Participants**

(a) For purposes of holding a meeting of Noteholders where the Notes are represented by Global Notes and the Depository's book-entry registration system is in effect, the Trustee shall promptly notify the Depository and obtain therefrom a current Participants List.



(b) Within five Business Days of receipt of such notice by the Depository, or within any shorter delay which might be imposed by a competent regulatory authority, the Depository shall contact or cause to be contacted each Participant on the Participants List by mail to confirm the required number of copies (the "**Required Number**") of proxy material or other documents relating to the meeting (the "**Proxy Material**") which the Participant requires for the benefit of Beneficial Owners. Within 10 Business Days of confirmation by the Participant of the Required Number, the Trustee shall arrange to have delivered to such Participant the Required Number of copies of the Proxy Material. It shall be the responsibility of each Participant on the Participants List to arrange for distribution of the Proxy Material to the Beneficial Owners. Neither the Corporation nor the Trustee shall assume any liability for failure by a Participant to distribute the Proxy Material.

(c) The Corporation and the Trustee understand that the Proxy Material will be sent to the Beneficial Owners not less than 21 nor more than 50 days, or such longer delay as may be prescribed by a competent regulatory authority, before the date of the meeting.

(d) Failure by a Participant to distribute the Proxy Material to Beneficial Owners shall not affect the validity of the proceedings to be held at the meeting if notice of the meeting has been published by the Trustee at least 30 days before the holding of such meeting in *The Globe and Mail*, national edition, or any other English language daily newspaper or newspapers of general circulation in Canada and in a French language daily newspaper of general circulation in the Province of Québec, or if at least 25% in the aggregate principal amount of outstanding Notes is represented at the meeting by Noteholders or their proxies.

## **9.5 Chairman**

An individual, who need not be a Noteholder, nominated in writing by the Trustee at the request of Noteholders evidenced by a Noteholders' Request, shall be chairman of the meeting and if no person is so nominated, or if the person so nominated is unable or unwilling to act or if the person so nominated is not present within 15 minutes from the time fixed for the holding of the meeting, the Noteholders present in person or by proxy shall choose a person present to be chairman.

## **9.6 Quorum**

At any meeting of the Noteholders other than a meeting convened for the purpose of considering a resolution prepared to be passed as an Extraordinary Resolution, as to which Section 9.14 shall be applicable, a quorum shall consist of Noteholders present in person or by proxy and representing at least 25% in principal amount of the outstanding Notes. If a quorum of the Noteholders shall not be present within 30 minutes from the time fixed for holding any meeting, the meeting, if convened by the Noteholders or pursuant to a Noteholders' Request, shall be dissolved; but in any other case the meeting shall be adjourned to the same day in the next week (unless such day is not a Business Day, in which case it shall be adjourned to the next following Business Day) at the same time and place, and no notice shall be required to be given in respect of such reconvened meeting. At the reconvened meeting the Noteholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened notwithstanding that they may not represent more than 25% of the principal

amount of the outstanding Notes. Any business may be brought before or dealt with at a reconvened meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

**9.7            Power to Adjourn**

The chairman of any meeting at which a quorum of the Noteholders is present may, with the consent of the holders of a majority in principal amount of the Notes represented thereat, adjourn any such meeting and no notice of such adjournment need be given except such notice, if any, as the meeting may prescribe.

**9.8            Show of Hands**

Every question submitted to a meeting shall be decided in the first instance by a majority of the votes given on a show of hands, except that votes on Extraordinary Resolutions shall be given in the manner provided by Section 9.14. At any such meeting, unless a poll is required or duly demanded as herein provided, a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact. The chairman of any meeting shall be entitled, both on a show of hands and on a poll, to vote in respect of the Notes, if any, held by the chairman.

**9.9            Poll**

On every Extraordinary Resolution, and on any other question submitted to a meeting, when demanded by the chairman or by one or more Noteholders and/or proxies for Noteholders holding the lesser of (i) at least \$10 million of principal amount of Notes and (ii) 5% of the principal amount of the Notes represented thereat, a poll shall be taken in such manner and either at once or after an adjournment as the chairman shall direct. Questions other than Extraordinary Resolutions shall, if a poll be taken, be decided by the votes of the holders of a majority in principal amount of the Notes represented at the meeting and voted on the poll.

**9.10          Voting**

On a show of hands, every person who is present and entitled to vote, whether as a Noteholder or as proxy for one or more Noteholders or both, shall have one vote. On a poll, each Noteholder present in person or represented by a proxy duly appointed by an instrument in writing shall be entitled to one vote in respect of each \$1,000 principal amount of Notes of which such person shall then be the Noteholder. A proxy need not be a Noteholder. In the case of joint registered Noteholders of a Note, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others; but in case more than one of them be present in person or by proxy, they shall vote together in respect of the Notes of which they are joint registered Noteholders.

### **9.11            Regulations**

The Trustee, or the Corporation with the approval of the Trustee, may from time to time make and from time to time vary or revoke such regulations as it shall from time to time think fit providing for and governing:

- (a) voting by proxy and the form of the instrument appointing a proxy, which shall be in writing, and the manner in which the same shall be executed and for the production of the authority of any person signing on behalf of a Noteholder;
- (b) the deposit of instruments appointing proxies at such place as the Trustee, the Corporation or the Noteholders convening the particular meeting, as the case may be, in the notice convening the meeting, direct and the time, if any, before the holding of the meeting or any adjournment thereof by which the same shall be deposited; and
- (c) the deposit of instruments appointing proxies at some approved place or places other than the place at which the meeting is to be held and enabling particulars of such instruments appointing proxies to be mailed or telecopied before the meeting to the Corporation or to the Trustee at the place where the same is to be held and for the voting of proxies so deposited as though the instruments themselves were produced at the meeting.

Any regulations so made shall be binding and effective and the votes given in accordance therewith shall be valid and shall be counted. Save as such regulations may provide, the only persons who shall be recognized at any meeting as the Noteholders, or as entitled to vote at the meeting in respect thereof, shall be Noteholders and persons whom Noteholders have by instrument in writing duly appointed as their proxies.

### **9.12            Corporation and Trustee May Be Represented**

The Corporation by its officers, directors and employees and its legal advisors may attend any meeting of the Noteholders, but shall have no vote as such. Any officers, directors, employees or legal advisors of the Trustee and/or of any Noteholder or of any proxy for any Noteholder may attend any meeting of the Noteholders, but shall have no vote as such.

### **9.13            Powers Exercisable by Extraordinary Resolution**

Subject to Section 9.2, in addition to the powers conferred upon them by other provisions of this Indenture or by law, a meeting of the Noteholders shall have the following powers exercisable from time to time by Extraordinary Resolution:

- (a) subject to Section 9.15, power to approve any change whatsoever in any of the provisions of this Indenture or the Notes and any modification, abrogation, alteration, compromise or arrangement of the rights of the Noteholders and/or (subject to the prior consent of the Trustee) the Trustee against the Corporation or against its undertaking, property and assets or any part thereof, whether such rights arise under this Indenture or the Notes or otherwise;

- (b) power to sanction any scheme for the reconstruction or reorganization of the Corporation or for the consolidation, amalgamation or merger of the Corporation with any other corporation or for the sale, leasing, transfer or other disposition of the undertaking, property and assets of the Corporation or any part thereof, provided that no such sanction shall be necessary in respect of any such transaction if Section 6.2(b) shall have been complied with;
- (c) power to direct or authorize the Trustee to exercise any power, right, remedy or authority given to it by this Indenture in any manner specified in any such Extraordinary Resolution or to refrain from exercising any such power, right, remedy or authority;
- (d) power to waive and direct the Trustee to waive (i) any Default or Event of Default hereunder and/or cancel any declaration made by the Trustee pursuant to Section 7.2 or (ii) compliance with any term, provision or condition set forth in Article 6 or 8, in each case either unconditionally or upon any conditions specified in such Extraordinary Resolution;
- (e) power to restrain any Noteholder from taking or instituting any suit, action or proceeding for the purpose of enforcing payment of the principal of or interest or Premium, if any, on the Notes, or for the execution of any trust or power hereunder;
- (f) power to direct any Noteholder who, as such, has brought any action, suit or proceeding to stay or discontinue or otherwise deal with the same in the manner directed by such Extraordinary Resolution upon payment, if the taking of such suit, action or proceeding shall have been permitted by Section 7.7, of the costs, charges and expenses reasonably and properly incurred by such Noteholder in connection herewith;
- (g) power to assent to any compromise or arrangement with any creditor or creditors or any class or classes of creditors, whether secured or otherwise, and with holders of any shares or other Securities of the Corporation;
- (h) power to appoint a committee to consult with the Trustee (and to remove any committee so appointed) and to delegate to such committee (subject to such limitation, if any, as may be prescribed in such Extraordinary Resolution) all or any of the powers which the Noteholders may exercise by Extraordinary Resolution under Section 9.13(c), (d), (e) or (f); the Extraordinary Resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee; such committee shall consist of such number of individuals (who need not be Noteholders) as shall be prescribed in the Extraordinary Resolution appointing it; subject to the Extraordinary Resolution appointing it, every such committee may elect its chairman and may make regulations respecting its quorum, the calling of its meetings, the filling of vacancies occurring in its number, the manner in which it may act and its procedure generally and such regulations may provide that the

committee may act at a meeting at which such quorum is present or may act by resolution signed in one or more counterparts by a majority of the members thereof or the number of members thereof necessary to constitute a quorum, whichever is the greater; all acts of any such committee within the authority delegated to it shall be binding upon all Noteholders;

- (i) power to authorize the distribution *in specie* of any shares, bonds, debentures or other Securities or obligations and/or cash or other consideration received hereunder or the use or disposal of the whole or any part of such shares, bonds, debentures or other Securities or obligations and/or cash or other consideration in such manner and for such purpose as may be deemed advisable and specified in such Extraordinary Resolution;
- (j) power to authorize the Trustee or any other person or persons to bid at any sale of the Corporation's properties or assets or any part thereof and to:
  - (i) borrow the monies required to make any deposit at said sale or pay the balance of the purchase price of such properties or assets;
  - (ii) (A) hypothecate, mortgage, pledge, charge, cede and transfer the property or assets so purchased as security for the repayment of the monies so borrowed and interest thereon, or (B) itself, himself or themselves, as the case may be, advance such monies (in which event it, he or they shall have a Lien upon the property or assets so purchased for the amount so advanced and interest thereon);
  - (iii) hold any property or assets so purchased (subject to any Lien to secure any monies so borrowed or advanced) in trust for all the Noteholders of the Notes outstanding at the time of such sale *pro rata* in proportion to the amounts due to them thereon respectively for principal, Premium, if any, and interest before such sale;
  - (iv) sell, transfer and convey the whole or any part or parts of the property or assets so purchased for such consideration in cash or in the shares, bonds, debentures or other Securities or obligations of any corporation formed or to be formed, or partly in cash and partly in such Securities or obligations, and upon such terms and conditions as may be determined by such Extraordinary Resolution of the Noteholders; and
  - (v) otherwise deal with such property and assets and the proceeds of any sale, transfer or conveyance thereof as the Noteholders may by such Extraordinary Resolution direct;
- (k) power to remove the Trustee from office and to appoint a new Trustee or Trustees; and

- (l) power to amend, alter or repeal any Extraordinary Resolution previously passed or sanctioned by the Noteholders or by any committee appointed pursuant to Section 9.13(h).

#### **9.14 Meaning of "Extraordinary Resolution"**

(a) The expression "**Extraordinary Resolution**" when used in this Indenture means, subject as hereinafter in this Article 9 provided, a resolution proposed to be passed as an extraordinary resolution at a meeting of Noteholders (including a reconvened meeting) duly convened for the purpose and held in accordance with this Article 9 at which the Noteholders of more than 25% (or 50% for the purpose of passing an Extraordinary Resolution at a series meeting as contemplated by Section 9.2(b)) in principal amount of the Notes then outstanding are present in person or by proxy and passed by the favourable votes of the Noteholders of not less than 66⅔% of the principal amount of Notes represented at the meeting and voted on a poll upon such resolution.

(b) If, at any such meeting, the holders of more than 25% (or 50% for the purpose of passing an Extraordinary Resolution at a series meeting as contemplated by Section 9.2(b)) in principal amount of the Notes outstanding are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Noteholders, shall be dissolved; but if convened by the Trustee (other than on the requisition of Noteholders) or by the Corporation, it shall stand adjourned to such date, being not less than 21 nor more than 50 days later, and to such place and time as may be appointed by the chairman. Not less than ten days' notice shall be given of the time and place of such reconvened meeting in the manner provided in Section 9.4. Such notice shall state that at the reconvened meeting, the Noteholders present in person or by proxy shall form a quorum and shall set forth the purposes for which the meeting was originally called or any other particulars. At the reconvened meeting, the Noteholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such reconvened meeting and passed by holders of 66⅔% of the principal amount of the Notes present in person or by proxy at such reconvened meeting of the Noteholders shall be an Extraordinary Resolution within the meaning of this Indenture, notwithstanding that the holders of more than 25% (or 50% for the purpose of passing an Extraordinary Resolution at a series meeting as contemplated by Section 9.2(b)) in principal amount of the Notes then outstanding are not present in person or by proxy at such reconvened meeting.

(c) Votes on an Extraordinary Resolution shall always be given on a poll and no demand for a poll on an Extraordinary Resolution shall be necessary.

#### **9.15 Required Written Consent**

Notwithstanding any other provision of this Indenture, no change may be made to (a) the terms of any Series of Notes which affects the interest rate, the timing, currency, amount or other terms relating to the payment of interest, principal, Premium or the Applicable Redemption Price or the terms of repayment, redemption or maturity of such Series of Notes unless the prior written consent of all Noteholders of such Series of Notes is obtained, and (b) the

percentage vote required to make amendments or waivers of the other terms and conditions of this Indenture or the Notes unless the prior consent of all of the Noteholders of Notes is obtained.

#### **9.16            Beneficial Owners**

(a) Unless otherwise established in or pursuant to a Certified Board Resolution or set forth or determined in a Certificate of the Corporation, or established in one or more Supplemental Indentures, a Noteholder, including a Depository that is a Noteholder of a Global Note, may make, give or take, by a proxy, or proxies, duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Noteholders, and a Depository that is a Noteholder of a Global Note may provide its proxy or proxies to the Beneficial Owners of interests in the Global Note through such Depository's standing instructions and customary practices.

(b) The Corporation shall fix a record date for the purpose of determining the persons who are Beneficial Owners of interest in any Global Note held by a Depository entitled under the procedures of such Depository to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Noteholders. If such a record date is fixed, the Noteholders on such record date or their duly appointed proxy or proxies, and only such persons shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Noteholders remain Noteholders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action shall be valid or effective if made, given or taken more than 90 days after such record date.

#### **9.17            Powers Cumulative**

It is hereby declared and agreed that any one or more of the powers and/or any combination of the powers in this Indenture stated to be exercisable by the Noteholders by Extraordinary Resolution or that otherwise may be exercised from time to time and the exercise of any one or more of such powers or any combination of powers from time to time shall not be deemed to exhaust the rights of the Noteholders to exercise the same or any other such power or powers or combination of powers thereafter from time to time.

#### **9.18            Minutes**

Minutes of all resolutions and proceedings at every meeting of Noteholders shall be made and duly entered into books to be from time to time provided for that purpose by the Trustee at the expense of the Corporation, and any such minutes as aforesaid, if signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting of the Noteholders, shall be *prima facie* evidence of the matters therein stated and, until the contrary is proved, every such meeting, in respect of the proceedings of which minutes shall have been made, shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings taken thereat, to have been duly passed and taken.

**9.19            Instruments in Writing**

Subject to Section 7.4 and Section 9.15, all actions which may be taken and all powers that may be exercised by the Noteholders at a meeting held as hereinbefore in this Article 9 provided may also be taken and exercised by the Noteholders of not less than 66 $\frac{2}{3}$ % of the principal amount of all the outstanding Notes in the case of an Extraordinary Resolution and, by the Noteholders of not less than 51% of the principal amount of all the outstanding Notes in all other cases, by an instrument in writing signed in one or more counterparts and the expression "Extraordinary Resolution" when used in this Indenture shall include an instrument so signed.

**9.20            Binding Effect of Resolutions**

Every resolution and every Extraordinary Resolution passed in accordance with the provisions of this Article 9 at a meeting of the Noteholders shall be binding upon all the Noteholders, whether present at or absent from such meeting, and every instrument in writing signed by Noteholders in accordance with Section 9.19 shall be binding upon all the Noteholders, whether signatories thereto or not, and each and every Noteholder and the Trustee (subject to the provisions for its indemnity herein contained) shall be bound to give effect accordingly to every such resolution and instrument in writing.

**9.21            Evidence of Rights of Noteholders**

Any request, direction, notice, consent or other instrument which this Indenture may require or permit to be signed or executed by the Noteholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Noteholders in person or by attorney duly appointed in writing. Proof of the execution of any such request or other instrument or of a writing appointing any such attorney or (subject to the provisions of this Article 9 with regard to voting at meetings of Noteholders) of the holding by any person of Notes shall be sufficient for any purpose of this Indenture if made in the following manner, namely, the fact and date of execution by any person of such request or other instrument or writing may be proved by the certificate of any notary public, or other officer authorized to take acknowledgements of deeds to be recorded at the place where such certificate is made, that the person signing such request or other instrument in writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution or in any other manner which the Trustee may consider adequate.

The Trustee may, nevertheless, in its discretion require further proof in cases where it deems further proof desirable or may accept such other proof as it shall consider proper.

**ARTICLE 10**  
**NOTICES**

**10.1           Notice to Corporation**

Any notice, request or other communication required or permitted to be given to the Corporation under this Indenture shall be valid and effective if (a) delivered personally to the Corporation at P.O. Box 1218, 1130 Bertie Street, Fort Erie, ON, L2A 5Y2, Attention: Chief



Financial Officer, or (b) sent by facsimile to facsimile number (905) 871-0676, Attention: Chief Financial Officer, or (c) delivered by another form of notice agreed to by the Corporation and the Trustee, in the manner and according to the procedures agreed to by such parties and, subject as provided in this Section 10.1, shall be deemed to have been given at the time of delivery or sending by facsimile. Any delivery made or facsimile sent on a day other than a Business Day, or after 3:00 p.m. (Toronto time) on a Business Day, will be deemed to be received on the next following Business Day. The Corporation may from time to time notify the Trustee of a change in address or facsimile number which thereafter, until changed by like notice, will be the address or facsimile number of the Corporation for all purposes of this Indenture.

## **10.2            Notice to Noteholders**

(a) Except as otherwise expressly provided herein or in a Supplemental Indenture, any notice, request or other communication required or permitted to be given to the Noteholders under this Indenture shall be valid and effective if (i) delivered personally or mailed to each Noteholder at its address on the Register maintained pursuant to Section 2.9 or (ii) delivered by another form of notice agreed to by the Corporation and the Trustee, in the manner and according to the procedures agreed to by such parties and, subject as provided in this Section 10.2, shall be deemed to have been received at the time of delivery or, if mailed, two Business Days after such mailing. Any delivery made on a day other than a Business Day, or after 3:00 p.m. (Toronto time) on a Business Day, shall be deemed to be received on the next following Business Day.

(b) All notices with respect to any Note may be given to whichever one of the Noteholders thereof (if more than one) is named first in the Registers hereinbefore mentioned, and any notices so given shall be sufficient notice to all Noteholders of and/or persons interested in such Note.

## **10.3            Notice to the Trustee**

Any notice, request or other communication required or permitted to be given to the Trustee under this Indenture shall be valid and effective if (a) delivered personally or mailed to the Trustee at 100 University Avenue, 8th Floor, South Tower, Toronto, ON, M5J 2Y1, (b) sent by facsimile to facsimile number (416) 981-9777, Attention: Manager, Corporate Trust, or (c) delivered by another form of notice agreed to by the Corporation and the Trustee, in the manner and according to the procedures agreed to by such parties and, subject as provided in this Section 10.3, will be deemed to have been given at the time of delivery or sending by facsimile or, if mailed, two Business Days after such mailing. Any delivery made or facsimile sent on a day other than a Business Day, or after 3:00 p.m. (Toronto time) on a Business Day, will be deemed to be received on the next following Business Day. The Trustee may from time to time notify the Corporation of a change in address or facsimile number which thereafter, until changed by like notice, will be the address or facsimile number of the Trustee for all purposes of this Indenture.

#### **10.4           Mail Service Interruption**

In the case of disruption or interruption of mail service in Canada, any notice, request or other communication given under Section 10.2 or 10.3, if mailed, shall be deemed not to have been given until it is actually delivered.

#### **10.5           Waiver of Notice**

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Noteholders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

#### **10.6           Electronic Communication**

When used in this Article 10, the term "electronic communication" shall include communications by facsimile, e-mail or any other electronic, optical or other communication formats which may become available in the future (excluding verbal telephone communications) which are capable of providing a permanent record and in respect of which delivery can be verified or a receipt acknowledged, and the term "electronic number" shall include a facsimile number, e-mail address or any other unique number or address capable of directing the electronic communication to the intended recipient thereof.

### **ARTICLE 11** **CONCERNING THE TRUSTEE**

#### **11.1           Indenture Legislation**

(a) The expression "**Indenture Legislation**" means the provisions, if any, of the *Business Corporations Act* (Ontario), and any other statute of Canada or any province thereof, and of any regulations under any such statute, relating to trust indentures and to the rights, duties and obligations of trustees under trust indentures and of corporations issuing Indebtedness obligations under trust indentures, to the extent that such provisions are at the time in force and applicable to this Indenture, the Corporation or the Trustee.

(b) The Corporation and the Trustee agree that each will at all times in relation to this Indenture and any action to be taken hereunder, observe and comply with and be entitled to the benefits of Indenture Legislation.

(c) If and to the extent that any provision of this Indenture limits, qualifies or conflicts with any mandatory requirement of Indenture Legislation, such mandatory requirement shall prevail.

#### **11.2           Rights and Duties of Trustee**

(a) In the exercise of the rights, powers, duties and obligations prescribed or conferred by the terms of this Indenture, the Trustee shall act honestly and in good faith with a

view to the best interests of the Noteholders as a whole and exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

(b) The obligation of the Trustee to commence or continue any act, action or proceeding for the purpose of enforcing any rights of the Trustee or the Noteholders hereunder shall be conditional upon the Noteholders furnishing, when required by notice in writing by the Trustee, sufficient funds to commence or continue such act, action or proceeding and an indemnity reasonably satisfactory to the Trustee to protect and hold harmless the Trustee against the costs, charges, expenses and liabilities to be incurred thereby and any loss or damage it may suffer by reason thereof. None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless funded and indemnified as aforesaid.

(c) The Trustee may, before commencing or at any time during the continuance of any such act, action or proceeding, require the Noteholders at whose instance it is acting to deposit with the Trustee the Notes held by them, for which Notes the Trustee shall issue receipts.

(d) Every provision of this Indenture that by its terms relieves the Trustee of liability or entitles it to rely upon any evidence submitted to it is subject to the provisions of the Indenture Legislation, this Section 11.2 and Section 11.3.

(e) The Trustee shall not be bound to give any notice or do or take any act, action or proceeding by virtue of the powers conferred on it by this Indenture unless and until it shall have been required so to do under the terms of this Indenture; nor shall the Trustee be required to take notice of any Default or Event of Default hereunder, unless and until notified in writing of such Default or Event of Default, which notice shall distinctly specify the Default or Event of Default desired to be brought to the attention of the Trustee and in the absence of any such notice the Trustee may for all purposes of this Indenture conclusively assume that no Default or Event of Default has been made in the observance or performance of any of the representations, warranties, covenants, agreements or conditions contained herein. Subject to Section 7.6, any such notice shall in no way limit any discretion herein given the Trustee to determine whether or not the Trustee shall take action with respect to any Default or Event of Default.

### **11.3 Evidence, Experts and Advisors**

(a) In addition to the reports, certificates, opinions, statutory declarations and other evidence required by this Indenture, the Corporation shall furnish to the Trustee such additional evidence of compliance with any provisions hereof, and in such form as may be prescribed by the Indenture Legislation or as the Trustee may reasonably require by written notice to the Corporation.

(b) In the exercise of its rights, powers, duties and obligations, the Trustee may, if it is acting in good faith, act, and rely as to the truth of the statements and the accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports, certificates or other evidence referred to in Section 11.3(a) provided that the Trustee examines the same and

determines that such evidence complies with the applicable requirements of this Indenture and of Indenture Legislation.

(c) The Trustee may employ or retain such counsel, auditors, accountants, agents, appraisers, brokers or other experts or advisors, whose qualifications give authority to any advice, opinion or report made by them, as it may reasonably require for the purpose of determining and discharging its duties hereunder, shall not be responsible for any misconduct on the part of any of them, and the Trustee may act and rely on the advice, opinion or report of any such expert or advisor and shall not be responsible for any loss occasioned by so acting and relying, unless such action was taken in bad faith or such action constitutes negligence or wilful misconduct. The Corporation will reimburse the Trustee for all costs, charges and expenses properly incurred by it in employing or retaining such experts and advisors in accordance with this Section 11.3(c).

#### **11.4 Certificate, etc. of the Corporation as Evidence**

Except as otherwise specifically provided or prescribed by this Indenture, whenever in the administration of the provisions of this Indenture the Trustee shall deem necessary or desirable that the matter be approved or established prior to taking or admitting any action hereunder, the Trustee, if acting in good faith, may rely and act upon a Certificate of the Corporation, Written Order of the Corporation, Written Request of the Corporation or Written Direction of the Corporation.

#### **11.5 Protection of Trustee**

By way of supplement to the provisions of any law for the time being relating to Trustees, it is expressly declared and agreed as follows:

- (a) the Trustee and its directors, officers and employees will at all times be indemnified and saved harmless by the Corporation from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever arising in connection with this Indenture and the Notes, including those arising out of or related to actions taken or omitted to be taken by the Trustee contemplated hereby or thereby, legal fees and disbursements, and costs and expenses incurred in connection with the enforcement of this indemnity, which the Trustee 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 Trustee. The foregoing provisions of this Section 11.5(a) do not apply to the extent that in any circumstances there has been a failure by the Trustee or its employees to act honestly and in good faith or where the Trustee or its employees have acted negligently or in wilful disregard of the Trustee's obligations hereunder. This indemnity shall survive resignation or removal of the Trustee and the discharge of this Indenture;
- (b) the Trustee shall not be liable for or by reason of any statements of fact or recitals in this Indenture or in the Notes (except the representation contained in Sections

11.7 and 11.17 and in the certificate of the Trustee on the Notes) or required to verify the same, but all such statements or recitals are and shall be deemed to be made by the Corporation;

- (c) nothing herein contained shall impose any obligation on the Trustee to see to or to require evidence of the registration or filing (or renewal thereof) of this Indenture or any instrument ancillary or supplemental hereto;
- (d) the Trustee shall not be bound to give notice to any person of the execution hereof; and
- (e) the Trustee shall not incur any liability or responsibility whatever or be in any way responsible for the consequence of any breach on the part of the Corporation or any of the covenants herein contained or of any acts of the agents of the Corporation.

#### **11.6 Trustee Not Required to Give Security**

The Trustee shall not be required to give any bond or security in respect of the execution of the trusts and powers of this Indenture or otherwise in respect of the premises.

#### **11.7 No Conflict of Interest**

The Trustee represents and warrants to the Corporation and the Noteholders that at the date of execution and delivery by it of this Indenture, there exists no conflict of interest between its role as Trustee hereunder and its role in any other capacity. The Trustee shall, within 90 days after it becomes aware that such a material conflict of interest exists, either eliminate such material conflict of interest or resign in the manner and with the effect specified in Section 11.10. If, notwithstanding the foregoing provisions of this Section 11.7, the Trustee has such a conflict of interest, the validity and enforceability of this Indenture and of the Notes issued hereunder shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Trustee contravenes the foregoing provisions of this Section 11.7, any interested person may apply to the Ontario Court of Queen's Bench for an order that the Trustee be replaced as trustee hereunder.

#### **11.8 Investment of Trust Monies**

(a) Unless otherwise provided in this Indenture, any monies held by the Trustee, which under the trusts of this Indenture may or ought to be invested or which may be on deposit with the Trustee or which may be in the hands of the Trustee, shall be invested and reinvested in the name or under the control of the Trustee in any Authorized Investments (i) prior to the date the Trustee shall have declared the principal of and interest on the Notes to be due and payable, at the direction of the Corporation and (ii) thereafter, as may be directed in a resolution of Noteholders. Any such direction to the Trustee as to the investment of the funds shall be in writing and shall be provided to the Trustee no later than 11:00 a.m. (Toronto time) on the day on which the investment is to be made. Any such direction received by the Trustee after 11:00 a.m. (Toronto time) or received on a non-Business Day, shall be deemed to have been given prior to 11:00 a.m. (Toronto time) on the next Business Day. Pending such investment or receipt

of any investment direction, such monies may be deposited by the Trustee in any Canadian chartered bank (including any Affiliate of the Trustee) or maintained in a trust account with the Trustee. The Trustee shall allow interest at its current rate for trust accounts on monies maintained in a trust account with it and shall credit the Corporation with interest received or other return obtained on monies deposited with other depositaries and on all money invested as provided for in this Section 11.8. For the purposes of this Section 11.8, "**Authorized Investments**" means interest bearing or discount indebtedness obligations issued or guaranteed by the Government of Canada or a province of Canada or a Canadian chartered bank (which may include an affiliate or related party of the Trustee) provided that each such obligation is rated at least AA by Standard & Poor's Ratings Service or its then equivalent rating by Standard & Poor's Ratings Service or an equivalent rating by any other rating agency and provided that such indebtedness obligations are expressed to mature within one year after their purchase by the Trustee.

(b) Unless and until the Trustee shall have declared the principal of and interest on the Notes to be due and payable, the Trustee shall, on request, pay over to the Corporation all interest received or other return obtained by the Trustee in respect of any investments or deposits made pursuant to this Section 11.8, including interest payable on funds maintained in a trust account with the Trustee.

#### **11.9            Action by Trustee to Protect Interests**

The Trustee shall have the power to institute and maintain all and any such actions, suits or proceedings as it may consider necessary or expedient to preserve, protect or enforce its interests and the interests of the Noteholders.

#### **11.10          Replacement of Trustee**

(a) The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Corporation and the Noteholders 60 days' notice in writing or such shorter notice as the Corporation and the Noteholders (in accordance with a Noteholder Approval) may accept as sufficient. The Noteholders by Extraordinary Resolution shall have the power at any time to remove the Trustee and to appoint a new Trustee hereunder. In the event of the Trustee resigning or being removed or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Corporation shall forthwith appoint a new Trustee unless a new Trustee has already been appointed by the Noteholders; failing such appointment by the Corporation, the retiring Trustee or any Noteholder may apply, at the Corporation's expense, to a Judge of the Ontario Court of Queen's Bench on such notice as such Judge may direct, for the appointment of a new Trustee; but any new Trustee so appointed by the Corporation or by the Court shall be subject to removal as aforesaid by the Noteholders. Any new Trustee appointed pursuant to this Section 11.10 shall be a corporation authorized to carry on the business of a trust company in each of the provinces of Canada. On any new appointment, the new Trustee shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as Trustee.

(b) Any corporation into which the Trustee may be merged or with which it may be consolidated or amalgamated or any corporation resulting from any merger, consolidation or

amalgamation to which the Trustee shall be a party, shall be the successor Trustee under this Indenture without the execution of any instrument or any further act. Nevertheless, upon the written request of the successor Trustee or of the Corporation, the Trustee ceasing to act shall execute and deliver an instrument assigning and transferring to such successor Trustee, upon the trusts herein expressed, all the rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver all property and money held by such Trustee to the successor Trustee so appointed in its place. Should any deed, conveyance or instrument in writing from the Corporation be required by any new Trustee for more fully and certainly vesting in and confirming to it such estates, properties, rights, powers and trusts, then any and all such deeds, conveyances and instruments in writing shall on request of such new Trustee be made, executed, acknowledged and delivered by the Corporation.

**11.11      Reliance by Trustee**

The Trustee is not in contravention of Section 11.2 if it relies in good faith upon statutory declarations, certificates, opinions or reports furnished pursuant to the provisions hereof or required by the Trustee to be furnished to it in the exercise of its rights and duties hereunder if such statutory declarations, certificates, opinions or reports comply with Section 11.12, if applicable, and with any other applicable provisions of this Indenture or with the applicable provisions of the *Business Corporations Act* (Ontario).

**11.12      Evidence and Authority to Trustee**

(a) The Corporation shall furnish to the Trustee evidence of compliance with the conditions provided for in this Indenture relating to any action or step required or permitted to be taken by the Corporation or the Trustee under this Indenture or as a result of any obligation imposed under this Indenture, including the issue, certification and delivery of Notes hereunder, the satisfaction and discharge of this Indenture and the taking of any other action to be taken by the Trustee at the request of or on the application of the Corporation, forthwith if and when: (i) such evidence is required by any other Section of this Indenture to be furnished to the Trustee in accordance with the terms of this Section 11.12; or (ii) the Trustee, in the exercise of its rights and duties under this Indenture, gives the Corporation written notice requiring it to furnish such evidence in relation to any particular action or obligation specified in such notice. Such evidence shall consist of:

- (i) a statutory declaration or a certificate made by the President or any Vice-President or the Secretary of the Corporation stating that any such condition has been complied with in accordance with the terms of this Indenture;
- (ii) in the case of any such condition compliance with which is, by the terms of this Indenture, made subject to review by legal counsel, an opinion of Counsel to the Corporation that such condition has been complied with in accordance with the terms of this Indenture; and
- (iii) in the case of any such condition compliance with which is, by the terms of this Indenture, made subject to review or examination by an auditor or

accountant, an opinion or report of the Auditors of the Corporation or any accountant registered under the *Regulated Accounting Profession Act* (Ontario) based on the examinations or enquiries required to be made under the terms of this Indenture, in each case approved by the Trustee, that such condition has been complied with in accordance with the terms of this Indenture.

(b) Whenever such evidence relates to a matter other than the issue, certification and delivery of Notes, the satisfaction and discharge of this Indenture or the taking of any other action to be taken by the Trustee at the request of or on the application of the Corporation, and except as otherwise specifically provided herein, such evidence may consist of a report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other person whose qualifications give authority to a statement made by him, provided that if such report or opinion is furnished by a director, officer or employee of the Corporation, it shall be in the form of a statutory declaration. Such evidence shall be, so far as appropriate, in accordance with Section 11.12(a).

(c) Each statutory declaration, certificate, opinion or report furnished to the Trustee as evidence of compliance with a condition provided for in this Indenture shall include a statement by the person giving the evidence: (i) declaring that he has read and understands the provisions of this Indenture relating to the condition in question; (ii) describing the nature and scope of the examination or investigation upon which he based the statutory declaration, certificate, opinion or report; and (iii) declaring that he has made the examination or investigation that he believes necessary to enable him to make the statements or give the opinions contained or expressed therein.

(d) At least once in each 12-month period beginning on the date of the Indenture and at any other time upon the demand of the Trustee, the Corporation shall furnish the Trustee with a certificate of compliance (the "**Certificate of Compliance**") in the form set out in Schedule "D" that the Corporation has complied with all requirements contained in this Indenture that, if not complied with, would constitute a Default or an Event of Default, or, if there has been failure to so comply, giving particulars thereof. Upon the demand of the Trustee, the Corporation shall furnish the Trustee with evidence in such form as the Trustee may require as to compliance with any condition contained in this Indenture relating to any action required or permitted to be taken by the Corporation or as a result of any obligation imposed by this Indenture.

#### **11.13 Trustee May Deal in Notes**

Subject to Section 11.7, the Trustee may, in its personal or any other capacity, buy, sell, lend upon and deal in the Notes and generally contract and enter into financial transactions with the Corporation or otherwise, without being liable to account for any profits made thereby.

#### **11.14 Trustee Not Ordinarily Bound**

Except as provided in Section 6.3 and as otherwise specifically provided herein, the Trustee shall not, subject to Section 11.2, be bound to give notice to any person of the



execution hereof, nor to do, observe or perform or see to the observance or performance by the Corporation of any of the obligations herein imposed upon the Corporation or of the covenants on the part of the Corporation herein contained nor in any way to supervise or interfere with the conduct of the Corporation's business unless the Trustee shall have been required to do so by a Noteholders' Request or by any Extraordinary Resolution of the Noteholders passed in accordance with Article 9, and then only after it shall have been indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, charges, damages and expenses which it may incur by so doing.

**11.15            Trustee Not to Be Appointed Receiver**

The Trustee and any person related to the Trustee shall not be appointed a receiver or receiver and manager or liquidator of all or any part of the assets or undertaking of the Corporation.

**11.16            Trustee Not Bound to Act on Corporation's Request**

Except as in this Indenture otherwise specifically provided, the Trustee shall not be bound to act in accordance with any direction or request of the Corporation or of the Board of Directors until a duly authenticated copy of the instrument or resolution containing such direction or request shall have been delivered to the Trustee, and the Trustee shall be empowered to act upon any such copy purporting to be authenticated and believed by the Trustee to be genuine.

**11.17            Authority to Carry on Business**

The Trustee represents to the Corporation that at the date of execution and delivery by it of this Indenture, it is authorized to carry on the business of a trust corporation in each of the provinces of Canada but if, notwithstanding this Section 11.17, it ceases to be so authorized to carry on business, the validity and enforceability of this Indenture and the Notes issued hereunder shall not be affected in any manner whatsoever by reason only of such event but the Trustee shall, within 90 days after ceasing to be authorized to carry on the business of a trust company in the Province of Ontario, either become so authorized or resign in the manner and with the effect specified in Section 11.10.

**11.18            Acceptance of Trusts**

The Trustee hereby accepts the trusts in this Indenture declared and provided for and agrees to perform the same upon the terms and conditions herein set forth and to hold all rights, privileges and benefits conferred hereby and by law in trust for various persons who shall from time to time be Noteholders, subject to all the terms and conditions herein set forth.

**11.19            Privacy**

The Corporation acknowledges that the Trustee may, in the course of providing services hereunder, collect or receive financial and other information about the Corporation and/or its representatives, as individuals, and use such information for the following purposes:

- (a) to provide the services required under this Indenture and other services that may be requested from time to time;
- (b) to help the Trustee manage its servicing relationships with the Corporation and its representatives; and
- (c) to meet the Trustee's legal and regulatory requirements.

The Corporation acknowledges and agrees that the Trustee may receive, collect, use and disclose personal information provided to it or acquired by it in the course of this Indenture for the purposes described above and, generally, in the manner and on the terms described in its privacy code, which the Trustee shall make available on its website or upon request, including revisions thereto. Some of this personal information may be transferred to servicers in the U.S. for data processing and/or storage. Further, the Corporation agrees that it shall not provide or cause to be provided to the Trustee any personal information relating to an individual who is not a representative of the Corporation.

#### **11.20      Force Majeure**

(a) The term "force majeure" shall mean any of the following events, if the same is beyond the control of the party affected (*i.e.*, such event was not caused by the fault or negligence of such party and could not have been prevented or avoided by that party through commercially reasonable precautions), and did not exist at the date of this Indenture:

- (i) lightning, storms, earthquakes, avalanches, landslides, floods, washouts and other acts of God or natural calamities;
- (ii) fires, explosions and destruction, whether accidentally or intentionally caused and whether partial or complete, in or of the premises and facilities of either party, if the same materially affects the ability of such party to perform its obligations hereunder;
- (iii) strikes, lockouts or other industrial action materially affecting the capacity of either party to perform its obligations hereunder;
- (iv) civil disturbances, acts of sabotage or terrorism, war, blockades, insurrections, vandalism, riots or epidemics;
- (v) inability of either party to obtain supplies, materials or services (including electricity, water, fuel or other utilities) which are essential to enable such party to perform its obligations hereunder; or
- (vi) any other events beyond the reasonable control of the party affected that substantially impair the ability of such party to carry out its obligations under this Agreement.

For greater certainty, the inability of a party to perform any of its obligations under this Indenture due to insolvency or financial difficulty shall not constitute an event of force majeure.

(b) If an event of force majeure shall occur that prevents, delays or substantially hinders either party from carrying out some or all of its obligations hereunder except for the payment obligations of the Corporation contained herein, the party affected by such event of force majeure may give written notice thereof to the other party hereto setting out in reasonable detail the nature of such event of force majeure and its effect upon the obligations of the affected party. If such notice is given and the party affected by such event of force majeure (i) takes all reasonable efforts to mitigate or overcome the effect of such force majeure (including procuring alternative performance by another party, if commercially reasonable to do so) and (ii) continues to perform its obligations hereunder, to the extent that such performance is not directly prevented by such event of force majeure, (A) the affected party shall be deemed not to be in default of its obligations hereunder, to the extent that any failure to perform such obligations which would otherwise constitute such default is reasonably attributable to the effect of such event of force majeure, (B) any time period within which such obligations are to be performed pursuant to the terms of this Agreement shall be extended for the period of such inability to perform, and (C) the other party may suspend the performance of any of its obligations under this Indenture to the extent that they are dependent upon the affected obligations of the affected party or such suspension is otherwise commercially reasonable in the circumstances. To the extent that an event of force majeure prevents a party from giving notice under this Section 11.20, performance times under this Indenture shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section 11.20.

## **ARTICLE 12**

### **SUPPLEMENTAL INDENTURES**

#### **12.1            Supplemental Indentures**

From time to time the Trustee and, when authorized by a resolution of the Board of Directors, the Corporation may, and they shall, when required by this Indenture, execute, acknowledge and deliver by their proper officers Supplemental Indentures hereto, which thereafter shall form part hereof, for any one or more of the following purposes:

- (a) to provide for the creation and issuance of Additional Notes and the terms thereof;
- (b) adding to the covenants of the Corporation herein contained for the protection of the Noteholders of the Notes and/or providing for Events of Default in addition to those herein specified;
- (c) provided that Noteholder Approval is obtained, making such provisions not inconsistent with this Indenture as may be necessary or desirable with respect to matters or questions arising hereunder, including the making of any modifications in the form of the Notes which do not affect the substance thereof and which it may be expedient to make;
- (d) evidencing the succession, or successive successions, of other corporations to the Corporation and the covenants of and obligations assumed by any such successor in accordance with the provisions of this Indenture;

- (e) giving effect to any Extraordinary Resolution passed as provided in Article 9; and
- (f) for any other purpose not inconsistent with the terms of this Indenture as determined by the Noteholders (as evidenced by Noteholder Approval).

The Trustee may also, without the consent or concurrence of the Noteholders, by Supplemental Indenture or otherwise, concur with the Corporation in making any changes or corrections in this Indenture which it shall have been advised pursuant to an opinion of Counsel to the Trustee are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provisions or clerical omissions or mistakes or manifest errors contained herein or in any Supplemental Indenture, provided that in the opinion of the Trustee (relying on an opinion of Counsel to the Trustee as to the legal aspects thereof) the rights of the Trustee and of the Noteholders are not adversely affected in any material respect thereby.

### **ARTICLE 13**

#### **EXECUTION AND FORMAL DATE**

#### **13.1        Execution**

This Indenture may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

#### **13.2        Formal Date**

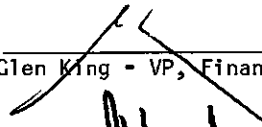
For the purpose of convenience, this Indenture may be referred to as bearing a formal date of December 16, 2011, irrespective of the actual date of execution hereof.

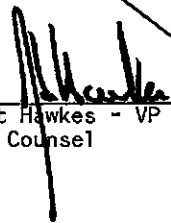
**The next page is the signature page.**

IN WITNESS WHEREOF the parties hereto have executed this Indenture.

**ALGOMA POWER INC.**

by

  
Glen King - VP, Finance & Chief Financial Officer

  
R. Scott Hawkes - VP Corp. Services &  
General Counsel

**COMPUTERSHARE TRUST  
COMPANY OF CANADA**

by

  
Judith Sebald  
Corporate Trust Officer

  
Kemi Atawo  
Corporate Trust Officer

## **SCHEDULE "A"**

### **FORM OF GLOBAL NOTE – SERIES 11-1 NOTES**

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE TRUST INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF CDS & CO. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED ("CDS") TO THE CORPORATION OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN RESPECT THEREOF IS REGISTERED IN THE NAME OF CDS & CO., OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS (AND ANY PAYMENT IS MADE TO CDS & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED NOTEHOLDER HEREOF, CDS & CO., HAS AN INTEREST HEREIN.

#### **ALGOMA POWER INC.**

(Incorporated under the laws of Ontario)

Series: 11-1

\$52,000,000

No. 001

CUSIP 015653AA6

### **GLOBAL NOTE**

#### **5.118% SENIOR UNSECURED NOTE DUE DECEMBER 16, 2041**

**ALGOMA POWER INC.** (the "**Corporation**") for value received hereby acknowledges itself indebted and promises to pay to the registered holder hereof on December 16, 2041, or on such earlier date as the principal amount hereof may become due in accordance with the provisions of the Trust Indenture (as defined below), the principal amount of FIFTY-TWO MILLION DOLLARS (\$52,000,000) in lawful money of Canada on presentation and surrender of this Note at a Corporate Trust Office (as defined in the Trust Indenture) of the Trustee (as defined below), together with such further amount, if any, as may be payable by way of Premium (as defined in the Trust Indenture) and to pay interest on the principal amount hereof at the rate of 5.118% per annum from December 16, 2011, or from the last interest payment date on which interest has been paid or made available for payment on this Note, whichever is later, with equal payments of interest, made semi-annually in arrears on June 16 and December 16 in each year to and including December 16, 2041 (unless this Note has been previously purchased or redeemed in accordance with the provisions of the Trust Indenture) or on such earlier date as the interest amount becomes payable in accordance with the provisions of the Trust Indenture; and, should the Corporation at any time make default in the payment of any principal, Premium, if any, or interest, to pay interest on the amount in default at the same rate.

As interest on this Note becomes due, such interest (less any tax required by law to be deducted and remitted to a taxing authority) will be paid by the Corporation or a Paying Agent (as defined in the Trust Indenture), if any, by wire transfer to the Depository (as defined in the Trust Indenture) prior to such date or by wire transfer of immediately available funds by 11:00 a.m. (EST) on such date (or such earlier date as may be agreed upon by the Corporation

and the registered holder of this Note and provided that interest payable at maturity or on redemption shall be paid on presentation and surrender of this Note).

This Note is one of the 5.118% Senior Unsecured Notes due December 16, 2041 (herein referred to as the "**Notes**") issued under a Trust Indenture (which Trust Indenture together with all instruments supplemental or ancillary thereto is herein called the "**Trust Indenture**") dated December 16, 2011 and made between the Corporation and Computershare Trust Company of Canada, as Trustee (the "**Trustee**"), to which Trust Indenture reference is hereby made for a description of the rights of the holders of the said Notes, of the Corporation and of the Trustee and of the terms and conditions upon which the Notes are issued and held, all to the same effect as if the provisions of the Trust Indenture were herein set forth, to all of which provisions the holder of this Note, by acceptance hereof, assents. In the event that there is any inconsistency between the provisions of the Trust Indenture and the provisions hereof, the provisions of the Trust Indenture shall govern.

The Notes are issuable as Book-Entry Only Notes (as defined in the Trust Indenture) in minimum denominations of \$1,000 and integral multiples of \$1,000. The Notes of any authorized denomination may be exchanged, as provided in the Trust Indenture, for Notes of an equal aggregate principal amount in any other authorized denomination or denominations.

This Note may be redeemed at the option of the Corporation on the terms and conditions set out in the Trust Indenture at the redemption prices therein set out.

The right is reserved to the Corporation, subject to the terms and conditions set out in the Trust Indenture, to purchase Notes at any time or times in the market, by tender or by private contract.

In case an Event of Default (as defined in the Trust Indenture) has occurred and is continuing, the principal of and the Premium on, if any, and interest on, all Notes then outstanding under the Trust Indenture may be declared due and payable upon the conditions and in the manner and with the effect provided in the Trust Indenture.

The Trust Indenture contains provisions for the holding of meetings of holders of Notes and making resolutions passed at such meetings and instruments in writing signed by the holders of a specified majority of the Notes outstanding binding on all holders of Notes, subject to the provisions of the Trust Indenture.

This Note may only be transferred upon compliance with the conditions prescribed in the Trust Indenture, on the registers of transfers to be kept at the Corporate Trust Offices of the Trustee and at such other branch registers, place or places, if any, as the Corporation with the approval of the Trustee may designate, by the registered holder hereof or his executors or administrators or other legal representatives or his or their attorney duly appointed by an instrument in writing in form and execution satisfactory to the Trustee, and upon compliance with such reasonable requirements as the Trustee may prescribe and such transfer shall be duly noted hereon by the Trustee.

This Note shall not become obligatory for any purpose until this Note shall have been certified by the Trustee for the time being under the Trust Indenture.

This Note shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

IN WITNESS WHEREOF the Corporation has executed this Note.

Dated: December 16, 2011

**ALGOMA POWER INC.**

by \_\_\_\_\_

\_\_\_\_\_

**TRUSTEE'S CERTIFICATE**

**This Note is one of the 5.118% Senior Unsecured Notes due December 16, 2041 referred to in the Trust Indenture within mentioned.**

**COMPUTERSHARE TRUST COMPANY OF  
CANADA, Trustee**

by \_\_\_\_\_

Authorized Signature



## **SCHEDULE "B"**

### **U.S. SECURITIES ACT LEGEND**

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR ANY APPLICABLE STATE SECURITIES LAWS. THE NOTEHOLDER HEREOF, BY PURCHASING SUCH SECURITIES, AGREES FOR THE BENEFIT OF ALGOMA POWER INC. THAT SUCH SECURITIES MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED ONLY, WHETHER DIRECTLY OR INDIRECTLY, (A) TO ALGOMA POWER INC., (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT OR (C) IN ACCORDANCE WITH (1) RULE 144A UNDER THE SECURITIES ACT, (2) RULE 144 UNDER THE SECURITIES ACT, IF AVAILABLE, OR (3) ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE STATE SECURITIES LAWS OR SECURITIES LAWS OF ANY OTHER JURISDICTION AND SUBJECT, FOR TRANSFERS PURSUANT TO (C)(2) OR (3), TO THE RIGHT OF ALGOMA POWER INC. AND THE TRUSTEE TO REQUIRE, PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER, THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATE OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM TO DOCUMENT COMPLIANCE WITH THE SECURITIES ACT AND ANY SUCH STATE SECURITIES LAWS. FURTHERMORE, EACH NOTEHOLDER OF THESE SECURITIES AGREES TO PROVIDE NOTICE OF THE FOREGOING TRANSFER RESTRICTIONS TO ANY PERSON TO WHOM THE NOTEHOLDER SELLS, ASSIGNS OR OTHERWISE TRANSFERS THE SECURITIES. A NEW CERTIFICATE BEARING NO LEGEND MAY BE OBTAINED FROM THE TRUSTEE UPON DELIVERY OF THIS CERTIFICATE AND A DULY EXECUTED DECLARATION, IN A FORM SATISFACTORY TO THE TRUSTEE, TO THE EFFECT THAT THE SALE OF THE SECURITIES REPRESENTED HEREBY IS BEING MADE IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT OR UPON DELIVERY OF THIS CERTIFICATE AND AN OPINION OF COUNSEL OF RECOGNIZED STANDING SATISFACTORY TO ALGOMA POWER INC. THAT, OR SUCH CERTIFICATION OR OTHER INFORMATION AS THE TRUSTEE MAY REASONABLY REQUIRE TO DETERMINE THAT, THE LEGEND IS NO LONGER REQUIRED UNDER THE SECURITIES ACT OR STATE SECURITIES LAWS.

## SCHEDULE "C"

### FORM OF DECLARATION FOR REMOVAL OF LEGEND

TO: Computershare Trust Company of Canada  
as Trustee for 5.118% Senior Unsecured Notes, due December 16, 2041, of Algoma  
Power Inc.

100 University Avenue  
8th Floor, South Tower  
Toronto, Ontario M5J 2Y1  
Canada

The undersigned (a) acknowledges that the sale of the securities of Algoma Power Inc. (the "**Corporation**") to which this declaration relates is being made in reliance on Rule 904 of Regulation S under the United States *Securities Act of 1933*, as amended (the "**1933 Act**") and (b) certifies that (1) it is not an affiliate (as defined in Rule 405 under the 1933 Act) of the Corporation, (2) the offer of such securities was not made to a person in the United States and at the time the buy order was originated, the buyer was outside the United States, or the seller and any person acting on its behalf reasonably believed that the buyer was outside the United States, and (3) neither the seller nor any affiliate of the seller nor any person acting on any of their behalf has engaged or will engage in any directed selling efforts in the United States in connection with the offer and sale of such securities. Terms used herein have the meanings given to them by Regulation S.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name:  
Title:

**SCHEDULE "D"**

**FORM OF CERTIFICATE OF COMPLIANCE**

**CERTIFICATE OF COMPLIANCE**

To: COMPUTERSHARE TRUST COMPANY OF CANADA

Reference is made to the trust indenture (the "**Indenture**") dated December 16, 2011 between Algoma Power Inc. (the "**Corporation**") and Computershare Trust Company of Canada providing for the issuance of Senior Unsecured Notes, including the 5.118% Senior Unsecured Notes due December 16, 2041. The Corporation has made such examinations or investigations as it believes are necessary in order to enable it to make the statements contained herein. Except as set out in the attachment hereto, the Corporation has complied with, observed and performed during the year ended **[insert date]**, all of the requirements contained in the Indenture or any Supplemental Indenture to be complied with, observed or performed by it and no Default or Event of Default (each as defined in the Indenture or any Supplemental Indenture) has occurred and is continuing.

DATED at \_\_\_\_\_, Ontario, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**ALGOMA POWER INC.**

by \_\_\_\_\_  
Name:  
Title:

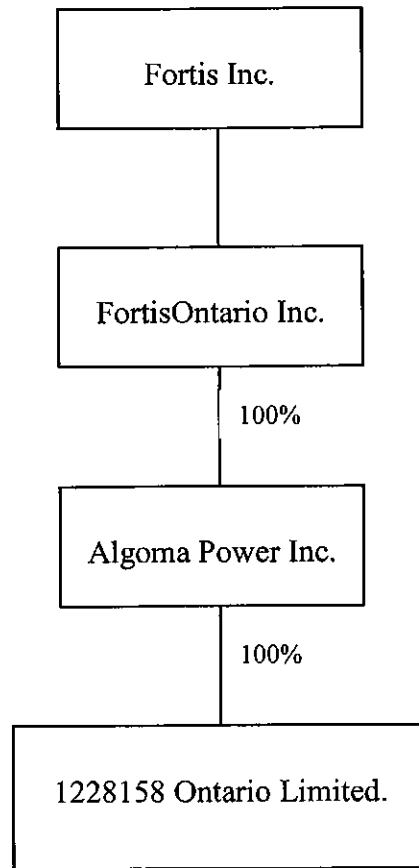
**SCHEDULE "5.1(j)"**  
**LITIGATION AND OTHER PROCEEDINGS**

NIL

**SCHEDULE "5.1(o)"**  
**INDEBTEDNESS**

<b><u>Creditor</u></b>	<b><u>Amount</u></b>
Fortis Inc.	\$50,000,000

**SCHEDULE "5.1(p)"**  
**SIMPLIFIED CORPORATE STRUCTURE<sup>1</sup>**



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<sup>1</sup> Excludes shell companies with minimal contribution

**SCHEDULE "5.1(q)"**  
**COMPLIANCE WITH LAWS**

NIL



# Appendix 5B

Algoma Power Inc.

2020 Cost of Service

EB-2019-0000



# ALGOMA POWER INC.

## PROMISSORY NOTE

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**\$12,750,000**

**DUE: ON DEMAND**

**FOR VALUE RECEIVED** Algoma Power Inc. ("API") hereby promises to pay on demand to or to the order of FortisOntario Inc. ("FON") at 1130 Bertie Street, Fort Erie, Ontario, the principal amount of \$12,750,000 in lawful money of Canada and to pay interest both before and after demand, default and judgement at the rate of 4.13% per annum, which interest rate will be automatically amended from time to time to be consistent with any interest rate approved by the Ontario Energy Board ("OEB") in connection with the then current decision and order issued by the OEB approving the electricity distribution rates that API is permitted to recover. The interest rate will be calculated monthly not in advance on the principal amount, said interest to be payable monthly in each year, commencing on the 1<sup>st</sup> day of January, 2019.

The principal amount outstanding under this promissory note from time to time and all accrued interest thereon shall become due and be paid in full upon demand being made by FON therefore.

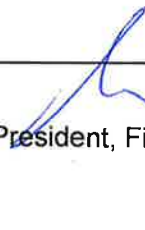
API hereby waives demand and presentment for payment, notice of non-payment, protest, notice of protest, notice of dishonour, bringing of suit and diligence in taking any action.

**DATED** at Fort Erie, Ontario, as of this 17<sup>th</sup> day December 2018.

**ALGOMA POWER INC.**



R. Scott Hawkes  
President and Chief Executive Officer



Glen King  
Vice President, Finance and Chief Financial Officer