

**VOTING AGREEMENT**

**THIS AGREEMENT** dated September 7, 2012

**BETWEEN:**

**COMPUTERSHARE TRUST COMPANY OF CANADA**, a trust company incorporated under the laws of Canada, with offices in the City of Toronto, in the Province of Ontario, and the City of Calgary, in the Province of Alberta as agent for and on behalf of the Unitholders of Crius Energy Trust (hereinafter called the "**Trustee**")

- and -

**CRIOUS ENERGY ADMINISTRATOR INC.**, a corporation incorporated under the laws of Ontario (hereinafter called the "**Corporation**")

- and -

**664848 N.B. INC.**, a corporation incorporated under the laws of New Brunswick (hereinafter called the "**Initial Shareholder**")

**WHEREAS:**

- A. The Initial Shareholder is the legal and beneficial owner of all of the Shares (as hereinafter defined).
- B. The Corporation was organized for the purpose of undertaking activities relating to the formation of Crius Energy Trust (the "**Trust**") and its affiliates, the initial public offering of the units of the Trust and the transactions described in the Prospectus (as hereinafter defined) as well as acting as the administrator of the Trust.
- C. The parties wish to define certain rights and obligations between each other respecting the business and affairs of the Corporation, regarding their rights and obligations in respect of the Shares, certain restrictions on and waivers of rights by the Shareholder and certain other matters as hereinafter set forth.
- D. The parties intend that this Agreement shall operate and be construed as a unanimous shareholder agreement under the Act (as hereinafter defined).
- E. The parties have agreed to do all such things as may be necessary in order to give effect to this Agreement.
- F. The Trustee enters into this Agreement as Trustee on behalf of the Unitholders (as hereinafter defined) and agrees to be bound hereby and to take all necessary measures to enforce this Agreement and all benefits and obligations created hereunder in favour of the Unitholders.

**NOW THEREFORE** in consideration of the mutual promises herein expressed and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto do covenant and agree, each with the others, as follows:

**1. Definitions**

In this Agreement, where capitalized terms defined in the Trust Indenture are used herein without definition, the definitions set out in the Trust Indenture shall apply to this Agreement and, in addition, the following terms shall have the meanings set forth below:

- (a) "**Act**" means the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B-16, as amended from time to time, including the regulations adopted thereunder;
- (b) "**Administrative Services Agreement**" means the administrative services agreement dated September 7, 2012 between the Trustee and the Corporation, as amended, supplemented or amended and restated from time to time, pursuant to which the Corporation will provide administrative services to the Trust and pursuant to which the Corporation has been delegated certain duties in connection with the governance of the Trust;
- (c) "**Administrator**" means the person appointed as the administrator of the Trust from time to time in accordance with the terms of the Trust Indenture and, if applicable, the Administrative Services Agreement, initially being the Corporation;
- (d) "**Administrator Directors**" means the director or directors of the Administrator;
- (e) "**affiliate**" has the meaning ascribed thereto in the Trust Indenture;
- (f) "**Agreement**" means this voting agreement as amended, supplemented or amended and restated from time to time;
- (g) "**Appointment**" includes "**election**" and vice versa;
- (h) "**Articles**" means the articles of incorporation of the Corporation dated July 25, 2012 and as the same may be amended or amended and restated from time to time;
- (i) "**Board**" means the board of directors of the Corporation;
- (j) "**By-Laws**" means By-Law No. 1 of the Corporation as confirmed by the Shareholder effective as of July 25, 2012, as the same may be amended or amended and restated from time to time;
- (k) "**Cdn Holdco**" means Crius Energy Holdings Inc., a corporation to be incorporated under the laws of the Province of Ontario, and a direct wholly-owned subsidiary of the Trust;
- (l) "**Change of Control**" means:
  - (i) any change in the holding, direct or indirect, of securities of the Shareholder, whereby as a result of such change a person who is not a director or an officer of the Corporation or of a Trust Subsidiary prior to such change, or a group of persons (none of whom is a director or an officer of the Corporation or of a Trust

Subsidiary prior to such change) acting jointly or in concert hold, directly or indirectly, greater than 50% of the voting securities of the Corporation, including any such indirect holdings through control of the Shareholder, or are in a position to exercise control, directly or indirectly, of the Corporation, whether such change in the holding of such securities occurs by way of take-over bid, reorganization, recapitalization, consolidation, amalgamation, arrangement, merger, transfer, sale or otherwise; or

- (ii) any change in the board of directors of the Shareholder which results in a person who is not a director or an officer of the Corporation or of a Trust Subsidiary prior to such change becoming a director of the Shareholder;
- (m) "**control**" means a person controls a body corporate if securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;
- (n) "**Commercial Trust**" means Crius Energy Commercial Trust, an unincorporated open-ended limited purpose trust to be settled under the laws of the Province of Ontario pursuant to the Commercial Trust Indenture;
- (o) "**Commercial Trust Indenture**" means the trust indenture establishing the Commercial Trust to be entered into between the Trust and the Corporation, as such may be amended, supplemented or amended and restated from time to time;
- (p) "**Initial Shareholder Owner**" means Michael Fallquist, the President of the Corporation;
- (q) "**person**" means any individual, partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, trust, trustee, executor, administrator, or other legal personal representative, regulatory body or agency, government or governmental agency, authority or entity howsoever designated or constituted;
- (r) "**Prospectus**" has the meaning ascribed to it in the Trust Indenture;
- (s) "**Shares**" means all of the issued and outstanding common shares in the capital of the Corporation;
- (t) "**Shareholder**" means the person or persons from time to time owning the Shares, initially being the Initial Shareholder;
- (u) "**Shareholder Owner**" means the person or persons from time to time beneficially owning the issued and outstanding common shares of the Initial Shareholder, initially being the Initial Shareholder Owner;
- (v) "**Standard of Care**" means the obligation to act honestly, in good faith and in the best interests of the Trust and the Unitholders and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;

- (w) "**Transfer**" includes any sale, exchange, assignment, gift, bequest, disposition, mortgage, charge, pledge, encumbrance, grant of a security interest or other arrangement by which possession, legal title or beneficial ownership passes from one person to another, or to the same person in a different capacity, whether or not voluntarily and whether or not for value, and any agreement to effect any of the foregoing; and the words "**Transferred**", "**Transferring**" and similar words have corresponding meanings;
- (x) "**Trust**" means Crius Energy Trust, an unincorporated open-ended limited purpose trust settled under the laws of the Province of Ontario on September 7, 2012 pursuant to the Trust Indenture;
- (y) "**Trustee**" means the trustee of the Trust from time to time being, at the date of this Agreement, Computershare Trust Company of Canada;
- (z) "**Trust Indenture**" means the trust indenture establishing the Trust made as of September 7, 2012 between the Trustee and the Corporation, as such may be amended, supplemented or amended and restated from time to time;
- (aa) "**Trust Property**" has the meaning ascribed to it in the Trust Indenture;
- (bb) "**Trust Subsidiary**" means either Cdn Holdco or U.S. Holdco;
- (cc) "**Unitholders**" means the holders of Units;
- (dd) "**Units**" means the trust units of the Trust created pursuant to the Trust Indenture;
- (ee) "**U.S. Holdco**" means Crius Energy Corporation, a corporation to be formed pursuant to the laws of Delaware, and an indirect wholly-owned subsidiary of the Trust; and
- (ff) "**Voting Rights**" means all voting rights appertaining to any of the Shares, including, but not limited to, voting rights with respect to the Appointment of the directors of the Corporation, the removal of directors of the Corporation, the appointment of an auditor of the Corporation, and any other matter in respect of which the Shareholder otherwise would have the right to vote under the Act.

## 2. **References to Acts Performed by the Trust**

For greater certainty, where any reference is made in this Agreement to:

- (a) an act to be performed by the Trust or to rights of the Trust, such reference shall be construed and applied for all purposes to refer to: (i) an act to be performed by the Trustee on behalf of the Trust or by some other person duly authorized to do so by the Trustee or pursuant to the provisions of the Trust Indenture or the Administrative Services Agreement; or (ii) rights of the Trustee, in its capacity as Trustee of the Trust, as the case may be; and
- (b) actions, rights or obligations of the Trustee, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustee in its capacity as Trustee of the Trust, and not in its other capacities unless the context requires otherwise.

**3. Effect of Agreement**

This Agreement constitutes a unanimous shareholder agreement within the meaning of the Act. In the event of any conflict between the provisions of this Agreement on the one hand, and the Articles or By-Laws on the other, the provisions of this Agreement shall govern. The Shareholder agrees to vote, or to cause to be voted, all of the Shares owned, directly or indirectly, by the Shareholder so as to cause the Articles or By-Laws, or both, as the case may be, to be amended to resolve any such conflict in favour of the provisions of this Agreement. The Shareholder hereby waives each and every provision contained in the Articles or By-laws insofar as they may conflict with the provisions of this Agreement.

**4. Representations, Warrants and Covenants of the Shareholder**

The Shareholder represents, warrants and covenants to each of the Trustee and the Corporation as follows:

- (a) if the Shareholder is a corporation:
  - (i) the Shareholder is duly incorporated or organized and validly subsisting under the laws of Canada or of a Province of Canada, and has all requisite power, capacity and authority to own its properties and assets and to carry on its activities as presently conducted, and to enter into and deliver this Agreement and to perform its obligations hereunder; and
  - (ii) the Shareholder Owner is a director or an officer of the Corporation or of a Trust Subsidiary;
- (b) if Shareholder is an individual, the Shareholder is a director or an officer of the Corporation or of a Trust Subsidiary;
- (c) the Shareholder is the legal and beneficial owner of all of the issued and outstanding Shares and, except as contemplated by this Agreement, the Shareholder shall remain the legal and beneficial owner of all such Shares;
- (d) the Shareholder shall provide prompt written notice to the Trustee and the Corporation upon the occurrence of any event described in subsection 11(b) or at such earlier time as it becomes aware of facts or circumstances that could result in the occurrence of any such event;
- (e) except as may be required pursuant to the terms of this Agreement, the Shareholder shall not Transfer any of the Shares now or hereafter owned or controlled by the Shareholder;
- (f) the Shares are held by the Shareholder free and clear of all mortgages, charges, pledges, security interests, encumbrances, claims or demands whatsoever in law or in equity, and the Shareholder shall not mortgage, charge, pledge, grant a security interest in, or otherwise encumber any of the Shares now or hereafter owned or controlled by the Shareholder;
- (g) the Shareholder hereby acknowledges and confirms for the benefit of the other parties hereto that it shall waive the appointment of an auditor of the Corporation pursuant to Section 148 of the Act;

- (h) the Corporation has not carried on any business since formation other than such activities as are incidental to the formation of the Corporation and activities relating to the formation of the Trust and its affiliates, the IPO and the transactions described in the Prospectus;
- (i) if the Shareholder is a corporation, the Shareholder has not carried on any business since formation other than activities relating to the formation of the Corporation and the ownership of the Shares; and
- (j) if the Shareholder is a corporation, the Shareholder shall not delete, alter or amend the restrictions in its articles of incorporation which limit the business of the Shareholder to the ownership of the Shares and any activities related to or incidental to the ownership of the Shares.

## **5. Exercise of Voting Rights by the Shareholder**

The Shareholder hereby agrees that at all times from and after the closing of the IPO:

- (a) the Shareholder shall abstain from voting the Shares at any and all meetings of the shareholders of the Corporation and shall not exercise any rights to pass a resolution in writing except as contemplated by this Agreement or as directed by the Trustee pursuant to subsections 5(b) and 5(c);
- (b) the Unitholders shall be entitled and have exclusive authority to direct the Trustee, as agent for the Unitholders, regarding the exercise of all of the Voting Rights which the Shareholder has or may in the future have in respect of the Shares now or hereafter owned or controlled by the Shareholder;
- (c) in exercising the Voting Rights attached to the Shares, the Shareholder will accept the direction of the Trustee, as agent for the Unitholders, as to how to vote (or how to compel the voting) for the election of the Administrator Directors or in respect of any other matters to which Voting Rights appertain;
- (d) the Trustee, as agent for the Unitholders, shall be entitled to notice of, to attend and to vote in person or by proxy (on the basis of one vote per Unit held by Unitholders in each case as if and to the same extent that the Unitholders were holders of Shares of the Corporation for all such purposes) at any meeting of, and in respect of any matter put before the holders of Shares. All notices, proxy solicitation materials and other matters in this regard shall be governed by the provisions of the Articles, the By-Laws, the Act and the *Securities Act* (Ontario) as if the Units were Shares of the Corporation;
- (e) the Shareholder shall attend or duly appoint a proxy to attend all meetings of Shareholders necessary to satisfy the quorum requirements under Section 52 of the By-Laws and Section 101 of the Act so as to facilitate the timely exercise of the Voting Rights as contemplated by this Section 5;
- (f) the Trustee will be entitled to exercise its own judgment and discretion as to the manner in which it exercises such Voting Rights and shall not be liable to the Shareholder in respect of any action taken or omitted to be taken by it under this Agreement or any approval or consent given by it in exercising its rights hereunder;

- (g) for greater certainty, it is hereby declared and agreed among the parties that the Trust does not by virtue of this Agreement acquire, retain or hold any ownership, directly or indirectly, in the Shares or with respect to the Voting Rights;
- (h) the Shareholder hereby waives any and all claims of any nature which it may have against the Trust, the Trustee or the Unitholders and hereby releases the Trust, the Trustee and the Unitholders and their successors from any liability arising out of or in connection with the exercise of the Trustee's powers hereunder, except in respect of any willful misconduct by the Trustee; and
- (i) to the extent the assignment of the Administrative Services Agreement in accordance with the terms thereof constitutes a sale, lease or exchange of all or substantially all of the property of the Corporation, the Shareholder shall approve any such assignment pursuant to Section 184(3) of the Act.

**6. Vacancies on the Board**

The parties acknowledge that, subject to and in accordance with Section 5 of By-Law No. 1 of the Corporation and Section 124 of the Act, a quorum of Administrator Directors may fill a vacancy among the Administrator Directors, provided that for purposes of this Section 6 all references to "shareholders" in Section 5 of By-Law No. 1 shall be replaced with "Unitholders".

**7. Proxies**

In order to give further effect to Section 5, the Shareholder covenants and agrees to execute and deliver, as and when requested by the Trustee, such proxies and other evidences of authority as the Trustee may request in connection with any meeting of the shareholders of the Corporation, which proxies and other evidences of authority will grant the Trustee complete, irrevocable discretion with full power of substitution in exercising the Voting Rights in respect of all matters and resolutions which may arise for decision at any such meeting, and any adjournments thereof.

**8. Shareholder Resolutions**

In order to give further effect to Section 5, the Trustee, as agent for the Unitholders, is hereby irrevocably authorized, until the termination of this Agreement, to execute and deliver, for and on behalf of the Shareholder, any and all resolutions in writing to be executed by the shareholders of the Corporation entitled to vote on any resolution of shareholders in order to bring such resolution into effect as if it had been passed at a meeting of the shareholders of the Corporation.

**9. Power of Attorney**

In order to give further effect to Section 5, Section 7, Section 8 and subsection 11(b), the Shareholder hereby appoints the Trustee with power of attorney in respect of the execution by the Trustee on behalf of the Shareholder of all instruments in writing which may arise in respect of exercising the Voting Rights or effecting the transfer of Shares as required by this Agreement.

**10. Share Reorganizations**

The provisions of this Agreement relating to the Shares will also apply, with the necessary changes, to the following:

- (a) any shares or securities into which the Shares may be converted, changed, reclassified, redivided, redesignated, redeemed, subdivided or consolidated;
- (b) any shares or securities of the Corporation that are received by the Shareholder as a stock dividend or distribution payable in shares or securities of the Corporation; and
- (c) any shares or securities of the Corporation or of any successor or continuing corporation to the Corporation that may be received by the Shareholder on a reorganization, amalgamation, consolidation, merger or otherwise.

**11. Transfer of Shares**

- (a) The Shareholder agrees that the Shares will be subject to restrictions on transfer in the Articles in that no transfer of Shares shall be valid without the written approval of the Administrator Directors. No Transfer of Shares will be valid for any purpose whatsoever unless such transfer is in accordance with such restrictions and the transferee of such Shares is: (i) a director or an officer of the Corporation or of a Trust Subsidiary; or (ii) a corporation wholly-owned by a director or an officer of the Corporation or of a Trust Subsidiary.
- (b) If:
  - (i) the Shareholder is in breach or non-compliance of any representation, warranty, covenant or term of this Agreement;
  - (ii) any of the Shares become encumbered in any way, including by any mortgage, charge, pledge, security, interest, encumbrance, claim or demand whatsoever in law or in equity;
  - (iii) there is a Change of Control; or
  - (iv) the Shareholder Owner is neither a director nor an officer of the Corporation nor of any Trust Subsidiary,

the Shareholder agrees that all Shares owned or controlled by the Shareholder shall be transferred, effective immediately preceding the first to occur of (i), (ii), (iii) or (iv) above and at the election and direction of the Board in its sole discretion, to: (A) the Corporation for cancellation; (B) to a director or an officer of the Corporation or of any Trust Subsidiary designated by the Board; or (C) to a corporation wholly-owned by a director or an officer of the Corporation or of any Trust Subsidiary designated by the Board. Any such transfer shall be for consideration equal to the original subscription price at which the Shares were issued by the Corporation. The Shareholder agrees to execute any and all stock transfer powers of attorney or other documents requested by the Corporation to recognize and give effect to such transfer.



- (c) In the event of the Shareholder being obligated to sell the Shares to the Corporation or another person in accordance with subsection 11(b) and the Shareholder defaults in transferring any such Shares, the Corporation is authorized and directed to record the transfer for cancellation of the Shares in the registers of the Corporation. The transaction will be deemed completed at the price and on other terms and conditions contemplated by this Agreement and the Shareholder will cease to have any right to or in respect of the Shares except the right to receive, without interest, the subscription price received by the Corporation upon surrender of any certificates that previously represented such Shares.

**12. Restrictions and Requirements Applicable to the Corporation**

- (a) The Corporation shall not carry on any business other than:
  - (i) acting as Administrator of the Trust pursuant to the terms of the Trust Indenture and the Administrative Services Agreement;
  - (ii) acting as trustee of the Commercial Trust pursuant to the terms of the Commercial Trust Indenture; and
  - (iii) such other activities ancillary to the activities in subsections 12(a)(i) and (ii) that are necessary to perform the obligations of the Administrator.
- (b) The Administrator Directors shall exercise their powers and discharge their duties as directors of the Corporation in accordance with the Standard of Care, and no other standard of care shall apply or be implied in relation to the performance by the Administrator Directors of their duties and obligations as directors of the Corporation.
- (c) The Corporation and the Board shall not declare any dividends on the Shares.
- (d) The Corporation and the Board shall not borrow any money on the credit of the Corporation, issue debt obligations, give any guarantee on behalf of the Corporation to secure performance of any obligation of any person, or mortgage, hypothecate, pledge or otherwise create an interest in or charge on all or any property of the Corporation.
- (e) At any time during which the Trust is a "reporting issuer" under the *Securities Act* (Ontario) or the securities legislation of any other province or territory of Canada and the Corporation is the administrator of the Trust under the Administrative Services Agreement, the Corporation shall have no fewer than three directors and at least the number of directors as required by National Instrument 52-110 *Audit Committees* shall be "independent" and "financially literate" within the meaning of such instrument.
- (f) Subject to, and in accordance with, the Act and the By-Laws, each annual meeting of shareholders of the Corporation (including for greater certainty, the passing of a resolution in writing in lieu of a meeting) shall be held as soon as reasonably practicable following each annual meeting of Unitholders.

**13. Subsequent Parties to this Agreement**

- (a) Any replacement of, or successor to, the Trustee shall, prior to becoming the Trustee, execute one or more counterparts of this Agreement and shall thereafter be entitled to all

of the benefits and obligations hereof and be bound by the terms and conditions of this Agreement in the same manner as if it had been an original party hereto.

- (b) Any person who shall hereafter become the registered owner of one or more Shares in accordance with Section 11 or otherwise shall, prior to becoming such registered holder, execute one or more counterparts of this Agreement and shall thereafter be entitled to all of the benefits and obligations hereof and be bound by the terms and conditions of this Agreement in the same manner as if it had been an original party hereto.

#### **14. Endorsement on Share Certificates**

Until such time as the provisions of this Agreement are terminated, any and all certificates representing Shares during the term of this Agreement (whether such securities are issued initially or following a Transfer or otherwise) will have endorsed thereon in bold type the following legend:

"The securities represented by this certificate are subject to the provisions of a Voting Agreement dated September 7, 2012, as amended, restated or replaced from time to time (which agreement constitutes a unanimous shareholder agreement within the meaning of the *Business Corporations Act* (Ontario)), and such securities are not transferable on the books of the Corporation except in accordance and compliance with the terms and conditions of such Agreement."

#### **15. Waiver by Shareholder of Certain Rights**

At all times from and after the closing of the IPO, the Shareholder hereby unconditionally and irrevocably waives certain rights afforded to it under the Act and the By-Laws, including the following:

- (a) the right, in the Shareholder's role as a shareholder of the Corporation, to have access to corporate records of the Corporation pursuant to Section 145 of the Act;
- (b) except as directed by the Trustee pursuant to Section 5, the right to reduce the stated capital of the Shares pursuant to Section 34 of the Act;
- (c) except as directed by the Trustee pursuant to Section 5, the right to make a proposal to make, amend or repeal a by-law of the Corporation pursuant to Section 116(5) of the Act;
- (d) except as directed by the Trustee pursuant to Section 5, the right to remove a director of the Corporation pursuant to Section 122(1) of the Act;
- (e) except as directed by the Trustee pursuant to Section 5, the right to change the number of directors pursuant to Section 125 of the Act;
- (f) the right to submit a proposal pursuant to Section 99 of the Act;
- (g) except as directed by the Trustee pursuant to Section 5, the right to vote Shares pursuant to Section 102 of the Act or to pass written resolutions pursuant to Section 104 of the Act;
- (h) except as directed by the Trustee pursuant to Section 5, the right to requisition a meeting of holders of Shares pursuant to Section 105 of the Act;

- (i) except as directed by the Trustee pursuant to Section 5, the right to apply to court pursuant to Sections 106 and 107 of the Act;
- (j) except as directed by the Trustee pursuant to Section 5, the right to appoint a proxyholder pursuant to Section 110 of the Act;
- (k) the right to apply to court for the appointment of an auditor of the Corporation pursuant to Section 149(8) of the Act;
- (l) the right to receive financial statements of the Corporation pursuant to Sections 154(1) and 154(3) of the Act;
- (m) the right to make application to court for an order directing an investigation pursuant to Section 161 of the Act; and
- (n) except as directed by the Trustee pursuant to Section 5, the right to amend the Articles pursuant to Section 168 of the Act or propose an amendment to the Articles pursuant to Section 169 of the Act;
- (o) except as directed by the Trustee pursuant to Section 5, the right to approve an amalgamation agreement pursuant to Section 176;
- (p) except as directed by the Trustee pursuant to Section 5, the right to authorize the continuance of the Corporation pursuant to Section 181 of the Act;
- (q) the right to dissent pursuant to Section 185 of the Act;
- (r) the right to make a proposal for the voluntary liquidation and dissolution of the Corporation pursuant to Sections 193 and 237 of the Act or apply to the court pursuant to Sections 207 or 208 of the Act; and
- (s) the right to apply to the court for leave to bring a derivative action pursuant to Section 246 of the Act or to apply to the court under Section 248 of the Act.

## **16. Term of Agreement**

This Agreement shall remain in full force and effect until terminated, in writing by all the parties, provided that this Agreement shall automatically terminate without any action by or on behalf of the parties hereto upon the termination of the Trust or such time as the Corporation ceases, in accordance with the terms of the Administrative Services Agreement, to be a party to the Administrative Services Agreement.

## **17. Liability of the Trust**

The parties hereto acknowledge that the Trustee is entering into this Agreement solely in its capacity as Trustee on behalf of the Trust and as agent for the Unitholders, and the obligations of the Trust hereunder shall not be binding upon the Trustee, other than in its capacity as such nor shall it be binding upon any Unitholder, beneficial Unitholder or any "annuitant" as defined in the Trust Indenture, such that any recourse against the Trust, the Trustee, or any Unitholder or any Beneficiary in any manner in respect of any indebtedness, obligation or liability arising hereunder or arising in connection herewith or from the

matters to which this Agreement relates including, without limitation, claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the Trust Property.

#### **18. Indemnification of the Shareholder**

The Shareholder, its affiliates, each of the respective directors, officers, employees, partners, shareholders and agents of the Shareholder and its affiliates, each other person, if any, controlling the Shareholder or any of its affiliates (other than the Administrator), along with the heirs, legal representatives and successors of any of the foregoing (collectively, the "**Shareholder Indemnitees**"), shall be indemnified and saved harmless by the Administrator out of the Trust Property from and against all losses, claims, damages, liabilities, obligations, costs and expenses (including judgments, fines, penalties, amounts paid in settlement (with the approval of the Administrator, acting reasonably), and legal fees on a solicitor-client basis, including reasonable disbursements) of whatsoever kind or nature (collectively "**Trust Claims**") incurred by, borne by or asserted against any of the Shareholder Indemnitees and which arise from the exercise of the Voting Rights and the Trustee's powers hereunder, unless such Trust Claims arise from the fraud, willful misconduct or gross negligence on the part of the Shareholder.

The foregoing right of indemnification shall not derogate from any other rights to which the Shareholder Indemnitees may be entitled as a matter of law or equity or which be lawfully granted to such person.

#### **19. Method of Asserting Claims**

- (a) If a Party entitled to indemnification pursuant to the terms hereof (the "**Indemnified Party**") intends to seek indemnification under Section 18 from the Administrator, the Indemnified Party shall give the Administrator notice of such claim for indemnification promptly following the receipt or determination by the Indemnified Party of actual knowledge or information as to the factual and legal basis of any claim which is subject to indemnification and, where such claim results from the commencement of any claim or action by a third party, promptly following receipt of written notice of such third party claim or action. The failure of, or delay by, an Indemnified Party to so notify the Administrator (as set forth above) shall not relieve the Administrator of its indemnification obligations hereunder to the Indemnified Party, however the liability which the Administrator has to the Indemnified Party pursuant to the terms of Section 18 (and for which the Administrator will be obligated to indemnify the Indemnified Party in respect of) shall be reduced to the extent that any such delay in or failure to give notice as herein required prejudices the defence of any such action, suit, proceeding, investigation or claim, or otherwise results in any increase in the liability which the Administrator has under its indemnity provided for herein.
- (b) The Administrator, at its sole cost and expense, shall have the right to assume the defence of any claim, action, suit, proceeding or investigation brought against the Indemnified Party with counsel designated by the Administrator and reasonably satisfactory to the Indemnified Party; provided that the Administrator will not, without the Indemnified Party's prior written consent (such consent not to be unreasonably withheld), settle, compromise, consent to the entry of any judgement in or otherwise seek to terminate any action, suit, proceeding, investigation or claim in respect of which indemnification may be sought hereunder (whether or not the Indemnified Party is a party thereto) unless such settlement, compromise, consent or termination includes a release of the Indemnified Party from all liabilities arising out of such action, suit, proceeding, investigation or claim. The Indemnified Party will give to the Administrator and its counsel reasonable access to all business records and other documents relevant to such defence or settlement,

and shall permit them to consult with the employees and counsel (if any) of the Indemnified Party.

- (c) Notwithstanding the foregoing:
- (i) if the defendants in any such action, suit, proceeding or investigation include both the Indemnified Party and the Administrator, and the Indemnified Party is advised by counsel that there are legal defences available to the Indemnified Party that are additional to those available to the Administrator and that in such circumstances representation by the same counsel would be inappropriate; or
  - (ii) if the Indemnified Party shall have reasonably concluded that the Administrator is not taking or has not taken, all necessary steps to diligently defend such claim, action, suit, proceeding or investigation, the Indemnified Party has provided written notice of same to the Administrator, and the Administrator has not rectified the situation within a reasonable time,

then the Indemnified Party shall have the right to retain separate counsel, the reasonable costs of which shall be at the Administrator's expense, to represent the Indemnified Party and to otherwise participate in the defence of such claim, action, suit, proceeding or investigation on behalf of such Indemnified Party. For further certainty, only one legal firm may be engaged at the expense of the Administrator.

- (d) Notwithstanding anything herein contained, an Indemnified Party shall have the right, at its sole cost and expense, to retain counsel to separately represent it in connection with the negotiation, settlement or defence of any claim, action, suit, proceeding or investigation brought by a third party provided, for further certainty, that such counsel shall not, unless agreed by the Administrator, assume control of the negotiation, settlement or defence.
- (e) Except to the extent expressly provided herein, no Indemnified Party shall settle any claim or action with respect to which it has sought or intends to seek indemnification pursuant to Section 18 without the prior written consent of the Administrator, which consent shall not be unreasonably withheld or delayed.
- (f) If the Administrator does not assume the defence of any claim, action, suit, proceeding or investigation brought against the Indemnified Party, then the Indemnified Party shall have the right to do so on its own behalf and all such expense in so doing shall be added to the amount of the claim for indemnification hereunder by such Indemnified Party as against the Administrator.

## **20. Net Amount**

In the event that the Administrator is obligated to indemnify and hold any Indemnified Party harmless under Section 18, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's reasonable out-of-pocket losses (whether paid or payable), net of any such out-of-pocket losses recovered by the Indemnified Party from any other person; provided that the foregoing shall not be construed so as to obligate an Indemnified Party to pursue or seek recovery of any of its out-of-pocket losses from any other person whomsoever, including insurers.

**21. Subrogation Rights**

If an Indemnified Party has a right against a person (other than as against one of the other parties to be indemnified by the Administrator) with respect to any damages or other amounts paid by the Administrator, then the Administrator shall, to the extent of such payment and to the extent permitted by Applicable Laws, be subrogated to the rights of such Indemnified Party as against such person. Notwithstanding the foregoing, no Administrator shall be subrogated to any insurance rights of any Indemnified Party.

**22. Survival**

The obligation to indemnify under Section 18 will continue in full force and effect notwithstanding the expiration or termination of this Agreement, with respect to any loss, claim, liability, damage or other expense based on events, conditions or circumstances which occurred or are attributable to the period prior to such expiration termination.

**23. Immunity of the Shareholder**

The Trustee on behalf of the Unitholders hereby waives and releases any right, cause of action or remedy now or hereafter existing in any jurisdiction against the Shareholder (provided that such waiver and release will not apply when it is determined in a final non-appealable judgment by a court of competent jurisdiction that the relevant loss was caused by the fraud, gross negligence or willful misconduct of the Shareholder) or of any heirs, legal representatives and successors thereof, relating to this Agreement, the ownership of the Shares or the transactions contemplated hereby including any covenant, agreement, representation or warranty by the Corporation herein or in the Units or the Trust Indenture contained.

**24. Notice**

Any notice or other document or written communication to be given under this Agreement shall be addressed and sent as follows:

If to the Trustee:

Computershare Trust Company of Canada  
100 University Avenue, 9<sup>th</sup> Floor  
Toronto, Ontario M5J 2Y1

Attention:       Manager Corporate Trust  
Facsimile:       (888) 453-0330

and notice shall also be sent to:

Computershare Trust Company of Canada  
600, 530 – 8<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 3S8

Attention:       Manager, Corporate Trust  
Facsimile:       (403) 267-6598

If to the Corporation:

Crius Energy Administrator Inc.  
Suite 3400, One First Canadian Place  
Toronto, Ontario M5X 1A4

Attention: President  
Fax: (416) 863-1716

If to the Initial Shareholder:

664848 N.B. Inc.  
44 Chipman Hill, Suite 1000  
P.O. Box 7289, Stn. "A"  
Saint John, NB E2L 4S6

Attention: President  
Facsimile: (416) 863-1716

and shall be deemed to have been given on the date of delivery or, if mailed, five (5) days from the date of mailing or, if sent by facsimile transmission, shall be deemed to have been given on the first business day thereafter. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by reason of a strike, lockout or other work stoppage, actual or threatened, involving postal employees, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. (Toronto time) on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted any notice or other communication shall be delivered or given by personal delivery, facsimile transmission or other means of prepaid, transmitted or recorded communication.

**25. Further Assurances**

Each party will at any time and from time to time, upon the request of any other party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request in order to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this Agreement.

**26. Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors and permitted assigns.

**27. Governing Law and Attornment**

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Any disputes arising under this Agreement, whether as to interpretation, performance or otherwise, shall be subject to the non-exclusive jurisdiction of the courts of the Province of Ontario and the parties hereto irrevocably attorn to the jurisdiction of the courts of such province.

**28. Headings**

The headings in this Agreement are for the purposes of reference only and will not limit or otherwise affect the meaning of this Agreement.

**29. Counterparts**

This Agreement may be executed and delivered in counterparts and by facsimile, each of which part when so executed and delivered will be deemed to be an original and such counterparts together shall constitute one and the same agreement, and delivery of such counterparts may be effected by means of a facsimile or other electronic transmission.

**30. Assignment**

Except as expressly provided for in this Agreement, including pursuant to Sections 11 and 13 hereof, none of the parties hereto may assign its rights or obligations under this Agreement without the prior written consent of all the other parties hereto, and, in the case of the Shareholder, except where such assignment is made together with a Transfer of Shares in accordance with this Agreement.

**31. Time of the Essence**

Time is of the essence of this Agreement.

**32. Severable**

If any provision of this Agreement or any part hereof is found or determined to be invalid it will be severable from this Agreement and the remainder of this Agreement will be construed as if such invalid part had been deleted from this Agreement.

**33. Interpretation**

For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, every reference to the singular will be construed to include the plural, and the masculine to include the feminine or neuter gender, where the context so permits, and vice versa.

**34. Statutory References**

A reference herein to any statute includes every regulation (and other similar ancillary instrument having the force of law) made pursuant thereto, all amendments to the statute or to any such regulation (or other similar ancillary instrument) in force from time to time, and any statute or regulation (or other similar ancillary instrument) which supplements or supersedes such statute or regulation (or other similar ancillary instrument); and a reference to any section or provision of a statute includes all amendments to such section or provision, as made from time to time, and all sections or provisions which supplement or supersede such section or provision referred to herein.

*[Remainder of Page Left Intentionally Blank]*



**IN WITNESS WHEREOF** the parties have hereunto executed this Agreement as of the day and year first written above

**COMPUTERSHARE TRUST  
COMPANY OF CANADA** as trustee of  
**CRIOUS ENERGY TRUST**

*"Pui Hong"*

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Pui Hong  
Corporate trust Officer

*"Karen Biscope"*

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Karen Biscope  
Manager, Corporate Trust

**CRIOUS ENERGY  
ADMINISTRATOR INC.**

*"Michael Fallquist"*

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Michael Fallquist  
President and Chief Executive Officer

**664848 N.B. INC.**

*"Michael Fallquist"*

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Michael Fallquist  
President