

**THIS AGREEMENT** made at St. John's, in the Province of Newfoundland and Labrador, this 5<sup>th</sup> day of September, 2014.

## **MEMORANDUM OF AGREEMENT**

**BETWEEN:**                **HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR**, as represented by the Minister of Natural Resources

(**"NR"**)

**AND:**                      **NARL ACQUISITIONS LLC**, a body corporate registered as an extra-provincial company pursuant to the laws of the Province of Newfoundland and Labrador, with a registered office in St. John's, in the Province of Newfoundland and Labrador

(**"NACQ"**)

**WHEREAS** NACQ has entered into an agreement whereby NACQ has agreed, subject to performance of the terms and conditions of the said agreement, to purchase all of the shares of North Atlantic Refining Limited, a corporation registered in Newfoundland and Labrador (**"NARL"**), previously registered as Newfoundland Processing Limited (**"NPL"**);

**AND WHEREAS** NARL owns and operates the Come By Chance Refinery (the **"Refinery"**) and will continue to own and operate the Refinery following the completion of the purchase of all NARL shares by NACQ;

**AND WHEREAS** the parties hereto wish to confirm their mutual understanding of environmental matters at the Refinery as such exist or as might arise;

**NOW THEREFORE THIS MEMORANDUM OF AGREEMENT WITNESSES** that for and in consideration of the sum of Ten Canadian Dollars (\$10.00) now paid by each of the parties to the other and other good and valuable consideration, the parties hereto agree as follows:

### **1. DEFINITIONS**

1.1 In addition to the terms defined Schedules attached hereto, the following words and phrases shall have the following meanings:

- a) "Closing Date" means the day that NACQ completes the purchase of all of the shares of NARL;

- b) "Environmental Agreement" shall have the meaning ascribed in Section 2.1;
  - c) "Environmental Site Assessment" or "ESA" means an assessment of the baseline environmental conditions relating to soil, sediment, surface water and groundwater contamination at the Refinery carried out in accordance with the Environmental Agreement;
  - d) "Refinery" shall have the meaning in the second recital;
  - e) "Site Professional" means a consultant selected by NACQ pursuant to Part 3;
  - f) "NPL" shall have the meaning ascribed in the first recital;
- 1.2 In the event of a conflict between the definitions in this Memorandum of Agreement and the Appendices to this Memorandum of Agreement, the definitions in this Memorandum of Agreement shall prevail.
- 1.3 The following schedules are attached to, and form part and parcel of, this Memorandum of Agreement:
- Appendix "A" – Environmental Agreement; and  
Appendix "B" – Guidance Document for the Management of Impacted Sites.

## **2. TERM**

- 2.1 This Agreement shall be effective as of the date of execution of all the Parties and shall expire upon the expiration or termination of the Environmental Agreement.

## **3. ENVIRONMENTAL AGREEMENT**

- 3.1 The agreement in respect of environmental matters relating to the operation of the Refinery (the "Environmental Agreement"), which is attached as Appendix "A", is acceptable in its entirety to the Parties, without modification except as mutually agreed to in writing.
- 3.2 Prior to the Closing Date, NR shall execute the Environmental Agreement and deliver the executed Agreement to NACQ.
- 3.3 On the Closing Date, NACQ shall execute the Environmental Agreement and shall direct NARL to execute the Environmental Agreement, at which time the Environmental Agreement shall become binding upon the Parties and NARL, provided however, that should the Closing Date not occur on or before the 30<sup>th</sup> day of November, 2014, this Memorandum of Agreement shall become null and void and the Environmental Agreement shall be of no force or effect whatsoever.
- 3.4 NACQ shall deliver the executed Environmental Agreement to NR within 10 days of the Closing Date.

#### **4. SITE PROFESSIONAL**

- 4.1 Upon execution of this Memorandum of Agreement, NACQ shall select a Site Professional that meets the requirements set out in Section 6 of the document entitled "Guidance Document for the Management of Impacted Sites, v. 2.0", attached as Appendix "B" hereto, to perform an Environmental Site Assessment of the Refinery.
- 4.2 NACQ shall submit the name of the selected Site Professional to NR for approval. NACQ shall not hire, engage, employ or enter into an agreement with a Site Professional for the purposes of an ESA until the Site Professional has been approved by NR.
- 4.3 NACQ shall be responsible for all costs related to the Site Professional and all work conducted by the Site Professional, and NR shall have no liability for the approval of the Site Professional.

#### **5. GENERAL**

- 5.1 NR shall make reasonable efforts to support NACQ in obtaining approval from Federal, Provincial and municipal authorities related to the purchase of NARL.
- 5.2 The Parties agree that they shall be covered by and shall be entitled to rely upon the provisions of this Memorandum of Agreement. The Parties further agree that to the extent to which this Memorandum of Agreement applies to NACQ, it shall not apply to the successors and assigns of NACQ, except as otherwise specified in Section 10 of the Environmental Agreement. For greater certainty, the Parties agree that NACQ shall not have the right to assign this Memorandum of Agreement in any manner.
- 5.3 This Memorandum of Agreement shall be interpreted, performed and enforced in accordance with the laws of Newfoundland and Labrador and all actions, suits or proceedings arising out of this Memorandum of Agreement shall be determined in a court of competent jurisdiction in Newfoundland and Labrador, subject to any right of appeal.
- 5.4 This Memorandum of Agreement and the Environmental Agreement may be executed in any number of counterparts, each of which will be considered an original, and which together will constitute one and the same instrument. This Memorandum of Agreement shall not be effective unless and until both Parties have executed a counterpart. A facsimile signature or an otherwise electronically reproduced signature of either Party shall be deemed to be an original.

#### **6. NOTICES**

- 6.1 Except as otherwise specifically provided for herein, all notices, claims, payments, reports and other communications required under this Memorandum of Agreement shall be in writing. The addresses for service are:

**For NR:**

Government of Newfoundland and Labrador  
Department of Natural Resources  
P.O. Box 8700  
Confederation Building  
St. John's, NL A1B 4J7

Attention: Minister of Natural Resources

**For NACQ:**

NARL Acquisitions LLC  
Suite 1200  
1330 Avenue of the Americas  
New York, New York 10019  
United States of America

Attention: Harsh Rameshwar, Partner

- 6.2 Except as otherwise specifically provided for herein, notices, requests or documents shall be deemed to have been received by the addressee as follows:
- a) As of the date on which they are delivered where delivery is by personal service;
  - b) As of the date on which they are sent where delivery is by facsimile or other means of electronic communication; or
  - c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

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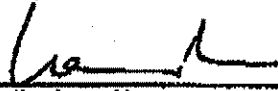
**IN WITNESS WHEREOF** this Memorandum of Agreement has been executed

**HER MAJESTY IN RIGHT OF  
NEWFOUNDLAND AND LABRADOR**

  
Minister of Natural Resources  
(or his/her authorized designate)

Date: Sept. 5, 2014

**NARL ACQUISITIONS LLC**

  
Authorized Signature **KAUSHIK AMIN**

Date: September 05, 2014

Execution Copy

**APPENDIX "A"**

**THIS AGREEMENT** made at St. John's, in the Province of Newfoundland and Labrador, this \_\_\_\_\_ day of \_\_\_\_\_, 2014

**ENVIRONMENTAL AGREEMENT**

**BETWEEN:**            **HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR**, as represented by the Minister of Natural Resources

**("NR")**

**AND:**                 **NARL ACQUISITIONS LLC**, a body corporate registered as an extra-provincial corporation pursuant to the laws of the Province of Newfoundland and Labrador, with a registered office in St. John's, in the Province of Newfoundland and Labrador

**("NACQ")**

**AND:**                 **NORTH ATLANTIC REFINING LIMITED**, a body corporate existing pursuant to the laws of the Province of Newfoundland and Labrador, with its registered head office in St. John's, in the Province of Newfoundland and Labrador

**("NARL")**

**WHEREAS** NARL is a wholly owned subsidiary of NACQ;

**AND WHEREAS** NACQ is Controlled by SilverRange Financial Partners LLC ("**SilverRange**"), a limited liability company existing pursuant to the laws of the State of Delaware, United States of America, with its offices at 1330 Sixth Avenue, Suite 1200, New York, New York, 10019, United States of America;

**AND WHEREAS** NARL owns and operates the Refinery located at Come By Chance, in the Province of Newfoundland and Labrador;

**AND WHEREAS** SilverRange has communicated to NR its business plan and a program of initiatives which will be of positive and long lasting benefit to the environmental integrity of the Refinery;

**AND WHEREAS** these initiatives include the processing of a majority of light sweet crudes from the United States of America, or other light sweet crudes and using significantly more butane and propane as fuel instead of fuel oil, which SilverRange reasonably believes will lead to material reductions in sulphur dioxide emissions at the Refinery;

**AND WHEREAS** NR has agreed to make reasonable efforts to support NARL and NACQ in obtaining approval from federal, provincial, and municipal authorities to increase the processing capacity of the Refinery;

**AND WHEREAS** the parties hereto wish to confirm their mutual understanding of environmental matters at the Refinery as such exist or as might arise;

**NOW THEREFORE, IN CONSIDERATION** of the mutual agreements, promises, conditions and arrangements contained herein, the Parties agree as follows:

**1. DEFINITIONS**

1.1 In addition to the terms defined Schedules attached hereto, the following words and phrases shall have the following meanings:

- a) "Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls or is Controlled by such Person, or is under common Control with such Person;
- b) "Approved ESA" shall have the meaning ascribed in Section 4.10;
- c) "Business Day" means a day other than a Saturday, Sunday or a provincial holiday in the Province of Newfoundland and Labrador;
- d) "Control" (including, with correlative meanings, the terms "Controlled by" and "under common Control with") means the ability or power, directly or indirectly, to direct or cause the direction of the management and policies of such other Person whether through the ownership of voting securities, by contract or otherwise;
- e) "Default" shall have the meaning ascribed in Section 14.1;
- f) "Effective Date" shall have the meaning ascribed in Section 2.1;
- g) "Existing Contamination" means soil, sediment, surface water and groundwater contamination at the Refinery to the extent that the contamination is identified in the Approved ESA as existing prior to the Effective Date, but for greater certainty shall not include contamination at the closed hazardous waste facility and the closed solid waste landfill;

- h) "Expiry Date" shall have the meaning ascribed in Section 2.1;
- i) "Environmental Law" means all applicable federal (Government of Canada), provincial, municipal and local laws, statutes, ordinances, by-laws, regulations and orders, directives and decisions rendered by any ministry, department or administrative or regulatory agency relating to environmental matters and governing the use, storage, treatment, generation, transportation, processing, manufacturing, handling, production, discharge or disposal of Hazardous Substances, including without limitation, air pollution, soil and subsoil pollution, and water (including surface water and groundwater) pollution and requirements under Environmental Permits;
- j) "Environmental Permit" means all permits, licences, approvals, authorizations, certificates, consents, or registrations, required by Environmental Law;
- k) "Environmental Site Assessment" or "ESA" shall have the meaning ascribed in Section 4.1;
- l) "Executive Committee" shall have the meaning ascribed in Section 15.2;
- m) "Hazardous Substance" means any pollutants, contaminants, chemicals, industrial, toxic or hazardous waste, or substances regulated under Environmental Law;
- n) "Immediate Remediation Plan" or "IRP" shall have the meaning ascribed in Section 4.5;
- o) "Insolvency Event" means, in relation to NARL or NACQ, the occurrence of one or more of the following:
  - (i) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
  - (ii) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a bankruptcy application against it, or files an assignment, a proposal, a notice of intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar law, or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all the property of such Party or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;



- (iii) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;
- (iv) any proceeding or application is commenced respecting such Party without its consent or acquiescence pursuant to any law relating to bankruptcy, insolvency, reorganization of debts, winding up, liquidation or dissolution, and such proceeding or application (i) results in a bankruptcy order or the entry of an order for relief and a period of 30 days has elapsed since the issuance of such order without such order having been reversed or set aside, or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the commencement of such a proceeding or application; or
- (v) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;
- p) "Legal Proceeding" means an action, suit, proceeding or hearing in, or before, any court, municipal, provincial, or federal government, or agency thereof, or before any mediator or arbitrator;
- q) "Person" means any natural person, governmental entity or authority, corporation, limited partnership, general partnership, limited liability company, limited liability partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity;
- r) "Proposed Tank Farm Schedule" shall have the meaning ascribed in Section 6.2;
- s) "Province" means the Government of the Province of Newfoundland and Labrador;
- t) "Refinery" means the Refinery Assets and Refinery Site;
- u) "Refinery and Tank Farm Land" shall have the meaning ascribed in Paragraph 1.1(w)(ii);

- v) "Refinery Assets" means the oil refinery located at Come By Chance, in the Province of Newfoundland and Labrador, which is owned and operated by NARL, and the buildings, erections and assets on the Refinery Site, including:
- (i) the wharf, jetty and dock located on the Wharf Lands;
  - (ii) the Tank Farm and pipelines;
  - (iii) basins utilized in the management of stormwater and wastewater;
  - (iv) the processing area;
  - (v) the closed hazardous waste facility;
  - (vi) the closed solid waste landfill;
  - (vii) the refrigerated storage tank for butane; and
  - (viii) all administrative office buildings and trailers;
- w) "Refinery Site" means the land owned and leased by NARL, located at Come By Chance, in the Province of Newfoundland and Labrador, including:
- (i) the lands related to the wharf, transferred to NPL in a Deed of Conveyance dated December 15<sup>th</sup>, 1986, and registered in the Registry of Deeds of the Province at Roll 321/Frame 886, as more particularly described in Schedule "A" (the "Wharf Land");
  - (ii) the land associated with the Refinery and the Tank Farm, transferred to NPL in a Deed of Conveyance dated December 5<sup>th</sup>, 1986, and registered in the Registry of Deeds of the Province at Roll 321/Frame 879, as more particularly described in Schedule "B" (the "Refinery and Tank Farm Land");
  - (iii) 7.37 acres of land transferred to NLP in a Deed of Conveyance dated April 17<sup>th</sup>, 1989, and registered in the Registry of Deeds of the Province at Roll 819/Frame 2165, as more particularly described in Schedule "C";
  - (iv) 3 parcels of land granted to NPL in a Crown Grant dated December 21<sup>st</sup>, 1994, and registered in the Crown Lands Registry at Volume 204/Folio 102, as more particularly described in Schedule "D";
  - (v) 3 parcels of land granted to NARL as a Water Line Easement, in a Crown Lease dated December 1<sup>st</sup>, 1995, registered in the Crown Lands Registry as Lease No. 87029, as more particularly described in Schedule "E"; and
  - (vi) land granted to NARL for the purpose of a butane storage facility, in a Crown Grant dated May 12<sup>th</sup>, 2009, registered in the Crown Lands Registry at Volume 291/Folio 99, as more particularly described in Schedule "F";

but excluding:

- (vii) land owned by NARL and leased to a third party (or third parties);
  - (viii) land leased by NARL and subleased to a third party (or third parties);
  - (ix) land not located at Come By Chance; and
  - (x) retail locations owned or leased by NARL;
- x) "Refining Operations" means the use of the Refinery to process crude oil into refined petroleum products, and for greater certainty does not include the use of the Refinery exclusively as a marine terminal, transshipment facility, storage facility and/or distribution facility;
- y) "SilverRange" shall have the meaning ascribed in the second recital;
- z) "Site Professional" means a consultant selected by NACQ and approved by NR, pursuant to the Memorandum of Agreement between NR and NACQ;
- aa) "Start Date" means the day that is six (6) months after the Effective Date;
- bb) "Tank Farm" shall mean all the tanks for the storage of petroleum and other products at the Refinery Site; and
- cc) "Wharf Land" shall have the meaning ascribed in Paragraph 1.1(w)(i).
- 1.2 In the event of a conflict between the definitions in this Agreement, the Schedules to this Agreement, and the Memorandum of Agreement, the definitions in this Agreement shall prevail.
- 1.3 The following schedules are attached to, and form part and parcel of, this Agreement:
- Schedule "A" – Wharf Land;
  - Schedule "B" – Refinery and Tank Farm Land;
  - Schedule "C" – Refinery Site, 7.37 Acres;
  - Schedule "D" – Refinery Site, Crown Grant;
  - Schedule "E" – Refinery Site, Crown Easement;
  - Schedule "F" – Refinery Site, Crown Grant 2;
  - Schedule "G" – Guidance Document for the Management of Impacted Sites;
  - Schedule "H" – Environmental Compliance Agreement;
  - Schedule "I" – SilverRange Tank and Capex Program (June 2014);
  - Schedule "J" – Certificate of Approval; and
  - Schedule "K" – Environmental Disclosure.

## **2. TERM**

- 2.1 This Agreement shall be effective as of the date of execution of all the Parties ("Effective Date") and shall expire ten (10) years after the Effective Date (the "Expiry Date").

2.2 The following provisions shall survive the Expiry Date: Section 4.13 and Part 13.

**3. DISCLOSURE OF INFORMATION**

3.1 NARL and NACQ shall:

- a) notify NR promptly in writing of any event or occurrence that will, or may, give rise to a material report, warning, inquiry or investigation, or any Legal Proceeding, relating to, or a violation, or alleged violation of the requirements of Environmental Law by NARL or NACQ, or if NARL is no longer wholly owned or Controlled by NACQ, or NACQ is no longer Controlled by SilverRange;
- b) provide NR, upon request, such information, certificates, or statutory declarations, and shall conduct such environmental audits or site assessments, as may be reasonably necessary to ensure the compliance by NARL and NACQ with all requirements of Environmental Law; and
- c) execute all consents, authorizations and directions to appropriate governmental authorities that are required to permit any inspection of the Refinery and the release to NR, or its representatives, of information in relation to the Refinery.

**4. ENVIRONMENTAL SITE ASSESSMENT**

- 4.1 Upon execution of this Agreement, NARL shall direct the Site Professional to perform an assessment of the baseline environmental conditions relating to soil, sediment, surface water and groundwater contamination at the Refinery ("Environmental Site Assessment").
- 4.2 NARL shall be responsible for all costs related to the ESA and all work conducted by the Site Professional in relation thereto, and NR shall have no liability for the ESA, except as otherwise specifically provided for in this Agreement.
- 4.3 NARL shall direct the Site Professional to provide all ESA sampling plans and work plans to NR for its review and approval prior to the commencement of the field testing, sampling or other work described in the plan by the Site Professional. In order to facilitate the expeditious completion of the ESA, NR shall within a reasonable time after receipt of such plans either approve them or request additions or revisions thereto.
- 4.4 The implementation of the ESA shall, to the extent possible, minimize economic impact on the Refinery.
- 4.5 The ESA shall be conducted in accordance with the standards set out in Schedule "G" and shall include:
  - a) Phase I: a review of current and historical activities associated with the Refinery, in order to determine any existing contamination or the potential for contamination;

- b) Phase II: the preliminary collection and laboratory analysis of samples of potentially impacted media;
- c) Phase III: further sampling and laboratory analysis to delineate the extent of impacts identified during Phase II; and
- d) Remedial action planning and remediation/risk management planning, including:
  - (i) a remediation plan which shall specifically identify any remediation which is required to be undertaken immediately due to a high risk of the contamination migrating offsite and causing unacceptable risks to human or ecological health (the "Immediate Remediation Plan" or "IRP");
  - (ii) a remediation plan which shall specifically identify any remediation which is recommended; and
  - (iii) a detailed estimate of all costs associated with the remediation plans under (i) and (ii).

4.6 NARL shall submit to NR a copy of:

- a) Phase I of the ESA and the sampling plan for Phase II of the ESA prior to January 31<sup>st</sup>, 2015;
- b) Phase II of the ESA prior to June 30<sup>th</sup>, 2015; and
- c) the entire completed ESA within 12 months of the Effective Date.

4.7 Notwithstanding Section 4.6, NARL shall submit each Phase of the ESA to NR as it is completed, and may submit part of a Phase of the ESA to NR as it is completed.

4.8 Upon receiving and reviewing the ESA, or part thereof, NR shall:

- a) Approve the ESA, or part thereof; or
- b) Request further information, sampling, analysis, amendments, revisions or additions to the ESA, or part thereof.

4.9 Where NR makes a request under Subsection 4.8(b), NARL shall direct the Site Professional to revise the ESA accordingly and shall submit the revised ESA to NR for its review and approval in accordance with 4.8.

4.10 Where NR has approved the ESA, or part thereof, under Subsection 4.8(a) ("Approved ESA"), the ESA will be considered *prima facie* evidence as to the existence of soil, sediment, surface water and groundwater contamination, Hazardous Substances or other conditions as of the Effective Date.

4.11 The Parties intend that either of them has the unlimited right to use the Approved ESA in any mediation, arbitration or other proceedings, and that the burden of proving in those proceedings the existence of a condition differing in kind or degree from those described in the Approved ESA rests with the party alleging a differing condition, but that this

provision and the use of the Approved ESA is not to be construed or interpreted so as to limit the indemnities and releases provided in this Agreement.

- 4.12 For the purposes of this Agreement only, the exclusion, absence or omission of any reference to soil, sediment, surface water and/or groundwater contamination in the Approved ESA shall be deemed to be evidence of the absence thereof as of the Effective Date. Where Phase I of the ESA finds that there may be soil, sediment, surface water and/or groundwater contamination, but this finding is not substantiated in further Phases, the Phase I findings shall not constitute a reference to, or evidence of, soil, sediment, surface water and/or groundwater contamination.
- 4.13 Notwithstanding Part 13, NR may use the ESA for any purpose whatsoever, including a use not related to this Agreement and may share the ESA within government and with contractors, and this right shall survive the Expiry Date.

## **5. REMEDATION**

- 5.1 Where an Approved ESA includes an IRP, and the provincial Department of Environment and Conservation or other regulatory authority has directed that remediation is required, NR may, at its option, in consultation with NARL:
- a) hire the Site Professional or a contractor to carry out the IRP; or
  - b) direct NARL to hire the Site Professional to carry out the IRP.
- 5.2 NR shall be responsible for all costs related to an IRP completed in accordance with this Part 5, including any remediation under the IRP and additional remediation under 5.7(b), but not the costs of ongoing monitoring of soil, sediment, surface water and groundwater contamination.
- 5.3 NARL shall not select, hire, engage, employ or enter into an agreement with the Site Professional for the purposes of carrying out the IRP, until directed to do so under Section 5.1(b).
- 5.4 Where NARL has been directed to hire the Site Professional under Section 5.1(b), NARL shall direct and require that the Site Professional:
- a) submit the name of all subcontractors that it is considering engaging for the purpose of carrying out the IRP to NR for approval;
  - b) not hire, engage, employ or enter into an agreement with a subcontractor for the purposes of carrying out the IRP, until that subcontractor has been approved by NR;
  - c) not begin work based on the IRP until the IRP has been approved by NR under Section 4.8;
  - d) only carry out the work in accordance with the IRP and any amendments thereto approved by NR under Subsection 4.8(a).
- 5.5 Any amendments to the IRP shall be submitted to NR for approval under Section 4.8.

5.6 NARL shall grant the Site Professional or a contractor hired by NR access to the Refinery for the purpose of carrying out the IRP.

5.7 Once the Site Professional has completed the IRP, NR shall:

- a) approve the remediation, or
- b) request that NARL direct the Site Professional to perform additional remediation.

## **6 RESPONSIBILITIES**

6.1 NACQ and NARL shall be responsible, *inter alia*, for the remediation, monitoring and/or containment of contamination at the Refinery including ongoing monitoring under Section 5.2, with the exception of the remediation and/or containment of Existing Contamination.

6.2 NARL may seek an amendment to the timeframes set out in the "Tank Schedule" to the Environmental Compliance Agreement, attached hereto as Schedule "H", in which case NARL shall submit to the Department of Environment and Conservation:

- a) a plan to improve overall safety of the Tank Farm; and
- b) a plan for the inspection, repair, alteration and reconstruction, of the Tank Farm, and approximate dates for the removal and return of service of all the tanks, which provides details in addition to those included in SilverRange's Tank and Capex Program, attached hereto as Schedule "I", and which is in accordance with the standards set out in the Certificate of Approval, attached hereto as Schedule "J", and more particularly described in the American Petroleum Institute Standard API 653, "Tank Inspection, Repair, Alteration, and Reconstruction", or its successor (the "Proposed Tank Farm Schedule").

6.3 The Proposed Tank Farm Schedule shall not replace any regulatory and/or reporting requirements contained in the Certificate of Approval, attached hereto as Schedule "J", or the Environmental Compliance Agreement, attached hereto as Schedule "H".

6.4 NARL shall operate the Refinery so that the annual amount of sulphur dioxide released into the atmosphere from the Refinery during the period of one (1) year, beginning on the Start Date, and during the following period of one (1) year, remains at or below eleven thousand three hundred and ninety (11,390) Tonnes, which level represents a thirty-three percent (33%) decline in sulphur dioxide emissions from the annual maximum of seventeen thousand (17,000) Tonnes imposed pursuant to Section 2.1 of the Environmental Compliance Agreement, attached hereto as Schedule "H".

6.5 On or before the day that:

- a) is two (2) years after the Start Date, or

- b) NARL anticipates that the daily output of the Refinery will exceed one hundred and twenty thousand (120,000) barrels per stream day;

whichever is earlier, NARL shall enter into a new or amended compliance agreement with the Department of Environment and Conservation which includes sulphur dioxide emissions targets. If NARL enters into a new compliance agreement prior to the day that is one (1) year after the Start Date, NARL shall not be obligated to meet the requirements under 6.4 beginning in the subsequent period of one (1) year.

6.6 NARL shall measure sulphur dioxide emission levels in accordance with:

- a) the terms and conditions described in the Certificate of Approval, attached hereto as Schedule "J", as amended; and
- b) Section 2.0 of the Environmental Compliance Agreement, attached hereto as Schedule "H", as amended.

6.7 To the extent commercially reasonable, any measures undertaken by NARL under Section 6.4 shall not limit the availability of petroleum products in the Newfoundland and Labrador market.

6.8 NARL acknowledges that as of the Effective Date, approximately 450 full time employees are employed at the Refinery, and NARL shall make all commercially reasonable efforts to maintain this number of full time employees, or equivalent employment levels, during the term of this Agreement.

6.9 NR shall be responsible for costs incurred by NARL, with the prior approval of NR, for remediation and/or containment related to Existing Contamination, but, notwithstanding any other provision in this Agreement, NR shall not be responsible for costs related to:

- a) actions, omissions, or negligence of NACQ, NARL and their Affiliates after the Effective Date;
- b) business losses resulting from or associated with Existing Contamination, or the remediation and/or containment thereof; or
- c) ongoing monitoring as set out in Section 5.2.

## **7 INDEMNIFICATION**

7.1 Any existing environmental indemnifications previously enjoyed by NARL relating to the Refinery are null and void.

7.2 Sections 7.3 and 7.4 do not apply in relation to Existing Contamination.

7.3 NACQ and NARL release the Province, and all others for whom the Province is responsible at law, from any costs, liabilities, claims, expenses and responsibility related to the Refinery, including environmental liabilities and any required remediation and/or containment.



- 7.4 NACQ and NARL agree that the Province shall not be responsible or liable in any manner for, and shall at all times fully indemnify, defend and hold harmless the Province, and the Province's agents, servants, employees, contractors, invitees, and all others for whom the Province is responsible for at law, from and against any and all claims (including any claims related to any extension of timelines for Tank Farm permits and/or approvals, including but not limited to failure to inspect or negligent inspection of the Tank Farm), demands, injuries, actions, damages, judgments, fines, orders, interest, losses, costs, proceedings, suits and/or liabilities (including environmental liabilities and any required clean-up, containment or remediation) and expenses of whatever sort and by whomever made, brought or prosecuted, arising out of, related to, occasioned by, attributable to, accruing from, or connected with NACQ and NARL's ownership, operation, remediation and maintenance of the Refinery and any other related loss, injury, or damage whatsoever (including without limitation bodily injury, death, and property damage), that is caused in whole or in part by or relates to their ownership, operation, maintenance and remediation of the Refinery.
- 7.5 NR releases NACQ and NARL, and all others for whom NACQ and NARL are responsible at law, from any liability and responsibility related to Existing Contamination.
- 7.6 NR agrees that NACQ and NARL shall not be responsible or liable in any manner for, and shall at all times fully indemnify, defend and hold harmless NACQ and NARL, and NACQ and NARL's agents, servants, employees, officers, directors, shareholders, contractors, invitees, and all others for whom NACQ and NARL are responsible for at law, from and against any and all claims, demands, injuries, actions, damages, judgments, fines, orders, interest, losses, costs, proceedings, suits and/or liabilities and expenses (including expenses in respect of any actual or alleged non-compliance with any environmental laws, environmental liabilities or any required clean-up, containment or remediation), of whatever sort and by whomever made, brought or prosecuted, arising out of, related to, occasioned by, attributable to, accruing from, or connected with Existing Contamination and any other related loss, injury, or damage whatsoever (including without limitation bodily injury, death, and property damage), that is caused in whole or in part by or relates to Existing Contamination.
- 7.7 The releases and indemnities under Sections 7.5, 7.6 and 7.8 do not apply in respect of:
- a) actions, omissions, or negligence of NACQ, NARL and their Affiliates after the Effective Date;
  - b) business losses resulting from or associated with Existing Contamination and remediation and/or containment thereof;
  - c) ongoing monitoring as set out in Section 5.2; or
  - d) costs relating to Existing Contamination that are incurred by NARL without the prior approval of NR.
- 7.8 NR confirms that NACQ and NARL shall not be required to bear the cost of remediating contamination relating to Existing Contamination, including without limitation any requirement to remediate that, but for this indemnity, could be imposed against NACQ

and NARL pursuant to the *Environmental Protection Act*, SNL 2002, c E-14.2 or the *Water Resources Act*, SNL 2002, c W-4.01.

- 7.9 NACQ and/or NARL shall give NR prompt written notice of, and all information requested by NR with respect to, any order, action, suit, litigation or other proceeding which is commenced or threatened against NACQ and/or NARL and which involves either a claim or potential claim involving Existing Contamination.
- 7.10 NR may, at its sole discretion, defend any legal action or claim that may arise in respect of, in connection with or related to the indemnities and releases provided by NR hereunder on NACQ and/or NARL's behalf, or without NACQ and/or NARL being added as a party thereto. NR may, at its sole discretion, retain its own legal counsel to defend its interests in any such legal action or claim, and NR shall have the sole right, at its expense, to control any legal action or claim and to settle on terms and conditions approved by NR. NR shall consult with NACQ and/or NARL before entering into or making any settlement, compromise, admission or acknowledgment of the validity of any such action or claim, or any liability in respect thereof, if injunctive or other equitable relief would be imposed against NACQ or NARL as a result.

## **8 INSURANCE**

- 8.1 NARL shall maintain or have maintained environmental liability insurance for sudden and accidental contamination in the name of NARL, covering any third party claims for bodily injury, property damage and remediation for any environmental incidents in an amount, with such deductibles and under policies in a form as is customary for persons engaged in businesses similar to that of NARL.
- 8.2 Evidence of such insurance and all renewals and replacements thereof shall be delivered to NR on request, together with evidence of payment of all premiums therefor.
- 8.3 The policy contemplated under Section 8.1 shall:
- a) Be with an independent and reputable insurer that has a rating of not less than A- from A.M. Best Company or a rating of not less than A- from S&P; and
  - b) provide that no cancellation or termination thereof or change therein, for any reason whatsoever, shall take effect unless the insurer concerned has given NR not less than sixty (60) days' notice of such proposed action (with the exception of cancellation for non-payment of premium for which fifteen (15) days' notice may apply) .
- 8.4 NACQ and NARL agree that the insurance provided herein in no way limits NACQ and NARL's liability pursuant to the indemnity provisions provided for in this Agreement. NACQ and NARL shall also be responsible for deciding if additional insurance coverage is necessary to fulfill their obligations under this Agreement and to ensure compliance with Environmental Law. Any additional insurance coverage is at NACQ and/or NARL's expense.

## **9 NATURE OF AGREEMENT**

- 9.1 The Parties acknowledge that this Agreement is intended to create legally binding obligations upon the Parties in respect of the commitments made herein, and the Parties to this Agreement shall be covered by and shall be entitled to rely upon the provisions of this Agreement.

## **10 TRANSFER**

- 10.1 This Agreement may not be transferred or assigned in whole or in part by a Party without the written consent of the other Parties. Notwithstanding the forgoing, but subject to Section 10.2, nothing herein shall limit the right of NACQ to engage in any reorganization or merger with an Affiliate or Affiliates, or with NARL, which results in NARL continuing to be Controlled by, or under common Control with, NACQ.

- 10.2 This Agreement shall apply to NACQ and NARL only as long as:

- a) NARL is a wholly owned subsidiary of NACQ or Controlled by NACQ; and
- b) NACQ is Controlled by SilverRange,

and it shall not apply to the successors and assigns of NACQ and NARL.

## **11 AMENDMENT**

- 11.1 This document and the schedules attached hereto represent the entirety of this Agreement, subject to any amendments made pursuant to Section 11.2.
- 11.2 This Agreement may be amended with the written agreement of the Parties.

## **12 REPRESENTATIONS AND WARRANTIES**

- 12.1 NR represents and warrants to NACQ and NARL, and acknowledges that NACQ and NARL have relied upon such representations and warranties in entering into this Agreement, that:

- a) it has all the requisite power and authority to enter into this Agreement and to perform its obligations in accordance with the terms of this Agreement;
- b) it has duly executed and delivered this Agreement; and
- c) none of the execution, delivery or performance of this Agreement by NR does or, with the giving of notice or the lapse of time or both, will conflict with, result in a breach of, constitute a default under or accelerate or permit the acceleration of the performance required by any agreement to which NR is a party.

- 12.2 NACQ represents and warrants to NR, and acknowledges that NR has relied upon such representations and warranties in entering into this Agreement, that:

- a) it has duly executed and delivered this Agreement;

- b) it is a limited liability company duly organized under the laws of Delaware, United States of America, and validly subsisting and in good standing under the laws of Delaware and the Province;
- c) it has the requisite power and authority to carry out all aspects of this Agreement;
- d) this Agreement, and the agreements, contracts and instruments required by this Agreement, are a valid and binding obligation of NACQ and enforceable against NACQ in accordance with the terms of this Agreement;
- e) the execution and delivery by NACQ of this Agreement and the performance by it of its obligations thereunder and the completion by it of the transactions contemplated thereby does not result in the violation of any of the terms and provisions of the constating documents or by-laws of NACQ or, to the best of its knowledge, violate any law or regulation or any municipal by-law or ordinance, or any order or decree of any Court or tribunal to which NACQ is subject, and will not conflict with, result in a breach of, constitute a default under or accelerate or permit the acceleration of the performance required by any agreement to which NACQ is a party;
- f) except as otherwise provided in this Agreement, NACQ does not have knowledge of any authorization, consent or approval of, or filing with or notice to, any governmental agency, regulatory body, court or other Person, being required in connection with the execution, delivery, or performance of this Agreement by NACQ;
- g) to the best of NACQ's knowledge, it has carried out its business in relation to the purchase of NARL in compliance in all material respects with all applicable laws, regulations, by-laws or ordinances;
- h) except as set out in the Environmental Disclosure document, attached as Schedule "K", NACQ:
  - (i) does not have any notice of any orders or directives of any kind from any municipal, provincial, or federal government, or agency thereof, with respect to the Refinery, including from the federal or provincial departments of environment or labour in relation to environmental occupational, health or safety matters;
  - (ii) does not have any notice of Legal Proceedings whatsoever outstanding with respect to the Refinery. To the knowledge of NACQ there is not presently or anticipated to be outstanding against NARL in relation to the Refinery any judgment, decree, injunction, rule, order or award of any court, governmental department, commission, ward, bureau, agency or arbitrator binding upon NARL that has not been satisfied in full. To the knowledge of NACQ there are no open files, notices of violation or outstanding work orders relating to the Refinery from or required by any police, fire department, sanitation, health, workers, safety authorities, or any federal, provincial, municipal authority, or any matters under discussion with any such authority or department relating to open files,

notice of violation of work orders and no material order affecting either NARL or the Refinery has been issued or is expected to be issued by any governmental, ministry, agency, board or authority;

- (iii) is not aware of any orders or directions relating to environmental matters requiring any work, repairs, construction or capital expenditures with respect to the Refinery;
  - (iv) is not aware of any environmental audits, evaluations, assessments, studies or tests relating to the operations of the Refinery;
  - (v) has disclosed to NR all relevant material information respecting matters relating to this Agreement, including all material information relating to the environmental condition of the Refinery;
- m) NACQ shall remain in compliance and shall direct NARL to remain in compliance in all material respects with Environmental Law and all applicable laws, rules, regulations, by-laws, ordinances and standards relating to the Refinery, including but not limited to those related to civil rights, occupational health and safety, Hazardous Substances, zoning laws, and building codes; and
- n) NACQ possesses no information or knowledge of facts relating to the Refinery other than as disclosed herein which might reasonably be expected to deter NR from completing the transactions herein contemplated on the terms and conditions of this Agreement.

**12.3** NARL represents and warrants to NR, and acknowledges that NR has relied upon such representations and warranties in entering into this Agreement, that:

- a) it is a corporation duly incorporated and organized and validly subsisting and in good standing under the laws of the Province;
- b) it has all the requisite power and authority to enter into this Agreement;
- c) it has duly executed and delivered this Agreement;
- d) it has the corporate authority to carry out the transactions contemplated by this Agreement and has the corporate authority to own its property and carry on its business;
- e) this Agreement, and the agreements, contracts and instruments required by this Agreement, are a valid and binding obligation of NARL enforceable against NARL in accordance with the terms of this Agreement;
- f) the execution and delivery by NARL of this Agreement and the performance by it of its obligations thereunder and the completion by it of the transactions contemplated thereby does not result in the violation of any of the terms and provisions of the constating documents or by-laws of NARL, or, to the best of its knowledge, violate any law or regulation or any municipal by-law or ordinance, or any order or decree of any Court or tribunal to which NARL is subject, or will

conflict with, result in a breach of, constitute a default under or accelerate or permit the acceleration of the performance required by any agreement to which NARL is a party;

- g) except as otherwise provided in this Agreement, NARL does not have knowledge of any authorization, consent or approval of, or filing with or notice to, any governmental agency, regulatory body, court or other Person, being required in connection with the execution, delivery, or performance of this Agreement by NARL;
- h) to the best of NARL's knowledge, it has carried out its business in relation to the Refinery in compliance in all material respects with all applicable laws, regulations, by-laws or ordinances;
- i) except as set out in the Environmental Disclosure document, attached as Schedule "K":
  - (i) no Legal Proceeding, administrative, or other proceeding or, to NARL's knowledge, no investigation by any municipal, provincial, or federal government, or agency thereof, is pending or, to NARL's knowledge, has been threatened by or against NARL which would materially and adversely affect the ability of NARL to consummate this Agreement;
  - (ii) NARL is not a party to or, to NARL's knowledge, is not threatened to be made a party to, any Legal Proceeding;
  - (iii) to NARL's knowledge, it is in compliance with Legal Requirements applicable to the Company Business except for those matters that would not be reasonably expected to cause a material adverse effect;
  - (iv) with respect to the ownership and/or operation of the Refinery, Refinery Assets, and Refinery Lands, there are no existing or, to NARL's knowledge threatened, violations, actions, suits, proceedings or hearings resulting from, related to or arising under any Environmental Law or Environmental Permit;
  - (v) NARL and the Refinery are in compliance with all applicable Environmental Laws except for those matters that would not be reasonably expected to cause a material adverse effect;
  - (vi) NARL holds all Environmental Permits (including extensions or renewals thereof normally obtained consistent with good industry practice) required under Environmental Law necessary for the conduct of its business, operation of Refinery Assets, and use of Refinery Lands;
  - (vii) NARL has made all applications necessary to renew any such Environmental Permits in a timely fashion so as to allow it to continue to operate in material compliance with Environmental Law as its business is presently conducted;
  - (viii) to NARL's knowledge, it does not expect any new or renewed

Environmental Permit to include any terms or conditions that would reasonably be expected to have a material adverse effect on its business; and

- (ix) NARL is in material compliance with the Certificate of Approval, attached hereto as Schedule "J", and the Environmental Compliance Agreement, attached hereto as Schedule "H", and is not in violation of the terms of any permits, except for those matters that would not be reasonably expected to cause a material adverse effect;
  - j) it will remain in compliance in all material respects with Environmental Law and all applicable laws, rules, regulations, by-laws, ordinances and standards relating to the Refinery, including but not limited to those related to civil rights, occupational health and safety, Hazardous Substances, zoning laws, and building codes;
  - k) it possesses no information or knowledge of facts relating to the Refinery other than as disclosed herein which might reasonably be expected to deter NR from completing the transactions herein contemplated on the terms and conditions of this Agreement; and
  - l) it holds all licences, permits, certifications and registrations including governmental permits as may be required for the ownership and operation of the Refinery. There are no proceedings pending or to the knowledge of NARL threatened, which may result in the revocation, cancellation, suspension or adverse modification of any such permit, license, certification or registration.
- 12.4 Notwithstanding any other provisions of this Agreement, Sections 12.2 and 12.3 contain the sole representations and warranties of NACQ and NARL with respect to environmental matters.

### **13 CONFIDENTIALITY**

- 13.1 The Parties acknowledge the requirements and obligations respecting the confidentiality of information which is provided and received solely under this Agreement and agree to maintain the confidentiality of information which is provided and received solely under this Agreement, except as may otherwise be required by law or regulation.
- 13.2 The Parties agree to consult on measures deemed necessary to maintain the confidentiality of information provided and received solely under this Agreement and shall incorporate such measures as the Parties consider appropriate.
- 13.3 Notwithstanding Sections 13.1 and 13.2, NR may share information received under this Agreement within the government of Newfoundland and Labrador.

## **14     DEFAULT**

**14.1**    The occurrence of one (1) or more of the following events shall be an event of default by NACQ and NARL under this Agreement ("Default"):

- a)     NARL ceases Refining Operations for a period of one (1) year or more;
- b)     NARL is no longer wholly owned or Controlled by NACQ, or NACQ is no longer Controlled by SilverRange;
- c)     NARL fails to meet the requirements set out in Section 6.4 and/or 6.5, and the default continues for thirty (30) days after the receipt by NARL of notice thereof from NR;
- d)     Any representation or warranty made by NARL or NACQ in this Agreement is false or misleading in any material respect;
- e)     NARL ceases Refining Operations for a period of six (6) months due to an Insolvency Event with respect to NARL or NACQ; and
- f)     NARL or NACQ is in default or breach of any term, condition or obligation under this Agreement, and, if the default is capable of being cured, it continues for thirty (30) days after the receipt by NACQ or NARL of notice thereof from NR, unless the cure reasonably requires a longer period and NARL and/or NACQ is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by NR.



- 14.2 Upon the occurrence of a Default under Subsections 14.1(a), (b), or (c), Section 6.9 and the indemnities provided by NR under Part 7 shall be null and void.
- 14.3 Upon the occurrence of a Default, NR may terminate this Agreement.
- 14.4 If any representation or warranty made by NR in this Agreement is false or misleading in any material respect, NACQ and/or NARL may terminate this Agreement.
- 14.5 Notwithstanding Section 5.2, if a Default occurs prior to the completion of an IRP, costs related to the IRP:
- a) which have already been incurred by NR shall be the responsibility of NR; and
  - b) which are subsequently incurred shall be the responsibility of NACQ.
- 14.6 For greater certainty, upon the occurrence of a Default, the Department of Natural Resources shall have no other remedy or claim against NARL or NACQ under this Agreement, except for the voiding of the indemnities provided by NR and the termination of this Agreement, or part thereof.

## **15 DISPUTE RESOLUTION**

- 15.1 The Parties agree to discuss any dispute that may arise with respect to: (i) the interpretation of any provision of this Agreement; (ii) the performance or non-performance by a Party hereunder; (iii) whether contamination pre-existed the Effective Date; or iv) any other matter which arises in connection with this Agreement, and to negotiate in good faith in an effort to resolve any such dispute without the necessity of any formal proceeding relating thereto, including if agreed the amendment of this Agreement.
- 15.2 The "Executive Committee" for the purpose of this Part shall be:
- a) For NR: Deputy Minister of the Department of Natural Resources, or a representative thereof;
  - b) for NACQ: Harsh Rameshwar, Partner;
  - c) for NARL: Jon Ruggles, Director of Refining; and
  - d) at the request of one or more Parties, the Deputy Minister of the Department of Environment and Conservation, or a representative thereof, for the Minister of Environment and Conservation, as a consulting member;
- 15.3 In the event that the Parties are unable to reach an agreement under Section 15.1, the Executive Committee will meet for the purpose of endeavouring to resolve such dispute.
- 15.4 The Executive Committee will meet as often as necessary to gather and furnish to the others all information with respect to the matter in issue which is appropriate and relevant in connection with its resolution. The Executive Committee will discuss the problem and negotiate in good faith in an effort to resolve the dispute without the

necessity of any formal proceeding relating thereto. During the course of such negotiation, all reasonable requests made by one Party to the other for non-privileged information reasonably relating to the Agreement, will be honoured in order that each of the Parties may be fully advised of the other's position. The specific format for such discussions will be left to the discretion of the Executive Committee but may include the preparation of agreed upon statements of fact or written statements of position provided to the other Party.

- 15.5 If the Executive Committee concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely, the Parties may initiate mediation as set out in Section 15.6.
- 15.6 Despite anything contained in this Agreement to the contrary, in the event that a dispute arises with respect to this Agreement that cannot be resolved by negotiation between the Parties, then in such event the Parties agree to use the services of an experienced, qualified mediator to attempt to resolve their dispute and, failing agreement on the procedure to be followed, the mediation shall be conducted in accordance with the National Mediation Rules of the ADR Institute of Canada Inc.
- 15.7 The cost of mediation shall be borne equally between the Parties, except that each Party shall bear the cost of their own legal counsel and witnesses.
- 15.8 The Parties agree to choose a mediator jointly within twenty (20) Business Days following the end of negotiations. Should they be unable to agree upon the choice of a mediator pursuant to their decision to submit their dispute to mediation, a mediator shall be chosen by:

ADR Institute of Canada Inc.  
Suite 405-234 Eglinton Avenue East  
Toronto, Ontario, M4P 1K5  
Tel: 416-487-4733 Fax: 416-487-4429 Toll free: 1-877-475-4353  
Email: admin@adrcanada.ca

- 15.9 In the event of the discontinuance of ADR Institute of Canada Inc. or their refusal to act, a Party may immediately apply to the Supreme Court of Newfoundland and Labrador for the appointment of a mediator. Once the mediator has been chosen, the Parties agree to undertake the mediation as soon as possible and to endeavour to execute a mediation agreement within twenty-five (25) Business Days of the appointment of the mediator.
- 15.10 If the Parties are unable to settle the dispute within ninety (90) Business Days of notice of mediation being given, or any other period agreed upon by the Parties, a Party may notify the other Parties of its intention to request arbitration, in which case such arbitration shall take place in St. John's, Newfoundland and Labrador.
- 15.11 Subject to the foregoing provisions, the parties agree to proceed to arbitration in accordance with the *Arbitration Act*, RSNL1990 c A-14.
- 15.12 The cost of arbitration shall be borne equally between the Parties, except that each Party shall bear the cost of their own legal counsel and witnesses.

## **16     NOTICES**

- 16.1 Except as otherwise specifically provided for herein, all notices, claims, payments, reports and other communications required under this Agreement shall be in writing. The addresses for service are:

**For NR:**

Government of Newfoundland and Labrador  
Department of Natural Resources  
P.O. Box 8700  
Confederation Building  
St. John's, NL A1B 4J7

Attention: Minister of Natural Resources

**For NACQ:**

NARL Acquisitions LLC  
Suite 1200  
1330 Avenue of the Americas  
New York, New York 10019  
United States of America

Attention: Harsh Rameshwar, Partner

**For NARL:**

North Atlantic Refining Limited  
P.O. Box 40  
1 Refinery Road  
Come by Chance, NL A0B 1N0

Attention: Jon Ruggles, Director Refining

- 16.2 Except as otherwise specifically provided for herein, notices, requests or documents shall be deemed to have been received by the addressee as follows:

- a) As of the date on which they are delivered where delivery is by personal service;
- b) As of the date on which they are sent where delivery is by facsimile or other means of electronic communication; or
- c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

## **17     GENERAL**

- 17.1 NACQ and NARL acknowledge that nothing contained in this Agreement in any way limits or defines the absolute right of the Province to create or amend environmental

legislation, including regulations, policies or guidance documents, during the term of this Agreement. NACQ and NARL further acknowledge that, should new or amended legislation be promulgated during the term of this Agreement, this Agreement may be amended by mutual consent, in order to give continuing effect to the terms and provisions of this Agreement.

- 17.2 The Parties shall not be considered in default in performance of its obligations hereunder to the extent that performance of such obligation is delayed, hindered, or prevented by force majeure. Force majeure shall be any cause beyond the control of the parties hereto which they could not reasonably have foreseen and guarded against.
- 17.3 This Agreement may be executed in any number of counterparts, each of which will be considered an original, and which together will constitute one and the same instrument. This Agreement shall not be effective unless and until both Parties have executed a counterpart. A facsimile signature or an otherwise electronically reproduced signature of either Party shall be deemed to be an original.
- 17.4 If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, such invalidity or unenforceability shall attach only to such provision, and all other provisions hereof shall continue in full force and effect.
- 17.5 The failure of a Party to this Agreement to require performance of any provision shall not affect that Party's right to require performance at any time thereafter, nor shall a waiver of any breach or default to this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
- 17.6 This Agreement shall be interpreted, performed and enforced in accordance with the laws of the Province of Newfoundland and Labrador and all actions, suits or proceedings arising out of this Agreement shall be determined in a court of competent jurisdiction in Newfoundland and Labrador, subject to any right of appeal.

[remainder of this page intentionally left blank]

**IN WITNESS WHEREOF** this Agreement has been executed

**HER MAJESTY IN RIGHT OF  
NEWFOUNDLAND AND LABRADOR**

**NARL Acquisitions LLC**

\_\_\_\_\_  
Minister of Natural Resources  
(or his/her authorized designate)

\_\_\_\_\_  
Authorized Signature

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**North Atlantic Refining Limited**

\_\_\_\_\_  
Authorized Signature

Date: \_\_\_\_\_

**SCHEDULE "K"**  
**ENVIRONMENTAL DISCLOSURE**

In relation to Section 12.2(h)(iv), NACQ has provided a copy of the environmental assessment conducted by Pilko and Associates in 2013 to NR.