

**GIANT MINE REMEDIATION PROJECT
ENVIRONMENTAL AGREEMENT**

This Agreement is dated for reference the 9th day of June, 2015.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the
Minister of Indian Affairs and Northern Development
(referred to as “Canada”)

AND

THE GOVERNMENT OF THE NORTHWEST TERRITORIES
as represented by the
Minister of Environment and Natural Resources
(referred to as the “GNWT”)

AND

YELLOWKNIVES DENE FIRST NATION
a Band under the *Indian Act*

AND

CITY OF YELLOWKNIFE
a municipal corporation under the *Cities Towns and Villages Act* of the Northwest Territories

AND

ALTERNATIVES NORTH
a society incorporated under the *Societies Act* of the Northwest Territories

AND

NORTH SLAVE MÉTIS ALLIANCE
a society incorporated under the *Societies Act* of the Northwest Territories

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RECITALS:

- A. The Giant Mine site contains 237,000 metric tonnes of arsenic trioxide waste, and Canada and the GNWT propose as co-proponents to undertake the Project for the remediation of the site.
- B. The Mackenzie Valley Environmental Impact Review Board conducted an environmental assessment of the Project pursuant to the *Mackenzie Valley Resource Management Act* (the “MVRMA”) which resulted in a report issued on June 20, 2003 titled “Report of Environmental Assessment and Reasons for Decision: Giant Mine Remediation Project” (EA0809-001, the “MVEIRB Report”).
- C. The MVRMA environmental assessment of the Project has culminated in measures adopted by the federal and territorial responsible ministers under s. 130(1)(b)(i) of that Act, which decision was communicated in a letter sent by the Minister of Indian Affairs and Northern Development to the Chair of the Mackenzie Valley Environmental Impact Review Board, dated August 11, 2014 (the “Responsible Ministers’ Decision”).
- D. MVRMA Measure 7 adopted by the Responsible Ministers requires the Co-Proponents to negotiate the terms of a legally binding environmental agreement for the establishment of an independent oversight body for the Project with, at a minimum, Yellowknives Dene First Nation, City of Yellowknife, and Alternatives North.
- E. Various other MVRMA Measures adopted by the Responsible Ministers affect matters to be addressed in the agreement, or affect the role and activities of the independent oversight body.
- F. The MVEIRB Report contains a number of suggestions offered by the Mackenzie Valley Environmental Impact Review Board, and contains a list of commitments made by the Co-Proponents in the course of the environmental assessment.
- G. The First Nation now named the Yellowknives Dene First Nation has used the lands and waters in the vicinity of the Giant Mine site since time immemorial, and its use of these land and waters are and will continue for the foreseeable future to be affected by the Giant Mine.
- H. Other aboriginal peoples of Canada were and remain users of the lands and waters in the vicinity of the Giant Mine site, and their use of these lands and waters was affected by the impacts of the mine.
- I. Aboriginal peoples of Canada in the vicinity of Yellowknife, other area residents, traditional, current, and future users of the lands and waters in the vicinity of the Giant Mine site, the City of Yellowknife, the Co-Proponents, the communities on and

downstream of Great Slave Lake and all Canadians have significant interests in the success of the Project and in the current and future state of the lands and waters affected by the Project.

The Parties therefore agree as follows:

Article 1 INTERPRETATION

1.1 DEFINITIONS

In this Agreement, unless the context otherwise requires, the following terms have the meanings ascribed to them below:

“**aboriginal peoples of Canada**” has the meaning ascribed thereto in section 35 of the *Constitution Act, 1982*.

“**Adaptive Management**” means a management method that incorporates monitoring results and newly available information in an iterative and ongoing process toward continual improvement.

“**Co-Proponents**” means Canada and the GNWT.

“**Co-Proponents’ Commitments**” means the commitments made by the Co-Proponents in the environmental assessment process that are explicitly identified as such in the MVEIRB Report within “Appendix C: List of Developer Commitments”.

“**Effective Date**” has the meaning ascribed to it in section 16.1(a).

“**Environmental Programs and Plans**” means the Project’s Environmental, Health, Safety and Community Management System and any other environmental management plan or environmental monitoring program carried out for the purposes of the Project.

“**Frozen Block Method**” means the method for freezing underground arsenic trioxide that was presented in section 6.2 of the Developer’s Assessment Report submitted as part of the MVRMA environmental assessment, as that method will be refined and implemented over time.

“**MVEIRB Report**” has the meaning ascribed to it in Recital B.

“**MVEIRB Suggestions**” means the sixteen suggestions explicitly identified as such in the MVEIRB Report.

“**MVRMA**” means the *Mackenzie Valley Resource Management Act*, S.C. 1998, c. 25, referred to in Recital B.

“**MVRMA Measures**” means the measures adopted by the Responsible Ministers by way of the Responsible Ministers’ Decision.

“**Parties**” means the parties to this Agreement.

“**Perpetual Care**” means the care and maintenance associated with the Project in perpetuity.

“**Project**” means the Giant Mine Remediation Project assessed and approved in the MVRMA environmental assessment process referred to in Recital B, as that project will be refined and implemented over time.

“**Regulatory Instrument**” means any authorization, licence or permit under any legislation that is required or obtained for the carrying out of the Project.

“**Research Program**” means the research and related activities conducted in accordance with MVRMA Measure 4, as further elaborated in Article 7 of this Agreement.

“**Responsible Ministers**” means those ministers identified as such in the Responsible Ministers’ Decision.

“**Responsible Ministers’ Decision**” means the letter identified as such in Recital C.

“**Traditional Knowledge**” means the evolving body of Aboriginal knowledge and values that has been acquired through experience and observation from the land (including the earth, water, air, flora, fauna, and the relations among them) and from spiritual teachings and that is handed down from one generation to another.

1.2 EXTENDED MEANINGS

Words importing the singular number include the plural and vice versa; words importing gender include the masculine, feminine and neuter genders; words importing persons include firms and corporations.

1.3 HEADINGS

The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and do not alter the construction or interpretation of this Agreement.

1.4 LEGISLATION

Unless the context requires otherwise, a reference to any statute includes any regulation under that statute, any amendment to the statute, and any successor legislation.

1.5 SCHEDULES

Subject to any explicit statement to the contrary, the schedules to this Agreement are not part of this Agreement and do not have the force of this Agreement. They are for convenience of reference only and do not alter the meaning of this Agreement.

Article 2
PURPOSES, OBJECTIVES AND PRINCIPLES

2.1 PURPOSES

The purposes of this Agreement are to:

- (a) provide for the establishment, roles and funding of an independent oversight body for the Project, and establish or give effect to the rights and responsibilities of the Parties relating to the independent oversight body;
- (b) support the development of a coordinated approach to the implementation of the MVRMA Measures, the Co-Proponents' Commitments and the MVRMA Suggestions;
- (c) facilitate collaboration among the Parties; and
- (d) build public confidence in the Project and enhanced transparency and accountability in relation to the Project.

2.2 OBJECTIVES

The Parties intend that this Agreement will achieve or support the following objectives:

- (a) the remediation of the Giant Mine site in a manner that protects:
 - (i) the land, air, water, aquatic life and other wildlife in the area of or potentially affected by the Project;
 - (ii) the economy, way of life and well-being of the aboriginal peoples of Canada in the vicinity of Yellowknife, and of other residents of Yellowknife, the Northwest Territories and Canada;
- (b) the remediation of the Giant Mine site in a manner that eliminates or substantially mitigates the environmental risks posed by the site;
- (c) comprehensive, integrated ecosystem-based approaches for the monitoring, management and regulation of the Project;
- (d) the minimization of the Perpetual Care requirements at the Giant Mine site;
- (e) effective communication with future generations about the Project;
- (f) the provision of advice to the Co-Proponents that will assist them in managing the Project in a manner that furthers the purposes, objectives and principles stated in this Article;
- (g) effective participation of the public and the Parties in the implementation of this Agreement and the furthering of the purposes, objectives and principles stated in this Article.

2.3 ROLES OF THE PARTIES

The Parties have the following roles under this Agreement:

- (a) the Co-Proponents are responsible for and maintain full control and authority for the management of the Project;
- (b) the Oversight Body shall, in a manner consistent with this Agreement:
 - (i) promote public awareness of the Project, disseminate information about the Project, and promote public engagement in processes related to the Project;
 - (ii) provide such independent advice to the Co-Proponents on the management of the Project as the Oversight Body considers appropriate;
 - (iii) provide such independent advice to regulatory authorities, the Parties, the public, and to whomever else the Oversight Body considers appropriate, on the monitoring and management of the Project; and
 - (iv) manage the program for research toward a permanent solution for dealing with arsenic at the Giant Mine site as set out in Article 7 (“Active Research Toward a Permanent Solution for Arsenic”) and section 8.2 (“Research Results”); and
- (c) the other Parties may participate in the implementation of the Agreement as provided for in the Agreement.

2.4 PRINCIPLES

The Parties shall carry out their respective responsibilities under this Agreement in a manner that:

- (a) fully considers available Traditional Knowledge, western science and other technical information;
- (b) applies Adaptive Management principles using best available information and best available technology economically achievable;
- (c) takes all reasonable measures to respond to risks of serious or irreversible environmental degradation, or risks to human health and safety, even when lacking full scientific certainty;
- (d) promotes the development and implementation of remediation and environmental protection measures designed to maximize environmental quality to the extent reasonably possible;
- (e) supports ongoing research and development into an inherently safe, economically viable, permanent and complete remediation alternative for the arsenic trioxide stored underground at the Giant Mine site; and

- (f) promotes the best uses of available resources, making use of information, data and resources that may be available from other sources and avoiding unreasonable duplication of monitoring and other activities being conducted by others, including by the Parties, government departments, regulatory bodies and other similar institutions.

2.5 TIMELINESS

The Parties shall fulfill their responsibilities under this Agreement in a timely manner. The Oversight Body shall set reasonable timelines for the evaluation processes described in Article 4 (“Environmental Programs and Plans”), Article 5 (“Co-Proponents’ Annual Reporting”), Article 6 (“Status of the Environment Reporting”) and Article 8 (“Independent Project Review”).

2.6 ACCESS TO REPORTS, EVALUATIONS, ETC.

Where this Agreement creates an obligation on either the Co-Proponents or the Oversight Body to produce and provide to each other any written report, evaluation, assessment, reply or notice, the producer of the document shall also provide it to all the other Parties without unreasonable delay.

Article 3

MANDATE OF THE OVERSIGHT BODY

3.1 MONITORING AND REPORTING

- (a) Without limiting section 2.3 (“Roles of the Parties”), the mandate of the Oversight Body includes monitoring and reporting on:
 - (i) the environmental aspects of the Project;
 - (ii) the nature and quality of the Co-Proponents’ engagements with the public regarding the Project and the effectiveness of the Co-Proponents’ public communications about the Project;
 - (iii) the provision by the Co-Proponents of access to relevant information about the Project;
 - (iv) the implementation of this Agreement; and
 - (v) any other matter required by MVRMA Measure 8 or any other MVRMA Measure.
- (b) In furtherance of its mandate, and without limiting the generality of section 3.1(a), the Oversight Body may compile and analyze available and relevant environmental quality data in order to review, report, or make recommendations concerning:
 - (i) the Project’s Environmental Programs and Plans;

- (ii) the Project's integration of Traditional Knowledge into its Environmental Programs and Plans;
 - (iii) the Project's integration of short-, medium-, and long-term land-use constraints and land-use objectives into its Environmental Programs and Plans;
 - (iv) active research toward a permanent solution for dealing with arsenic at the Giant Mine site;
 - (v) environmental or engineering studies conducted by the Co-Proponents in relation to the Project; and
 - (vi) other matters relevant to the identification or mitigation of impacts of the Project on the environment.
- (c) The Oversight Body shall review and may make recommendations concerning the Co-Proponents' annual report, Status of the Environment Report and the 20-year independent Project review in the manner described in sections 5.1 ("Annual Report"), 6.1 ("Status of the Environment Report") and 8.1 ("Independent Project Review") respectively.
 - (d) The Oversight Body shall participate in and advise on the Co-Proponents' process to assess options for the management of Baker Creek, as required by MVRMA Measure 11.
 - (e) The Oversight Body shall manage the Research Program in the manner provided for in section 2.3 ("Roles of the Parties").
 - (f) Subject to the discretion of the applicable regulatory body, the Oversight Body may intervene in regulatory processes in relation to the Project.
 - (g) Subject to the discretion of the applicable tribunal, and without prejudice to the right of a participant to oppose the application, the Oversight Body may apply to intervene in legal proceedings in relation to the environmental aspects of the Project.

3.2 INDEPENDENCE

The Oversight Body may, at any time it considers appropriate, express its observations or conclusions in respect of the Project, along with the factual bases for same. In all its activities and at all times, the Oversight Body shall maintain an independent and objective perspective on the matters within its mandate.

3.3 INFORMATION REPOSITORY, DISSEMINATION, *ETC.*

- (a) The Oversight Body shall develop and maintain a comprehensive understanding of the Project and of the matters referred to in sections 2.1 ("Purposes"), 2.2 ("Objectives") and 2.4 ("Principles") of this Agreement.

- (b) Subject to applicable privacy legislation and access to information legislation, the other Parties shall provide the Oversight Body with such information as may be requested by the Oversight Body, provided that the Party is reasonably able to provide the information and that the information is required for the Oversight Body to carry out its mandate.
- (c) The Oversight Body shall:
 - (i) promote public awareness of itself, this Agreement, and its roles under this Agreement;
 - (ii) establish a publicly accessible repository of records that it considers relevant to its responsibilities;
 - (iii) provide information to the Co-Proponents, the other Parties, the public or any other appropriate person on matters relevant to its responsibilities when and in the manner it considers appropriate.
- (d) The Oversight Body may:
 - (i) receive information relevant to its responsibilities from any person, and convey that information, along with its views on that information, to the Co-Proponents, the other Parties, the public, or any other appropriate person;
 - (ii) hold meetings on matters relevant to its responsibilities; and
 - (iii) participate in meetings, workshops or conferences that relate to the Project and the Oversight Body's mandate under this Agreement.

3.4 OVERSIGHT BODY REPORTING

- (a) The Oversight Body may, from time to time and as it considers appropriate, issue reports on its activities, observations, evaluations, advice or any other matter relevant to its responsibilities.
- (b) The Oversight Body shall provide all of its reports and evaluations to the Co-Proponents and shall make them available to the public.
- (c) The Oversight Body shall issue an annual report each year, including a summary of the matters referred to in section 3.4(a) that may be applicable in that year.
- (d) The Oversight Body shall hold an annual meeting each year for the first five years of its operations. Each such meeting must be open to the public. The Co-Proponents shall participate in any such meeting. The Oversight Body may coordinate or combine these meetings with the Co-Proponents' annual meetings referred to in section 5.5.

Article 4
ENVIRONMENTAL PROGRAMS AND PLANS

4.1 MINIMUM CONTENTS

The Co-Proponents shall include in their Environmental Programs and Plans provision for the management and monitoring of at least the following matters, when and to the extent that those matters may be applicable to the Project:

- (a) water;
- (b) air quality;
- (c) materials;
- (d) wildlife;
- (e) aquatic life;
- (f) traffic;
- (g) waste;
- (h) arsenic trioxide;
- (i) quarries;
- (j) land use constraints and land use objectives; and
- (k) Perpetual Care.

4.2 PERPETUAL CARE

- (a) As part of the Co-Proponents' Environmental Plans and Programs, in particular as required by section 4.1(k), the Co-Proponents shall develop a comprehensive Perpetual Care plan that must address improvements in records management, communication with future generations, long-term access to funds for the Project and analysis of different possible future scenarios that might affect the Perpetual Care of the Project.
- (b) The Co-Proponents shall provide the Oversight Body with a first draft Perpetual Care plan no later than five years after the Effective Date of this Agreement.

4.3 INCIDENT REPORTING

The Co-Proponents shall, without unreasonable delay, provide the Oversight Body a report of any reportable spill, accident or significant malfunction in or caused by the Project, together with a description of the Co-Proponents' response.

4.4 ANNUAL FORECAST

- (a) Every year the Co-Proponents shall provide the Oversight Body with a forecast of upcoming changes to operational activities, along with references to the relevant Environmental Plans and Programs for the management and monitoring of those activities.
- (b) If at any time the Co-Proponents intend to make significant changes to the forecast operational activities, the Co-Proponents shall inform the Oversight Body in writing of such change without unreasonable delay, and make this notification available to the public.

4.5 EVALUATION BY OVERSIGHT BODY

- (a) The Oversight Body may from time to time conduct an evaluation of the Environmental Plans and Programs. Following such an evaluation, the Oversight Body shall provide the Co-Proponents a written report of its evaluation of the Environmental Programs and Plans, including any recommendations it may have for improvement, along with the bases for its evaluation. This report shall be made available to the public.
- (b) Section 6.5 (“Coordination with Annual Report”) applies to the Oversight Body’s evaluation report under section 4.5(a) with such modification as may be necessary to fit the context.
- (c) The Co-Proponents shall reply to the Oversight Body’s evaluation under section 4.5(a), and in that reply the Co-Proponents shall indicate agreement or disagreement with any of the Oversight Body’s recommendations, along with a meaningful explanation of the bases for agreement or disagreement. The Co-Proponents shall make their reply available to the public.
- (d) If the Oversight Body believes that the Co-Proponents have not complied with the requirements of section 4.5(c), the Oversight Body may initiate the dispute resolution process described in Article 13 of this Agreement.

Article 5

CO-PROPONENTS’ ANNUAL REPORTING

5.1 ANNUAL REPORT

The Co-Proponents shall prepare, provide to the Oversight Body, and make available to the public an annual report on the Project each year. The Co-Proponents shall provide the first such annual report to the Oversight Body no later than October 1, 2016, and thereafter the Co-Proponents shall provide the Oversight Body with the annual report no later than October 1 in each year, unless the Oversight Body establishes a different due date for the report.

5.2 REPORT CONTENTS

Each annual report must include in respect of each year:

- (a) a summary of the Project's key operational activities and associated expenditures;
- (b) a summary of any other significant developments relating to the Project;
- (c) a summary of the results or findings of all monitoring done for the Environmental Programs and Plans and a description of actions taken or planned to implement Adaptive Management;
- (d) an assessment of the effectiveness of actions already taken to address the results or findings of all monitoring done for the Environmental Programs and Plans;
- (e) a summary of any environmental or engineering studies conducted by the Co-Proponents in relation to the Project;
- (f) a summary of any changes to, or plans for changes to, the Environmental Programs and Plans;
- (g) a summary of any environmental audits of the Project, and the Co-Proponents' response to the audit;
- (h) a summary of any reportable spills, accidents or significant malfunctions, and a summary of the Co-Proponents' responses;
- (i) a listing of regulatory inspections, reports or directions, and a summary of the Co-Proponents responses to any issues arising therefrom;
- (j) an analysis of trends in environmental effects data over time;
- (k) a summary of significant public engagement activities, of matters raised as public concerns, and the Co-Proponents' responses;
- (l) a summary of the Project's planned key operational activities for the upcoming year and associated planned expenditures, subject to the need to protect commercially sensitive financial information;
- (m) a summary of the progress of the Project, including with respect to the MVRMA Measures, MVEIRB Suggestions, and Co-Proponents' Commitments;
- (n) references to all sources relied on by the Co-Proponents in coming to conclusions in the annual report; and
- (o) a plain-language summary of the annual report.

5.3 ACCESS TO SOURCE MATERIAL ON REQUEST

- (a) The Oversight Body may request source material referred to in the annual report, and the Co-Proponents shall provide the requested record without unreasonable delay, unless there are privacy-based, commercial, safety-related or legal reasons

justifying a decision not to provide the requested document, in which case those reasons shall be provided by the Co-Proponents in writing.

- (b) If the record requested under section 5.3(a) can be redacted to address the issue preventing the Co-Proponents from providing it to the Oversight Body, the Co-Proponents shall provide a redacted version of the record without unreasonable delay, and shall indicate in writing the reason for the redaction.
- (c) If the Oversight Body believes that lack of access to a requested record would materially impair the Oversight Body's ability to perform its responsibilities under section 5.4, the Oversight Body may initiate the dispute resolution process described in Article 13 of this Agreement.
- (d) The Co-Proponents' obligation under this Agreement to provide any record is subject to the same limitations on access to information and protection of privacy as would apply if the Oversight Body's request for a record were a request under the *Access to Information Act* (Canada) or the *Access to Information and Protection of Privacy Act* (Northwest Territories), as the case may be.

5.4 OVERSIGHT BODY'S EVALUATIONS

- (a) The Oversight Body shall evaluate whether the Co-Proponents' annual report provides the information required under section 5.1. The Oversight Body shall provide its evaluation to the Co-Proponents and make it available to the public.
- (b) The Co-Proponents shall take reasonable steps to address any information deficiencies found by the Oversight Body in the annual report by providing additional information requested by the Oversight Body without unreasonable delay, subject further to the limitations on sensitive information in sections 5.3(a) and 5.3(d).
- (c) The Oversight Body may provide a written evaluation of the actions taken by the Co-Proponents within the year, or planned by the Co-Proponents for the future, along with the bases for its evaluation. The Oversight Body shall provide its evaluation to the Co-Proponents and make it available to the public.
- (d) The Co-Proponents shall reply to the Oversight Body's evaluation under section 5.4(c), and in that reply the Co-Proponents shall indicate agreement or disagreement with any recommendations, along with a meaningful explanation of the bases for agreement or disagreement. The Co-Proponents shall provide their reply to the Oversight Body and make it available to the public.
- (e) If the Oversight Body believes that the Co-Proponents have not complied with the requirements of sections 5.4(b) or 5.4(d) the Oversight Body may initiate the dispute resolution process described in Article 13 of this Agreement.

5.5 ANNUAL MEETING

The Co-Proponents shall hold a meeting each year to discuss the Co-Proponents' annual report, the Oversight Body's evaluation of the report, and the Co-Proponents' reply. This meeting must be open to the public.

Article 6 STATUS OF THE ENVIRONMENT REPORTING

6.1 STATUS OF THE ENVIRONMENT REPORT

At the times identified in section 6.4 the Co-Proponents shall prepare, provide to the Oversight Body, and make available to the public a comprehensive report on the Project. Each report shall include in respect of each reporting period:

- (a) a summary of the Project's key operational activities;
- (b) an assessment of the long-term effects of the Project;
- (c) a summary of the methodology, and the results or findings, of all monitoring done for the Environmental Programs and Plans and a description of actions taken or planned to implement Adaptive Management;
- (d) a summary of any changes to the environmental impact prediction models, or other conceptual models used by the Co-Proponents to guide Project management, and of the rationale for the changes;
- (e) the identification of any cumulative effects of the Project on the environment, meaning any effects of the Project considered in combination with the effects of other human activities;
- (f) a comparison of the results or findings of all environmental monitoring programs under the Environmental Programs and Plans to the results predicted in the Developers' Assessment Report submitted as part of the MVRMA environmental assessment;
- (g) an evaluation of the performance of Adaptive Management;
- (h) a summary of the Project's planned key operational activities for the upcoming reporting period;
- (i) references to all sources relied on by the Co-Proponents in coming to conclusions in the report; and
- (j) a plain-language summary of the report.

6.2 SOURCE MATERIAL, EVALUATION PROCESS, ETC.

The processes in sections 5.3 (“Access to Source Material on Request”) and 5.4 (“Oversight Body’s Evaluations”) in respect of the Co-Proponents’ annual report apply to the Status of the Environment Report, each with such modification as may be necessary to fit the context.

6.3 MEETING

The Co-Proponents shall hold a meeting, which must be open to the public, to discuss the Status of the Environment Report, the Oversight Body’s evaluation of the report, and the Co-Proponents’ reply. This meeting may be coordinated or consolidated with the meeting required by section 5.5 (“Annual Meeting”).

6.4 TIMING OF STATUS OF THE ENVIRONMENT REPORTS

The Co-Proponents shall provide the report required by section 6.1 seven years after the Effective Date, and subsequently every three years for a period of 15 years. After that 15-year period, the Co-Proponents shall prepare the report required by section 6.1 every five years.

6.5 COORDINATION WITH ANNUAL REPORTS

Where multiple reports or evaluations by the Oversight Body are likely to address related subjects, the Oversight Body shall make best efforts to coordinate and harmonize its reports and evaluations under Article 5 and Article 6.

Article 7

ACTIVE RESEARCH TOWARD A PERMANENT SOLUTION FOR ARSENIC

7.1 RESEARCH PROGRAM

In order to facilitate active research toward a permanent solution for dealing with arsenic at the Giant Mine site, the Oversight Body shall, on a periodic basis, ensure that:

- (a) reports on relevant emerging technologies are produced;
- (b) research priorities are identified;
- (c) research funding is administered;
- (d) results of research are made public; and
- (e) the results of each cycle are applied to the next cycle of the steps described in sections 7.1(a) through 7.1(d).

7.2 ENGAGEMENT

In conducting all of its activities described in section 7.1 (“Research Program”), the Oversight Body shall:

- (a) encourage public awareness of its work; and
- (b) create opportunities for interested persons, including the Parties, to participate as the Oversight Body considers meaningful and appropriate.

7.3 EXISTING PROGRAMS

In conducting all of its activities described in sections 7.1 (“Research Program”), the Oversight Body shall make best use of existing research institutions and programs.

7.4 IMPLEMENTATION GUIDELINES

The Parties have developed implementation guidelines to give initial guidance to the Oversight Body as it plans for the activities described in section 7.1 (“Research Cycle”). The implementation guidelines are attached to this Agreement as Schedule A. These guidelines were prepared to facilitate discussion and planning, and subject to section 7.2 (“Engagement”) the Oversight Body may revise the implementation approach as it considers appropriate.

Article 8

INDEPENDENT PROJECT REVIEW

8.1 INDEPENDENT PROJECT REVIEW

MVRMA Measure 2 requires the Co-Proponents to commission an independent review of the Project every 20 years, beginning after Project implementation. As required by Measure 2, the Co-Proponents shall ensure that the independent review of the Project is conducted in a manner that considers ongoing research results, is participatory and transparent in nature and follows the requirements of procedural fairness. The Co-Proponents shall solicit the Oversight Body’s advice in designing the independent review of the Project required under MVRMA Measure 2.

8.2 RESEARCH RESULTS

The Oversight Body shall ensure that:

- (a) it provides the results of the research conducted under section 7.1 (“Research Program”) to the independent review process that must occur every 20 years commencing after the beginning of Project implementation, which independent review process is described in MVRMA Measure 2; and
- (b) if the research conducted under section 7.1 identifies better technological options for a permanent solution to the arsenic at the Giant Mine site in between the 20-year review cycles, the Oversight Body shall report publicly on the research.

8.3 OVERSIGHT BODY’S EVALUATIONS

- (a) The Co-Proponents shall provide the report of the independent review to the Oversight Body and make the report public.

- (b) The Oversight Body shall evaluate whether the independent review meets the requirements of MVRMA Measure 2. The Oversight Body shall provide its evaluation to the Co-Proponents and make it available to the public.
- (c) The Co-Proponents shall make best efforts to have the independent reviewer address any information deficiencies found by the Oversight Body without unreasonable delay.
- (d) The Co-Proponents shall reply to the Oversight Body's evaluation under section 8.3(b), and in that reply the Co-Proponents shall indicate agreement or disagreement with any of the Oversight Body's recommendations, along with a meaningful explanation of the bases for agreement or disagreement. The Co-Proponents shall make their reply public.
- (e) If the Oversight Body believes that the Co-Proponents have not complied with the requirements of sections 8.3(c) or 8.3(d) the Oversight Body may initiate the dispute resolution process described in Article 13 of this Agreement.

Article 9

IMPLEMENTATION, REVIEW AND AMENDMENT OF THIS AGREEMENT

9.1 SEMI-ANNUAL MEETINGS

- (a) Subject to 9.1(d), twice each year the Parties shall meet to discuss this Agreement and its implementation. The Oversight Body shall determine when in the year such meetings will be held, taking into account the timing preferred by the other Parties.
- (b) Potential topics for discussion at the semi-annual meetings include:
 - (i) activities planned for the year by each of the Oversight Body and the Co-Proponents, including a forecast work plan and planned expenditures;
 - (ii) planning for and coordination of the meetings contemplated in this Agreement;
 - (iii) opportunities for coordination of public participation and engagement related to the Project or the implementation of this Agreement;
 - (iv) progress with respect to research conducted pursuant to Article 7 of this Agreement;
 - (v) a summary of the recommendations and evaluations of the Oversight Body;
 - (vi) periodic review pursuant to section 9.2 of this Agreement; and
 - (vii) other matters relating to the implementation of this Agreement.

- (c) No later than 22 years after the Effective Date, and subsequently commencing two years before each independent project review required by MVRMA Measure 2, the agenda for the semi-annual meetings must include a discussion of planning and design for the independent project review to be conducted in accordance with Article 8.
- (d) The Parties may by unanimous written consent postpone or cancel any semi-annual meeting or meetings.

9.2 PERIODIC REVIEW

The Parties may at any time consider jointly whether:

- (a) the requirements for the annual report and the Status of the Environment Report;
- (b) the composition, bylaws or operations of the Oversight Body; or
- (c) any other elements of this Agreement, including the term of this Agreement

should be changed, with a view to ensuring the prudent management of public resources while maintaining the purposes, objectives and principles stated in Article 2 of this Agreement.

9.3 MINIMUM FREQUENCY

The Parties shall consider jointly the matters referred to in section 9.2 five years after the Effective Date. Thereafter, the Parties shall do so every ten years.

9.4 AMENDMENT

This Agreement may be amended at any time by written agreement of the Parties.

9.5 NO OBLIGATION TO FUND

Subject to section 11.1 (“Source of Funds for the Oversight Body”), nothing in this Agreement creates an obligation on the Co-Proponents to fund the other Parties’ participation in the implementation of this Agreement.

Article 10

ESTABLISHMENT OF THE OVERSIGHT BODY

10.1 OVERSIGHT BODY SOCIETY

- (a) The Parties agree that the Project will be monitored by the independent oversight body (the “Oversight Body”) to be established in accordance with Schedule “B”.
- (b) The Parties or agents acting on their behalf shall incorporate the Oversight Body under the *Societies Act*, R.S.N.W.T 1988, c. S-11 without unreasonable delay. The bylaws on incorporation must be as agreed in writing between the Parties to this Agreement.

- (c) The Oversight Body society will be a party to this Agreement effective upon its signing of the Agreement in accordance with section 16.1(b) of the Agreement.

10.2 MEMBERSHIP AND BYLAWS OF THE OVERSIGHT BODY SOCIETY

- (a) The bylaws of the Oversight Body society referred to in section 10.1(b) must address the following matters:
 - (i) corporate objects consistent with this Agreement;
 - (ii) subject to section 10.2(a)(iv), that only the Parties to this Agreement are eligible for membership in the Oversight Body society;
 - (iii) limitations on withdrawal of members from membership in the Oversight Body society that are consistent with section 10.2(b);
 - (iv) that at Canada's option, instead of joining the Oversight Body society as a member, Canada may identify another person to become a member of the society on Canada's behalf;
 - (v) a process for appointment as a director of the Oversight Body society that is consistent with section 10.3;
 - (vi) limitations on the removal of a director by the member that appointed that director;
 - (vii) that the directors of the Oversight Body society shall act in the best interests of the society in accordance with its objects, and not as a representative of the member that appointed them;
 - (viii) the establishment of corporate offices and a process for selection of officers;
 - (ix) remuneration of directors;
 - (x) conflicts of interest for directors of the Oversight Body society;
 - (xi) the effect of vacancies on the conduct of the business of the Oversight Body society;
 - (xii) a process for changes to the bylaws; and
 - (xiii) financial records, accounting methods and annual audit requirements.
- (b) A Party shall not cease to be a member of the Oversight Body society, except in accordance with the following:
 - (i) subject to section 10.2(b)(ii), a Party may only cease to be a member of the Oversight Body with the written consent of the other members of the Oversight Body society;

- (ii) only one of the GNWT and Canada (or if applicable a person acting on behalf of Canada in accordance with section 10.2(a)(iv)) is required to be a member of the Oversight Body society at any given time; and
- (iii) if the GNWT is not a member of the Oversight Body society and if Canada has identified another person to become a member of the Oversight Body society on Canada's behalf, and if that person ceases to be a member, then Canada shall either identify a person to become a member of the society without unreasonable delay or become a member of the society without unreasonable delay. If the director position to which Canada is entitled to appoint a director is then vacant, Canada or the person acting on Canada's behalf shall appoint a director without unreasonable delay.

10.3 DIRECTORS OF THE SOCIETY

Each Party to this Agreement except the Oversight Body is entitled to appoint a director of the Oversight Body society as follows:

- (a) within 45 days of the Effective Date, or without unreasonable delay thereafter, each Party shall appoint an individual to be a director of the Oversight Body society;
- (b) each Party's appointee must have expertise in matters relevant to the mandate of the Oversight Body society;
- (c) no Party may appoint a director with interests that materially conflict with the fulfilment of his or her obligations to the Oversight Body society, or with the obligations of the Oversight Body under section 3.2 of this Agreement;
- (d) notices of appointment must be given in writing to every other Party; and
- (e) any Party may appoint a successor appointee to replace that Party's appointed director immediately on the termination of the directorship of the Party's appointee. Sections 10.3(b) through 10.3(d) apply to successor appointees, each with such modification as may be necessary to fit the context.

Article 11

FUNDING OF THE OVERSIGHT BODY

11.1 SOURCE OF FUNDS FOR THE OVERSIGHT BODY

- (a) Canada and the GNWT (in this Article, referred to jointly as the "**Funding Governments**") shall fund the Oversight Body in accordance with this Article.
- (b) The Oversight Body shall conduct its affairs in a fiscally prudent, reasonable and cost-effective manner.

- (c) The Oversight Body shall execute transfer payment funding agreements and prepare annual budgets and work plans in the form required by the Funding Governments.
- (d) Subject to section 11.7(a)(i), the Oversight Body's annual budget is subject to review and approval by the Funding Governments, provided that the Funding Governments shall not unreasonably withhold their approval. A decision by the Funding Governments to withhold approval of an annual budget is subject to the dispute resolution process described in Article 13.
- (e) In its budgets and work plans, the Oversight Body shall ensure that costs and activities that are associated with the Research Program are identified separately from the costs and activities associated with all its other operations (the latter to be referred to as its "General Operations" in this Article). Despite the distinction between General Operations and Research Program, the Oversight Body shall develop integrated budgets and work plans covering both General Operations and Research Program activities.

11.2 GENERAL OPERATIONS FUNDING

- (a) The Oversight Body's General Operations budget allocations are:
 - (i) subject to section 11.2(b), for the fiscal year 2015-2016 – \$436,000; and
 - (ii) thereafter, for each fiscal year until this Agreement is terminated in accordance with section 16.2, \$650,000 in constant 2015 dollars, adjusted against the Consumer Price Index for Yellowknife published by Statistics Canada.
- (b) For the fiscal year 2015-2016, the Oversight Body's funding allocation will be:
 - (i) \$175,000 to cover fixed and start-up costs; plus
 - (ii) subject to the conditions that follow, \$261,000 in General Operations funding starting on October 1. This amount is contingent on, and will be adjusted downward *pro rata* until, either (i) the Oversight Body has hired an executive director; or (ii) the Oversight Body has leased and must make payments for its office space.

11.3 RESEARCH PROGRAM FUNDING

The Oversight Body's Research Program budget allocations are set out in the following table:

Research Funding	
Fiscal Year	Allocation
2015 – 2016	\$0
2016 – 2017	\$175,000*
2017 – 2018	\$175,000*
2018 – 2019	\$175,000*
Thereafter for each fiscal year until this Agreement is terminated in accordance with section 17.2	\$250,000*
* Constant 2015 dollars, adjusted against the Consumer Price Index for Yellowknife published by Statistics Canada.	

11.4 ELIGIBLE RECIPIENT

The Funding Governments may withhold funding otherwise payable under this Agreement if the Oversight Body is not in compliance with the requirements of applicable funding agreements, or with the written policies and directives of the Funding Governments that are applicable to such transfers of funds. Without limiting the foregoing, the Funding Governments have no obligation to transfer funds if the Oversight Body is in default under a funding agreement.

11.5 COMPLIANCE WITH BYLAWS

The Funding Governments may withhold funding otherwise payable under this Agreement if:

- (a) the Oversight Body is not in compliance with both the *Societies Act* and its own bylaws in all material respects; or
- (b) the bylaws of the Oversight Body differ from the bylaws agreed to in accordance with section 10.1(b), unless:
 - (i) all changes to the bylaws have been consented to by Canada in accordance with section 11.6; or

- (ii) the Funding Governments have agreed between them that the GNWT has assumed the obligation under section 11.1(a) to fund the Oversight Body, and have notified the other Parties of this agreement.

11.6 CONSENT TO BYLAW AMENDMENTS

- (a) The Oversight Body shall, without unreasonable delay, give notice to Canada specifying any change to the Oversight Body society's bylaws.
- (b) The Oversight Body, or any member of the Oversight Body society, may give Canada notice of an intention to propose an amendment to the Oversight Body society's bylaws. This notice must include the proposed amendment.
- (c) After receipt of a notice under either section 11.6(a) or 11.6(b), Canada shall respond without unreasonable delay indicating whether Canada consents to the amendment of the bylaws for the purposes of section 11.5(b), which consent may not be unreasonably withheld. If Canada withholds consent to a bylaw amendment it shall provide written reasons to the Oversight Body.
- (d) If the Oversight Body believes that the Co-Proponents have not complied with the requirements of section 11.6(c), the Oversight Body may initiate the dispute resolution process described in Article 13 of this Agreement.

11.7 FLEXIBILITY IN FUNDING ARRANGEMENTS

- (a) Subject to the limitations of existing authorities under the written policies and directives of the Funding Governments that are applicable to the transfers of funds to the Oversight Body, the Funding Governments shall to the extent possible permit the Oversight Body to:
 - (i) develop its annual budget and work plan without the requirement for approval by the Funding Governments;
 - (ii) carry unspent General Operations funds forward from one year to the next, provided that the funds may still be spent only in furtherance of the Oversight Body's roles and responsibilities under this Agreement;
 - (iii) at the end of a fiscal year, re-allocate any unspent General Operations funds (including General Operations funds that have been carried forward a year) to the Research Program;
 - (iv) carry unspent Research Program funds forward, provided that the funds may still be spent only in furtherance of the Oversight Body's roles and responsibilities under Article 7 ("Active Research Toward a Permanent Solution for Arsenic"); and
 - (v) report to the Funding Governments on its expenditures at the frequency and level of detail commensurate with a grant under the Treasury Board of Canada's system of grants and contributions.

- (b) If the applicable written policies and directives of the Funding Governments do not authorize funding agreements that would permit the Oversight Body the flexibility to manage funds and report as described in section 11.7(a), the Minister of Aboriginal Affairs and Northern Development shall without unreasonable delay seek authority from the Treasury Board of Canada to transfer the funds under Article 11 by way of a grant or other funding mechanism that permits the Oversight Body the flexibility to manage funds as described in section 11.7(a).
- (c) If the Oversight Body believes that the Minister has not complied with the requirements of section 11.7(b), the Oversight Body may initiate the dispute resolution process described in Article 13 of this Agreement.

Article 12

REGULATORY AUTHORITY

12.1 PARAMOUNTCY

In the event that any provisions of this Agreement are in conflict with or inconsistent with any legislation, Regulatory Instrument, or requirement of a regulatory authority with respect to the Project, then such legislation, Regulatory Instrument, or requirement of a regulatory authority prevails over any of the terms of this Agreement to the extent of the conflict or inconsistency.

12.2 NON-DUPLICATION

- (a) The Parties to this Agreement acknowledge that it is contrary to the intentions of this Agreement to cause unreasonable duplication between the obligations of the Co-Proponents under this Agreement and the requirements of any Regulatory Instrument or process of a regulatory authority.
- (b) In the event that any obligation of the Co-Proponents under this Agreement unreasonably duplicates the requirements of any statute, regulation, Regulatory Instrument, or regulatory process (each, a “regulatory requirement”), satisfaction of the regulatory requirement will, subject to section 12.2(d), constitute compliance with the requirements of this Agreement.
- (c) If at any time the Co-Proponents intend to rely on a regulatory requirement as constituting compliance with an obligation of the Co-Proponents under this Agreement, the Co-Proponents shall provide the Oversight Body with and make public a written notice of this intention without unreasonable delay.
- (d) If the Oversight Body believes that the obligation of the Co-Proponents under this Agreement does not duplicate the regulatory requirement, or believes that such duplication is reasonable, the Oversight Body may initiate the dispute resolution process described in Article 13 of this Agreement.

12.3 EXERCISE OF STATUTORY DUTIES

Nothing in this Agreement can be construed as limiting either Canada or the GNWT, or any other regulatory authority, in the exercise of statutory powers and duties.

Article 13 RESOLUTION OF DISPUTES

13.1 APPLICATION OF DISPUTE RESOLUTION

The dispute resolution process set out in this Article applies only to those matters expressly identified as subject to dispute resolution in this Agreement, and the dispute resolution process can be invoked only as expressly set out in this Article.

13.2 DISPUTE RESOLUTION PROCESS

Where there is a dispute to which this process applies, the parties to the dispute (the “Disputing Parties”) shall make best efforts to resolve the dispute amicably. The Disputing Parties shall use a tiered dispute resolution process, to be conducted in accordance with the following terms, prior to commencing legal proceedings:

- (a) *Notice:* To invoke the dispute resolution process, the Party invoking the dispute resolution process must send the other Party a written notice to negotiate specifying the issue in dispute. The recipient Party shall acknowledge receipt of the notice without unreasonable delay. To ensure that the other Parties are informed of the issue in dispute, but without creating a right to participate in the negotiation, each Disputing Party shall provide its notice or acknowledgment to all the other Parties without unreasonable delay.
- (b) *Negotiation:* The negotiation between the authorized representatives of the Disputing Parties must start within 45 days after the date of the delivery of the written notice to negotiate, unless the Disputing Parties both consent in writing to extend that time.
- (c) *Proceeding to Mediation:* If the Disputing Parties do not resolve all of the issues in dispute within 30 days after commencing the negotiation, either Party may invoke the mediation process in accordance with the terms of mediation set out in section 13.3.
- (d) *Proceeding to Arbitration:* If the Disputing Parties do not resolve all of the issues in dispute within 30 days after commencing the mediation, either Party may invoke the arbitration process in accordance with the terms of arbitration set out in section 13.4.

13.3 TERMS OF MEDIATION

If the dispute remains unresolved, then subject to section 13.2(c) (“Mediation”) either Disputing Party may require the other Disputing Party to engage in mediation, and the following provisions apply:

- (a) *Notice:* The Party invoking the mediation process must send to the other Party a written notice to mediate specifying the issue in dispute. The recipient Party shall acknowledge receipt of the notice without unreasonable delay. To ensure that the other Parties are informed of the issue in dispute, each Disputing Party shall provide its notice or acknowledgment to all the other Parties without unreasonable delay.
- (b) *Selection of the Mediator:* The Disputing Parties shall jointly select a mediator. The mediator must be independent, impartial, knowledgeable and experienced in the kinds of issues in dispute. If the Disputing Parties cannot agree on the choice of a mediator within 14 days from the date of the notice to mediate, then a mediator will be selected, upon application by the parties, by the ADR Institute of Canada. If the ADR Institute no longer exists or is otherwise unable or unwilling to select a mediator, then the parties may agree to select another organization capable of selecting a mediator. If the parties cannot agree on such an organization, then the parties may proceed to arbitration under Article 13.4.
- (c) *Schedule:* The Disputing Parties, with the concurrence of the mediator, shall jointly select a date for the mediation that is no later than 30 days from the date on which the mediator was selected.
- (d) *Application to Intervene:* The Disputing Parties may jointly consent to a request by another of the Parties, or by another interested person, to intervene in the mediation process. The Disputing Parties' consent may not be unreasonably withheld.
- (e) *Exchange of Information:* The Disputing Parties and any other participant in the mediation shall provide each other and the mediator with written statements of the issues in dispute, the relevant facts and their objectives for the mediation. This exchange must be completed no later than seven days prior to the date set for the mediation.
- (f) *Caucusing:* The mediator is free to caucus with the Disputing Parties and any interveners individually, as he or she sees fit, to improve the chances of a mediated settlement.
- (g) *Confidentiality:* All participants in the mediation shall treat the information presented in the mediation as confidential to the mediation process and without prejudice to any subsequent legal proceeding or dispute resolution process. Unless required by law, no participant shall, in any legal proceeding or other dispute resolution process, raise or otherwise disclose, or ask the mediator to give evidence regarding or otherwise disclose, any information disclosed in the mediation process, any mediator notes or any other written views of the mediator. In agreements with the mediator, the participants in the mediation shall bind the mediator to these confidentiality requirements.
- (h) *No New Steps:* During the course of the mediation, no Party may commence legal proceedings or to take any new steps in any legal proceeding between them which concerns the same matter that is the subject of this mediation, except

where it is necessary to take action to preserve rights while the mediation process is ongoing.

- (i) *Authority to Settle*: The representatives of the Disputing Parties must have the authority required to settle the dispute or must have a rapid means of obtaining the requisite authorization.
- (j) *Termination of the Mediation*: The mediation is terminated when the Disputing Parties come to a resolution, they agree to terminate the mediation, or one Disputing Party unilaterally terminates the mediation and the mediator is informed accordingly.
- (k) *Administrative Expenses*: The Disputing Parties shall share equally the administrative expenses of the mediation, including the fees and expenses of the mediator. Each Disputing Party and any intervener is responsible for its own expenses associated with the mediation.

13.4 TERMS OF ARBITRATION

If the dispute is not resolved pursuant to section 13.2(b) (“Mediation”), or if the Disputing Parties both consent in writing to proceed directly to arbitration, then the Disputing Parties may engage in binding arbitration pursuant to the *Commercial Arbitration Act* (Canada) and Commercial Arbitration Code annexed thereto, and the following provisions apply:

- (a) *Notice*: The Party invoking the arbitration process must send to the other Party a written notice to arbitrate specifying the issue in dispute. The recipient Party shall acknowledge receipt of the notice without unreasonable delay. To ensure that the other Parties are informed of the issue in dispute, each Disputing Party shall provide its notice or acknowledgment to all the other Parties without unreasonable delay.
- (b) *Commencement of Proceedings*: The arbitration commences on the date of receipt of the notice to arbitrate the dispute.
- (c) *Selection of Arbitrator*: The Disputing Parties agree to jointly select an arbitrator. The arbitrator must be independent, impartial, knowledgeable and experienced in the kinds of issues in dispute. If the Disputing Parties cannot agree on the choice of an arbitrator within 30 days from the date of the notice of intent to arbitrate (unless the Disputing Parties both consent in writing to extend that time), then an arbitrator will be chosen, upon application by the Disputing Parties, by the ADR Institute of Canada. If the ADR Institute no longer exists or is otherwise unable or unwilling to select an arbitrator, then an application may be made to the Supreme Court of the Northwest Territories for the appointment of an arbitrator.
- (d) *Rules*: The arbitration will be conducted as required by this Agreement and according to such rules and processes as the arbitrator considers proportionate to the issue in dispute and appropriate in the circumstances, taking into account the need for a just, timely and cost effective resolution.

- (e) *Intervention*: Any other Party to this Agreement may, as of right, intervene in the resolution of a dispute under arbitration. The arbitrator may, consistent with and having regard to section 13.4(d), set terms applicable to any such intervention.
- (f) *Administrative Expenses*: The Disputing Parties shall share equally the administrative expenses of the arbitration, including the fees and expenses of the arbitrator. Each Disputing Party and any intervener is responsible for its own expenses associated with the arbitration.
- (g) *Award of Costs*: The arbitrator may include in an award an allocation to either Disputing Party or to any intervener of such costs as the arbitrator deems reasonable. An award of costs may include administrative costs of the arbitration, reasonable fees and expenses of the arbitrator, and where the arbitrator believes that a participant has unreasonably prolonged or frustrated the resolution of the dispute, reasonable legal fees and disbursements of any participant.
- (h) *Governing Law*: The arbitrator shall decide the dispute in accordance with the laws of the Northwest Territories and the laws of Canada applicable therein.
- (i) *Judgment*: Judgment upon any arbitral award rendered may be entered in any court that has jurisdiction.
- (j) *Prohibition against Future Assistance*: The arbitrator must neither represent nor testify on behalf of any of the Parties in any subsequent proceeding between the Parties or where they are opposed in interest. In agreements with the arbitrator, the participants in the arbitration shall bind the arbitrator to this prohibition.
- (k) *No New Steps*: During the course of the arbitration, no Party may commence legal proceedings or to take any new steps in any legal proceeding between them which concerns the same matter that is the subject of the arbitration, except where it is necessary to take action to preserve rights while the arbitration process is ongoing.

13.5 JURISDICTION OF THE ARBITRATOR

The jurisdiction of the arbitrator is limited to issuing declarations resolving disputes respecting interpretation, application or alleged breach of the terms of this Agreement, awards requiring compliance with this Agreement and awards requiring the performance of this Agreement. An arbitrator does not have jurisdiction to issue any monetary awards or damages, penalties, accounting, costs or equitable remedies, except for an award of costs of arbitration under section 13.4(g). For greater certainty, the arbitrator is prohibited from making any decision that is inconsistent with or would require amending any provision of this Agreement.

13.6 INTERLOCUTORY RELIEF

- (a) Nothing in this Article prevents a Party from commencing judicial proceedings at any time:
 - (i) to prevent a loss of a right to commence proceedings due to the expiration of a limitation period; or
 - (ii) to obtain an interim order for the protection or preservation of property or other interests that are the subject matter of the dispute;

where, for any reason, it is impossible or impractical for an arbitrator to promptly resolve the matter in dispute.

- (b) Neither the resolution of such court application nor the participation therein by any Party operates as a bar to arbitration, or as a waiver of any of the rights and obligations of any Party with respect to dispute resolution in accordance with the terms of this Agreement.

Article 14

ABORIGINAL RIGHTS AND INTERESTS, TRANSITIONAL, *ETC.*

14.1 ABORIGINAL RIGHTS AND INTERESTS

Nothing in this Agreement is to be interpreted as abrogating or derogating from, or to limit or restrict:

- (a) any treaty or aboriginal right, title, claim or interest of any aboriginal peoples of Canada;
- (b) the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*;
- (c) any fiduciary duty or obligation of the Crown to aboriginal peoples of Canada; or
- (d) any executive, prerogative or statutory powers or any legislative authority of Canada, the Parliament of Canada, the GNWT, or the Legislative Assembly of the Northwest Territories to affect any right, title, claim or interest referred to in section 14.1(a), or any right referred to in section 14.1(b) or arising from any duty or obligation referred to in section 14.1(c), in a manner consistent with the Constitution of Canada.

14.2 LIMITATIONS ON CONSTRUCTION

Nothing in this Agreement is to be interpreted:

- (a) as an admission or acknowledgement by the Crown as to the existence, nature or scope of any aboriginal or treaty right of any aboriginal peoples of Canada, or of

any fiduciary duty or obligation, or any other constitutional obligation to any aboriginal peoples of Canada;

- (b) as an admission or acknowledgement by any aboriginal peoples of Canada that any obligation of the Crown to any aboriginal peoples of Canada, including a duty to consult, has been discharged by the entering into of this Agreement or by the fulfillment of its terms; or
- (c) so as to preclude any person from advocating before the courts any position on the existence, nature, scope or status of any aboriginal or treaty right of aboriginal peoples of Canada, or of any fiduciary obligation, or any other constitutional obligation, to any aboriginal peoples of Canada.

14.3 NO RECOGNITION OR DENIAL

For greater certainty, nothing in this Agreement is to be interpreted as:

- (a) recognizing or denying the existence of any Party's or any non-party's aboriginal or treaty rights; or
- (b) recognizing or denying the status of any of Party or non-party that asserts aboriginal or treaty rights.

14.4 NO EFFECT ON OTHER PROCESSES

Nothing in this Agreement affects:

- (a) on-going or future land claims or self-government negotiations;
- (b) current or future litigation in which any Party is involved, except to the extent that such litigation may relate to the lands or activities associated with the Project;
- (c) constitutional changes which may occur in the Northwest Territories; or
- (d) changes to any law resulting from the settlement of land claims and self-government negotiations, or resulting from constitutional changes or devolution.

14.5 TRANSFERS OF AUTHORITY

- (a) In the event that legal rights or responsibilities, jurisdiction or regulatory authority relating to the Project is transferred as a result of constitutional change, treaty, self-government or land claim agreement, or other transfer of a similar kind that is given effect by legislation, and if any such transfer creates a conflict or inconsistency with this Agreement, then the Parties shall negotiate in good faith to amend this Agreement to reflect such transfer and resolve the conflict or inconsistency, while maintaining the purposes, objectives and principles stated in Article 2 of this Agreement.

- (b) Nothing in this Agreement prevents Canada and the GNWT from determining which of those two governments has any power, duty or function in respect of the Project generally or under this Agreement in particular.

Article 15
GENERAL PROVISIONS

15.1 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties with respect to its subject matters, and supersedes all previous relevant negotiations, communications and other agreements, whether written or oral, between the Parties. In entering into this Agreement, no Party is relying on any representations other than those contained in this Agreement.

15.2 GOVERNING LAW

This Agreement is governed by and is to be construed in accordance with the laws of the Northwest Territories and the laws of Canada applicable therein.

15.3 FURTHER ASSURANCES

The Parties shall with reasonable diligence do all things and provide such further documents or instruments as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions. The Oversight Body shall execute any amendments to this Agreement that may be negotiated by the other Parties.

15.4 SEVERABILITY

Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction does not invalidate or impair the remaining provisions. The remaining provisions are severable from any such prohibited or unenforceable provision. Any such prohibition or unenforceability in any jurisdiction does not invalidate or render unenforceable such provision in any other jurisdiction.

15.5 REMEDIES NOT EXCLUSIVE

The rights and remedies of any Party under this Agreement are cumulative and in addition to, and not in substitution for, any rights, powers or remedies provided at law or in equity, including pursuant to applicable environmental legislation. Any single or partial exercise by any Party of any right or remedy for a default or breach of any term, covenant, condition or agreement in this Agreement does not affect that Party's rights and does not waive, alter, affect or prejudice any other right or remedy to which that Party may be entitled for the same default or breach. Any waiver by any Party of the strict observance of, performance of, or compliance with, any term, covenant, condition or agreement of this Agreement must be in writing to be effective and any waiver or indulgence by any Party does not constitute a waiver of any other provisions, a continuing waiver or a waiver of any subsequent default.

15.6 NO ASSIGNMENT

Subject to sections 14.3 (“No Effect on Other Processes”) and 14.5 (“Transfers of Authority”), no Party may transfer, including by merger (whether that Party is the surviving or disappearing entity), consolidation, dissolution, or operation of law,

- (a) any discretion granted it under this Agreement;
- (b) any right that it has to satisfy a condition under this Agreement;
- (c) any remedy that it has under this Agreement; or
- (d) any obligation imposed on it under this Agreement.

Any purported transfer in violation of this section 15.6 will be void.

15.7 MEMBER OF HOUSE OF COMMONS NOT TO BENEFIT

As required by the *Parliament of Canada Act*, it is an express condition of this Agreement that no member of the House of Commons can be admitted to any share or part of this Agreement or to any benefit arising therefrom.

15.8 OFFICIAL LANGUAGES ACT (CANADA)

This Agreement must be made in both of Canada’s official languages, and the two versions of the Agreement are equally authoritative, in accordance with s. 10(2)(b) of the *Official Languages Act (Canada)*.

15.9 FINANCIAL ADMINISTRATION ACT (CANADA)

Any obligation of Canada to make a payment under this Agreement is contingent on an appropriation of funds by the Parliament of Canada for the fiscal year in which the payment is to be made, regardless of any other provision in this Agreement, in accordance with section 40 of the *Financial Administration Act (Canada)*.

15.10 FINANCIAL ADMINISTRATION ACT (NORTHWEST TERRITORIES)

Any obligation of the GNWT to make a payment under this Agreement is contingent on there being a sufficient uncommitted balance in the appropriated item for the fiscal year in which the expenditure would otherwise be required under this Agreement, regardless of any other provision in this Agreement, in accordance with section 46 of the *Financial Administration Act (Northwest Territories)*.

15.11 NOT A PARTNERSHIP OR JOINT VENTURE

Nothing contained in this Agreement makes any of the Parties partners, joint venturers, or principal and agent.

15.12 FORCE MAJEURE

In the event that any Party is delayed or hindered in or prevented from the performance of its obligations under this Agreement by reason of an event beyond the reasonable control of the Party, including strikes, inability to procure materials or services, civil commotion, sabotage or act of God, then obligations under this Agreement that are not fulfilled by a Party as a direct result of such delay or hindrance does not constitute a default under this Agreement during the period of such delay or hindrance.

15.13 BUSINESS DAY

Whenever an action to be taken under this Agreement is required to be taken before the expiry of a day which is a Saturday, Sunday or statutory holiday in the Northwest Territories or the National Capital Region, then such action may be taken on the next succeeding day that is not a Saturday, Sunday or statutory holiday in the Northwest Territories or National Capital Region.

15.14 NOTICES

- (a) Any notices or communications required or permitted to be given pursuant to this Agreement must be in writing and must be delivered during normal business hours to, or sent by prepaid registered or certified mail, or email, provided receipt of the email is acknowledged, each addressed as follows:

- (i) In the case of Canada:

**Department of Aboriginal Affairs and Northern Development
Deputy Director, Giant Mine Remediation Project**

Attention: Natalie Plato
Mail: Giant Mine Remediation Project
Gallery Building
4923 – 52 Street
Yellowknife, Northwest Territories
X1A 2R3
Telephone: (867) 669-2838
Email: Natalie.Plato@aandc-aadnc.gc.ca

- (ii) In the case of GNWT:

**Department of Environment and Natural Resources
Assistant Deputy Minister**

Attention: Shannon Cumming
Mail: 600, 5102 50th Avenue
Yellowknife, Northwest Territories
X1A 2L9
Email: shannon_cumming@gov.nt.ca
Telephone: (867) 873-4701

- (iii) In the case of Yellowknives Dene First Nation:

Yellowknives Dene First Nation

Attention: Director, Lands and Environment
Mail: PO Box 2514
Yellowknife, Northwest Territories
X1A 2P8
Email: ●
Telephone: (867)766-3496

- (iv) In the case of City of Yellowknife:

City of Yellowknife

Attention: Mayor
Mail: Yellowknife City Hall
4807 – 52 Street
P.O. Box 580
X1A 2N4
Email: mayor@yellowknife.ca
Telephone: (867) 920-5600

- (v) In the case of Alternatives North:

Alternatives North

Attention: Kevin O'Reilly
Mail: P.O. Box 444
Yellowknife, Northwest Territories
X1A 2N3
Email: kor@theedge.ca
Telephone: (867) 920-2765

- (vi) In the case of North Slave Métis Alliance:

North Slave Métis Alliance

Attention: William Enge, President
Mail: 32 Melville Drive
PO Box 2301
Yellowknife, Northwest Territories
X1A 2P7
Email: billenge@nsma.net
Telephone: (867) 873-6762

- (vii) In the case of the Oversight Body:

the Oversight Body shall give notice of its address and other contact information to the other Parties without unreasonable delay.

- (b) Any Party may from time to time advise the other Parties by notice in writing of a change to that Party's recipient for notice, or his or her contact information.

- (c) Any notice given by personal delivery or certified or registered mail is deemed to have been received on the business day after the date of delivery. Any notice sent by email is deemed to have been received on the date receipt is acknowledged by the recipient.

15.15 COUNTERPARTS

This Agreement may be executed in counterparts each of which is an original and all of which taken together constitute a single agreement. The Parties may rely upon copies of this Agreement delivered by facsimile or email as if such copies were originals.

Article 16 **TERM**

16.1 COMING INTO EFFECT

- (a) This Agreement comes into effect upon delivery of an executed counterpart by at least Canada, GNWT and one other Party (the date upon which this occurs being called the “Effective Date”).
- (b) After the Effective Date, this Agreement becomes binding upon and enures to the benefit of each of the other Parties at the time each delivers an executed counterpart.

16.2 TERMINATION

This Agreement terminates upon:

- (a) the passage of 180 calendar days from the Effective Date, if as of that date fewer than five of the entities listed on the face page of this Agreement have become Parties in accordance with section 16.1(b) of this Agreement;
- (b) the passage of 90 calendar days from the date of incorporation of the Oversight Body in accordance with section 10.1(b), if before that date the Oversight Body has not become party to this Agreement in accordance with section 16.1(b);
- (c) the passage of five years from the Effective Date, if the Co-Proponents have not before that date announced jointly that they have decided to proceed with the Project;
- (d) the cancellation of the Project, if such cancellation occurs prior to the implementation of the Frozen Block Method;
- (e) full and final implementation of the Project and completion of any and all post-closure monitoring and maintenance required in connection with the Project.

Article 17
SIGNATURES

The undersigned make this Agreement on behalf of the Parties.

GOVERNMENT OF CANADA

Hon. Bernard Valcourt, PC MP
Minister of Indian Affairs and Northern
Development
Signed _____, 2015

**GOVERNMENT OF THE NORTHWEST
TERRITORIES**

Hon. J. Michael Miltenberger
Minister of Environment and Natural
Resources
Signed _____, 2015

YELLOWKNIVES DENE FIRST NATION

Chief Ernest Betsina
Yellowknives Dene First Nation (Ndilo)
Signed _____, 2015

CITY OF YELLOWKNIFE

His Worship Mark Heyck
Mayor
Signed _____, 2015

ALTERNATIVES NORTH

Kevin O'Reilly
Signed _____, 2015

NORTH SLAVE MÉTIS ALLIANCE

William Enge, President
Signed _____, 2015

Oversight Body:

(Legal Name of Oversight Body)

By: _____

Signed _____, 2015

SCHEDULE “A” — Environmental Agreement s. 7.4

RESEARCH PROGRAM IMPLEMENTATION GUIDELINES

- 1) The Oversight Body shall develop its priorities, work plans and budgets for its research program, and conduct all of the activities described in these implementation guidelines, in the manner required by section 7.2 (“Engagement”) of the Agreement.
- 2) The Oversight Body shall take a multi-year planning approach in the development and implementation of its research program in order to maximize the potential for successful advancement of the state of knowledge of matters relevant to finding a permanent solution for dealing with arsenic at the Giant Mine site.
- 3) Early in the development of its research program (ideally to be complete prior to December 31, 2018) the Oversight Body shall produce an up-to-date state of knowledge report. Topics to be addressed in the state of knowledge report include:
 - a) technology for the safe removal of the underground arsenic;
 - b) treatment into more stable forms of arsenic;
 - c) other approaches to in-situ arsenic management;
 - d) safe recovery of residual gold;
 - e) the potential to combine extraction, transportation, treatment, disposal and other technologies into a feasible solution for arsenic management; and
 - f) other matters that the Oversight Body considers appropriate for inclusion.
- 4) Upon completion of the state of knowledge report, the Oversight Body shall make the report public and conduct a public engagement program that may include expert assistance and meetings involving the Co-Proponents, the public, and other interested or knowledgeable persons or organizations, including the Parties.
- 5) Following its public engagement program, and taking into account the views and priorities of the participants, the Oversight Body shall prepare and make available to the public a report, and update its research priorities and multi-year work plan as appropriate.
- 6) Consistent with the cyclical nature of MVRMA Measure 3 and the requirements of section 7.1(e) of the Agreement, the Oversight Body shall update its research priorities and multi-year plan at such times or upon such milestones as the Oversight Body considers appropriate.

SCHEDULE “B” — Environmental Agreement s. 10.1

Giant Mine Environmental Agreement Implementation Protocol

Alternatives North, City of Yellowknife, Department of Aboriginal Affairs and Northern Development (Canada), Government of the Northwest Territories Department of Environment and Natural Resources (GNWT), Yellowknives Dene First Nation and the North Slave Métis Alliance (the “Parties”) have reached consensus on a draft Environmental Agreement for the Giant Mine Remediation Project.

The Parties will, upon signing of this Implementation Protocol, establish an Implementation Working Group (the “Working Group”) which shall meet within two weeks, to facilitate the establishment and initial operations of the Giant Mine Oversight Body. Each Party may appoint one representative (and an alternate if they wish) to the Working Group.

Canada or the GNWT (the Co-Proponents) shall provide secretariat support to the Working Group in carrying out its mandate. Secretariat support personnel shall report directly to the Working Group for the work outlined in this Schedule. The Co-Proponents shall fund the other parties through contribution agreements for their participation in the Working Group upon request.

The Working Group shall, as soon as possible, execute the following work for the establishment of the Giant Mine Oversight Body:

- incorporation of the Giant Mine Oversight Body pursuant to the *Societies Act*;
- provide a forum for discussion of Director appointments to the Giant Mine Oversight Body;
- arrangements for administrative services, including the identification of potential office locations, banking services, website/logo design options and other office support;
- collection of relevant background materials and preparation of a transition plan for the incoming board and staff (e.g., may include sample job descriptions, policies, etc.);
- coordination of communications on the Environmental Agreement and establishment of the Oversight Body; and
- other related activities as agreed by the Working Group.

The Working Group shall complete its work in a timely manner, targeting the Oversight Body managing its own affairs no later than the end of calendar year 2015. Unless otherwise determined by Oversight Body the Working Group will at this point be deemed to have completed its mandate.

Alternatives North

Aboriginal Affairs and Northern
Development

City of Yellowknife

Government of the Northwest Territories

Yellowknives Dene First Nation

North Slave Métis Alliance

Dated this _____ day of _____, 2015.