

SCHEDULE 12

AGREEMENT TO PROCESS CROWN ROYALTY BITUMEN

DISPUTE RESOLUTION PROCEDURE

1. GENERAL

1.1 Capitalized Terms

Capitalized terms used in this Schedule have the definitions as set out in the Agreement to Process Crown Royalty Bitumen (the “**Processing Agreement**”) entered into between Alberta Petroleum Marketing Commission and North West Redwater Partnership.

1.2 Processing Agreement Reference

This Schedule is referenced in Sections 1.1, 1.3, 1.8, 12.2, 13.6, 13.7, 15.1, 22.5(c), 23.3(i), 23.4, 23.8 and 26 of the Processing Agreement.

1.3 Definitions

In this Schedule, the following expressions have the following meanings:

“**Arbitral Tribunal**” has the meaning provided that term in section 2.5 of this Schedule;

“**Chair**” has the meaning provided that term in section 2.5 of this Schedule;

“**Court**” means a court of law of competent jurisdiction;

“**Consolidated Dispute**” has the meaning provided that term in section 2.6 of this Schedule;

“**Dispute**” means any disagreement, failure to agree or other dispute in respect of the application or interpretation of any provision of the Processing Agreement;

“**Dispute Notice**” means a notice from one Party to the other providing details of a Dispute and invoking the Dispute Resolution Procedure in respect of that Dispute;

“**Initiating Party**” has the meaning provided that term in section 2.5 of this Schedule;

“**Referee**” means the person appointed pursuant to section 2.2 of this Schedule and performing the functions in respect to a Dispute, which person will be independent of the Parties, impartial as between the Parties, and, qualified and experienced with respect to

the design, construction and operation of bitumen processing and refining facilities in the Province of Alberta similar to the Facility;

“**Related Dispute**” has the meaning provided that term in section 2.6 of this Schedule;

“**Responding Party**” has the meaning provided that term in section 2.5 of this Schedule;
and

“**Settlement Meeting**” has the meaning provided that term in section 2.3 of this Schedule.

2. DISPUTES

2.1 Dispute Resolution

Except as set out in the Processing Agreement or any other Schedule thereto, any Dispute will be resolved in accordance with the Dispute Resolution Procedure set out in this Schedule, which procedure shall be followed in the order set out below unless both Parties agree otherwise in writing:

- (a) unless expressly provided otherwise in this Schedule or the Processing Agreement, the Dispute Resolution Procedure shall be started by delivery of a Dispute Notice by one Party to the other;
- (b) the Parties shall attempt to resolve the Dispute by a Settlement Meeting under section 2.3 of this Schedule;
- (c) if the Settlement Meeting does not result in resolution of the Dispute, the Parties shall, subject to section 2.4 of this Schedule, engage and obtain the assessment of a Referee; and
- (d) if the Dispute is not resolved through the Referee’s assessment, or either Party waives the review of the Referee pursuant to section 2.4 of this Schedule, either Party may refer the Dispute to arbitration under section 2.5 of this Schedule.

2.2 Appointment of the Referee

Unless the Parties agree otherwise, within one year from the Execution Date of the Processing Agreement, APMC and the Processor will appoint and enter into a written agreement with a person acceptable to both as Referee to whom resolution of Disputes may be referred for immediate interim resolution. Notwithstanding the one year deadline in the foregoing sentence, either Party may (i) shorten such deadline on written notice to the other Party to a date referenced in the notice that is at least 15 Business Days after delivery of such written notice; or (ii) make a one-time extension of such deadline on written notice to the other Party, provided the notice is delivered prior to the deadline, to

a date referenced in the notice that is not more than six Months after the delivery of such written notice.

In the event that the Parties cannot agree upon an acceptable person as the Referee within the time period provided, the Referee shall be determined by arbitration pursuant to section 2.5 of this Schedule. The person appointed as Referee must be impartial as between the Parties, independent of APMC and the Processor and qualified and experienced with respect to the design, construction and operation of bitumen processing and refining facilities in the Province of Alberta similar to the Facility.

The appointment of the Referee will be deemed to be a joint appointment and will be irrevocable by each Party without the consent of the other. The appointment of the Referee will continue for a five year period unless otherwise extended and agreed to by the Parties. If the Referee resigns, dies, or becomes incapable of fulfilling the role of Referee, or the Parties' agreement with the Referee expires or is terminated at any time during the Term, the Parties shall immediately appoint a replacement in the manner set forth herein.

The fees and expenses of the Referee shall be set by the terms of the agreement between the Parties and the Referee. The Referee's fees, disbursements and other costs, as agreed between the Parties and the Referee, will be shared equally by APMC and the Processor. Each Party shall bear its own costs and expenses in preparing submissions for and attending meetings with the Referee.

2.3 Settlement Meeting

In the event of a Dispute which is not resolved in the normal course of business, either Party may deliver a Dispute Notice to the other Party. Within five Business Days from the delivery of the Dispute Notice, senior officials designated by APMC and the Processor will meet at a mutually acceptable time and place to attempt to resolve the Dispute (a "**Settlement Meeting**"). The Parties through their representatives will make all reasonable efforts to resolve the Dispute. If the Dispute is not resolved through the Settlement Meeting within 10 Business Days from delivery of the Dispute Notice, or such longer period as the Parties agree, then the Dispute will be referred to the Referee in accordance with section 2.4 of this Schedule.

At any time prior to referral of the Dispute to the Referee, either Party may propose that a mediator be retained to participate in the Settlement Meeting and assist in resolving the Dispute. Neither Party shall be obliged to accept the participation of a particular, or any, mediator. Upon notice either Party may terminate a mediator's further participation in the Settlement Meeting. If a mediator's participation is terminated at a time after 10 Business Days from delivery of the Dispute Notice the Dispute will be immediately referred to the Referee in accordance with section 2.4 of this Schedule unless the Parties agree otherwise. A mediator's fees, disbursements and other costs, as agreed between the Parties and the mediator, will be shared equally by APMC and the Processor.

All negotiations held pursuant to this section 2.3 of this Schedule are to be held on a without prejudice basis and will not be used by either Party as evidence at any other proceeding. A mediator who has participated in a Settlement Meeting may not be retained by either Party in respect of the matter and may not be called by either Party to give evidence with respect to the Dispute in any other proceeding.

2.4 Referee

Unless a Party waives the Referee's review, before proceeding to arbitration of the Dispute, the Parties shall obtain an assessment of the Dispute from the Referee. The Referee will participate in the Dispute as follows:

- (a) the Referee will conduct a review of the Dispute in the manner the Referee decides is most suitable, including on-site inspections and discussions with any persons. The Parties will comply with all reasonable requests from the Referee for additional information and documents which the Referee considers necessary for the review. Each Party will be entitled to obtain from the Referee any information of the other Party which was material to the Referee's assessment of the Dispute, as determined by the Referee. All information disclosed in accordance with this section shall be Confidential Information for purposes of the Processing Agreement;
- (b) the Referee may, with the written approval of the Parties, retain others to assist with the review;
- (c) the Referee will deliver to the Parties a brief written assessment of the Dispute within 10 Business Days of referral to the Referee or such longer period as agreed to in writing by the Parties;
- (d) an assessment by a Referee is not binding on the Parties, and a Referee's review will be sought only for the purpose of assisting the Parties to reach agreement with respect to the Dispute;
- (e) a Referee who has rendered an assessment of a Dispute may not be retained by either Party in respect of the matter and may not be called by either Party to give evidence with respect to the Dispute in any subsequent arbitration or court proceeding to resolve the Dispute, nor will either Party refer to or enter into evidence the assessment of the Referee in such proceeding, unless required by a Court; and
- (f) APMC and the Processor will agree to release and indemnify the Referee in respect of certain claims provided the Referee has acted in good faith and in accordance with the agreement among the parties.

2.5 Arbitration

If any Dispute which is the subject of an assessment by the Referee is not resolved by agreement between the Parties within 10 Business Days after receipt of the Referee's assessment or the date the Referee's review was waived, or if there is any dispute relating to the appointment of the Referee then either Party may refer the Dispute to arbitration.

Unless the Parties agreed otherwise, a Dispute referred to arbitration shall be decided by a three person tribunal (the "**Arbitral Tribunal**") as further described in this section 2.5 of this Schedule. The *Arbitration Act* (Alberta) shall apply to all arbitration proceedings except to the extent it is modified or supplanted by the express terms of this Dispute Resolution Procedure. Unless otherwise agreed by the Parties, the seat of the arbitration shall be the City of Edmonton, Alberta.

Arbitration proceedings shall be commenced by the Party desiring arbitration (the "**Initiating Party**") giving notice to the other Party entitled to participate in the arbitration proceedings (the "**Responding Party**") specifying the matter to be arbitrated. If within 10 Business Days, or such period as may otherwise be agreed, the Parties have not reached agreement on the appointment of the Arbitral Tribunal, then each of the Initiating Party and Responding Party may appoint one arbitrator to the Arbitral Tribunal by written notice to the other Party. Within 10 Business Days, or such period as may otherwise be agreed, of the appointment of the last such arbitrator the arbitrators individually appointed by the Parties shall, among themselves and within five Business Days of the appointment of the last such arbitrator, agree upon the appointment of a third arbitrator to serve as chair (the "**Chair**"), failing which the Chair shall, upon the application of either Party and on notice to the other, be appointed by the Court.

The Arbitral Tribunal shall be composed of arbitrators having appropriate qualifications to address the Dispute.

The Arbitral Tribunal will have the authority to award any remedy or relief that a judge of a court of competent jurisdiction within the Province of Alberta could order or grant in accordance with the Processing Agreement.

Subject to the foregoing, the Arbitral Tribunal may fix the date, time and place of meetings and hearings in the arbitration and will give all Parties adequate notice of same. All meetings and hearings will be in private unless the Parties agree otherwise and the Parties are entitled to be represented at any meetings or hearings by legal counsel. Either Party may examine and re-examine all its own witnesses at the arbitration and may cross-examine all of the other Party's witnesses.

The arbitration will be conducted in a confidential manner and the existence of the proceeding, information disclosed in the course of the proceeding and any element of it (including, but not limited to, any pleadings, briefs or other documents submitted and exchanged, and testimony or other oral submission and any awards) shall be Confidential Information and subject to the disclosure restrictions set out in the Processing Agreement.

The Arbitral Tribunal will make and send a decision in writing not later than 15 Business Days after the conclusion of the hearing and, unless the Parties agree otherwise, will set out reasons for the decision. Costs will be awarded in accordance with the *Arbitration Act* (Alberta) unless the Parties have previously agreed on the basis for the apportionment of costs.

A majority decision of the Arbitral Tribunal will be final and binding on the Parties and subject only to judicial review or an appeal in accordance with the provisions of the *Arbitration Act* (Alberta).

2.6 Consolidation of Related Disputes

Where a dispute in respect of the application or interpretation of a provision of the Processing Agreement raises common questions of fact or law, or issues which are, in the opinion of either Party, substantially the same as or connected with issues raised in a dispute between the Processor and CNR (or affiliates) under the CNR Processing Agreement (a “**Related Dispute**”), a Party may at any time propose that the Related Dispute be consolidated with, or parties to a Related Dispute be joined to, a Dispute between the Parties (a “**Consolidated Dispute**”) for the purposes of obtaining an assessment of the Referee under section 2.4 of this Schedule or for the purposes of arbitration under section 2.5 of this Schedule, each as the case may be, in respect of the Consolidated Dispute as though it were a Dispute under this Dispute Resolution Procedure. The Party proposing a Consolidated Dispute shall provide notice to the other Party including such details of the nature of the Related Dispute and terms of the proposed Consolidated Dispute as is reasonable in all the circumstances. A Consolidated Dispute may only proceed under this Dispute Resolution Procedure with the consent of both Parties and such consent may, in either Party’s sole discretion, be withheld. All information disclosed in relation to this section shall be Confidential Information and subject to the disclosure restrictions set out in the Processing Agreement.

2.7 Strict Compliance with Time Limits

The Parties agree that timely resolution of any Dispute is mutually beneficial and, in order to achieve timely resolution, the time limits as set out in this Schedule shall be strictly enforced.

2.8 Performance of Obligations

Notwithstanding the existence of any Dispute, APMC and the Processor will, to the extent not precluded by the matter in Dispute, continue with the performance of their respective obligations under the Processing Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of the Processing Agreement.