

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
BANKRUPTCY DIVISION  
ST. CROIX, VIRGIN ISLANDS**

In re:	)	
	)	
HOVENSA L.L.C.,	)	Chapter 11
	)	
Debtor.	)	Case No. 1:15-bk-10003-MFW
	)	
	)	Re: Docket Nos. 541, 542, 563, 572,
	)	599, 602 and 613

**NOTICE OF FILING EXECUTED VERSION OF  
ENVIRONMENTAL RESPONSE TRUST AGREEMENT**

**PLEASE TAKE NOTICE** that, on January 12, 2016, the above-captioned debtor and debtor-in-possession (the “Debtor”) filed the *Plan Supplement to Debtor’s Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 541] (the “Plan Supplement”) with the United States District Court of the Virgin Islands, Bankruptcy Division, St. Croix, Virgin Islands (the “Bankruptcy Court”).<sup>1</sup>

**PLEASE TAKE FURTHER NOTICE** that attached as Exhibit B to the Plan Supplement was a form of Environmental Response Trust Agreement.

**PLEASE TAKE FURTHER NOTICE** that, on January 19, 2016, the Debtor filed the *Debtor’s Second Amended Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 563] (the “Second Amended Plan”), which was confirmed by the Bankruptcy Court on January 20, 2016 by the *Order Granting Final Approval of Disclosure Statement and Confirming Chapter 11 Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 572] (the “Confirmation Order”).

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Executed Environmental Response Trust Agreement (as defined below).

**PLEASE TAKE FURTHER NOTICE** that, on February 8, 2016 and February 10, 2016, the Debtor filed revised forms of the Environmental Response Trust Agreement [Docket Nos. 599, 602 and 613].

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit A** is a copy of the fully executed Environmental Response Trust Agreement, substantially in the form filed with the Bankruptcy Court on February 10, 2016 [Docket No. 613] (the “Executed Environmental Response Trust Agreement”).

**PLEASE TAKE FURTHER NOTICE** that by agreement of the Parties to the Executed Environmental Response Trust Agreement, including the Beneficiaries, Project Navigator, Ltd. shall act as the Environmental Response Trustee in accordance with paragraph 48 of the Confirmation Order and Article VIII of the Second Amended Plan. Roberto Puga has executed the Executed Environmental Response Trust Agreement on behalf of Project Navigator, Ltd., not individually, but solely in its representative capacity as Environmental Response Trustee.

**PLEASE TAKE FURTHER NOTICE** that, notwithstanding the occurrence of the Environmental Response Trust Effective Date, the United States’ covenant not to sue under section 4.14 of the Executed Environmental Response Trust Agreement shall be subject to a period of public comment following publication of notice in the *Federal Register*. After the conclusion of the public comment period, if the United States timely receives any public comments, the United States will file with the Bankruptcy Court any comments received, as well as the United States’ responses to the comments, and, if appropriate, the United States will request approval of the covenant not to sue effective retroactively to the Environmental Response Trust Effective Date. The United States has reserved the right to withdraw or withhold its consent to the covenant not to sue if the comments regarding the covenant not to sue disclose

facts or considerations which indicate that the covenant not to sue is not in the public interest. If no public comments are timely received by the United States, the United States shall file a Notice with the Bankruptcy Court so stating and the United States' covenant not to sue shall be effective retroactively to the Environmental Response Trust Effective Date.

**PLEASE TAKE FURTHER NOTICE** that copies of the Second Amended Plan, the Plan Supplement, Confirmation Order, and the Executed Environmental Response Trust Agreement are available on the Bankruptcy Court's website at <https://ecf.vib.uscourts.gov> in accordance with the procedures and fees set forth therein, as well as free of charge on the website established by the Debtor's claims and noticing agent at <https://cases.primeclerk.com/hovensa>.

Dated: February 17, 2016  
St. Thomas, U.S. Virgin Islands

/s/ Richard H. Dollison

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*Counsel for Debtor and Debtor-in-Possession*

**Exhibit A**

**Executed Environmental Response Trust Agreement**

**ENVIRONMENTAL RESPONSE TRUST AGREEMENT**

**BY AND AMONG**

**HOVENSA L.L.C.**

**As Settlor,**

**PROJECT NAVIGATOR, LTD.**

**not individually but solely in its representative capacity  
as Environmental Response Trustee,**

**AND**

**THE UNITED STATES, ON BEHALF OF THE UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY and THE GOVERNMENT OF THE VIRGIN ISLANDS ON  
BEHALF OF  
the VIRGIN ISLANDS DEPARTMENT OF PLANNING AND NATURAL RESOURCES  
as Beneficiaries**

**As of February 17, 2016**

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## ENVIRONMENTAL RESPONSE TRUST AGREEMENT

### (Hovenssa Facility)

This Environmental Response Trust Agreement (the “Agreement”) is made this 17th day of February, 2016, by and among HOVENSA L.L.C. (“Hovenssa”), as debtor and debtor in possession in the Bankruptcy Case (defined below) (the “Settlor”) and Project Navigator, Ltd., not individually but solely in its representative capacity as Environmental Response Trustee (defined herein) of the Environmental Response Trust (defined herein) established hereby for the Facility (defined herein), and the Beneficiaries (defined herein).

### RECITALS:

WHEREAS, on September 15, 2015 (the “Petition Date”), the Settlor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), initiating Case No. 1:15-10003-MFW (the “Bankruptcy Case”) in the United States District Court of the U.S. Virgin Islands, Bankruptcy Division – St. Croix, Virgin Islands (the “Bankruptcy Court”);

WHEREAS, on the Petition Date, the Settlor filed its *Motion for Entry of Orders (A)(I) Establishing Bidding Procedures Relating to the Sale of the Debtor's Assets, Including Approving Break-Up Fee and Expense Reimbursement, (II) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts, (III) Approving Form and Manner of Notice Relating Thereto, and (IV) Scheduling a Hearing to Consider the Proposed Sale; (B)(I) Approving the Sale of the Debtor's Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, and (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* [Docket No. 15] (the “Sale Motion”);

WHEREAS, on December 1, 2015 the Bankruptcy Court entered the Sale Order (defined herein) granting the Sale Motion;

WHEREAS, on January 4, 2016, the Settlor entered into that certain Amended and Restated Asset Purchase Agreement, by and among the Purchaser (defined below), Limetree Bay Holdings, LLC, the Settlor, and HOVIC (as may be amended, supplemented, or modified from time to time, the “Purchase Agreement”), pursuant to which the Purchaser agreed to purchase certain real and personal property utilized in Hovenssa’s crude oil and product storage and terminalling business, but excluding the Purchase Agreement Excluded Assets (defined below);

WHEREAS, on December 17, 2015, the Settlor filed its *Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 467] (as may be amended, modified, and supplemented from time to time, the “Plan”) with the Bankruptcy Court;

WHEREAS, the Plan provides for the creation of the Environmental Response Trust (defined below) to be administered by the Environmental Response Trustee (defined below) pursuant to this Agreement and the Plan;

WHEREAS, in accordance with Article VIII of the Plan, the Confirmation Order (defined herein), and the Termination and Release Agreement, the Environmental Response Trust is established for the primary purposes of (a) paying for any post-Environmental Response Trust Effective Date (defined herein) Remediation/Compliance Costs (defined herein) and associated costs and fees incurred by the Environmental Response Trust, (b) implementing the Environmental Remediation/Compliance Program (defined herein), (c) overseeing the Remedial Actions (defined herein), (d) owning certain real property transferred from the Settlor as provided in this Agreement, and (e) ultimately settling, transferring, or otherwise disposing of or facilitating the reuse of all or part of the Environmental Response Trust Assets, if possible.

WHEREAS, the Environmental Response Trust is to be funded in the manner set forth in the Plan and the Termination and Release Agreement;

WHEREAS, this Agreement and Article VIII of the Plan govern the Environmental Response Trust, which is intended to be treated as a trust for federal income tax purposes;

WHEREAS, the Environmental Response Trust shall be the exclusive holder of the assets described herein for purposes of 31 U.S.C. § 3713(b);

WHEREAS, the United States recognizes that the Government of the Virgin Islands, along with EPA and the United States, has made significant efforts towards ensuring the availability of funds to address environmental concerns at the former HOVENSA Refinery, which include, among other things, the agreement of the Purchaser to fund up to \$30 million in wind-up costs, the agreement of the Settlor to make an initial payment to the Environmental Response Trust of at least \$5 million, and the agreement of the Settlor to purchase a \$75 million insurance policy to cover any presently unknown contamination.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein and in the Plan, the Parties hereby agree as follows:

## ARTICLE I DEFINITIONS

### 1.1 Definitions.

The following terms as used in this Agreement shall have the definitions given below:

1.1.1 “Above-Grade Refinery Assets” means any and all refining process units, buildings, structures, fixtures or other improvements owned by the Settlor that are present on the Option Refinery Property or the Leased Submerged Lands that are exclusively at or above grade, including the power plant located on the Option Refinery Property, and all equipment, personal property and fixtures, including any and all ancillary and non-structural personal property, required to operate such assets (including below-grade pumps, storage tanks, piping, electrical service and distribution system, control systems and any other associated utility infrastructure); provided, that, for the avoidance of doubt, the Above-Grade Refinery Assets shall not include any Retained Refinery Assets or other Purchase Agreement Excluded Assets. Notwithstanding the foregoing, the Above-Grade Refinery Assets shall include the above-grade portion of the

ground flare present on that certain parcel of real property identified in Exhibit H to the Purchase Agreement as an “Excluded” parcel and located within the submerged land border.

1.1.2 “Accident Trust” means the Standby Trust (and any related or subsequent financial assurance documents) providing financial assurance for sudden and non-sudden accidental occurrences as required by the RCRA Permit.

1.1.3 “Administrative and Priority Claims Reserve” shall have the meaning ascribed to such term in the Plan.

1.1.4 “Administrative Costs” means the fees, costs, and expenses incurred in connection with the administration of the Environmental Response Trust, including but not limited to real estate management, taxes, insurance, and maintenance costs, but excluding any expenses (including, without limitation, expenses of the Environmental Response Trustee and its third-party professionals) incurred in overseeing and managing the Environmental Remediation/Compliance Program and complying with other applicable environmental obligations imposed by Governmental Units, including reporting requirements.

1.1.5 “Agreement” shall have the meaning given in the preamble.

1.1.6 “Arrangements with the Purchaser” shall mean the Settlor’s rights under the Purchase Agreement, the Shared Services Agreement, and any other Transaction Documents among the Settlor and the Purchaser (or its affiliates) relating to the Purchaser’s obligations with respect to Settlor’s wind-up of its affairs (including conducting any Remedial Actions related to the Purchase Agreement Excluded Liabilities and dismantling and disposing of any Retained Refinery Assets or other Purchase Agreement Excluded Assets), including all rights under such agreements (i) with respect to the payment or reimbursement of up to \$30 million of “Wind-Up Costs” (as defined in the Purchase Agreement); and (ii) to require the Purchaser to supply, or cause one of its affiliates to supply, power after the closing of the Sale Transaction to the Settlor or the Environmental Response Trust, as applicable, as set forth in section 7.24 of the Purchase Agreement; in each case in accordance with the terms of the Purchase Agreement, the Shared Services Agreement, and any other Transaction Document, as applicable.

1.1.7 “Bankruptcy Case” shall have the meaning given in the recitals to this Agreement.

1.1.8 “Bankruptcy Code” shall have the meaning given in the recitals to this Agreement.

1.1.9 “Bankruptcy Court” shall have the meaning given in the recitals to this Agreement.

1.1.10 “Beneficiaries” means the GVI, on behalf of the DPNR, and the United States, on behalf of the EPA.

1.1.11 “Cash” means the legal tender of the United States of America or the equivalent thereof.

1.1.12 “Closing Date” means the Closing Date as defined in section 3.5(a) of the Purchase Agreement.

1.1.13 “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.1.14 “Contract Assumption Schedule” shall have the meaning ascribed to such term in the Plan.

1.1.15 “Consent Decree” means the Consent Decree entered on June 7, 2011 in the United States District Court of the Virgin Islands in the matter of *United States of America, and United States Virgin Islands v. Hovensa L.L.C.* (Civ. No. 1:11-cv-00006).

1.1.16 “Court” means the Bankruptcy Court or, if the Bankruptcy Court abstains from exercising jurisdiction or is otherwise without jurisdiction over any matter arising out of this Agreement, a United States District Court having competent jurisdiction with respect to such matters.

1.1.17 “DPNR” shall mean the Virgin Islands Department of Planning and Natural Resources.

1.1.18 “Effective Date” shall have the meaning ascribed to such term in the Plan.

1.1.19 “Environmental Law” means any Law, Permit, Order or other requirement of Law that relates to (a) the protection of the environment (including natural resource restoration and natural resource damages) or of human health or safety (to the extent human health or safety relates to exposure to Hazardous Materials), or (b) the presence, Release, threatened Release, generation, recycling, transportation, storage disposal, treatment or remediation of Hazardous Material, or the arrangement for any such activities.

1.1.20 “Environmental Remediation/Compliance Program” means the program whereby the Environmental Response Trust shall conduct the environmental aspects of the winding-up of the Settlor’s affairs as required by any of the non-terminated environmental permits set forth at Exhibit 2 to the Termination and Release Agreement, including the RCRA Permit, by Environmental Law, and/or as otherwise enumerated as follows: (a) the activities required by the RCRA Permit and associated plans, including the pump and treat program and all other corrective actions required for the solid waste management units and areas of concern; (b) the Product Release Prevention Program required by the RCRA Permit, which includes testing and repair of atmospheric storage tankage, oily water conveyance systems and underground piping in chemical or hydrocarbon service; (c) the obligations associated with regulated units required by the RCRA Permit and/or the RCRA Post-Closure Permit, including with

regard to units known as Landfarms I, II and III, (d) any other groundwater remediation and/or monitoring activities (including maintaining hydraulic control at the perimeter of the Facility and any other appropriate locations) that are reasonably required to address the mobility and/or thickness of phase-separated hydrocarbons and/or elevated levels of dissolved-phase hydrocarbons and/or MTBE at the Facility; (e) the marine study required by section 4.8.2 of this Agreement; (f) all of the activities described in, or that are the functional equivalent of, those described in Table 1: Review of Wind Down Cost Estimate December 20, 2015 submitted to the GVI on December 20, 2015, which were estimated by the Settlor to have a total cost of \$66,637,000; (g) implementation of the Debtor's obligations under sections A and B of section IX (Territorial Supplemental Environmental Project(s)) of the Consent Decree, including the obligation to approve the disbursement of funds from the TSEP Account to fund the Territorial Supplemental Environmental Project, as well as the obligation to provide no greater than \$500,000 for the VIWAPA Emissions Monitoring Assistance; (h) any of the environmental obligations of the Settlor under the Administrative Order on Consent, EPA Region 2 Docket No. RCRA-02-2001-7301 that are not assumed by the Purchaser, and (i) any other environmental expenditure proposed by the Environmental Response Trust and approved in accordance with section 7.13 of this Agreement.

1.1.21 "Environmental Response Trust" means the trust established pursuant to this Agreement.

1.1.22 "Environmental Response Trust Account" shall have the meaning given in section 2.2 hereof.

1.1.23 "Environmental Response Trust Administrative Account" means the Environmental Response Trust Account established in accordance with this Agreement to fund the payment of Administrative Costs.

1.1.24 "Environmental Response Trust Assets" means: (a) the ERT Cash Payment; (b) the ERT Cash Distributions; (c) the Remaining Assets; (d) the Settlor's rights with respect to the RCRA Trusts and the TSEP Account; (e) the Settlor's rights with respect to the Accident Trust; (f) the Settlor's rights with respect to the Environmental Response Trust Insurance Policies and any rights to assert claims with respect to any such insurance recoveries or other available insurance policies; (g) the Environmental Response Trust Books and Records; (h) the Settlor's rights with respect to any Executory Contracts or Unexpired Leases identified on the Contract Assumption Schedule as being assigned to the Environmental Response Trust, provided that the Environmental Response Trustee has accepted such contracts or unexpired leases on the ground that they are needed for the Environmental Response Trust to comply with its obligations under this Agreement; (i) any revenue raised or secured by the Environmental Response Trustee; and (j) the Settlor's rights under the Purchase Agreement, the Shared Services Agreement, and any other Transaction Documents among the Settlor and the Purchaser (or its Affiliates) relating to the Environmental Response Trust, including all rights under such agreements (x) with respect to the payment or reimbursement of Wind-Up Costs; (y) the right to require the Purchaser to supply, or cause one of its affiliates to supply, power after the closing of the Sale Transaction to the Settlor or the

Environmental Response Trust, as applicable, as set forth in section 7.24 of the Purchase Agreement; and (z) any other rights of recovery under the Purchase Agreement and any other Transaction Document among the Settlor and the Purchaser (or its Affiliates); in each case in accordance with the terms of the Purchase Agreement, the Shared Services Agreement, and any other Transaction Document, as applicable.

1.1.25 “Environmental Response Trust Books and Records” means any of the Settlor’s books and records that relate to the Environmental Remediation/Compliance Program and the activities of the Environmental Response Trust.

1.1.26 “Environmental Response Trust Effective Date” means the date upon which the Environmental Response Trust becomes effective, which date may be after the Effective Date if the condition precedent set forth in Article XI.A.4 of the Plan is waived in accordance with Article XI.B of the Plan and the Confirmation Order, provided, however, that the United States’ covenant not to sue under Paragraph 4.14 is subject to public comment process described in that Paragraph.

1.1.27 “Environmental Response Trust Remediation Cost Account” means the Environmental Response Trust Account established in accordance with this Agreement to fund the payment of Remediation/Compliance Costs and/or costs associated with a brownfield or similar redevelopment or reuse opportunity.

1.1.28 “Environmental Response Trust Insurance Policies” means the insurance policies identified in a schedule in the Plan Supplement (which shall include the ERT Agreed Insurance Policies).

1.1.29 “Environmental Response Trust Parties” means, collectively, the Environmental Response Trust, the Environmental Response Trustee, and the Environmental Response Trustee’s shareholders, officers, directors, employees, members, managers, partners, affiliated entities, consultants, agents, accountants, attorneys or other professionals or representatives engaged or employed by the Environmental Response Trust or Environmental Response Trustee; provided, however, that any contractors or consultants retained to perform or oversee the Environmental Remediation/Compliance Program of the Environmental Response Trust (for the avoidance of doubt, other than the Environmental Response Trustee and its officers, directors, and employees) shall not be Environmental Response Trust Parties.

1.1.30 “Environmental Response Trust Proceeds” means the net proceeds of any liquidation, sale, lease, recovery or other disposition of or other proceeds in respect of the Environmental Response Trust Assets.

1.1.31 “Environmental Response Trust Transfer Date” means each date on which any ERT Cash Distribution shall be made.

1.1.32 “Environmental Response Trustee” means the trustee of the Environmental Response Trust.



1.1.33 “EPA” means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

1.1.34 “ERT Agreed Insurance Policies” means the insurance policies with insurance carriers with AM Best Ratings of A- or greater and Financial Size Category XV or greater providing coverage, at a minimum, for cleanup and remediation of, and bodily injury or property damage arising from, presently unknown conditions at or emanating or migrating from the Facility, with coverage of no less than \$50,000,000 per occurrence and in the aggregate under commercially reasonable terms (to be raised to \$75,000,000 per occurrence and in the aggregate if such limits are reasonably commercially available), and all on such other terms as are laid out in Exhibit 1 or Exhibit 1-A (as amended) to the Termination and Release Agreement (if more than one policy is used to obtain the required limits, all excess policies shall follow form and provide coverage on the same terms and conditions as the underlying policy).

1.1.35 “ERT Cash Distribution” means any transfer of excess Cash in the Administrative and Priority Claims Reserve by the Reorganized Debtor to the Environmental Response Trust (other than the ERT Cash Payment) on any Environmental Response Trust Transfer Date.

1.1.36 “ERT Cash Payment” means \$5,000,000 to be transferred by the Debtor or the Reorganized Debtor, as applicable, to the Environmental Response Trust on the Environmental Response Trust Effective Date.

1.1.37 “Facility” shall have the meaning ascribed to such term in the RCRA Permit and 40 C.F.R. § 260.10 including, without limitation, the Retained Refinery Assets, the Leased Submerged Lands, and real property transferred from the Settlor in connection with the Purchase Agreement.

1.1.38 “Final Certification” shall have the meaning ascribed to such term in the Plan.

1.1.39 “Government Parcels” means each parcel of real property identified on Exhibit H to the Purchase Agreement, which real property shall be transferred from the Settlor to the GVI in connection with the Sale Transaction.

1.1.40 “Governmental Unit” has the meaning set forth in section 101(27) of the Bankruptcy Code.

1.1.41 “GVI” means the Government of the United States Virgin Islands, including any United States Virgin Islands Governmental Unit, department or agency.

1.1.42 “Hazardous Material” means any waste, including any solid or hazardous waste or hazardous constituent, or any other substance that is listed, defined, designated, classified as, or otherwise determined to be, hazardous, extremely hazardous, toxic, radioactive, or a pollutant, contaminant or constituent under or pursuant to any regulation, Law, Order or requirement of Law, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-

containing materials, lead and lead-based paint, and polychlorinated biphenyls and compounds containing them.

1.1.43 “HOVIC” means Hess Oil Virgin Islands Corp., a corporation organized under the Laws of the U.S. Virgin Islands.

1.1.44 “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

1.1.45 “Law” means any statute, law, ordinance, ruling, consent decree, permit, policy, rule or regulation of, issued by, or entered into by any Governmental Unit and all judicial or administrative interpretations thereof and any common law doctrine.

1.1.46 “Leased Submerged Lands” means those portions of real property identified in Exhibit H to the Purchase Agreement as “Terminal” or “Refinery” parcels that have been leased by Hovensa subject to (i) the Submerged Land Lease, (ii) that certain Contract, dated as of September 22, 1976, by and between the GVI and HOVIC (as amended, supplemented or modified from time to time), and (iii) that certain letter agreement, dated as of October 14, 1998 by and between the GVI and HOVIC (as amended, supplemented or modified from time to time), pursuant to which the GVI consented to (a) the assignment by HOVIC to Hovensa of the Submerged Land Lease, provided that HOVIC agreed to remain the primary obligor thereunder and (b) the assignment and delegation by HOVIC to Hovensa of the rights and obligations of HOVIC under the contract referenced in subsection (ii) hereof.

1.1.47 “Liquidating Trust Assets” shall have the meaning ascribed to such term in the Plan.

1.1.48 “Liquidating Trustee” shall have the meaning ascribed to such term in the Plan.

1.1.49 “Manager” shall have the meaning ascribed to such term in the Plan.

1.1.50 “Option Agreement” means an option agreement entered into by and among the Purchaser and the Settlor pursuant to which the Purchaser will have the right to acquire some or all of the Option Refinery Property from the Debtor or the Environmental Response Trust, as applicable, for a purchase price of \$1 per acre.

1.1.51 “Option Refinery Parcels” means those parcels of property identified as a “Refinery” parcel in Exhibit H to the Purchase Agreement.

1.1.52 “Option Refinery Property” means the real property owned by the Settlor and described in section 1.1(e) of the Seller Disclosure Letter attached to the Purchase Agreement (and including, for the avoidance of doubt, the Option Refinery Parcels), together with all easements, appurtenances, rights and other hereditaments appurtenant to such real property, which shall be transferred to the Environmental



Response Trust on the Environmental Response Trust Effective Date pursuant to the terms of the Plan.

1.1.53 “Order” means any judgment, order, injunction, decree, writ or license issued or entered by or with any Governmental Unit or any arbitrator, whether preliminary, interlocutory or final, including any order entered by the Bankruptcy Court in the Bankruptcy Case.

1.1.54 “Parties” means the Settlor, the Environmental Response Trustee, the United States, on behalf of EPA and the GVI, on behalf of DPNR.

1.1.55 “Permit” means all permits, approvals, licenses, authorizations, certificates, rights, exemptions and Orders from Governmental Units.

1.1.56 “Perpetuities Period” means, with respect to a trust, the period, if any, defined by a RAP applicable to such trust, within which interests in the trust must vest in order to be valid.

1.1.57 “Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, charitable foundation, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

1.1.58 “Plan” shall have the meaning given in the recitals to this Agreement.

1.1.59 “Plan Supplement” means the compilation of documents and forms of documents, schedules, and exhibits to the Plan, to be filed in accordance therewith.

1.1.60 “Purchase Agreement” shall have the meaning given in the recitals to this Agreement.

1.1.61 “Purchase Agreement Excluded Assets” means those assets, rights, or privileges of the Settlor not acquired by the Purchaser in the Sale Transaction, as more fully described in section 2.2 of the Purchase Agreement. For the avoidance of doubt, the Option Refinery Property shall be viewed as a Purchase Agreement Excluded Asset until such time, if ever, that such property or a portion thereof is acquired by the Purchaser pursuant to the Option Agreement.

1.1.62 “Purchaser” means Limetree Bay Terminals, LLC, a limited liability company organized under the Laws of the U.S. Virgin Islands, together with its successors and permitted assigns.

1.1.63 “RAP” means any rule against perpetuities or a rule governing or limiting vesting, accumulations, the suspension of alienation, or the like.

1.1.64 “RCRA” means the Solid Waste Disposal Act (as amended by other acts, including the Resource Conservation and Recovery Act), as set forth in 42

U.S.C. § 6901 et seq., any implementing regulation or rule, and any amendments to the foregoing.

1.1.65 “RCRA AOC” means the Administrative Order on Consent, EPA Region 2 Docket No. RCRA-02-2001-7301.

1.1.66 “RCRA Permit” means the Resource Conservation and Recovery Act Part B Permit No. VID 980536080, any amendments thereto, and any document(s) that replace such Permit or portions thereof.

1.1.67 “RCRA Post-Closure Permit” means the Post-Closure Permit No. PRD980536080 for Landfarm I.

1.1.68 “RCRA Trusts” means the two trust accounts that hold approximately \$36.6 million in Cash to provide financial assurance to the EPA related to Hovensa’s performance of certain obligations related to (a) closure of a hazardous waste management unit at the refinery and (b) the remediation and monitoring of soil and groundwater contamination and solid waste management units and areas of concern associated with its historic operations.

1.1.69 “Release” shall mean the disposing, discharging, injecting, spilling, leaking, pumping, pouring, leaching, dumping, emitting, escaping or emptying into or upon any air, soil, sediment, subsurface strata, surface water or groundwater.

1.1.70 “Remaining Assets” means the Purchase Agreement Excluded Assets other than the Government Parcels, the Reorganized Debtor Assets and the Liquidating Trust Assets. For the avoidance of doubt, the Remaining Assets shall include the Option Refinery Property, unless and until such property is transferred to the Purchaser pursuant to the Option Agreement.

1.1.71 “Remedial Action” means those activities associated with or relating to investigating, sampling, monitoring, preventing, minimizing, abating, cleaning up, removing, remediating, or mitigating with respect to Hazardous Materials in the environment.

1.1.72 “Remediation/Compliance Costs” means the costs and expenses of implementing the Environmental Remediation/Compliance Program.

1.1.73 “Reorganized Debtor” means the Debtor, on and after the Effective Date.

1.1.74 “Reorganized Debtor Assets” shall have the meaning ascribed to such term in the Plan.

1.1.75 “Retained Refinery Assets” means the Option Refinery Property, to the extent such Option Refinery Property has not been conveyed pursuant to the Option Agreement (and excluding, for the avoidance of doubt, the Above-Grade Refinery Assets).

1.1.76 “Sale Order” means the *Order (A)(I) Approving the Sale of the Debtor’s Assets, Free and Clear of All Liens, Claims, Encumbrances, and Interests; and (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (B) Granting Related Relief*, entered on December 1, 2015 [Docket No. 394].

1.1.77 “Sale Transaction” means that certain sale transaction between the Settlor and the Purchaser as set forth in the Purchase Agreement and the Sale Order.

1.1.78 “Settlor” shall have the meaning given in the preamble.

1.1.79 “Shared Services Agreement” means a shared services agreement entered into by and among the Purchaser and the Settlor in connection with the Sale Transaction, in form and substance reasonably satisfactory to the Purchaser and the Settlor in their sole discretion.

1.1.80 “Submerged Land Lease” means that certain Lease, dated as of October 16, 1976, by and between the GVI and HOVIC (as amended, supplemented or modified from time to time), pursuant to which the GVI leases certain reclaimed submerged lands specified therein to Hovensa (as assignee of HOVIC).

1.1.81 “Termination and Release Agreement” means that certain Termination and Release Agreement dated as of January 4, 2016 by and between the Settlor, the GVI and the Virgin Islands Bureau of Internal Revenue.

1.1.82 “Territorial Supplemental Environmental Projects” means, collectively, the Virgin Islands Territorial supplemental environmental project and the VIWAPA Emissions Monitoring Assistance Program as provided in sections IX.A and IX.B of the Consent Decree.

1.1.83 “Transaction Documents” shall have the meaning ascribed to such term in the Purchase Agreement.

1.1.84 “TSEP Account” means that certain escrow account in which the Settlor deposited \$4.875 million in Cash to be used for funding Territorial Supplemental Environmental Projects, in accordance with section IX.A of the Consent Decree.

1.1.85 “TSEP Escrow Agreement” means that certain TSEP Account Escrow Agreement, dated October 13, 2011, by and among Hovensa, the GVI, and JPMorgan Chase Bank, National Association.

1.1.86 “United States” means the United States of America and its departments and agencies.

All Capitalized terms not defined above shall have the meanings provided in the Plan.

ARTICLE II  
THE HOVENSA TRUST

2.1 Creation of and Transfer of Assets to the Hovenssa Trust.

2.1.1 Pursuant to Article VIII of the Plan, Hovenssa and the Reorganized Debtor shall, in accordance with the provisions of this section 2.1, transfer, assign, and deliver, by quitclaim deed and other appropriate instruments, to the Environmental Response Trust, on behalf of the Beneficiaries, all of their respective rights, title and interests in and to the Environmental Response Trust Assets. Neither the Settlor nor the Reorganized Debtor shall retain any ownership or other residual interest whatsoever with respect to the Environmental Response Trust. The transfer of ownership by the Settlor and the Reorganized Debtor, as applicable, of the Environmental Response Trust Assets shall be a transfer of all of the Settlor's and the Reorganized Debtor's respective rights, title and interests therein, and the transfer shall be (i) "as is" and "where is", with no warranties of any nature; (ii) free and clear of all liens, claims, encumbrances, charges and other interests against the Settlor or the Reorganized Debtor, including mechanics' liens and other liens for the payments of monetary claims, such as property taxes, or other monetary claims asserted or that could have been asserted in the bankruptcy proceeding, but shall remain subject to any existing *in rem* claims that do not secure payment of monetary claims (such as easements or deed restrictions); (iii) subject to any rights of the United States and the GVI under the Plan; and (iv) accomplished by quitclaim deed and/or personal property bill of sale without warranty, with all such conveyance documents to be agreed to in form by the Settlor and the Reorganized Debtor, as applicable, and the Environmental Response Trustee, provided that in no event shall the conveyance include any warranty by the grantor by virtue of the grant document or statutory or common law or otherwise. The Settlor and the Reorganized Debtor hereby disclaim any and all express or implied representations or warranties, including any representations or warranties of any kind or nature, express or implied, as to the condition, value or quality of such assets or other property, and specifically disclaims any representation or warranty of merchantability, usage, suitability or fitness for any particular purpose with respect to such assets or other property, any part thereof, the workmanship thereof, and the absence of any defects therein, whether latent or patent, it being understood that such assets are being acquired "as is, where is," and in their condition as of the date of their transfer. The grantee for each such deed and personal property bill of sale shall be the Environmental Response Trust by and through Project Navigator, Ltd., not individually but solely in its representative capacity as Environmental Response Trustee. The Settlor and the Reorganized Debtor, as applicable, will reasonably cooperate with the United States (including the EPA), the GVI (including the DPNR), and the Environmental Response Trustee to deliver to the title company (which will record or cause to be recorded in the appropriate real property records) the transfer documents as soon as reasonably practicable, but in no event later than thirty (30) days after the Environmental Response Trust Effective Date. The Settlor or the Reorganized Debtor, as applicable, shall pay the deed preparation and recording costs to the title company related to the title transfer. The Settlor or the Reorganized Debtor shall pay to the applicable tax authorities on or prior to the Environmental Response Trust Effective Date all real property taxes relating to the Remaining Assets due on or before

the Environmental Response Trust Effective Date. The Settlor or the Reorganized Debtor, as applicable, and the Environmental Response Trust shall prorate the real property taxes accruing to or becoming a lien on the Remaining Assets during the calendar year of the Environmental Response Trust Effective Date, and the Settlor or the Reorganized Debtor, as applicable, shall have paid to the Environmental Response Trust the Settlor's pro-rata share of such real property taxes as of the Environmental Response Trust Effective Date. If the actual bills for such real property taxes have not been issued, then such proration shall be based on an amount equal to such real property taxes for the prior year or tax period, which shall constitute a final proration and not be subject to further adjustment. As of the Environmental Response Trust Effective Date, the Environmental Response Trust shall be responsible for paying all real property taxes first coming due following the Environmental Response Trust Effective Date relating to the Remaining Assets. The Settlor or the Reorganized Debtor, as applicable, shall execute, or cause to be executed, and record, if necessary, all necessary releases of any liens or security interests held by any secured lender or other secured party, the Settlor or the Reorganized Debtor against the Remaining Assets. The Environmental Response Trust hereby accepts and agrees to hold the Environmental Response Trust Assets in the Environmental Response Trust for the benefit of the Beneficiaries for the purposes described in section 2.3 below, subject to the terms of Article VIII of the Plan, this Agreement, and any applicable orders of the Court.

2.1.2 On the Environmental Response Trust Effective Date, all the Environmental Response Trust Assets (including the ERT Cash Payment) other than the ERT Cash Distributions (which shall be made in accordance with section 2.1.3 hereof), will vest and be deemed to vest in the Environmental Response Trust in accordance with section 2.1.1 of this Agreement. The Environmental Response Trust assumes legal responsibility for the implementation of the Environmental Remediation/Compliance Program and all associated obligations and costs, for the benefit of the Beneficiaries, provided, however, that any such liability is limited to the assets of the Environmental Response Trust (including any insurance assets) and is subject to the terms of this Agreement.

2.1.3 Additional Funding for the Environmental Response Trust. On each subsequent Environmental Response Trust Transfer Date, the Reorganized Debtor shall cause to be transferred to the Environmental Response Trust each ERT Cash Distribution, and each such ERT Cash Distribution will vest and be deemed to vest in the Environmental Response Trust in accordance with section 2.1.1.

2.1.4 The Debtor and the Reorganized Debtor shall have no reversionary or further interest in or with respect to any Environmental Response Trust Assets and any ERT Cash Distributions, in each case, effective upon the transfer thereof to the Environmental Response Trust.

2.1.5 Upon the Reorganized Debtor's filing of the Final Certification with the Bankruptcy Court, (a) the Reorganized Debtor shall be deemed to be dissolved without any further action by the Reorganized Debtor, and (b) the remaining Reorganized Debtor Assets, as identified in the Final Certification, shall vest and be deemed to vest in

the Environmental Response Trust in accordance with section 1141 of the Bankruptcy Code, free and clear of all liens, claims, and interests, except as otherwise specifically provided in the Plan or in the Confirmation Order. Upon the transfer by the Reorganized Debtor of the Reorganized Debtor Assets to the Environmental Response Trust, the Debtor and the Reorganized Debtor will have no reversionary or further interest in or with respect to any Reorganized Debtor Assets.

2.1.6 Nothing herein shall in any way alter the terms of the agreements governing the Accident Trust or the RCRA Trusts (other than substituting the Environmental Response Trust for the Settlor as the grantor of the trusts) including, without limitation, any provisions of those trusts indicating that EPA is the sole beneficiary of such trusts and that EPA has the sole discretion to determine the amount of funds that may need to be deposited into such trusts and how any funds in such trusts will be disbursed. If EPA determines that additional funds are needed in the RCRA Trusts, it will consult with DPNR before seeking such funds from the Environmental Response Trust. If DPNR disagrees with EPA's position on the matter, the matter shall be elevated to the EPA Region 2 Division Director who oversees RCRA financial assurance issues and to such DPNR employee as designated by DPNR for further discussions. If those discussions do not result in an agreement, the position of EPA shall be binding on the parties. For the avoidance of doubt, no person other than EPA shall have any right to determine the amount of such funds needed to be deposited into the RCRA Trusts or how the funds in the RCRA Trusts are disbursed.

## 2.2 Creation of the trust accounts.

2.2.1 Upon receipt of the Environmental Response Trust Assets delivered to the Environmental Trust on the Environmental Response Trust Effective Date, the Environmental Response Trustee shall create an Environmental Response Trust Remediation Cost Account within the Environmental Response Trust. The purpose of the Environmental Response Trust Remediation Cost Account shall be to pay Remediation/Compliance Costs and for funding certain future regulatory fees with respect to the Facility. The funds in the Environmental Response Trust Remediation Cost Account shall be held in trust for use in implementing the Environmental Remediation/Compliance Program, and may not be used for any other purpose except as expressly provided in section 4.4.2 below. The initial funding of the Environmental Response Trust Remediation Cost Account shall be the total of the ERT Cash Payment, except for the amount allocated to the Environmental Response Trust Administrative Account as described below. The Environmental Response Trustee shall also create a segregated Environmental Response Trust Administrative Account in the amount of 10% of the amount of the ERT Cash Payment. The separate accounts described in this section 2.2 are referred to in this Agreement individually as an "Environmental Response Trust Account" and collectively as the "Environmental Response Trust Accounts." Subject to section 4.4.2, the income and gains from any investment of the Environmental Response Trust Assets in an Environmental Response Trust Account shall be allocated, paid and credited to such Environmental Response Trust Account.



2.2.2 The Environmental Response Trust Accounts may be divided into such number of trust subaccounts dedicated for specific uses as may be deemed necessary in the sole discretion of the Environmental Response Trustee (each, a “Trust Subaccount”) to comply with the terms of, and implement, Article VIII of the Plan and this Agreement.

## 2.3 Objective and Purpose.

2.3.1 The primary purpose and function of the Environmental Response Trust is to assume responsibility for and carry out the Environmental Remediation/Compliance Program and, thereby, to ensure appropriate clean-up of the Facility, as required by the RCRA Permit, RCRA Post-Closure Permit and Environmental Law. In carrying out this purpose and function, the Environmental Response Trust will: (i) act as successor to the Settlor solely for the purpose of paying for any post-Environmental Response Trust Effective Date costs and expenses associated with the Environmental Remediation/Compliance Program or the Environmental Response Trust Assets and associated costs and fees incurred by the Environmental Response Trust in accordance with Article VIII of the Plan, the Confirmation Order, the Termination and Release Agreement, and this Agreement; (ii) own the Remaining Assets; (iii) implement the Environmental Remediation/Compliance Program; (iv) pay certain regulatory fees related to compliance with the Environmental Remediation/Compliance Program or this Agreement, (v) compensate DPNR for the costs of environmental sampling and analysis of up to \$100,000 over the life of the Environmental Response Trust that are pursued at DPNR’s own initiative and not approved by the Trustee; provided that DPNR provides the results of such sampling to the Environmental Response Trust and EPA; (vi) pursue brownfield redevelopment or similar reuse opportunities that advance the Environmental Remediation/Compliance Program; and (vii) sell, transfer or otherwise dispose or facilitate the reuse of all or part of the Environmental Response Trust Assets, if possible, all as provided herein with no objective or authority to engage in any trade or business unless such trade or business is approved in accordance with section 7.13 of this Agreement. The proceeds of the sale, transfer or other disposition of all or a part of the real property within the Trust shall be held in the custody of the Environmental Remediation Trustee, and may be used for funding any aspect of the Environmental Remediation/Compliance Program and/or the Administrative Costs that have been approved in accordance with the provisions of section 7.13 of this Agreement, whether such sale, transfer or other disposition occurs before or after the original funds in the Trust have been exhausted. The performance by the Environmental Response Trustee of its duties under this Agreement, including but not limited to the sale, lease or other disposition of some or all of the Environmental Response Trust Assets, shall not be considered to be the Environmental Response Trustee’s engaging in a trade or business. The Bankruptcy Court shall retain continuing jurisdiction over the Environmental Response Trust.

2.3.2 In carrying out the Environmental Remediation/Compliance Program, the Environmental Response Trust will aim, to the extent reasonably practicable, to employ residents of the United States Virgin Islands (as defined in the Operating Agreement between the GVI and the Purchaser) and use contractors based in

the United States Virgin Islands for on-site work with the goal of ensuring that 80% of all on-site jobs related to the Environmental Remediation/Compliance Program are filled by residents of the United States Virgin Islands.

2.4 Holder of Environmental Response Trust Assets.

The Environmental Response Trust shall be the exclusive holder of the Environmental Response Trust Assets and Environmental Response Trust Accounts described herein for purposes of 31 U.S.C. § 3713(b).

2.5 Work Performed and Disbursements by the Environmental Response Trust.

Payments from the Environmental Response Trust shall be made in accordance with section 3.2 of this Agreement.

2.6 Access to Environmental Information.

The Environmental Response Trust Books and Records held by the Settlor or the Reorganized Debtor, as applicable, shall be provided to the Environmental Response Trust. Such information shall be provided within two months of the Environmental Response Trust Effective Date, except for information needed for current operations related to the Environmental Remediation/Compliance Program, which shall be provided on the Environmental Response Trust Effective Date.

2.7 Assumption of the Settlor's Disbursement Obligations Pursuant to Consent Decree.

As of the Environmental Response Trust Effective Date, the Environmental Response Trust shall assume the Settlor's obligations to approve the disbursement of funds from the TSEP Account to the GVI for the Virgin Islands Territorial SEP and from the Environment Response Trust Remediation Account to VIWAPA for the VIWAPA Emissions Monitoring Assistance projects as provided for in sections IX.A and IX.B of the Consent Decree.

2.8 Environmental Response Trust Cooperation Obligations.

2.8.1 Upon written request of the GVI or the EPA, the Environmental Response Trust shall reasonably cooperate with the Beneficiaries to (a) facilitate the re-use of any portions of the Remaining Assets to the extent permitted by Law and (b) provide all documents or information that are reasonably requested by the GVI or the EPA (except for documents and information that are subject to a legal privilege). However, the Environmental Response Trust shall expend monies related to the re-use of the Property only as approved in accordance with sections 2.15.1 and 7.13 of this Agreement.

2.8.2 The Environmental Response Trust will cooperate with all persons required to comply with the RCRA Permit to achieve compliance with the RCRA Permit, the RCRA Post-Closure Permit, and the RCRA AOC, including by (1) providing such persons with reasonable access to the facilities, in accordance with the Easement Agreement by and between Limetree Bay Terminals, LLC and HOVENSA, LLC dated



January 4, 2016 and the Easement Agreement by and between HOVENSA, LLC and Limetree Bay Terminals, LLC dated January 4, 2016, and (2) cooperating with such parties to the extent reasonably necessary to allow such parties to implement and maintain any institutional controls necessary to carry out such persons' obligations under the RCRA Permit, the RCRA Post-Closure Permit, and the RCRA AOC.

2.8.3 The Environmental Response Trustee shall coordinate with the Liquidating Trustee and the Manager to develop a document sharing, retention, and maintenance policy with respect to the Reorganized Debtor Books and Records, the Liquidating Trust Books and Records, and the Environmental Response Trust Books and Records, the terms of which shall be agreed upon among the Reorganized Debtor, the Liquidating Trustee, and the Environmental Response Trustee.

2.8.4 The Environmental Response Trust shall reasonably cooperate with the Liquidating Trustee and the Manager and shall provide or grant access to readily available documents and information, including privileged documents and information, relating to or concerning, (a) with respect to the Liquidating Trustee, the Claims in Classes 4, 5, and 6, and (b) with respect to the Manager, the Administrative, Priority Tax, Professional Fee, Class 1, and Class 2 Claims.

## 2.9 Investment and Safekeeping of Environmental Response Trust Assets.

2.9.1 The Environmental Response Trust Assets, until sold or spent as provided herein and in Article VIII of the Plan, shall be held in trust and segregated. All interest, dividends, and other revenue earned in an Environmental Response Trust Account shall be retained in the respective Environmental Response Trust Account and used only for the same purposes as the principal in that account, as set forth in this Agreement and Article VIII of the Plan, subject to any reallocation approved in accordance with section 7.13 of this Agreement, that is in accordance with the terms of this Agreement and Article VIII of the Plan. The Environmental Response Trustee shall be under no liability for interest or producing income on any moneys received by the Environmental Response Trust hereunder and held for distribution or payment as provided in this Agreement, except as such interest shall actually be received by the Environmental Response Trustee.

2.9.2 The Environmental Response Trust may purchase and hold as investments (a) demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured; (b) U.S. Treasury bills and notes, including, but not limited to, long-term U.S. Treasury bills and notes; (c) repurchase agreements for U.S. Treasury bills and notes; (d) AA or AAA corporate bonds (with the rating awarded by at least two of the three major rating agencies (Standard & Poor's, Moody's, or Fitch)); (e) debt issued by agencies of the United States Government, the Federal National Mortgage Association (Fannie Mae), or the Federal Home Loan Mortgage Corporation and (Freddie Mac); or (f) open-ended mutual funds owning only assets described in subparts (a) through (e) of this subsection; provided, however, that the value of bonds of any single company and its affiliates owned by the Environmental Response Trust directly rather than through a mutual fund shall not

exceed three percent of the then current total value of the assets in the Environmental Response Trust Accounts, but may be held, despite an increase in value, so long as such percentage does not exceed five percent of the total value of the assets in the Environmental Response Trust Accounts.

2.9.3 The Environmental Response Trust may also purchase and hold as investments (a) publicly traded common stocks listed as components of the S&P 500 index or Russell 1000 index, or their successors, at time of purchase, (b) open-ended mutual funds owning publicly traded common stocks, or (c) exchange-traded funds representing ownership interests in a set of publicly traded common stocks or stock indices, in an amount no more than twenty percent of the then current total value of the assets in the Environmental Response Trust Accounts, and the Environmental Response Trust may hold such investments so long as the total percentage of such investments does not exceed 35 percent of the then current total of value of the assets in the Environmental Response Trust Accounts; provided, however, that the value of the publicly traded common stock (listed as components of the S&P 500 index or Russell 1000 index, or their successors, at time of purchase) of any single publicly traded company and its affiliates owned by the Environmental Response Trust directly rather than through a mutual fund or exchange-traded fund shall not exceed three percent of the then current total value of the assets in the Environmental Response Trust Accounts, but may be held, despite an increase in value, so long as such amount does not exceed five percent of the then current total value of the assets in the Environmental Response Trust Accounts.

2.9.4 Any investments made by the Environmental Response Trust shall be made consistently with the prudent investor standard established by the Uniform Prudent Investor Act.

2.9.5 The Beneficiaries may agree to expand or restrict the scope of permissible investments in accordance with section 7.13 of this Agreement.

2.9.6 The Environmental Response Trustee is expressly prohibited from holding any or all of the Environmental Response Trust Assets in a common, commingled or collective trust fund and from holding any or all of the Environmental Response Trust Assets in a common, commingled or collective trust fund with the assets of any other entity. However, the funds provided for administrative expenses can be held in one account.

2.9.7 Nothing in this section shall be construed as authorizing the Environmental Response Trustee to cause the Environmental Response Trust to carry on any business or to divide the gains therefrom, including without limitation, the business of an investment company, a company "controlled" by an "investment company," or required to register as such under the Investment Company Act of 1940, as amended. The sole purpose of this section 2.9 is to authorize the investment of the funds in the Environmental Response Trust Accounts or any portions thereof as may be reasonably prudent pending use of the proceeds for the purposes of the Environmental Response Trust.

2.10 Insurance Policy to Cover Unknown Contamination.

2.10.1 The Environmental Response Trustee shall obtain and maintain in full force and effect the ERT Agreed Insurance Policies.

2.10.2 Upon the occurrence of a claim, condition or event that qualifies or may qualify for coverage under the Environmental Response Trust Insurance Policies, the Environmental Response Trust shall promptly seek payment and take all commercially reasonable actions to obtain coverage pursuant to the applicable Environmental Response Trust Insurance Policies.

2.10.3 Solely for purposes under or concerning the Environmental Response Trust Insurance Policies, the Environmental Response Trust hereby assumes, and is legally liable for, any and all Cleanup Costs (as that term is defined in the Environmental Response Trust Insurance Policies), Damages (as that term is defined in the Environmental Response Trust Insurance Policies), Claims Expenses (as that term is defined in the Environmental Response Trust Insurance Policies), Claims (as that term is defined in the Environmental Response Trust Insurance Policies), and Pollution Conditions (as that term is defined in the Environmental Response Trust Insurance Policies) to at least the same extent (in addition to and not in lieu of any other or additional liabilities) that Hovensa was legally liable for any of the foregoing either (a) prior to the Petition Date or (b) on or after the Petition Date, provided, however, that any such liability is strictly limited to the coverage available under the Environmental Response Trust Insurance Policies.

2.11 Access and Deed Restrictions.

The Environmental Response Trustee shall provide the EPA, the GVI, and their representatives and contractors access to the Remaining Assets at all times for the purposes of overseeing the Environmental Remediation/Compliance Program at the Facility. Nothing herein shall affect the EPA's or DPNR's access rights otherwise provided by Law. The Environmental Response Trustee shall implement any required institutional controls or deed restrictions with respect to the Remaining Assets. The Environmental Response Trustee shall execute and record with the appropriate recorder's office any institutional controls or deed restrictions reasonably requested by the EPA and the GVI for restrictions on use of the Remaining Assets in order to protect public health, welfare or safety or the environment or ensure non-interference with or protectiveness of any action conducted pursuant to the Environmental Remediation/Compliance Program. Any existing institutional controls or deed restrictions of record as to the Remaining Assets prior to the Effective Date of the Plan shall survive confirmation of the Plan. The Environmental Response Trustee shall abide by the terms of any institutional controls or deed restrictions in place or of record as to the Remaining Assets.

2.12 Arrangements with the Purchaser.

2.12.1 To the extent consistent with the approved budgets under section 7.13 of this Agreement, the Environmental Response Trustee shall (i) seek reimbursement from Purchaser for (or request that the Purchaser pay on the

Environmental Response Trust's behalf) reasonable and documented out-of-pocket costs and expenses incurred in connection with the winding up of Hovensa's affairs including, without limitation, all activities listed on "Table I: Review of Wind Down Cost Estimate December 20, 2015", which is attached hereto and (ii) make any required payments to the Purchaser from reimbursements from the RCRA Trusts, in each case subject to the terms and conditions set forth in section 7.33 of the Purchase Agreement and section 2.1.6 of this Agreement.

2.12.2 The Environmental Response Trustee shall have all other rights of the Settlor based on the Arrangements with the Purchaser.

#### 2.13 Insurance.

The Environmental Response Trust may maintain customary insurance coverage for the protection of Entities serving as administrators and overseers of the Environmental Response Trust on and after the Environmental Response Trust Effective Date.

#### 2.14 Termination.

Consistent with the terms of Article VIII of the Plan and subject to the fulfillment of all of its legal responsibilities, the Environmental Response Trustee shall not unduly prolong the duration of the Environmental Response Trust past the time reasonably necessary to fulfill the purposes of the Environmental Response Trust, and shall at all times endeavor to resolve, settle, or otherwise satisfy all claims of or against the Beneficiaries, and to effect the distribution of Environmental Response Trust Assets and Environmental Response Trust Proceeds and other receipts relating thereto in accordance with the terms hereof, and to terminate the Environmental Response Trust as soon as practicable consistent with this Agreement and Article VIII of the Plan, but in no event prior to the completion of corrective action or other work required under the RCRA Permit and RCRA Post-Closure Permit and the disbursement of monies as provided in section IX of the Consent Decree and upon final transfer of all Environmental Response Trust Assets.

#### 2.15 Property Disposition.

2.15.1 The Environmental Response Trustee may, at any time, seek approval, pursuant to section 7.13 of this Agreement, for the sale, lease, reuse or other disposition of all or part of the Remaining Assets, provided that such sale, lease, reuse or other disposition does not interfere with any work or remediation required by RCRA, the RCRA Permit, or the RCRA Post-Closure Permit and is otherwise in accordance with any applicable requirements of Environmental Law. Subject to such approval, the Environmental Response Trustee may propose a sale, lease, or disposition of the Remaining Assets that includes funding from, or the retention of some portion of liability by, the respective Environmental Response Trust Remediation Cost Account and/or the Environmental Response Trust Administrative Account, provided that the net effect of any proposed sale, lease or disposition is to lessen the total financial obligations and liabilities as would otherwise be incurred in the absence of any such sale, lease, or disposition and/or to facilitate the re-use of the Remaining Assets pursuant to a

brownfield or similar program (provided that such reuse does not interfere with any work or remediation required by RCRA, the RCRA Permit, or the RCRA Post-Closure Permit and is consistent with any other requirements of Environmental Law). In the event of any approved sale or lease or other disposition under this section 2.15.1, any net proceeds from the sale or lease or other disposition shall be paid to the Environmental Response Trust Remediation Cost Account to fund the Environmental Remediation/Compliance Program.

2.15.2 The Parties agree that, to the maximum extent permitted by applicable law, no RAP shall apply to the Environmental Response Trust. To the extent that any RAP applies to the Environmental Response Trust, the Environmental Response Trust shall automatically terminate upon the expiration of the applicable Perpetuities Period; provided, that to the extent any RAP applies differently to different kinds of property held in trust, the Perpetuities Period shall be determined separately for each such kind of property. If the Environmental Response Trust is terminated in whole or in part pursuant to this Subsection, title to the relevant Property or Properties as to which the Environmental Response Trust is terminated shall be transferred outright and free of trust as approved in accordance with section 7.13 of this Agreement, provided, however, that the disposition of all relevant Property or Properties shall be governed by applicable Law, or by agreement of the Environmental Response Trustee, the EPA, and the GVI, or by Order of the Bankruptcy Court, and further provided that neither the EPA nor the GVI will be required to accept an ownership interest in the relevant Environmental Response Trust Asset or Environmental Response Trust Assets as to which the Environmental Response Trust is terminated.

### ARTICLE III WORK AND DISTRIBUTIONS

#### 3.1 Environmental Response Trust Accounts.

The Environmental Response Trustee shall establish, maintain and hold the Environmental Response Trust Accounts consistent with the Article VIII of Plan and section 2.2 of this Agreement, to administer the Environmental Response Trust Assets and distributions therefrom. The Environmental Response Trustee shall also maintain a dedicated Environmental Response Trust Administrative Account for administrative funds, which shall be used solely to pay the Administrative Costs as set forth herein.

#### 3.2 Payments by the Environmental Response Trust.

The Environmental Response Trust shall aim to minimize administrative expenses in order to preserve funding for Remediation/Compliance Costs. Within sixty (60) days following the Environmental Response Trust Effective Date in the first year and thereafter by or before January 1 of each calendar year, the Environmental Response Trustee shall provide the EPA and the DPNR with balance statements and proposed budgets and descriptions of the activities to be performed as described in sections 3.2.1 and 3.2.2 of this Agreement. The Environmental Response Trustee shall not exceed any approved budget amount by more than ten percent without obtaining approval in accordance with section 7.13 of this Agreement. Notwithstanding

the foregoing, nothing contained in this section 3.2 shall preclude the Environmental Response Trust from approving the disbursement of funds from the TSEP Account to the GVI for Territorial Supplemental Environmental Projects approved in accordance with the Consent Decree.

3.2.1 Administrative Expenses of the Environmental Response Trust.

Within sixty (60) days following the Environmental Response Trust Effective Date in the first year and thereafter by January 1 of each year, the Environmental Response Trustee shall provide the EPA and the DPNR with an itemized budget and a description of the activities to be performed for the following annual period for anticipated Administrative Costs of the Environmental Response Trust, which shall be approved in accordance with the provisions of section 7.13 of this Agreement. If disapproved, such budget and/or description of activities shall be revised and resubmitted as expeditiously as possible. Such annual budget shall include a future year forecast of administrative expenditures, with annual details for at least the next three years (or such longer period as reasonably requested).

3.2.2 Environmental Costs of the Environmental Response Trust.

The Environmental Response Trustee shall prepare balance statements and annual budgets and descriptions of the activities to be performed for projected expenditures from the Environmental Response Trust Remediation Cost Account. The first budget for the remainder of the current calendar year and the next calendar year shall be submitted within sixty (60) days following the Environmental Response Trust Effective Date and annual budgets and activity descriptions shall be submitted thereafter on or before each January 1 during the term of the Environmental Response Trust. The proposed budget and activity descriptions shall be approved in accordance with section 7.13 of this Agreement. If disapproved, a budget and/or activity description shall be revised and resubmitted as expeditiously as possible. No expenses may be incurred or paid by the Environmental Response Trustee that are inconsistent with an approved budget or which exceed any budgeted item by more than ten percent, unless there is an emergency requiring immediate action; provided, however, that the Environmental Response Trustee may incur or pay ongoing or recurring expenses approved in the prior year's budget that occur between the time a proposed annual budget is submitted and the time it is approved. Further, by January 1 of each year during the term of the Environmental Response Trust and within nine (9) months after termination of the Environmental Response Trust, the Environmental Response Trustee shall prepare and submit to the Beneficiaries an annual report with respect to the Environmental Response Trust Remediation Cost Account and its annual budget and description of activities. The annual report shall pertain to the prior calendar year, or if the report is a final report, the period from the end of the period covered by the most recent annual report to the termination of the Environmental Response Trust Remediation Cost Account.

The Environmental Response Trust shall regularly, but not less often than annually, and otherwise upon the reasonable request of any Beneficiary, provide documentation to the Beneficiary to substantiate compliance with the applicable



approved budgets and application of Environmental Response Trust Assets consistently with the terms of this Agreement and Article VIII of the Plan.

### 3.3 Reports.

The Environmental Response Trustee shall prepare and file with EPA and the GVI all reports it is required to file, including, without limitation, all reports, if any, it is required to file under the RCRA Permit, the RCRA Post Closure Permit, sections IX.A and IX.B of the Consent Decree, and any other permits or orders.

### 3.4 Manner of Payment.

Cash payments made by the Environmental Response Trust pursuant to Article VIII of the Plan and this Agreement shall be in United States dollars by checks drawn on a domestic bank, selected by the Environmental Response Trustee, whose deposits are federally insured, or by wire transfer from such a domestic bank, at the option of the Environmental Response Trustee.

## ARTICLE IV THE ENVIRONMENTAL RESPONSE TRUSTEE

### 4.1 Appointment.

Project Navigator, Ltd. serves, not individually but solely in its representative capacity, as the Environmental Response Trustee to administer the Environmental Response Trust and the Environmental Response Trust Accounts, in accordance with Article VIII of the Plan and this Agreement, and the Environmental Response Trustee hereby accepts such appointment and agrees to serve in such representative capacity, effective upon the Environmental Response Trust Effective Date. If the Environmental Response Trustee is removed and a successor Environmental Response Trustee is not appointed by the expiration of the earlier of the Environmental Response Trustee's term, as set forth in section 4.16, or within 30 days, the Court may reappoint the Environmental Response Trustee or appoint a successor Environmental Response Trustee.

### 4.2 Generally.

The Environmental Response Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the Environmental Response Trust and consistent with Article VIII of the Plan, and not otherwise. The Environmental Response Trustee shall have the authority to bind the Environmental Response Trust, and any successor Environmental Response Trustee, or successor or assign of the Environmental Response Trust, but shall for all purposes hereunder be acting in its representative capacity as Environmental Response Trustee and not individually. Notwithstanding anything to the contrary contained herein, the Environmental Response Trustee shall not be required to take action or omit to take any action if, after the advice of counsel, the Environmental Response Trustee believes in good faith such action or omission is not consistent with the Environmental Response Trustee's fiduciary duties. The Environmental Response Trustee shall have no obligations to

perform any activities for which the Environmental Response Trust Remediation Cost Account lacks sufficient funds.

#### 4.3 Powers.

In connection with the administration of the Environmental Response Trust, except as otherwise set forth in this Agreement or Article VIII of the Plan, the Environmental Response Trustee is authorized to perform any and all acts necessary to accomplish the purposes of the Environmental Response Trust. The powers of the Environmental Response Trustee shall, without any further Court approval or order, include, without limitation, each of the following: (i) to receive, manage, invest, supervise and protect the Environmental Response Trust Assets, withdraw, make distributions and pay taxes and other obligations owed by the Environmental Response Trust or the Environmental Response Trust Accounts from funds held by the Environmental Response Trustee and/or the Environmental Response Trust (or the Environmental Response Trust Accounts) in accordance with Article VIII of the Plan and this Agreement, and withhold and pay to the appropriate taxing authority any withholding taxes on distributions from the Environmental Response Trust; (ii) to engage employees and professional Persons to assist the Environmental Response Trust and/or the Environmental Response Trustee with respect to the responsibilities described herein; (iii) to make distributions of the Environmental Response Trust Assets from the Environmental Response Trust Accounts for the purposes contemplated in this Agreement and in Article VIII of the Plan; and (iv) to effect all actions and execute all agreements, instruments and other documents necessary to implement this Agreement, including to exercise such other powers as may be vested in or assumed by the Environmental Response Trust and/or the Environmental Response Trustee pursuant to this Agreement and any order of a Court or as may be necessary and proper to carry out the provisions of this Agreement and Article VIII of the Plan. No Person dealing with the Environmental Response Trust shall be obligated to inquire into the authority of the Environmental Response Trustee in connection with the protection, conservation or disposition of Environmental Response Trust Assets. The Environmental Response Trustee is authorized to execute and deliver all documents on behalf of the Environmental Response Trust to accomplish the purposes of this Agreement and Article VIII of the Plan.

#### 4.4 Management of Environmental Response Trust Assets.

4.4.1 The Environmental Response Trustee shall use the Environmental Response Trust Administrative Account to pay for pre-Environmental Response Trust Effective Date administrative costs associated with preparing to assume the Environmental Response Trust obligations and to enter into contract negotiations and legal fees to effectuate same, subject to a cap of \$125,000, and (b) the Environmental Response Trust Administrative Account or the Environmental Response Trust Remediation Cost Account, as appropriate, for post-Environmental Response Trust Effective Date costs and expenses associated with the Environmental Response Trust Assets and the Environmental Remediation/Compliance Program for the Facility, and associated costs and fees incurred by the Environmental Response Trust in accordance with Article VIII of the Plan, the Confirmation Order, and this Agreement. The Environmental Response Trustee shall use the Environmental Response Trust



Administrative Account to fund the Administrative Costs of the Environmental Response Trust in accordance with section 3.2.1 of this Agreement.

4.4.2 After the EPA and the GVI have confirmed to the Environmental Response Trustee that all final actions have been completed and all final Remediation/Compliance Costs have been disbursed from the Environmental Response Trust Remediation Cost Account or any Trust Subaccount thereof, and any liabilities of the Environmental Response Trust have been resolved and settled, any funds remaining in the Environmental Response Trust Remediation Cost Account or any Trust Subaccount thereof shall be transferred (a) first, to the Purchaser, solely to the extent the Purchaser previously provided such funds to the Environmental Response Trust; and (b) then to DPNR for use in connection with environmental remediation projects in the United States Virgin Islands.

#### 4.5 Administrative Cost Budget.

Annually, beginning with the first year after the Environmental Response Trust Effective Date, the Environmental Response Trustee shall provide the EPA and the GVI with an update of anticipated future Administrative Costs of the Environmental Response Trust. If there is an anticipated shortfall in the Environmental Response Trust Administrative Account based on anticipated future Administrative Costs of the Environmental Response Trust, funds from the Environmental Response Trust Remediation Cost Account may be transferred to the Environmental Response Trust Administrative Account, as approved pursuant to section 7.13 of this Agreement.

#### 4.6 Books and Records.

The Environmental Response Trustee shall maintain proper books, records, and accounts relating to all transactions pertaining to the Environmental Response Trust, and the assets and liabilities of the Environmental Response Trust in such detail and for such period of time as may be necessary to enable the Environmental Response Trustee to make full and proper accounting in respect thereof in accordance with Article VI below and to comply with applicable provisions of Law and good accounting practices. Except as otherwise provided herein or by the Plan, the Environmental Response Trustee shall not be required to file any accounting or seek approval of the Court with respect to the administration of the Environmental Response Trust, or as a condition for making any payment or distribution out of the Environmental Response Trust Assets or Environmental Response Trust Proceeds. Beneficiaries shall have the right upon fourteen (14) days' prior written notice delivered to the Environmental Response Trustee to inspect the Environmental Response Trust's books and records or to have copies of particular books and records sent to the Beneficiaries.

#### 4.7 Amendment of TSEP Escrow Agreement.

The Environmental Response Trustee shall amend the TSEP Escrow Agreement to have a five-year term, such term to be automatically renewed so long as money remains in the account pursuant to the terms of the Consent Decree.

#### 4.8 Other Professionals.

4.8.1 The Environmental Response Trustee shall have the authority to retain and pay such third parties as the Environmental Response Trustee, in accordance with budgets approved in accordance with section 7.13 of this Agreement, may deem necessary or appropriate to assist the Environmental Response Trustee in carrying out its powers and duties under this Agreement and the Plan, including, without limitation, (i) counsel to the Environmental Response Trustee and Environmental Response Trust, (ii) a public accounting firm to perform such reviews and/or audits of the financial books and records of the Environmental Response Trust as may be appropriate in the Environmental Response Trustee's sole discretion and to prepare and file any tax returns or informational returns for the Environmental Response Trust as may be required, and (iii) such environmental consultants as the Environmental Response Trustee may deem necessary. The Environmental Response Trustee will ensure that it complies with all applicable laws of the United States and the Virgin Islands. The Environmental Response Trustee may commit the Environmental Response Trust to pay all such persons compensation for services rendered and expenses incurred.

4.8.2 The Environmental Response Trustee shall retain Industrial Economics Consultants in Cambridge, Massachusetts to study the Facility's impacts on the Facility's marine environment at a cost not to exceed \$320,000. This study will be carried out in accordance with specifications approved in accordance with section 7.13 of this Agreement, and after consultation with the Environmental Response Trust to satisfy any of the Environmental Response Trustee's fiduciary responsibilities, in accordance with Article VIII of the Plan and this Agreement.

#### 4.9 Limitation of the Environmental Response Trustee's Authority.

The Environmental Response Trust and the Environmental Response Trustee shall not and are not authorized to (i) engage in any trade or business with respect to the Environmental Response Trust Assets or any proceeds therefrom except as and to the extent the same is deemed in good faith by the Environmental Response Trustee to be reasonably necessary or proper for the conservation or protection of the Environmental Response Trust Assets, or the fulfillment of the purposes of the Environmental Response Trust, and such trade or business is approved in accordance with the provisions of section 7.13 of this Agreement; (ii) take any actions that would cause the Environmental Response Trust to fail to qualify as a trust for federal income tax purposes; (iii) take any action that would cause Environmental Response Trust Assets to revest in Hovensa within the meaning of section 676 of the Internal Revenue Code; or (iv) bring cost recovery, contribution or other claims against the former owners of Hovensa under Environmental Laws, including, without limitation, the Comprehensive Environmental Response, Compensation and Recovery Act (42 U.S.C. §§ 9601 *et. seq.*).

#### 4.10 Reliance by the Environmental Response Trust Parties.

Except as may otherwise be provided herein: (a) the Environmental Response Trust Parties may rely on, and shall be protected from liability in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, Order, or other paper

or document believed by them to be genuine and to have been signed or presented by the proper party or parties; (b) the Environmental Response Trust Parties may consult with legal counsel, financial or accounting advisors and other professionals and shall not be personally liable for any action taken or not taken in accordance with the advice thereof, except in the case of fraud or willful misconduct by the Environmental Response Trust Party; and (c) persons dealing with the Environmental Response Trust Parties shall look only to the Environmental Response Trust Assets and/or Environmental Response Trust Proceeds to satisfy any liability incurred by the Environmental Response Trust Parties to such person in carrying out the terms of this Agreement or any Order of a Court, and the Environmental Response Trust Parties shall have no personal obligations to satisfy any such liability other than as provided in section 4.13.

#### 4.11 Compensation of the Environmental Response Trustee.

The Environmental Response Trust shall pay its own reasonable and necessary costs and expenses, and shall reimburse the Environmental Response Trustee for its actual, reasonable out-of-pocket fees and expenses to the extent incurred by the Environmental Response Trustee in connection with the Environmental Response Trustee's duties hereunder, including, without limitation, necessary travel, lodging, office rent (to be paid directly by the Environmental Response Trust), postage, photocopying, telephone and facsimile charges upon receipt of periodic billings, all in accordance with the approved annual budget or fee schedule. Documentation of costs incurred prior to the Environmental Response Trust Effective Date, which are subject to the cap set forth in section 4.4.1 of this Agreement, shall also be provided. The Environmental Response Trustee, and employees of the Environmental Response Trust and the Environmental Response Trustee, who perform services for the Environmental Response Trust shall be entitled to receive reasonable compensation for services rendered on behalf of the Environmental Response Trust in accordance with the approved annual budget or fee schedule.

The Environmental Response Trust Assets and Environmental Response Trust Proceeds shall be subject to the claims of the Environmental Response Trustee, and the Environmental Response Trustee shall be entitled to reimburse itself out of any available cash in the Environmental Response Trust Administrative Account, and the Environmental Response Trust shall be obligated to pay, for actual out-of-pocket expenses and for actual hours worked, in accordance with the approved budget.

All compensation and other amounts payable to the Environmental Response Trustee shall be paid from the Environmental Response Trust Assets and/or Environmental Response Trust Proceeds, in accordance with the approved budget.

#### 4.12 Personal Liability.

4.12.1 In no event shall any of the Environmental Response Trust Parties or Beneficiaries be held liable to any third parties for any liability, action, or inaction of any other party, including the Settlor or any other Environmental Response Trust Party. Nor shall the Beneficiaries be held liable to any of the Environmental Response Trust Parties for any liability, action, or inaction of any other party, including the Settlor or any other Environmental Response Trust Party.

4.12.2 The Environmental Response Trustee shall make every effort to implement the Environmental Remediation/Compliance Program within the funds provided and with a goal of ensuring that the funds are used to ensure their greatest impact and effect.

4.12.3 None of the United States, the GVI, nor the Settlor shall be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer or director of the Environmental Response Trust or the Environmental Response Trust Parties, or to be an owner or operator of the Facility on account of this Agreement or actions contemplated thereby; provided, however, that nothing in this Agreement shall affect the liability, if any, of any person, other than the Environmental Response Trust Parties, based on the actual ownership of property at the Facility.

4.12.4 Nothing in this Agreement shall be deemed to limit the authority of the EPA or the DPNR to take response action under section 104 of the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9604, or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the EPA or the DPNR pursuant to that authority. Nothing in this Agreement shall be deemed to limit the information-gathering authority of the EPA or the DPNR under sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, section 3007 of RCRA, 42 U.S.C. § 6927, or any other applicable federal or state Law or regulation, or to excuse the Environmental Response Trust from any disclosure or notification requirements imposed by CERCLA, RCRA, or any other applicable federal or territorial Law or regulation.

4.12.5 No provision of this Agreement or the Plan shall require the Environmental Response Trustee to expend or risk its own personal funds or otherwise incur any personal financial liability based on the ownership of the Environmental Response Trust Assets or Environmental Response Trust Proceeds or the performance or non-performance of any of its duties or the exercise of any of its authorities as Environmental Response Trustee hereunder. Notwithstanding the foregoing, the Environmental Response Trustee shall satisfy from its own funds any liability imposed by a final order of the Court, not reversed on appeal, on account of the Environmental Response Trustee’s fraud or willful misconduct with relation to the performance or non-performance of any of its duties or the exercise of any of its authorities as Environmental Response Trustee hereunder.

#### 4.13 Exculpation and Indemnification.

The Environmental Response Trust Parties shall be and hereby are exculpated by all Persons and entities, including, without limitation, holders of claims and other parties in interest, of and from any and all claims, causes of action and other assertions of liability arising out of the ownership of the Environmental Response Trust Assets or the Environmental Response Trust Proceeds and the discharge of the powers and duties conferred upon the Environmental Response Trustee and the Environmental Response Trust by the Plan, this Agreement, or any order of the Court entered pursuant to or in furtherance of the Plan or this Agreement, or applicable Law or otherwise, other than actions or omissions to act to the extent determined by a final Order of a

Court to be due to their own respective willful misconduct or fraud. No holder of a claim or other party in interest will have or be permitted to pursue any claim or cause of action against any Environmental Response Trust Party for making payments in accordance with the Plan, this Agreement, or any Order of a Court, or for implementing the provisions of the Plan, this Agreement, or any Order of a Court (other than on account of actions or omissions to act by the Environmental Response Trust Party to the extent determined by a final Order of a Court to be due to willful misconduct or fraud). The Environmental Response Trust shall indemnify, defend and hold harmless (without the Environmental Response Trust Parties having to first pay from their own funds) the Environmental Response Trust Parties from and against any and all claims, causes of action, liabilities, obligations, losses, costs, judgments, damages or expenses (including attorneys' fees) (other than on account of actions or omissions to act to the extent determined by a final Order of a Court to be due to their own respective willful misconduct or fraud) to the fullest extent permitted by applicable Law, provided that such indemnification shall be limited to funds in the Environmental Response Trust Accounts. It shall be an irrebuttable presumption that any action taken or omitted to be taken with the approval of the Court shall not constitute willful misconduct or fraud.

The United States and the GVI enter into this agreement in their sovereign capacities, pursuant to their authority to enforce Environmental Laws. Nothing in this Agreement shall be interpreted as a waiver of their sovereign immunity, and the Governmental Units hereby assert their sovereign immunity to the fullest extent permitted by Law.

#### 4.14 Covenant Not to Sue.

The United States, on behalf of EPA, and the GVI, on behalf of DPNR, subject to the terms of this section 4.14, covenant not to sue or assert any civil claims or causes of action or to take administrative action against the Environmental Response Trust Parties, pursuant to sections 3008(a) or 7003 of RCRA, 42 U.S.C. §§ 6928(a) or 6973, and sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, or related Virgin Islands territorial law provisions, for corrective actions, permit obligations, response actions or response costs related to the Facility.

The Parties agree and, by approving this Agreement, the Bankruptcy Court finds that this Agreement constitutes a judicially approved settlement pursuant to which the Environmental Response Trust Parties have resolved liability to the United States and the GVI within the meaning of section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and are entitled, as of the date of this Agreement, to protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken, and all response costs incurred or to be incurred, at or in connection with the Facility by the United States, GVI, or any potentially responsible parties.

The covenants set forth in this section 4.14 do not pertain to any matters other than those expressly specified therein and do not extend to any persons other than those specified therein. Notwithstanding the above, the covenants not to sue do not apply for purposes of seeking insurance coverage for environmental liabilities. The United States

and the GVI expressly reserve, and this Agreement is without prejudice to, all rights against the Environmental Response Trust Parties, with respect to all matters other than those set forth in the Covenants. Except as otherwise provided herein and resolved, the Parties expressly reserve all other claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which they may have against all other persons, firms, corporations, or entities for any matter arising at or relating in any manner to the Facility. Further, nothing in this Agreement diminishes the right of the United States, pursuant to section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to enter into any settlement that gives rise to contribution protection for any person not a party to this Agreement.

The United States and GVI also specifically reserve, and this Agreement, including, without limitation, sections 4.12, 4.13 and 4.14, is without prejudice to: (a) any action asserting any criminal liability, (b) any action based on fraud or willful misconduct, and (c) any action to enforce their rights under this Agreement or any portion thereof including, without limitation, the Environmental Response Trust's assumption of responsibility for the Environmental Remediation/Compliance Program and all associated obligations and of the obligations of section 2.11 of this Agreement. Notwithstanding any other provision of this Agreement, the United States reserves the right to bring, and shall not be precluded from bringing, an action against the Environmental Response Trust, pursuant to sections 3008(a) or 7003 of RCRA, 42 U.S.C. §§ 6928(a) or 6973, or sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, for corrective actions, permit obligations, response costs or response actions related to the Facility including, without limitation, an action asserting that the Environmental Response Trust must be substituted for Settlor as a permittee under the RCRA Permit or the RCRA Post-Closure Permit and must comply with the obligations of such permits, or an action asserting that the Environmental Response Trust is a successor to Settlor under the RCRA AOC and must comply with the obligations applicable to Settlor under such Order; provided, however, that any such action shall not require the Environmental Response Trust to incur costs in excess of the assets of the Environmental Response Trust including, without limitation, the Environmental Response Trust Assets, the Environmental Response Trust Proceeds, any sums earned by the Environmental Response Trust in connection with such assets, and any right to recovery under any insurance policy. For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement, nothing herein provides any release, settlement, covenant not to sue or assert claims or causes of action or administrative action, or any waiver or diminution of any nature of the rights of the United States, on behalf of EPA, or of the GVI, on behalf of DPNR, to sue or otherwise take action against the Environmental Response Trust Parties for amounts covered by any insurance at any time maintained by or at any time insuring, in whole or in part, any of the Environmental Response Trust Parties or which is required by this Agreement or any other agreement or contract to be maintained or procured by or for the benefit of any of the Environmental Response Trust Parties.

The Environmental Response Trust covenants not to sue and agrees not to assert or pursue any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States or the GVI, including any



department, agency or instrumentality of the GVI, with respect to the Facility or any matters addressed in this Agreement including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim under sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, or section 7002(a) of RCRA, 42 U.S.C. § 6972(a); (iii) any claims arising out of response activities. Nothing in this Agreement shall be deemed to constitute preauthorization of a claim within the meaning of section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d). All insurance policies maintained at any time by, or insuring, the Environmental Response Trust shall waive any and all rights of subrogation against the GVI, including any department, agency, or instrumentality of the GVI.

Notwithstanding any other provision of this Agreement, the Environmental Response Trust reserves, and this Agreement is without prejudice to, claims against the United States and GVI in the event any claim is asserted by the United States or the GVI against the Environmental Response Trust pursuant to any of the reservations set forth above, other than for failure to meet a requirement of this Agreement, but only to the extent that the Environmental Response Trust's claim arises from the same claim or cause of action that the United States or GVI is seeking pursuant to the applicable reservation.

The United States' covenant not to sue under this Paragraph shall be subject to a period of public comment following publication of notice in the *Federal Register*. After the conclusion of the public comment period, if the United States timely received any public comments, the United States will file with the Bankruptcy Court any comments received, as well as the United States' responses to the comments, and, if appropriate, the United States will request approval of the covenant not to sue effective retroactively to the Environmental Response Trust Effective Date. The United States reserves the right to withdraw or withhold its consent to the covenant not to sue if the comments regarding the covenant not to sue disclose facts or considerations which indicate that the covenant not to sue is not in the public interest. If no public comments are timely received by the United States, the United States shall file a Notice with the Bankruptcy Court so stating and the United States' covenant not to sue shall be effective retroactively to the Environmental Response Trust Effective Date.

#### 4.15 Termination, Replacement, and Removal of the Environmental Response Trustee.

##### 4.15.1 Termination.

The duties, responsibilities and powers of the Environmental Response Trustee will terminate on the date the Environmental Response Trust is dissolved under applicable Law in accordance with Article VIII of the Plan, or by an Order of a Court; provided that this section and sections 4.10, 4.12, 4.13 and 4.14 above shall survive such termination and dissolution. The Environmental Response Trustee may resign from its trusteeship generally and without cause giving not less than sixty days prior written notice thereof to the Bankruptcy Court, the EPA, and the GVI, provided that a successor trustee has been appointed as of the effective date of any such resignation.

Notwithstanding the foregoing, the Environmental Response Trustee is not required to take any action should there be insufficient funds in the relevant Environmental Trust Account to comply with any provision of this Agreement.

#### 4.15.2 Replacement.

The Environmental Response Trustee may be replaced upon completion of any five-year term by the joint direction of EPA and the GVI; provided, however, that this section and sections 4.10, 4.12, 4.13 and 4.14 above shall survive such replacement.

#### 4.15.3 Removal.

The Environmental Response Trustee may be removed by:

- (1) The entry of an Order by a Court finding that the Environmental Response Trustee committed fraud or willful misconduct after the Environmental Response Trust Effective Date in relation to the Environmental Response Trustee's duties under this Agreement; or
- (2) The entry of an Order by a Court finding that the Environmental Response Trustee (i) in any material respect, as a result of negligence, exacerbates hazardous conditions at the Facility, (ii) is seriously or repeatedly deficient or late in performance of the Environmental Remediation/Compliance Program or this Agreement, including providing budgets, workplans, or reports to the Beneficiaries as provided herein, or otherwise violates the provisions of the Plan, or (iii) has violated the provisions of this Agreement or other related implementation agreements.
- (3) The provisions of this section and sections 4.10, 4.12, 4.13 and 4.14 above shall survive the removal of the Environmental Response Trustee.

#### 4.16 Appointment of Successor Environmental Response Trustees.

Any successor Environmental Response Trustee shall be proposed by the EPA and the GVI and appointed by the Bankruptcy Court. Any successor Environmental Response Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the Environmental Response Trust records. Thereupon, such successor Environmental Response Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of its predecessor in the Environmental Response Trust with like effect as if originally named herein; provided, however, that a removed or resigning Environmental Response Trustee shall, nevertheless, when requested in writing by the successor Environmental Response Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Environmental Response Trustee under the Environmental Response Trust all the estates, properties, rights, powers, and trusts of such predecessor Environmental Response Trustee.



4.17 No Bond.

Notwithstanding any state or territorial Law to the contrary, except as otherwise ordered by the Bankruptcy Court, the Environmental Response Trustee, including any successor Environmental Response Trustee, shall be exempt from giving any bond or other security in any jurisdiction.

ARTICLE V  
BENEFICIARIES

5.1 Beneficiaries.

Beneficial interests in the Environmental Response Trust shall be held by each of the Beneficiaries.

5.2 Identification of Beneficiaries.

5.2.1 In order to determine the actual names and addresses of the authorized representatives of a Beneficiary, the Environmental Response Trust and the Environmental Response Trustee shall be entitled to rely conclusively on the name and address of the authorized representative for such Beneficiary listed below in section 5.2.2, who may from time to time provide additional or replacement names and addresses of authorized representatives, or listed in any written notice provided to the Environmental Response Trustee in the future by an authorized representative of such Beneficiary.

5.2.2 The Environmental Response Trustee shall send copies of all reports, budgets, annual balance statements, and other documents that the Environmental Response Trustee is required to submit to a Beneficiary under Article VIII of the Plan or this Agreement, and related implementation documents including any unilateral administrative orders, consent decrees, or administrative orders on consent to the following person(s), as applicable. Any such submission shall include a reference to the Bankruptcy Case, as well as the name of any other identifying information of any permits or agreements related to the submission:

As to the United States of America (on behalf of the EPA) as Beneficiary:

Authorized representative and party to receive all notices under 5.2.2:

Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611  
Ref: DOJ No. 90-5-2-1-08229/2

Chief, Special Projects Branch  
Emergency and Remedial Response Division  
EPA Region 2  
290 Broadway  
New York, NY 10007

Chief, Waste and Toxic Substances Branch  
Office of Regional Counsel  
EPA Region 2  
290 Broadway  
New York, NY 10007

As to the GVI as Beneficiary:

Authorized representative and party to receive all notices under 5.2.2:

Dawn L. Henry, Esq.  
45 Mars Hill  
Frederiksted, Virgin Islands 00840

Claude Walker, ESQ  
Attorney General  
Department of Justice  
Office of the Attorney General  
34-38 Kronprindsens Gade  
GERS Building, 2nd Floor  
St. Thomas, Virgin Islands 00802

5.3 Transfer of Beneficial Interests.

Beneficial interests in the Environmental Response Trust shall not be transferrable.

5.4 Distribution of Remaining Environmental Response Trust Funds.

After all Remediation/Compliance Costs have been paid or otherwise satisfied in full, and any liabilities have been resolved and settled in accordance with the terms of this Agreement and Article VIII of the Plan, any funds remaining with the Environmental Response Trust shall be transferred (a) first, to the Purchaser, solely to the extent the Purchaser previously provided such funds to the Environmental Response Trust; and (b) then to DPNR for use in connection with environmental remediation projects in the United States Virgin Islands..

ARTICLE VI  
REPORTING AND TAXES

6.1 Reports.

As soon as practicable after the end of each year, and as soon as practicable upon termination of the Environmental Response Trust, the Environmental Response Trustee shall submit to the Beneficiaries a written report, including: (a) financial statements of the Environmental Response Trust at the end of such calendar year and the receipts and disbursements of the Environmental Response Trust for such period; and (b) a description of any action to be taken by the Environmental Response Trust, and prior to such action being taken, in the performance of its duties which, as determined by outside counsel, accountants or other professional advisors, materially and adversely affects the Environmental Response Trust and of which notice has not previously been given to the Beneficiaries. The Environmental Response Trust shall promptly submit additional reports to the Beneficiaries whenever, as determined by outside counsel, accountants or other professional advisors, an adverse material event or change occurs which affects either the Environmental Response Trust or the rights of the Persons receiving distributions (including, without limitation, the Beneficiaries) hereunder. The Environmental Response Trust shall also provide the reports or information required by section 3.2 of this Agreement.

The Environmental Response Trustee shall respond to reasonable requests for information made by any of the former owners of Hovensa with respect to financial statements, receipts and disbursements, and actions taken by the Environmental Response Trust in the performance of its activities.

6.2 Other.

The Environmental Response Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Environmental Response Trust, that are required by any applicable Governmental Unit.

6.3 Reports in Support of Insurance Claims.

The Environmental Response Trust shall also file (or cause to be filed) reports and cost analyses in support of claims against insurance carriers at the request of the EPA and the GVI and shall provide the EPA and the GVI in a timely manner a copy of any such reports and cost analyses.

6.4 Taxes.

The Environmental Response Trustee shall be responsible for filing all federal, state, local and non-U.S. tax returns and paying taxes for the Environmental Response Trust. The Environmental Response Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or non-U.S. taxing authority, and all distributions made by the Environmental Response Trust shall be subject to any such withholding and reporting requirements. Amounts properly withheld from distributions to recipient beneficiaries and paid over to any Governmental Unit will be treated as amounts distributed to the recipient beneficiary.

The Environmental Response Trust shall be treated as a “non-grantor trust” for federal income tax purposes with the Beneficiaries treated as beneficiaries of the trust. Accordingly, for federal income tax purposes, it is intended that the Environmental Response Trust be treated as a taxable entity, on whose behalf the Environmental Response Trustee will file tax returns and pay taxes. The Parties agree that, unless otherwise required by appropriate tax authorities, the Environmental Response Trust shall file or cause to be filed tax returns, reports and other forms as required by applicable Law and consistent with the characterization of the Environmental Response Trust as provided in the preceding sentence. The Environmental Response Trustee shall pay any taxes shown as due on any return out of the Environmental Response Trust Assets (or the income or proceeds thereof).

The Environmental Response Trust may request an expedited determination of taxes of the Environmental Response Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Environmental Response Trust for all taxable periods through the dissolution of the Environmental Response Trust.

## ARTICLE VII MISCELLANEOUS PROVISIONS

### 7.1 Amendments and Waivers.

Any provision of this Agreement may be amended or waived by mutual written consent of the Environmental Response Trustee, the EPA, and the GVI; provided, however, that no change shall be made to this Agreement that would alter the provisions of section 6.4 hereof or adversely affect the federal income tax status of the Environmental Response Trust as a trust (in accordance with section 6.4 hereof), or, unless agreed to in writing by the affected Environmental Response Trustee, the rights of the Environmental Response Trustee. Technical amendments to this Agreement may be made as necessary, to clarify this Agreement or enable the Environmental Response Trustee to effectuate the terms of this Agreement, in a manner consistent with Article VIII of the Plan with the mutual consent of the Environmental Response Trustee, the EPA, and the GVI.

### 7.2 Cooperation.

The Environmental Response Trust and Environmental Response Trustee shall take such actions and execute such documents as are reasonably requested by the Settlor with respect to effectuating the Plan and the transactions contemplated thereby, provided that such actions are not inconsistent with this Agreement or the Plan. To the extent that the Settlor requests the Environmental Response Trust and/or the Environmental Response Trustee to take such an action, the Environmental Response Trust and Environmental Response Trustee shall do so at the sole expense of the Settlor but only if such action is not inconsistent with this Agreement or the Plan.

### 7.3 Situs of the Environmental Response Trust.

The situs of the Environmental Response Trust established herein is the United States Virgin Islands and, except to the extent the Bankruptcy Code or other federal law is applicable, the rights, duties, and obligations arising under this Agreement shall be governed by, and

construed and enforced in accordance with, the laws of the Virgin Islands, without giving effect to the principles of conflict of law thereof.

#### 7.4 Severability.

If any provision of this Agreement or application thereof to any Person or circumstance shall be finally determined by the Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by Law.

#### 7.5 Sufficient Notice.

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the Person for whom such notice is intended, to the name and address set forth in the case of a Beneficiary in section 5.2 of this Agreement or such other address provided in writing to the Environmental Response Trust by an authorized representative of the respective Beneficiary.

#### 7.6 Headings.

The section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or any term or provision hereof.

#### 7.7 Actions Taken on Other Than Business Day.

If any payment or act under the Plan or this Agreement is required to be made or performed on a date that is not a business day, then the making of such payment or the performance of such act may be completed on the next succeeding business day, but shall be deemed to have been completed as of the required date. For the purposes of this agreement, a business day shall be any of the days Monday through Friday excluding national holidays.

#### 7.8 Consistency of Agreements and Construction.

To the extent reasonably possible, the provisions of this Agreement shall be interpreted in a manner consistent with the Plan. Where the provisions of this Agreement are irreconcilable with the provisions of the Plan, the provisions of the Plan shall prevail, with the exception of Article IV in its entirety, in which case this Agreement controls.

#### 7.9 Compliance with Laws.

Any and all distributions of Environmental Response Trust Assets and/or Environmental Response Trust Proceeds shall be in compliance with applicable Laws, including, but not limited to, applicable federal, state, and territorial securities Laws.

7.10 Preservation of Privilege.

In connection with the Environmental Response Trust Assets, any attorney-client privilege, work-product privilege, joint interest privilege or other privilege or immunity attaching to any documents or communications (in any form, including, without limitation, written, electronic or oral) of the Settlor shall be transferred and shall vest in the Environmental Response Trust. The Environmental Response Trust's receipt of such privileges associated with the Environmental Response Trust Assets shall not operate as a waiver of other privileges possessed or retained by the Settlor.

7.11 No Recourse to Beneficiaries.

In no event shall the Beneficiaries have any responsibility for paying any expenses, fees, and other obligations of the Environmental Response Trust, even after any funding therein is depleted, and in no event shall the Environmental Response Trust or the Environmental Response Trustee, or any of their agents, representatives, or professionals, have recourse to the Beneficiaries therefor. None of the Beneficiaries shall be deemed an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Environmental Response Trust or the Environmental Response Trust Parties, or to be an owner or operator of the Facility, solely on account of this Environmental Response Trust Agreement or the actions contemplated thereby.

7.12 Uniform Custodial Trust Act.

This Agreement shall not be subject to any provision of the Uniform Custodial Trust Act as adopted by any state, now or in the future.

7.13 Process for Approvals by Beneficiaries.

Certain provisions of this Agreement require that certain matters be approved in accordance with this section 7.13 of the Agreement. This section 7.13 sets forth the process to be followed with respect to such approvals.

7.13.1 Matters Subject to EPA Approval. EPA shall act as the lead agency with respect to the following matters and shall have the right of final approval with respect to such matters after consultation with DPNR, the non-lead agency with respect to such matters, in accordance with section 7.13.3 of this Agreement: the approval, under section 3.2.2 of this Agreement, of budgets and descriptions of activities to be performed for the following expenditures from the Environmental Response Trust Remediation Cost Account: (i) expenditures related to the obligations of RCRA, the RCRA Permit, the RCRA Post-Closure Permit, and the RCRA AOC (as they may be modified or replaced with similar RCRA permits or Orders) including, without limitation, the obligations listed at lines 1-6 of the Wind Down Cost Estimate dated December 20, 2015, a copy of which is attached hereto ("Wind Down Cost Estimate"); (ii) any other groundwater remediation and/or monitoring activities (including maintaining hydraulic control at the perimeter of the Facility and any other appropriate locations) that are reasonably required to address the mobility and/or thickness of phase-separated hydrocarbons and/or elevated levels of dissolved-phase hydrocarbons and/or MTBE at

the Facility; (iii) expenditures related to the obligations listed at items 8 and 12-24 of the Wind Down Cost Estimate; (iv) expenditures related to the obligation under section IX.B of the Consent Decree to expend up to \$500,000 for VIWAPA Emissions Monitoring Assistance, which shall be made in compliance with the terms of the Consent Decree (as modified); and (v) expenditures related to PSD permit issues under the Clean Air Act.

7.13.2 Matters Subject to DPNR Approval. DPNR shall act as the lead agency with respect to the following matters and shall have the right of final approval with respect to such matters, after consultation with EPA, the non-lead agency with respect to such matters, in accordance with section 7.13.3 of this Agreement: the approval, under section 3.2.2 of this Agreement, of budgets and descriptions of activities to be performed for the following expenditures from the Environmental Response Trust Remediation Cost Account: (i) expenditures related to the obligations listed at items 7, 11 (to the extent not related to PSD permit issues) and 30 of the Wind Down Cost Estimate; (ii) expenditures related to the obligation of the Environmental Response Trust to spend up to \$320,000 for a study of the Facility's impacts on the Facility's marine environment, as set forth in section 4.8.2 of this Agreement; (iii) expenditures related to the obligation of the Environmental Response Trust to implement the Virgin Islands Territorial SEP under section IX.A of the Consent Decree (except that the approval of the expenditure of the funds in the TSEP Account shall be governed by the terms of the Consent Decree); (iv) expenditures related to compliance with the permit to generate and store hazardous waste (STX C-064), the Special Solid Waste Permit to Generate and/or Store/Treat/Dispose Used Oil (STX C-002), and the permit to use and operate UST Nos. 1 and 2 (Facility ID No. VI0000019), provided such expenditures are not inconsistent with RCRA or its regulations, the RCRA Permit, or the RCRA Post-Closure Permit; (v) expenditures related to the installation of solar panels or a wind farm at the Facility as long as (a) such project does not interfere with any work or remediation required by RCRA, the RCRA Permit or the RCRA Post-Closure Permit, and (b) it is reasonably expected that the net effect of such project will increase the financial resources of the Environmental Response Trust, and (vi) expenditures pursuant to a brownfield or similar program to encourage reuse or redevelopment of property (which could include the installation of solar panels or a wind farm) as long as (a) the project does not interfere with any work or remediation required by RCRA, the RCRA Permit or the RCRA Post-Closure Permit and (b) the expenditures of the Environmental Response Trust in connection with such project are not projected to exceed a \$ \$350,000 cap applicable to the lifetime of the Environmental Response Trust (if the project is expected to result in an exceedance of this \$350,000 lifetime cap, the project would be subject to joint approval under this section 7.13.5 of the Agreement).

7.13.3 Consultation Procedures. Matters subject to consultation under sections 7.13.1 and 7.13.2 of this Agreement shall proceed as follows. Before approving or disapproving of any matter, the lead agency shall provide the non-lead agency with notice of the determination. If, within 10 days, the non-lead agency indicates a disagreement with the proposed determination, the agencies shall endeavor to resolve the issue for a period of 10 days. If the agencies are unable to reach agreement within that 10-day period, the lead agency shall request that the Environmental Response Trustee work with the agencies, for a period of 10 days, to attempt to achieve agreement on the



issue between the agencies. If the agencies are unable to reach agreement within the 10-day period, the matter shall be elevated to the EPA Region 2 Division Director for the Division that oversees the environmental program at issue and to the DPNR employee designated by DPNR, who shall attempt to resolve the matter for an additional period of 10 days. If the Division Director and such designated DPNR employee are not able to reach an agreement within the 10-day period, the final determination of the lead agency concerning the matter shall be binding on the parties. The Beneficiaries may agree to alter the timeframes set forth above.

7.13.4 Matters Subject to Joint Approval of EPA and DPNR. The following matters shall be subject to the joint approval of EPA and DPNR. If there is a dispute over the appropriate way to resolve an issue for which joint approval is required, staff of both agencies will endeavor to resolve the dispute with any unresolved dispute being elevated to the DPNR employee designated by DPNR as well as to the EPA Region 2 Division Director that oversees the environmental program at issue. The Bankruptcy Court will retain jurisdiction if any disputes require resolution by the Court, provided, however, that any disputes concerning what obligations are imposed by RCRA or other Environmental Law on any person shall be resolved by the court or administrative tribunal with jurisdiction over such matters under non-bankruptcy law.

- (1) The approval of budgets for the Environmental Response Trust Remediation Cost Account for expenditures related to the obligations listed at line 25 of the Wind Down Cost Estimate;
- (2) approval of budgets for the Environmental Response Trust Remediation Cost Account for expenditures related to obligations of the Consent Decree (item 10 of the Wind Down Cost Estimate), except to the extent otherwise addressed above;
- (3) The approval of any other environmental expenditure proposed by the Environmental Response Trust, as set forth in section 1.1.20(i) of this Agreement.

7.13.5 Matters Subject to Joint Approval of the United States and the Virgin Islands. The following matters shall be subject to the joint approval of the United States and the Virgin Islands. If there is a dispute over the appropriate way to resolve an issue for which joint approval is required, staff of both parties will endeavor to resolve the dispute with any unresolved dispute being elevated to the individual at the Virgin Islands Department of Justice designated by the GVI and the Deputy section Chief of the Environmental Enforcement section of the Environment and Natural Resources Division of the United States Department of Justice. The Bankruptcy Court will retain jurisdiction if any disputes require resolution by the Court, provided, however, that any disputes concerning what obligations are imposed by RCRA or other Environmental Law on any person shall be resolved by the court or administrative tribunal with jurisdiction over such matters under non-bankruptcy law.

- (1) The approval of budgets for the Administrative Costs to be paid from the Environmental Response Trust Administrative Account including, without limitation, the obligations set forth at lines 9,26-29 and 31 of the Wind Down Cost Estimate;
- (2) The approval of the reallocation of funds between the Environmental Response Trust Remediation Cost Account and the Environmental Response Trust Administrative Account, pursuant to sections 2.9.1 and 4.5 of this Agreement;
- (3) The approval of additional investment options, or a further restriction of those options, for the Environmental Response Trust Assets and Environmental Response Trust Proceeds, or any income earned by the Environmental Response Trust, pursuant to section 2.9.5 of this Agreement;
- (4) the approval of the Environmental Response Trust engaging in any trade or business under section 2.3.1 of this Agreement;
- (5) The approval of any sale, lease or other disposition of all or part of the Remaining Assets under section 2.15.1 of this Agreement;
- (6) The approval of the transfer of property pursuant to section 2.15.2 of this Agreement; and
- (7) the approval of expenditures related to any other matter under this Agreement for which approval is required that are not specifically addressed above.


#### 7.14 Annual Beneficiary Progress Discussion.

At the annual meetings currently held between the Regional Administrator for Region 2 of EPA and the Commissioner of DPNR, the agenda will include the former HOVENSA refinery and the implementation of the Environmental Response Trust.


THE UNDERSIGNED PARTIES ENTER INTO THIS AGREEMENT

**FOR THE UNITED STATES OF AMERICA**

Date: 2/16/16

By:   
John C. Cruden  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

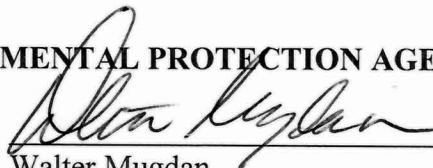
Date: 2/16/2016

By:   
Donald G. Frankel  
Myles Flint  
Senior Counsels  
Environmental Enforcement Section  
U.S. Department of Justice  
One Gateway Center  
Suite 616  
Newton, MA 02458

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Date: 2/12/16

By:

  
\_\_\_\_\_  
Walter Mugdan

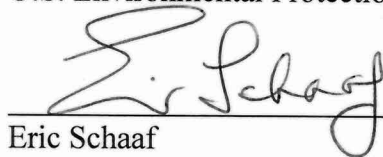
Director

Emergency and Remedial Response Division

U.S. Environmental Protection Agency – Region 2

Date: 2/11/16

By:

  
\_\_\_\_\_  
Eric Schaaf

Regional Counsel

U.S. Environmental Protection Agency – Region 2

**FOR THE UNITED STATES VIRGIN ISLANDS**

Date: 02/16/16

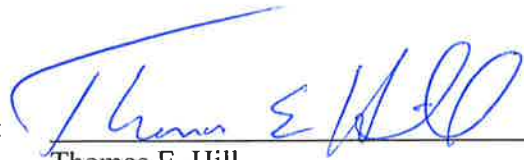
By:

Claude E. Walker  
Claude E. Walker  
Attorney General

**FOR HOVENSA L.L.C.**

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

By: \_\_\_\_\_



Thomas E. Hill  
Chief Restructuring Officer

**FOR THE ENVIRONMENTAL RESPONSE ENVIRONMENTAL RESPONSE TRUST,  
NOT INDIVIDUALLY BUT SOLELY IN THE REPRESENTATIVE CAPACITY AS  
TRUSTEE OF THE ENVIRONMENTAL RESPONSE ENVIRONMENTAL RESPONSE  
TRUST**

Date: 2/11/16

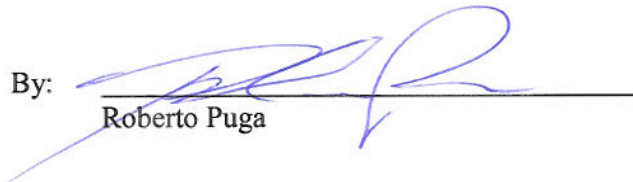
By:   
Roberto Puga



Table 1: Review of Wind Down Cost Estimate December 20, 2015

Line #	Environmental Program		Comments	Permit and or Regulatory Program Termination Requirements	Line #
1	RCRA	PRPP - OWS Testing & Repair	HOVENSA and buyer will share costs 24/76 years 1 and 2. HOVENSA move lines above ground.	Re-Route Recovery Wells / Full Facility Closure	1
2	RCRA	Scrap Metal / Recycle Yard Management	1) One-time Cost 2) Costs based on 2013 estimates received from VI Recycling & iTech for removal of tires/hoses 3) Assumed that scrap metal removal is a break-even cost	Renewed Permit will Require Removal of all Material in Recycle Yard (Scrap Metal, Tires, Equipment, etc.)	2
3	NESHAPS	Asbestos Landfill	1) On-going Costs 2) Consulting / Legal fees for deed notation 3) HOVENSA will close the Asbestos Landfill and retain liability to ensure integrity of cover, fencing and signage indefinitely.	Install a cover and file a notation on the deed to the facility property. (40 CFR Part 61 Subpart M)	3
4	RCRA	Corrective Action / Remediation / Hydrocarbon Recovery	1) On-going Costs 2) Includes \$34MM in Trust. 3) Includes \$17MM total estimate for treating recovered groundwater at an on-site WWTU (operated and permitted by new buyer). The Trust includes a portion of the \$17MM WWT estimate.	EPA approval of Clean-up Goals; Achieve Clean-Up Levels / Remove Control Requirements	4
	Line 4 Break Down	SWMUs and AOCs Specified in Financial Assurance Trust	1) Three new SWMUs in Part B Permit Application 2) Based on historical costs and calculations provided by GES and Jacobs Engineering 3) WWT plant right-sized in 2 years		Line 4 Break Down
		Remaining SWMUs Not Specified in Financial Assurance Trust			
		New SWMUs			
		Distribution System (Electrical / Compressed Air / OWS)			
		Permit, Legal, Survey and Other			
		Waste Water (Chemicals v Trust Adj)			
		All Other / Maint / Heavy Equipment / Etc.			
5	RCRA	Landfarm 1 Post-Closure	1) \$55,500 calculated financial assurance to complete Permit requirements for 30 years of post-monitoring. 2) Fencing/signage must be maintained indefinitely.	EPA Approval of Post-Closure Certification (2020) and EPA Release from Financial Assurance	5
6	RCRA	Landfarm 2 & 3 / RCRA Permit	1) 1994 closure cost estimates in Part B Permit adjusted each year for inflation as required for Financial Assurance requirements. 2) Includes 30-year post-closure period. 3) Includes 1 year operating expense at LF - estimated it will take 1 year to get final approval of LF closure plan.	Successful Landfarm Closure & 30-yr Post-Closure. EPA Approval of Post-Closure Certification and Release from Financial Assurance	6
7	CWA	TPDES	1) Consulting / Legal fees to work with Agencies to terminate/transfer permit.	No Wastewater Discharge and/or Stormwater Run-off	7
8	CWA	WWT (Primary & Secondary)	1) Primary & Secondary WWT must continue in some fashion for the treatment of recovered groundwater. 2) Costs for cleaning WWT tanks included in Line 1 "RCRA - Tank & Equipment Cleaning Project" 3) Veolia De-mob or Contract Modification Costs??	No Wastewater (including Recovered Groundwater) Generated. Option to Collect Wastewater & Send Off-Site to DPW Wastewater Treatment.	8
9	All	Data & Records Management & Retention	1) Records Management must continue as long as HOVENSA exists. 2) Costs for maintaining hard-copy records, records in LiveLink, and records in DAHS, etc.??	Historical Data & Records Must be Maintained and Available for Agency Inspections for the Minimum Retention Period defined in Permits and/or Regulations. Retention Times Vary and Range from 1 Year to Indefinite. Data & Records Must be Available even after Field Requirements (Program Operation) Ceases.	9
10	Air	Consent Decree	1) VI SEP & Additional WAPA Project included 2) All CD requirements for terminal/refinery assets post closure assumed by buyer	All Operations Ceased (excluding wastewater & remediation). Terminal-only operation without major air permits requires CD re-negotiation. Based on similar cases, EPA will likely maintain LDAR requirements under Terminal-only operation. Would have to succeed in re-negotiating to fully eliminate CD to eliminate the LDAR requirements in the CD.	10
11	Air	Air Permitting / Title V	1) Consulting / Legal fees to work with Agencies to terminate/transfer all air permits.	All Operations of Permitted Equipment Ceased.	11
12	Air	Tier II	1) Includes consulting fees to complete final reports due March 2016 & March 2017	Removal of Hazardous Chemicals (to below the reporting threshold). Reporting requirements extend into the following calendar year.	12
13	Air	TRI/EI	1) Includes consulting fees to complete final reports due July 2016 & July 2017	Removal of Hazardous Chemicals (to below the reporting threshold). Reporting requirements extend into the following calendar year.	13
14	Air	TSCA	1) Includes consulting fees to complete final reports. 2) Costs for hazardous chemical removal included in Line 8 "RCRA - Solid Waste & Universal Waste Management / Disposal"	Removal of Hazardous Chemicals (to below the reporting threshold). Reporting requirements are every 4 years (2016 is next due date).	14
15	Air	BWON	1) Consulting fees to complete final reports.	Below 10 Mg/year	15
16	Air	GHGs	1) Consulting fees to complete final reports.	Depends on Power Generation Unit Shutdown	16
17	Air	CEMs	1) Consulting fees to complete final reports/notifications.	All Operations Ceased (excluding wastewater & remediation)	17
18	Air	Boiler MACT		All Operations Ceased (excluding wastewater & remediation)	18
19	Air	LDAR		All Affected Units Shutdown	19
20	Air	Refinery MACTs		All Operations Ceased (excluding wastewater & remediation)	20
21	Air	Regional Haze		All Operations Ceased (excluding wastewater & remediation)	21
22	Air	SO2 non-attainment		Regulated Material No Longer Produced / Stored	22
23	Air	SOCMI-HON		All Tank Operations Ceased	23
24	Air	Tank Requirements		No Boilers Operating	24

Table 1: Review of Wind Down Cost Estimate December 20, 2015

Line #	Environmental Program		Comments	Permit and or Regulatory Program Termination Requirements	Line #
25	SDWA	Potable Water / SDWA	1) Consulting costs to complete final reports.	Eliminate Potable Water Production / Distribution	25
26	All	Utilities: Electric	1) First \$15 mm covered by buyer		26
27	All	Utilities: Compressed Air & Water	1) On-going costs 2) Compressed air required for recovery wells 3) Water required for deconning		27
28	All	Security	1) Site security		28
29	All	Business Operating Expenses (License, Insurance, Taxes, Accounting System, Legal Fees, Business Machines (desk top, printer, copier, fax, etc.), Telecommunications, Office Space, etc.)	1) Site access control required (SWMUs/AOCs being closed to industrial standards, i.e. a site with continued access control. More costly goals will have to be achieved if access control not maintained.)		29
30	All	PLL Insurance Premium			30
31	All	Fees for Trust and Trustee			31

Estimated Costs

\$	36,582,000	Amount in HOVENSA Trust as Required for RCRA Financial Assurance
\$	30,055,000	Other Costs Not In Trust
\$	66,637,000	Estimated HOVENSA Post Closing Costs