

Dated as of [●], 2014

ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

as

AUTHORITY

and

NORTHERN LIGHTS ENERGY, LLC

as

CONCESSIONAIRE

**NORTH SLOPE LNG
CONCESSION AGREEMENT**

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THIS NORTH SLOPE LNG CONCESSION AGREEMENT (this *Agreement*) is made and entered into as of this [●] day of [●], 2014 (the *Effective Date*) by and between the Alaska Industrial Development and Export Authority, a public corporation of the State of Alaska (the *Authority* or *AIDEA*) and Northern Lights Energy, LLC, a limited liability company organized and existing under the laws of Delaware (the *Concessionaire*).

RECITALS¹

WHEREAS, pursuant to, and under the terms and conditions contained in Section 11 of Chapter 26 of the 2013 Session Laws of Alaska (HCS CSSB 23) (*SB 23*), the Alaska Legislature has authorized the Authority to develop a natural gas liquefaction facility near Deadhorse, Alaska (as more specifically defined in Schedule A, the *Plant*), for which purpose the Authority desires to, and is duly authorized to, execute and deliver this Agreement, perform its obligations hereunder and enter into the Concession;

WHEREAS, the Plant will be located on property owned by the State of Alaska (the *State*) and managed by the Alaska Department of Natural Resources (*DNR*) (as such property is more specifically described in Schedule B-1, the *Plant Site*), which Plant Site is leased pursuant to the Site Lease Agreement by DNR to the Authority. The Concessionaire shall have exclusive possession and use of the Plant Site pursuant to the terms of this Agreement;

WHEREAS, as more fully set forth in this Agreement, the development and construction of the Plant will be funded by: (a) payments from the Authority to the Concessionaire in an amount not to exceed \$35,000,000 from funds appropriated by the Alaska Legislature for the Interior Energy Project (the *IEP*) pursuant to Section 26(b) of Chapter 16 of the 2013 Session Laws of Alaska (HCS CSSB 18 (FIN)) (*SB 18*) (such funds, the *AIDEA Appropriation Funds*), which AIDEA Appropriation Funds will be used for (i) procurement of Plant Site Improvements and certain engineering work as set forth in the AIDEA Early Works Agreement, (ii) to procure all or a portion of the Early Procurement Equipment hereunder and (iii) to the extent the AIDEA Appropriation Funds are not fully expended for the uses described in clauses (i) and (ii) above, for equipment procurement and construction costs incurred in accordance with the Approved Construction Budget; (b) payments from the Authority to the Concessionaire from the SETS Fund (as further defined in this Agreement, the *AIDEA SETS Funds*) on the terms and subject to the conditions set forth herein; (c) an investment by Northleaf Mid-Market Infrastructure Partnership LP (the *Investor*) through a combination of equity contributions by Investor or shareholder loans to the Concessionaire; and (d) to the extent the Investor does not fully fund its investment through an equity investment and shareholder loans, a loan or loans to the Concessionaire from Third Party Lenders;

WHEREAS, the Concessionaire will use the proceeds of the AIDEA SETS Funds, the AIDEA Appropriation Funds, the Investor Equity Contribution and the Third Party Loans (if any) to design, engineer, procure equipment and materials for, and construct the Plant and achieve Commercial Operation of the Plant, which shall have an initial nameplate capacity of six (6) Bcf per year (the *Initial Baseline Capacity*);

WHEREAS, the Concessionaire intends to enter into a separate LNG Sale and Purchase Agreement or LNG Tolling Services Agreement with each of Golden Valley Electric Association, Inc., Fairbanks Natural Gas, LLC and the Interior Alaska Natural Gas Utility, each of which agreements will provide for, in the case of LNG Sale and Purchase Agreements, the supply and sale of LNG, on a take or pay basis, and in the case of LNG Tolling Services Agreement, the provision of services for the liquefaction of natural gas supplied by the counterparty to such agreement, in an annual quantity and on such other terms

¹ A&O Note: This draft Concession Agreement contemplates that the concession is for the Northern Gas Supply Plant only. If storage and/or trucking are added to the scope of the Concessionaire's mandate, this Agreement will need to be revised accordingly.

and conditions as will be agreed by the Concessionaire and such Preferred LNG Purchaser. The Concessionaire may also enter into LNG Sale and Purchase Agreements or LNG Tolling Services Agreements with one or more additional LNG Purchasers;

WHEREAS, the Parties desire to make LNG available at the Plant for initial delivery in commercial quantities to utilities serving the Fairbanks North Star Borough (*FNSB*) and other Interior Alaska communities no later than September 30, 2016 (the *Target Initial LNG Delivery Date*);

[**WHEREAS**, as further provided herein, the Concessionaire will enter into a Gas Supply Agreement with Golden Valley Electric Association, Inc. that will provide for a supply of natural gas that is not less than the amount required to satisfy the Concessionaire's sale and delivery obligations under the LNG Sale and Purchase Agreements and LNG Tolling Services Agreements and be for a term that is contemporaneous with the Term of this Agreement;]²

WHEREAS, the Concessionaire intends to enter into an O&M Agreement with an Operator that will govern the operation and maintenance of the Plant;

WHEREAS, the Concessionaire desires to obtain a concession from the Authority to develop, construct, use, operate, manage and maintain the Plant, to provide the Plant Services in connection therewith and to receive the Revenues from the Project, all as hereinafter provided; and

WHEREAS, the Authority desires to grant to the Concessionaire the rights to develop, construct, use, operate, manage and maintain the Plant, to provide the Plant Services in connection therewith and to receive the Revenues from the Project, all as hereinafter provided.

NOW THEREFORE, for and in consideration of the premises, the mutual covenants, representations, warranties and agreements contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

Abandons means, other than in the event of an Unforeseen Event, that (a) during the Construction Phase, Concessionaire has substantially reduced, or has allowed its Contractors to substantially reduce, personnel at the Plant Site or has removed, or has allowed removal of, required equipment from the Plant Site such that it would not be possible to maintain progress sufficient to achieve Substantial Completion of the Plant by the Completion Deadline, and (b) during the Operations Phase, the Concessionaire does not operate the Plant for more than sixty (60) consecutive days or for ninety (90) days in total during any three hundred and sixty five (365) day period (but excluding any periods during which maintenance is being performed either under the Major Maintenance Plan or as otherwise required in accordance with Standard Industry Practice).

Actual Additional Equity Commitment has the meaning ascribed thereto in Section 12.2

² A&O Note: Structure of contractual relationship TBD based on discussions between MWH and GVEA.

Actual AIDEA Appropriation Funds Amount has the meaning ascribed thereto in Section 12.2(a).

Actual AIDEA SETS Funds Amount has the meaning ascribed thereto in Section 12.2(a).

Actual Investor Equity Contribution has the meaning ascribed thereto in Section 12.2(a).

Actual Investor Investment Commitment Amount has the meaning ascribed thereto in Section 12.2(a).

Actual Investor Residual Commitment has the meaning ascribed thereto in Section 12.2(a).

Additional Equity Commitment has the meaning ascribed thereto in Section 12.2(c)(ii).

Additional Equity Commitment Letter of Credit has the meaning ascribed thereto in Section 3.3(b)(v).

Additional Expansion Earnings has the meaning ascribed thereto in Section 9.2(d)(ii).

Additional Lands means any lands or other rights, title and interest in real property required for an Expansion, Modification or other capital improvement at the Plant.

Additional Project Costs has the meaning ascribed thereto in Section 2.4(c)(i)(A).

Adjusted for Standard Inflation means adjusted by the percentage increase, if any, in the Standard Adjustment Index during the applicable adjustment period, using as a base value the final value of the Standard Adjustment Index as reported for the month immediately prior to the month during which the Closing Date occurs.

Adverse Action has the meaning ascribed thereto in Section 17.1(a).

Adverse Action Disputes Notice has the meaning ascribed thereto in Section 17.1(c).

Adverse Action Notice has the meaning ascribed thereto in Section 17.1(c).

Adverse Action Preliminary Notice has the meaning ascribed thereto in Section 17.1(c).

Adverse Action Termination Damages has the meaning ascribed thereto in Section 20.4(d).

AEA means the Atomic Energy Act of 1954, 42 U.S.C. § 2011, et seq.

Affected Property means any public or private property, including a highway, street, road, roadway, railroad, rail or other transit way and any ancillary facilities related to any of the foregoing, under the jurisdiction and control of any Governmental Authority or any other Person (including any private road) that intersects, crosses over or under or is adjacent to the Plant or any part thereof, but excluding the Plant Site.

Affiliate when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with (which shall include, with respect to a managed fund or trust, the right to direct or cause the direction of the management and policies of such managed fund or trust as manager, advisor, supervisor, sponsor or trustee pursuant to relevant contractual arrangements) such specified Person, and a Person shall be deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a

trust, a contract or otherwise (for purposes of this definition, a managed fund or trust shall be deemed to be an Affiliate of the Person managing, supervising, sponsoring or advising such fund or trust and a limited partner in a managed fund or trust shall be deemed to be an Affiliate of such fund or trust and of the Person managing, supervising, sponsoring or advising such fund or trust); **provided** that (i) no Equity Participant shall be deemed an Affiliate of another Equity Participant solely by virtue of such Person being an Equity Participant, (ii) each Equity Participant shall be deemed to be an Affiliate of the Concessionaire and (iii) no portfolio company that is controlled by an Equity Participant or its respective Affiliates, but which does not control the Concessionaire, shall be deemed an Affiliate of the Concessionaire solely by virtue of such control.

Affiliate Contract means a Contract between the Concessionaire and an Affiliate of the Concessionaire.

Aggregate Annual Gas Quantity has the meaning ascribed thereto in Section 18.1(a)(i)(D).

Agreed Modification has the meaning ascribed thereto in Section 6.3(b).

Agreement has the meaning ascribed thereto in the preamble to this Agreement (including all schedules referred herein), as amended, modified or supplemented from time to time in accordance with the terms hereof.

AGS Determination has the meaning ascribed thereto in Section 18.1(b)(i).

AGS Expected Initial Delivery Date has the meaning ascribed thereto in Section 18.1(a)(ii).

AGS Notice has the meaning ascribed thereto in Section 18.1(b)(i)(B).

AGS Owner has the meaning ascribed thereto in Section 18.1(a)(i)(C).

AGS Termination Date has the meaning ascribed thereto in Section 18.1(b)(i)(B).

AGS Termination Damages has the meaning ascribed thereto in Section 20.4(c).

AIDEA Appropriation Funds has the meaning ascribed thereto in the Recitals.

AIDEA Deed of Trust means the Leasehold Deed of Trust to be entered into on the Closing Date by and among the Authority and an Institutional Lender selected by the Parties as trustee for the benefit of the Concessionaire.

AIDEA Disbursement Account means a segregated account established with a Depositary into which the AIDEA Funds shall be deposited on the Closing Date and thereafter disbursed to the Concessionaire in accordance with Section 12.5.

AIDEA Early Works Agreement has the meaning ascribed thereto in Section 2.2(a).

AIDEA Expansion Notice has the meaning ascribed thereto in Section 6.2(a).

AIDEA Funds has the meaning ascribed thereto in Section 12.3(a)(ii).

AIDEA Independent Engineer means HDR, Inc., a corporation organized under the laws of the State of Delaware.

AIDEA Indemnified Parties has the meaning ascribed thereto in Section 15.1(a).

AIDEA Material Adverse Effect means (a) at any time such term is applied on or before the Closing Date, an event or circumstance that (i) has caused or could reasonably be expected to cause the price of LNG produced by the Plant and made available for delivery FOB at the Plant to exceed the upper band of the Target FOB LNG Price Range by more than ten percent (10%), or (ii) causes or could reasonably be expected to cause Project Costs to exceed the Approved Construction Budget by more than ten percent (10%); and (b) at any time, an event or circumstance that (i) has had or could reasonably be expected to have a material adverse effect on the ability of the Concessionaire to repay the AIDEA SETS Funds in full by the end of the Term, or (ii) has had or could reasonably be expected to have a material adverse effect on the rights and remedies provided to the Authority hereunder as of the Effective Date.

AIDEA Operating Costs means [all payments that become due and payable by the Authority to the State under the Site Lease Agreement.]³

AIDEA Permits means each of the permits and approvals listed in Part 1 of Schedule C.

AIDEA Plant Expansion has the meaning ascribed thereto in Section 6.2(a).

AIDEA Plant Expansion Budget and Schedule has the meaning ascribed thereto in Section 6.2(a)(ii).

AIDEA Representative has the meaning ascribed thereto in Section 2.15.

AIDEA Representative Designee has the meaning ascribed thereto in Section 2.15.

AIDEA Security Agreement means the Security Agreement to be entered into on the Closing Date by the Authority for the benefit of the Concessionaire.

AIDEA SETS Funds has the meaning ascribed thereto in the Recitals.

Allocable Costs means, for services performed using Authority or Concessionaire personnel, materials and equipment, the sum of:

- (a) an amount equal to the reasonable fully burdened hourly rate (including overhead and fringe benefits) of each employee providing such services multiplied by the actual number of hours such employee performs such services; **plus**
- (b) the reasonable cost of all materials used, including sales taxes, freight and delivery charges and any allowable discounts; **plus**
- (c) reasonable and documented out-of-pocket costs and expenses of each employee (including travel, meals and lodging costs), subject to any limitations and requirements on such costs and expenses set forth in the Authority's travel guidelines; **plus**
- (d) the costs for the use, operating, maintenance, fuel, storage and other costs of all deployed tools (excluding small tools) and equipment.

Alternative Gas Supply Source has the meaning ascribed thereto in Section 18.1(a).

Annual Budget has the meaning ascribed thereto in Section 7.4.

³ A&O Note: To be confirmed.

Applicable Law means (i) any constitution, statute, law, regulation, ordinance, rule, judgment, order, decree, Permit, concession (other than the Concession), agreement, directive, guideline, policy, requirement or other governmental restriction or (ii) any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, in each such case having the effect or force of law, including Environmental Laws which are applicable to or affect the operation, construction, maintenance, ownership or use of the Plant or the Plant Site, including any of the foregoing pertaining to zoning or land use restrictions, environmental protection, pollution or sanitation, and any waiver, exemption, release, variance, order, Permit, authorization, right or license of, from, imposed or otherwise issued by a Governmental Authority.

Appraiser has the meaning ascribed thereto in Section 20.4(f)(v).

Appropriation Reserve Amount means a portion of the AIDEA Appropriation Funds to be reserved for cost overruns, as such amount shall be agreed by the Concessionaire and the Authority and committed by the Authority to fund Project Costs on or prior to Closing.

Approved Construction Budget has the meaning ascribed thereto in Section 2.4(b)(ii).

Arm's-Length Affiliate Contract means an Affiliate Contract entered into in the ordinary course of business and the terms of which are no less favorable to the Concessionaire than terms the Concessionaire could obtain in an arm's-length transaction for comparable services with a Person that is not an Affiliate of the Concessionaire.

Assigned Project Assets means those assets owned by the Authority in connection with the Project and listed on Schedule B-2, which will be assigned, transferred and conveyed to the Concessionaire at the Time of Closing.

Assumed Liabilities means the debts, liabilities and obligations described in Section 4.2.

Audit and similar expressions mean, with respect to any matter or thing relating to the Plant, the Plant Operations, the construction of the Plant or this Agreement, the performance by or on behalf of the Authority of such reviews, investigations, inspections and audits relating to such matter or thing as the Authority may determine, in its reasonable discretion, to be necessary in the circumstances, conducted in each case in accordance with generally accepted practices in the United States and the terms of this Agreement.

Authority or **AIDEA** has the meaning ascribed thereto in the preamble to this Agreement.

Authority-Caused Delay means (a) a delay or failure by the Authority in performing any of its material obligations pursuant to this Agreement (except to the extent such failure is attributable to a Force Majeure Event or a failure by the Concessionaire to perform any of its obligations under this Agreement) and such delay or failure materially interferes with the performance of the Work or Plant Operations or (b) the Authority takes any action not provided for under this Agreement and such action materially interferes with the performance of the Work or Plant Operations.

Authority Contracts means the AIDEA Early Works Agreement and the Services Agreement, and any agreements of the Authority entered into between the Effective Date and the Closing Date that relate to the development and construction of the Plant.

Authority Default has the meaning ascribed thereto in Section 20.2(a).

Authority NTP has the meaning ascribed thereto in Section 2.17(a).

Authority Required Modification has the meaning ascribed thereto in Section 6.4.

Bank Rate means the prime rate of interest announced publicly by *The Wall Street Journal* (or its successors) as the so called "prime rate" (the base rate on corporate loans posted by at least twenty-three (23) of the United States' thirty (30) largest banks).

Base Case Financial Model means the Initial Base Case Financial Model adjusted at Closing pursuant to Section 2.6.

Baseline Capacity means the Initial Baseline Capacity of the Plant, as adjusted following an Expansion.

Bcf means one (1) billion cubic feet.

BP means BP Exploration (Alaska) Inc., a corporation organized under the laws of the State of Delaware.

BP Gas Supply Agreement means the [Gas Supply Agreement] dated as of [●], 20[●] by and between GVEA and BP.

Breakage Costs means any prepayment penalties or premiums, make-whole premium payments, termination payments or other prepayment amounts (including debt premiums) that are required to be paid pursuant to any Third Party Loan Agreement as a result of the repayment of any Third Party Loan prior to its scheduled maturity date, including the costs of early termination of hedging arrangements related to interest rates on such Third Party Loans, excluding, however, any such amounts that are included in the principal amount of any Refinancing.

Business Day means: (i) (A) in relation to any notice or other communication or (B) for purposes of calculating a period of time during which an obligation is to be performed, any day other than a Saturday, Sunday, state holiday or day on which financial institutions in Anchorage, Alaska are authorized or are required to be closed; and (ii) in relation to any payment or funds transfer, a day on which commercial banks are not required or permitted to be closed in the place where the relevant payor, payor account, payee account, or payee is located.

CAA means the Clean Air Act, 42 U.S.C. § 7401, et seq.

CERCLA means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.

Change in Control means, with respect to any Person, whether accomplished through a single transaction or a series of related or unrelated transactions, either (i) a change in ownership so that fifty percent (50%) or more of the voting or economic interests in such Person is transferred to a Person or group of Persons acting in concert, (ii) the power to direct or cause the direction of management and policy of such Person, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred to another Person or group of Persons acting in concert or (iii) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person; **provided, however**, that notwithstanding anything to the contrary set forth in this definition, none of the following shall constitute a "Change in Control" for the purpose of this Agreement:

- (a) for purposes of clauses (i) and (ii) above, transactions in shares of a publicly traded company or other transactions involving a publicly traded company only if they do not cause such company to no longer be a publicly traded company;
- (b) Transfers of ownership interests in the Concessionaire between or among Persons that are Affiliates (including funds or similar entities managed by such Persons);
- (c) Transfers of shares of the Concessionaire, or the direct or indirect parent of the Concessionaire, as applicable, pursuant to bona fide open market transactions on the New York Stock Exchange, NASDAQ, London Stock Exchange or comparable United States or foreign securities exchange, including any such transactions involving an initial or "follow on" public offering;
- (d) Transfers of shares or beneficial interests in the ultimate parent organization of any Equity Participant, unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any Governmental Authority;
- (e) Transfers by any Equity Participant or its beneficial owner(s) to any Person so long as the Equity Participants or their respective beneficial owner(s) having ownership interests in the Concessionaire as of the Closing Date together retain, in the aggregate, fifty percent (50%) or more of the voting or economic interests in such Person or the power to direct or cause the direction of management and policy of such Person, through the ownership of voting securities, the rights to elect directors, officers and managers of the Concessionaire or otherwise;
- (f) Transfers of direct or indirect interests in the Concessionaire or in any intermediate entity in the chain of ownership in connection with any reorganization, so long as there occurs no change in the entity with ultimate power to control the Concessionaire;
- (g) Transfers of ownership interests in the Concessionaire by any Equity Participant or its direct or indirect beneficial owner(s) to any partners, members, shareholders, directors, officers, employees or investors who are distributees of investments held by such Equity Participant or beneficial owner(s) pursuant to any bona fide liquidation of such Equity Participant or beneficial owner(s) as a result of which securities held by such entity are distributed to such distributees;
- (h) Transfers of ownership interests in the Concessionaire (i) between or among investment funds, including infrastructure funds, and investors therein; provided that, following such Transfer, such ownership interests remains under common ownership, management or control, or (ii) from investment funds, including infrastructure funds, or investors therein, to any Person; **provided** that following such Transfer such ownership remains under common ownership, management or control, it being understood that ownerships interest shall be deemed to be controlled by a Person if controlled in any manner whatsoever that results in control in fact, whether directly or indirectly, and whether through share ownership, a trust, a contract or otherwise; and
- (i) Any Collateral Assignment of the Concessionaire Interest to a Collateral Assignee.

Change in Law means (i) the adoption of any Applicable Law after the Effective Date, or (ii) any change in any Applicable Law or in the interpretation or application thereof by any Governmental Authority after the Effective Date, and excluding any change in or new Applicable Law enacted but not yet effective as of the Effective Date.

Claiming Party has the meaning ascribed thereto in the definition of Force Majeure Event.

Claims means costs, claims, demands, actions, causes of action, Proceedings, judgments, awards (including arbitral awards), debts, losses deficiencies, liabilities, damages, costs, expenses (including reasonable attorneys' fees and costs of investigation), penalties or fines of any kind or nature (including any of the foregoing which relate to a Third-Party Liability), including: (i) any of the foregoing related or attributable to property damage or bodily or personal injuries (including death); (ii) any amounts paid in settlement of any of the foregoing; and (iii) the amount of any deductible payable under a policy of insurance by a party suffering or incurring a damage or loss.

Class 1 Cost Estimate means a cost estimate for the design, engineering and construction of the Plant which meets the standards and requirements of a "Class 1" cost estimate as described in Recommended Practice No. 56R-08 (December 5, 2012), as published by AACE International.

Closing has the meaning ascribed thereto in Section 3.2(a).

Closing Date has the meaning ascribed thereto in Section 3.2(a).

Closing Deadline has the meaning ascribed thereto in Section 3.3(d)(iii).

Closing Security means a Letter of Credit in favor of the Authority, in form and substance reasonably acceptable to the Authority, providing that it is payable only in accordance with Section 3.3(f) in the amount of \$1,000,000.

Collateral Assignee means the holder or beneficiary of a Collateral Assignment in connection with any Third Party Loan, including a financial insurer or an agent, trustee or other representative or designee of such a holder or beneficiary.

Collateral Assignment means any collateral assignment, pledge, mortgage or other security agreement or arrangement with any Collateral Assignee (including a securitization transaction with respect to the Revenues) encumbering any or all of the Concessionaire Interest or the shares or equity interests in the capital of the Concessionaire and any cash reserves or deposits held in the name of the Concessionaire.

Commercial Operation means that the Plant has successfully completed all testing and commissioning required under the Construction Contract and been declared by the Concessionaire and the Construction Contractor to be ready for regular and continuous operation.

Commercial Operation Certificate means the certificate issued by the Construction Contractor under the Construction Contract certifying that Commercial Operation has occurred, as accepted and countersigned by the Concessionaire.

Commercial Operation Date means the date that the Plant has satisfied all requirements for Commercial Operation.

Commercial Plant Expansion means any Concessionaire Plant Expansion that is not a Preferred Customer Plant Expansion. For the avoidance of doubt, a Commercial Plant Expansion includes a Concessionaire Plant Expansion that (i) is driven by demand from Preferred Customers, as stated on the Concessionaire Expansion Notice, and (ii) is funded from funding sources other than financing provided by AIDEA available to the Concessionaire, other than the Expansion Reserve Account.

Compensation Event means any of the following events:

- (a) any Authority-Caused Delay;

- (b) the development or implementation of any AIDEA Expansion or Authority Required Modification pursuant to this Agreement;
- (c) any Adverse Action or event that with the passage of time would become an Adverse Action;
- (d) any Significant Force Majeure Event to the extent the Authority elects to continue this Agreement pursuant to Section 20.5(a)(i);
- (e) the discovery of any protected species, archaeological, paleontological or geological condition (i) at the Plant Site (excluding for these purposes all Additional Lands) that was not identified prior to the Effective Date or (ii) on Additional Lands acquired after the Effective Date in connection with a Preferred Customer Plant Expansion and that was not identified prior to the acquisition date of such Additional Lands;
- (f) the discovery of any Pre-existing Environmental Condition (i) at the Plant Site (excluding for these purposes all Additional Lands) that was not identified prior to the Effective Date or (ii) on Additional Lands acquired after the Effective Date in connection with a Preferred Customer Plant Expansion and that was not identified prior to the acquisition date of such Additional Lands;
- (g) failure of issuance or renewal of any Permit that is necessary to implement the Project after application for such Permit has been timely made and such application satisfies all material requirements under Applicable Law, except to the extent that such failure is caused by the acts or omissions of the Concessionaire or any Concessionaire Party;
- (h) the suspension, termination, interruption or denial of any Permit that is necessary to implement the Project, or a delay of more than forty-five (45) days in the review, issuance or renewal of any such Permit, except to the extent that such suspension, termination, interruption, denial or delay in the review, issuance or renewal is caused by the acts or omissions of the Concessionaire or any Concessionaire Party; or
- (i) the issuance by a Governmental Authority having jurisdiction over the Project of an injunction or other order enjoining the Concessionaire or the Authority from the performance of, or otherwise materially and adversely affecting the ability of the Concessionaire or the Authority to perform, its rights or obligations pursuant to this Agreement, in any case for more than forty-five (45) days in the aggregate, unless such injunction or order arises as a result of a Concessionaire Default or any negligent act, omission or willful misconduct of a Concessionaire Party or any act or omission of a Concessionaire Party in material breach of this Agreement or any other Project Agreement to which it is a party.

Completion Deadline means the date as agreed by the Parties on the Closing Date and identified as the “Completion Deadline” in such Project Schedule, as such date may be extended pursuant to the terms of this Agreement.

Completion Reserve has the meaning ascribed thereto in Section 12.2(d).

Concession has the meaning ascribed thereto in Section 3.1(b).

Concession Fee has the meaning ascribed thereto in Section 13.1.

Concession Fee Reserve Account means the Concession Fee Reserve Account to be established by the Concessionaire with the Depositary and funded pursuant to Section 9.3(i).

Concession Value means the fair market value of the Concessionaire's Interest, as determined by the Appraiser under Section 20.4(f), which shall be calculated as the sum of the fair market value of the projected Distributions for the remainder of the Term without taking into consideration any termination of this Agreement pursuant to Section 20 or the events leading thereto and the fair market value of any Permitted Indebtedness of the Concessionaire outstanding as of the date of the calculation, and will include Concessionaire Damages for adverse Net Cost Impacts and Net Revenue Impacts accruing after the effective date of termination from Unforeseen Events that occurred prior to termination. The fair market value determination made by the Appraiser shall take into account (i) the terms and conditions of this Agreement, (ii) projected cash flows and projected costs of the Project for the remainder of the Term had the relevant Authority Default or AGS Determination not occurred and this Agreement not been terminated, (iii) the condition of the Plant immediately prior to the occurrence of the applicable Authority Default or AGS Determination, (iv) the status of the LNG SPAs and LNG TSAs immediately prior to the Authority Default or AGS Determination and whether any LNG Purchaser is in breach or default of its obligations thereunder or any such LNG SPA or LNG TSA has been terminated and (v) assuming Concessionaire had fully performed all of its obligations under this Agreement and the other Transaction Documents to which it is a party.

Concessionaire has the meaning ascribed thereto in the preamble to this Agreement.

Concessionaire Costs has the meaning ascribed thereto in Section 2.17(b).

Concessionaire Damages means the amount calculated pursuant to Section 19.4.

Concessionaire Default has the meaning ascribed thereto in Section 20.1(a).

Concessionaire Expansion Notice has the meaning ascribed thereto in Section 6.1(a).

Concessionaire Indemnified Parties has the meaning ascribed thereto in Section 15.2(a).

Concessionaire Interest means the interest, benefits and rights of the Concessionaire in the Plant and the Project Assets created by this Agreement and the rights and obligations of the Concessionaire under this Agreement (including the right to receive Termination Damages if and to the extent Termination Damages become payable under Section 20.4).

Concessionaire Marks means the Concessionaire's name and/or other trademarks, service marks and trade names owned or licensed by the Concessionaire.

Concessionaire Material Adverse Effect means a material adverse effect on the development, construction, business, financial condition or results of operations of the Plant taken as a whole or the rights of the Concessionaire under this Agreement.

Concessionaire Party means the Concessionaire, any of its Affiliates and their respective Representatives.

Concessionaire Permits has the meaning ascribed thereto in Section 2.5(d).

Concessionaire Plant Expansion has the meaning ascribed thereto in Section 6.1(a).

Concessionaire Plant Expansion Budget and Schedule has the meaning ascribed thereto in Section 6.1(a)(ii).

Concessionaire Representative has the meaning ascribed thereto in Section 2.16.

Concessionaire Representative Designee has the meaning ascribed thereto in Section 2.16.

Concessionaire Required Modification has the meaning ascribed thereto in Section 6.4.

Condemnation means any appropriation, acquisition of any title by eminent domain or condemnation covering all or any material portion of the Plant Site or the Plant, or any interest in the same, made as the result of or as settlement of any appropriation, condemnation or other eminent domain proceeding affecting the same (without regard to whether such proceeding shall actually have been commenced).

Consent and Agreement has the meaning ascribed thereto in Section 23.1(f).

Construction Budget has the meaning ascribed thereto in Section 2.4(b).

Construction Contract means the Engineering, Procurement and Construction Contract by and between the Concessionaire and the Construction Contractor.

Construction Contract Term Sheet means the Construction Contract Term Sheet attached as Schedule J.

Construction Contractor means TIC - The Industrial Company, a corporation organized under the laws of the State of Delaware.

Construction Contractor Guarantor means [Kiewit Corporation], a corporation organized under the laws of the State of Delaware.

Construction Contractor Parent Guarantee has the meaning ascribed thereto in Section 12.8(b).

Construction Contractor Performance Security has the meaning ascribed thereto in Section 12.8(a).

Construction Phase has the meaning ascribed thereto in Section 5.1(a).

Contract means any contract, subcontract, or other form of agreement to perform any part of the Work or provide any materials, equipment or supplies for the Plant, on behalf of the Concessionaire or any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers.

Contractor means, with respect to a Person, any contractor, with whom such Person contracts to perform work, supply materials or labor or perform services (including operation and maintenance services) in relation to the Plant, including any subcontractor of any tier, supplier or materialman directly or indirectly employed pursuant to a subcontract with a Contractor, but excluding any financial advisor retained by the Equity Participants or the Concessionaire to provide advice in relation to the financing of the Plant. For the avoidance of doubt, "Contractor" includes the Construction Contractor and the Operator.

Critical Path means the longest chain(s), in terms of time, of logically connected activities on the Project Schedule ending with Final Acceptance.

CWA means the Clean Water Act, 33 U.S.C. § 1251, et seq.

Default Termination Damages has the meaning ascribed thereto in Section 20.4(a).

Defect means any portion of the Work that, whether by design, construction, installation, damage or wear: (i) does not conform to the requirements of this Agreement or the Construction Contract; (ii) is not of

good quality, is not free from defects or deficiencies in design, application, manufacture or workmanship, or that contain inferior workmanship; or (iii) adversely affects the continuous and safe operation of the Plant or the condition, use, functionality, compliance or operation of the Plant.

Deferred Concession Fee has the meaning ascribed thereto in Section 13.3.

Delay Event means:

- (a) a Compensation Event; or
- (b) to the extent not included in the definition of “Compensation Event”:
 - (i) a Force Majeure Event;
 - (ii) failure of issuance or renewal, suspension, termination, interruption or denial of any Permit that is necessary to implement the Project, or a delay in the review, issuance or renewal of any such Permit, except to the extent that such failure, suspension, termination, interruption, denial or delay in the review, issuance or renewal is caused by the acts or omissions of the Concessionaire or any Concessionaire Party;
 - (iii) the issuance by a Governmental Authority having jurisdiction over the Project of an injunction or other order enjoining the Concessionaire or the Authority from the performance of, or otherwise materially and adversely affecting the ability of the Concessionaire or the Authority to perform, its rights or obligations pursuant to this Agreement, unless such injunction or order arises as a result of a Concessionaire Default or any negligent act, omission or willful misconduct of a Concessionaire Party or any act or omission of a Concessionaire Party in material breach of this Agreement or any other Project Agreement to which it is a party; or
 - (iv) a Change in Law;
- (c) which in either case under clause (a) or (b) above results in a delay or interruption in the performance by the Concessionaire of any obligation under this Agreement.

Demobilization Costs means costs and expenses that have been or will be reasonably and properly incurred by the Concessionaire as a result of the termination of this Agreement, including such costs and expenses that are incurred by any of the Concessionaire’s Representatives and which Concessionaire is obligated to reimburse to such Representative, but in any such case only to the extent that:

- (a) the costs and expenses are incurred in connection with the Project and in respect of the provision of services or completion of the Work, including:
 - (i) any materials or goods ordered or sub-contracts placed that cannot be cancelled without such costs and expenses being incurred;
 - (ii) any expenditure incurred in anticipation of the provision of services or the completion of the Work in the future;
 - (iii) the cost of demobilization including the cost of any relocation of equipment used in connection with the Project; and

- (iv) severance payments due and payable to employees or contractors of the Concessionaire;
- (b) the costs and expenses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
- (c) the Concessionaire and its relevant Representatives have each used Reasonable Efforts to mitigate such costs and expenses.

Depository means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender, designated by the Concessionaire and approved by the Authority, to serve as depository pursuant to this Agreement; **provided, however**, that so long as a Collateral Assignment is in effect, the Depository contemplated under Section 16.4 shall be the Collateral Assignee.

Depository Agreement means the Depository Agreement to be entered into on the Closing Date by and among the Concessionaire, the Authority and the Depository.

Design and Construction Documents means all design and construction documents prepared by Construction Contractor or its subcontractors (including the Equipment Suppliers) in connection with the design and construction of the Plant and delivered to the Concessionaire, including any plans, drawings, specifications and other design documents and all shop drawings, working drawings, materials and hardware descriptions, construction quality control reports and construction quality assurance reports.

Development Phase has the meaning ascribed thereto in Section 2.1.

Development Phase Milestones has the meaning ascribed thereto in Section 2.1.

Disbursement means an advance of AIDEA Appropriation Funds or AIDEA SETS Funds by the Depository to the Concessionaire following the Authority's approval of a Disbursement Request.

Disbursement Conditions Precedent has the meaning ascribed thereto in Section 12.5(b).

Disbursement Request has the meaning ascribed thereto in Section 12.5(a).

Disbursement Request Certificate has the meaning ascribed thereto in Section 12.5(b)(viii).

Discharge of Hazardous Materials means any spill, leak, emission, release, discharge, injection, escape, leaching, migrating, dumping or disposal of Hazardous Materials into or through the soil, air, surface water, groundwater or indoor or outdoor environment, including any exacerbation of an existing presence, release or condition of Hazardous Materials contamination.

Discriminatory Change in State Law means the adoption of any Change in Law of the Applicable Law of the State, except as otherwise provided within this definition, the effects of which are principally borne by the Project, the Concessionaire or the Concessionaire together with other private operators of comparable natural gas liquefaction facilities, as the case may be, except where such Change in Law of the Applicable Law of the State (1) is in response, in whole or in part, to any failure to perform or breach of this Agreement or another Project Agreement, violation of Applicable Law or Permit, act, omission, negligence or willful misconduct on the part of Concessionaire or any other Concessionaire Party or (2) is otherwise permitted under this Agreement. None of the following will be a Discriminatory Change in

State Law: (i) any changes in Taxes of general application; or (ii) the exercise by the Authority or any Governmental Authority of its police powers.

Dispute has the meaning ascribed thereto in Section 24.1.

Dispute Notice has the meaning ascribed thereto in Section 24.3(a).

Disputing Party has the meaning ascribed thereto in Section 24.3(a).

Distribution means:

- (a) any distribution, dividend or other monetary payment made by the Concessionaire to any Equity Participant, including from the proceeds of any Refinancing, on account of equity investment in the Concessionaire; or
- (b) any payment by the Concessionaire to an Affiliate other than (x) pursuant to an Affiliate Contract to which the Authority has consented in accordance with Section 4.13 or (y) pursuant to an Arm's-Length Affiliate Contract.

DNR has the meaning ascribed thereto in the Recitals.

Early Equipment Supplier has the meaning ascribed thereto in Section 2.2(c).

Early Equipment Work has the meaning ascribed thereto in Section 2.2(c).

Early Procurement Equipment means the equipment as further described in Schedule H.

Early Works has the meaning ascribed thereto in Section 2.2(a) as further described in Schedule H.

Easement Areas means the area covered by all easements and rights of way required for the Project as described on Schedule D.

Effective Date has the meaning ascribed thereto in the preamble to this Agreement.

Electing Purchaser has the meaning ascribed thereto in Section 18.1(b)(i).

Eligible Investments means any one or more of the following obligations or securities: (i) direct obligations of, and obligations fully guaranteed by, the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America; (ii) any money market funds, the investments of which consist of cash and obligations fully guaranteed by the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America and which have been rated "A" or higher by a Rating Agency; and (iii) other investments that at such time are customarily accepted by the Authority in similar circumstances.

Encumbrance means any mortgage, lien, judgment, execution, pledge, charge, security interest, restriction, easement, claim, deficiency in title or chain of ownership, trust, deemed trust or encumbrance of any nature whatsoever, whether arising by operation of Applicable Law or otherwise created.

End Date means the thirtieth (30th) anniversary of the Commercial Operation Date or such earlier date on which this Agreement is terminated.

Environment means indoor or outdoor air, soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, plants, animals and other life forms.

Environmental Claims means any Claims arising from or related to any Environmental Law or arising out of Hazardous Materials Conditions, Pre-existing Hazardous Materials, Discharge of Hazardous Materials, Environmental Conditions, Pre-existing Environmental Conditions or Environmental Non-Compliance, including actual or threatened damages to natural resources; claims for the recovery of response costs, or administrative or judicial orders directing the performance of investigations, removal, remedial or other response actions directing the performance of investigations, removal, remedial or other response actions under CERCLA, RCRA or other Environmental Laws; a requirement to implement "corrective action" pursuant to any order or permit issued pursuant to RCRA; claims for restitution, contribution or equitable indemnity from third parties or any Governmental Authority; fines, penalties, liens against property; and claims for injunctive relief or other orders or notices of violation from any Governmental Authority.

Environmental Conditions means any conditions, circumstances or other matters of fact, pertaining to, relating to or otherwise affecting the Environment or the actual or threatened presence, use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, migrating, pumping, pouring, emptying, discharging, injecting, escaping, leaching, disposal (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Materials), actual or threatened presence of Hazardous Materials or Discharge of Hazardous Materials.

Environmental Laws means any Applicable Law relating to the Environment or human health and safety, including any Applicable Laws relating to the use, management, handling, transportation, treatment, storage or disposal of Hazardous Materials or Discharge of Hazardous Materials, including the CERCLA, the TSCA, the RCRA, the CWA, the CAA, the FIFRA, the AEA, the EPCRA, the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1802, the Oil Pollution Act of 1990, 33 U.S.C. § 2761, the Occupational Health and Safety Act, 29 U.S.C. § 651, et seq., and the Pollution Prevention Act, 42 U.S.C. § 13101, et seq.

Environmental Losses means all Losses arising out of Environmental Conditions, Pre-existing Environmental Conditions, Environmental Non-Compliances, Hazardous Materials Conditions, Pre-existing Hazardous Materials, Discharge of Hazardous Materials, or otherwise concerning the Environment or Environmental Law, including costs of investigation, cleanup, remedial, removal or other response action, the costs associated with posting financial assurances for the completion of response, remedial or corrective actions, the preparation of any closure or other necessary or required plans or analyses, or other reports or analyses submitted to or prepared by Governmental Authorities, including the reasonable cost of health risk assessments, epidemiological studies and the like, retention of engineers and other expert consultants, legal counsel, capital improvements, operation and maintenance testing and monitoring costs, power and utility costs and pumping taxes or fees, and administrative, oversight and other costs incurred by Governmental Authorities.

Environmental Non-Compliances means any actual or alleged non-compliance with Environmental Laws, including with respect to: (i) the use, management, handling, treatment, storage, disposal, or transportation of Hazardous Materials or Discharge of Hazardous Materials; (ii) the construction, modification, operation and maintenance of physical structures, equipment, processes or facilities; (iii) federal, state or local requirements governing occupational safety and health related to Hazardous Materials, Hazardous Materials Conditions, Pre-existing Hazardous Materials or Pre-existing Environmental Conditions; (iv) any facility operations, procedures, designs, or other matters which do not conform to the statutory or regulatory requirements of Environmental Laws; (v) the failure to have obtained or to maintain in full force and effect Permits, variances or other authorizations necessary for the

legal operation of any equipment, process, facility or any other activity, to the extent required for compliance with Environmental Laws; or (vi) the operation of any facility, process, or equipment in violation of any permit condition, schedule of compliance, administrative or court order, to the extent required for compliance with Environmental Laws.

EPCRA means the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, et seq.

Equipment Supplier means, individually or collectively as the context may require, the Early Equipment Supplier and each other Person that supplies equipment for the Project.

Equipment Supply Contract means, individually or collectively as the context may require, each contract entered into by and between Construction Contractor and an Equipment Supplier.

Equity Contribution Agreement means the Equity Contribution Agreement to be entered into by and between the Concessionaire and Investor, which Equity Contribution Agreement shall be based substantially upon the terms set forth in the Equity Contribution Agreement Term Sheet.

Equity Contribution Agreement Term Sheet means the Equity Contribution Agreement Term Sheet attached as Schedule E.

Equity Participant means any Person who holds any shares of capital stock or securities of, or any units, partnership, membership interests or other equity interests in, the Concessionaire.

Excess Earnings has the meaning ascribed thereto in Section 9.2(d).

Excluded Liabilities has the meaning ascribed thereto in Section 4.2.

Expansion means an AIDEA Plant Expansion or Concessionaire Plant Expansion, individually or collectively as the context may require.

Expansion Reserve Account means the Expansion Reserve Account to be established by the Concessionaire with the Depository and funded pursuant to Section 9.3(g).

Expert has the meaning ascribed thereto in Section 24.4.

FIFRA means the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136, et seq.

Final Acceptance means each of the conditions precedent as set forth in the Construction Contract for final completion and acceptance of the Plant by the Concessionaire have been satisfied in full.

Final Acceptance Certificate means the certificate issued by the Construction Contractor under the Construction Contract certifying that Final Acceptance has occurred, as accepted and countersigned by the Concessionaire.

Financially Capable means, in respect of a Person, that either (a) such Person has a credit rating that is equal to or above A-, A3 or an equivalent rating or (b) the payment and performance of all of the obligations of such Person under the Project Agreements to which it is party have been irrevocably and unconditionally guaranteed by an Affiliate of such Person pursuant to a guarantee, which Affiliate has and continues to have a credit rating that is equal to or above A-, A3 or an equivalent rating.

Financial Model Formulas means the financial formulas that the Concessionaire and the Authority have agreed upon thirty (30) days following the Effective Date as a basis for the Initial Base Case Financial Model.

FM Termination Damages has the meaning ascribed thereto in Section 20.4(b).

FNG means Fairbanks Natural Gas, LLC, a limited liability company organized under the laws of the State of Alaska.

FNSB has the meaning ascribed thereto in the Recitals.

FOB means terms for delivery whereby the passing of risks from the Concessionaire to the LNG Purchaser with respect to LNG shall occur at the Plant upon loading of the LNG into LNG trailers, the Concessionaire will pay to load the LNG onto the LNG trailers and the LNG Purchaser will pay for all costs and expenses (including for transport, unloading, storage, regasification and distribution) beyond that point.

Force Majeure Event means any event beyond the reasonable control of a Party that delays or interrupts the performance by such Party (the **Claiming Party**) of its obligations hereunder, including an intervening act of God or public enemy, war (whether or not declared), invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, sabotage, civil commotions, interference by civil or military authorities, Condemnation or confiscation of property or equipment by any Governmental Authority, strike or labor disturbance (other than as set forth in clause (iv) below), aircraft crash or forced landing, nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, fire, flood, tornado, hurricane, storm, earthquake, riot or other public disorder, epidemic, quarantine restriction, stop-work order or injunction issued by a Governmental Authority, or governmental embargo; **provided** that such event neither is otherwise specifically dealt with in this Agreement nor arises by reason of: (i) the negligence or intentional misconduct of the Claiming Party or its Representatives; (ii) any act or omission by the Claiming Party or its Representatives in breach of the provisions of this Agreement; (iii) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Claiming Party; (iv) any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Claiming Party or its Representatives to supply materials or services for or in connection with the Project or any strike, labor dispute or labor protest caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the Claiming Party or its Representatives; (v) market conditions and economic conditions affecting the availability, supply, or cost of labor, equipment and materials, construction equipment and supplies, or commodities; (vi) weather conditions that are typically experienced at the Plant Site; or (vii) the exercise by the other Party of its rights and remedies hereunder.

Gas Supplier means BP, GVEA or such other appropriate counterparty to the Substitute Gas Supply Agreement, as the case may be.

Gas Supply Agreement has the meaning ascribed thereto in Section 2.8(a).

Governmental Authority means any federal, provincial, state, municipal, local or territorial government and any political subdivision thereof, or any other governmental, quasi-governmental, judicial, public or statutory department, ministry, agency, authority, board, bureau, corporation, commission, entity, or instrumentality or any arbitrator with authority to bind a party at law; provided that the Authority shall not be deemed to be a Governmental Authority for purposes of this Agreement.

Guaranteed EPC Price means the Target EPC Price plus [ten percent (10%)] or such other amount as agreed by the Concessionaire, the Authority and the Construction Contractor.

GVEA means the Golden Valley Electric Association, Inc., a corporation organized under the laws of the State of Alaska.

Handover and Reinstatement Work Requirements has the meaning ascribed thereto in Section 21.1(a).

Handover Security has the meaning ascribed thereto in Section 21.4(a).

Hazardous Materials means hazardous wastes, hazardous substances, hazardous constituents, air contaminants or toxic substances, whether solids, liquids or gases, including substances defined or otherwise regulated as "hazardous materials," "regulated substances," "hazardous wastes," "hazardous substances," "toxic substances," "pollutants," "contaminants," "carcinogens," "hazardous air pollutants," "criteria pollutants," "reproductive toxins," "radioactive materials," "toxic chemicals," or other similar designations in, or otherwise subject to regulation under, any Environmental Laws, including petroleum hydrocarbons, asbestos-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, naturally occurring radioactive materials and radionuclides.

Hazardous Materials Conditions means the presence of any Hazardous Materials on, in, under or emanating from the Plant Site that is present at concentrations or in quantities that: (a) may present an imminent or substantial safety or health hazard for the Authority, the Concessionaire or their respective Representatives, the general public or the surrounding Environment or (b) are required to be removed or remediated as a matter of Applicable Law or in accordance with the requirements of any Governmental Authority.

IEP has the meaning ascribed thereto in the Recitals.

IGU means the Interior Alaska Natural Gas Utility, an instrumentality of the FNSB.

Indebtedness means in respect of any Person at any date, without duplication, (a) all indebtedness for borrowed money of such Person, (b) all obligations of such Person for the deferred purchase price of property or services (other than trade payables incurred in the ordinary course of such Person's business that either (i) are not overdue by more than ninety (90) days or (ii) are being contested in good faith by appropriate dispute resolution or other proceedings), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all capital lease obligations of such Person, (e) the liquidation value of all mandatorily redeemable preferred capital stock of such Person and (f) all guarantee obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (e) above.

Indemnified Party means any AIDEA Indemnified Party or any Concessionaire Indemnified Party, as applicable.

Indemnifying Party means the Party responsible for indemnifying the Indemnified Parties pursuant to Section 15.1 or 15.2 as applicable.

Indemnity Claim has the meaning ascribed thereto in Section 15.3.

Information means any and all information relating to the Project, including (i) income statements, balance sheets, statements of cash flow and changes in financial position, details regarding Revenues (including information regarding the collection thereof), operating income, expenses, capital expenditures

and budgeted operating results relating to the Project, (ii) all certificates, correspondence, data (including test data), documents, contracts, agreements, facts, files, information, investigations, materials, notices, plans, projections, drawings, records, reports, requests, samples, schedules, statements, studies, surveys, tests, test results, in each case as analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by the Concessionaire or any other Concessionaire Party in connection with the Project, and (iii) proper, complete and accurate books, records, accounts and documents of the Concessionaire relating to the Project, including in all cases any Information that is stored electronically or on computer-related media.

Initial Baseline Capacity has the meaning ascribed thereto in the Recitals.

Initial Base Case Financial Model means the Financial Model Formulas and the assumptions and information, including projections and calculations with respect to revenues, expenses, the repayment of Third Party Loans, Distributions to Equity Participants and payments of the Concession Fee, applied to the Financial Model.

Initial Resolution Period has the meaning ascribed thereto in Section 24.3(a).

Initial UE Notice Period has the meaning ascribed thereto in Section 19.1(a).

Institutional Lender means (i) the United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments that, in any manner, assist in the financing, development, operation and maintenance of projects; (ii) any (A) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, (B) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States, (C) pension fund, foundation or university or college or other endowment fund, (D) real estate investment fund, infrastructure investment fund, investment bank, pension advisory firm, mutual fund, investment company or money management firm, (E) entity that is formed for the purpose of originating and causing the securitizing of mortgages, which securities are backed by such mortgages and are sold by public offering or to qualified investors under the Securities Act, or (F) Person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the Securities Act within two years of its making; (iii) any "qualified institutional buyer" under Rule 144(A) under the Securities Act or any other similar Applicable Law hereinafter enacted that defines a similar category of investors by substantially similar terms; (iv) conduit issuers established for the purpose of issuing private activity bonds authorized by Applicable Law for the benefit of the Concessionaire; or (v) any other financial institution or entity designated by the Concessionaire and approved by the Authority (**provided** that such institution or entity, in its activity under this Agreement, shall be acceptable under then current guidelines and practices of the State).

Intellectual Property means copyrights (including moral rights), trademarks (registered and unregistered), designs (registered, including applications, and unregistered), patents (including applications), circuit layouts, source code and source code documentation, plant varieties, business and domain names, inventions, trade secrets, proposals, copyrightable works, customer and supplier lists and information, and other results of intellectual activity, copies and tangible embodiments of all of the foregoing (in whatever form or medium) and licenses granting any rights with respect to any of the foregoing (to the extent assignable), in each case, relating to the Project.

Interior Alaska means the area of the State consisting of the FNSB, the Denali Borough, the Yukon-Koyukuk Census Area of the Unorganized Borough and the Southeast Fairbanks Census Area of the Unorganized Borough as identified on Schedule P.⁴

Investor has the meaning ascribed thereto in the Recitals.

Investor Equity Contribution has the meaning ascribed thereto in Section 12.2(c)(i).

Investor Equity Contribution Letter of Credit has the meaning ascribed thereto in Section 3.3(b)(v).

Investor Investment Commitment has the meaning ascribed thereto in Section 12.2(c).

Investor Residual Commitment has the meaning ascribed thereto in Section 12.2(c)(ii).

Letter of Credit means an irrevocable, unconditional letter of credit in favor of the Concessionaire (or where indicated, the Authority or the Depositary with the Authority as permitted transferee), in form and content reasonably acceptable to the Concessionaire that:

- (a) is payable within one (1) Business Day in U.S. dollars upon presentation of a sight draft and a certificate confirming that the Concessionaire (or, where indicated, the Depositary or the Authority) has the right to draw under such letter of credit from time to time in the amount of such sight draft and confirming such other matters that may be required under the Letter of Credit, without presentation of any other document, statement or authorization;
- (b) is issued by a commercial bank or trust company that (i) has a combined capital and surplus of at least \$1,000,000,000, (ii) is a national banking association, a state bank chartered in one of the states of the United States, or the U.S. branch of a foreign bank, and (iii) is not an Affiliate of the Concessionaire;
- (c) is issued by a commercial bank or trust company that has a current credit rating of at least A- or its equivalent from at least two nationally recognized Rating Agencies (or such other credit rating as is acceptable to the Authority in its discretion and approved by the Authority prior to the submission of the letter of credit);
- (d) provides that, if the issuer of the Letter of Credit fails to maintain the ratings specified above in clause (c), then the Letter of Credit may be drawn upon in full within thirty (30) days unless the Concessionaire or other applicable account party provides a replacement Letter of Credit that meets the requirements of this Agreement or provides additional security acceptable to the Authority in its discretion;
- (e) has an initial term as specified in this Agreement, to the extent applicable;
- (f) provides for the continuance or extension of its term for a period of at least one hundred and eighty (180) days or, if earlier, until the end of the term for which the Letter of Credit is required or as otherwise provided for in this Agreement;
- (g) provides that the office for presentment of sight drafts specified in the Letter of Credit will be located at a specified street address in the City of New York, New York or Chicago, Illinois; and

⁴ A&O NOTE: Subject to AK counsel diligence.

- (h) provides that it may be drawn upon in accordance with its terms within ten (10) Business Days of its scheduled expiration date unless, prior to such tenth (10th) Business Day, the Concessionaire (or, where indicated, the Depositary or the Authority) has received evidence that the scheduled expiration date of such letter of credit has been extended in accordance with the provisions hereof or that the replacement letter of credit meeting the requirements of this Agreement has been provided to the intended beneficiary of the expiring letter of credit.

LNG means liquid natural gas.

LNG Purchaser means any Person that purchases LNG or tolling services from the Plant.

LNG SPA or **LNG Sale and Purchase Agreement** means an LNG Sale and Purchase Agreement entered into by and between the Concessionaire and an LNG Purchaser, which LNG SPA shall be based substantially upon the terms set forth in the LNG SPA Term Sheet; **provided** that LNG SPAs with Non-Preferred LNG Purchasers need not be based upon the terms set forth in the LNG SPA Term Sheet.

LNG SPA Term Sheet means the LNG SPA Term Sheet attached as Schedule K-1.

LNG TSA Term Sheet means the LNG TSA Term Sheet attached as Schedule K-2.

LNG TSA or **LNG Tolling Services Agreement** means an LNG Tolling Service Agreement entered into by and between the Concessionaire and an LNG Purchaser, which LNG TSA shall be based substantially upon the terms set forth in the LNG TSA Term Sheet; **provided** that LNG TSAs with Non-Preferred LNG Purchasers need not be based upon the terms set forth in the LNG TSA Term Sheet.

Loss or **Losses** means any loss, liability, damage, penalty, fine, charge or out-of-pocket and documented cost or expense. For the avoidance of doubt, all actual payments reasonably made by any Person to third parties or reasonable out-of-pocket and documented costs or expenses actually suffered or incurred by any Person in respect of Third Party Claims shall constitute Losses of such Person whether or not such payments or such costs and expenses relate to punitive, special, indirect and consequential damages or contingent liabilities of such third parties.

Maintenance Capex means any major maintenance expenditures required to operate the Plant pursuant to the terms of this Agreement, including the maintenance, repair, renewal, reconstruction or replacement of any portion or component of the Plant, as applicable, of a type which is not normally included as ordinary or routine maintenance, except to the extent such Maintenance Capex is furnished pursuant to the Construction Contract.

Major Contract means any Contract having an aggregate value equal to or greater than \$500,000.

Major Equipment Supply Contract means an Equipment Supply Contract with an aggregate value equal to or greater than \$500,000.

Major Maintenance means maintenance, repair, renewal, reconstruction or replacement of any portion or component of the Plant, other than maintenance performed to preserve the current condition of the Plant and that is regarded as routine in nature in accordance with Standard Industry Practice.

Major Maintenance Plan has the meaning ascribed thereto in Section 7.3(b).

Major Maintenance Reserve Account means the Major Maintenance Reserve Account to be established by the Concessionaire and funded pursuant to Section 9.3(d).

Market Event means the occurrence of any of the following events: (a) there shall have occurred any outbreak of hostilities, escalation of hostilities or other national or international calamity or crisis, the effect of such outbreak, escalation, calamity or crisis on the financial markets of the United States of America being such as would be reasonably likely to materially adversely affect the Concessionaire's ability to secure a Third Party Loan; (b) there shall be in force a general suspension of trading on the New York Stock Exchange, or any other national securities exchange in the United States, or minimum or maximum prices for trading shall have been fixed and be in force, the effect of which on the financial markets of the United States is such as would be reasonably likely to materially adversely affect the Concessionaire's ability to secure a Third Party Loan; (c) a general banking moratorium shall have been declared by either federal, Alaska or New York authorities having jurisdiction, and shall be in force, the effect of which on the financial markets of the United States is such as would be reasonably likely to materially adversely affect the Concessionaire's ability to secure a Third Party Loan; (d) an AIDEA Material Adverse Effect such as would be reasonably likely to materially adversely affect the Concessionaire's ability to secure a Third Party Loan shall have occurred; or (e) a material disruption in commercial banking or securities settlement or clearance services in the United States, the effect, directly or indirectly, of which on the financial markets of the United States is such as would be reasonably likely to materially adversely affect the Concessionaire's ability to secure a Third Party Loan.

Material Adverse Effect on the Fair Market Value of the Concessionaire Interest has the meaning ascribed thereto in Section 17.1(a).

Maximum AIDEA Appropriation Funds Amount has the meaning ascribed thereto in Section 12.2(a).

Maximum AIDEA SETS Funds Amount has the meaning ascribed thereto in Section 12.2(b).

Maximum Expansion IRR means, in respect of any Commercial Plant Expansion, a Nominal Expansion IRR of [●] percent ([●]%).

Maximum Permitted IRR has the meaning ascribed thereto in Section 9.2(b).

Minimum Equity Contribution Obligation has the meaning ascribed thereto in Section 12.2(c)(i).

Modification means (i) a change in the services, obligations or work to be performed by, or rights of, the Concessionaire with respect to the Plant from that provided for in this Agreement, including work related to the integration of the Plant with any Expansion or other system performed by or on behalf of the Authority and not otherwise required hereunder or (ii) deleting, dispensing with or changing the dimensions, character, quantity, quality, description, location or position of any part of the Plant or the operation thereof or making other changes to the Plant or the operation thereof; **provided, however**, that (A) a Modification shall exclude any Expansion, which shall be implemented in accordance with Section 6.1 or Section 6.2, as applicable; (B) no Modification may require the Concessionaire to take any action that could reasonably be expected to violate any Applicable Law or cause the Concessionaire to fail to be in compliance with this Agreement; and (C) any changes or modifications to the Technical Standards shall be effected in accordance with Section 8.2 and not pursuant to a Modification.

Monthly Progress Report has the meaning ascribed thereto in Section 5.4.

MWHA means MWH Americas, Inc., a corporation organized under the laws of the State of California.

MWHI means MWH Infrastructure Development, Inc., a corporation organized under the laws of the State of Delaware.

Net Cost Impact means the aggregate value of any net increase in the Concessionaire's costs (including the Concessionaire's Allocable Costs to the extent applicable), reflected on an annual basis, directly attributable to an Unforeseen Event, as compared with what the Concessionaire's costs (including the Concessionaire's Allocable Costs, to the extent applicable) would have been absent the occurrence of the Unforeseen Event, less the increased costs that can reasonably be mitigated by the Concessionaire. Net Cost Impact will: (a) exclude amounts paid or to be paid to Affiliates that have not been approved by the Authority pursuant to Section 4.13 that are in excess of the pricing the Concessionaire could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor and (b) take into account any savings in costs, including finance costs, attributable to the Unforeseen Event.

Net Cost Savings means the aggregate value of any decrease in the Concessionaire's costs reflected on an annual basis directly attributable to an Unforeseen Event, as compared with what the costs would have been absent the occurrence of an Unforeseen Event but excluding any savings in costs taken into account to reduce the Net Cost Impact attributable to such Unforeseen Event.

Net Revenue Impact means:

- (a) any net increase or decrease in Revenues directly attributable to an Unforeseen Event;
- (b) in the case of a net decrease in Revenues, **less** any savings in Operating Costs resulting from the Unforeseen Event (excluding any savings in costs subtracted from Net Cost Impact for the same Unforeseen Event) as compared with what the Revenues would have been absent occurrence of the Unforeseen Event; and
- (c) in the case of a net increase in Revenues, **less** any incremental increase in Operating Costs resulting from the Unforeseen Event (excluding any increase in costs included in Net Cost Impact for the same Unforeseen Event).

Nominal Expansion IRR means, in connection with a Commercial Plant Expansion, the nominal post-U.S. federal and state income tax (but prior to any applicable U.S. federal or state withholding tax) internal rate of return calculated on the total amount of (i) the Investor's equity contribution provided in connection with development and construction of such Commercial Plant Expansion plus (ii) the principal amount of shareholder loans made by the Investor to the Concessionaire in connection with the development and construction of such Commercial Plant Expansion, taking into account the distributions received by the Investor to the date of calculation.

Nominal IRR means the nominal post-U.S. federal and state income tax (but prior to any applicable U.S. federal or state withholding tax) internal rate of return calculated on the total amount of (i) the Actual Investor Equity Contribution plus (ii) the principal amount of shareholder loans made by the Investor to the Concessionaire, taking into account the distributions received by the Investor to the date of calculation.

Non-Conforming Work means Work that does not conform to the requirements of this Agreement, the Construction Contract, the Technical Standards, relevant Permits or Applicable Law.

Non-Defaulting Party means, in the case of an Authority Default, the Concessionaire, and in the case of a Concessionaire Default, the Authority.

Non-Preferred Customers has the meaning ascribed thereto in Section 7.2(b).

Non-Preferred LNG Purchaser means each LNG Purchaser that is a Non-Preferred Customer.

O&M Agreement means the Operation and Maintenance Agreement to be entered into by and between the Concessionaire and the Operator.

Obligation Payment has the meaning ascribed thereto in Section 15.5(b).

Offsets has the meaning ascribed thereto in Section 15.7(a).

Open Book Basis means allowing the Authority to review all information related to the Construction Contract, including: (i) the development and revision to the Class 1 Cost Estimate and the Target EPC and any changes thereto; (ii) the basis for and calculation of all costs and expenses included in the Class 1 Cost Estimate and the Target EPC Price (including material take-offs, unit pricing, vendor quotes for equipment and subcontractors); (iii) the amount of mark-up, fees and profit included in the Class 1 Cost Estimate and Target EPC Price and the line items to which such mark-up, fees or profits are applied; and (iv) all assumptions related to the foregoing, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing.

Operating Costs means all costs incurred by the Concessionaire in connection with the operation and maintenance of the Plant during the Operations Phase, including: (i) costs for operation and maintenance and consumables, (ii) payments under any lease (other than the Site Lease Agreement and a financing lease constituting a Third Party Loan), (iii) payments due and payable under the O&M Agreement, (iv) Taxes, (v) insurance, (vi) costs for any security at the Plant, (vii) capital expenditures, and (viii) any other expense incurred by Concessionaire in connection with Major Maintenance of the Plant. Operating Costs do not include: (a) debt service payments or financing costs or fees, (b) any Distributions, (c) non-cash charges, such as depreciation, amortization or other bookkeeping entries of a similar nature or (d) AIDEA Operating Costs.

Operations and Maintenance Reserve Account means the Operations and Maintenance Reserve Account to be established by the Concessionaire and funded pursuant to Section 9.3(c).

Operations Phase has the meaning ascribed thereto in Section 7.1(a).

Operator means the Person that will operate and maintain the Plant, as selected by the Concessionaire and approved by the Authority in accordance with Section 2.10.

Other Projects has the meaning ascribed thereto in Section 18.3(a).

Party means the Concessionaire or the Authority, and **Parties** means both of them.

Payment Date has the meaning ascribed thereto in Section 13.2(a).

Payment Schedule has the meaning ascribed thereto in Section 13.2(a).

Permit means, collectively, any approvals, licenses, permits, authorizations, consents, franchises, rulings, certifications, exemptions, filings, variances, orders, judgments, decrees, publications or declarations of, or notices to or registrations with, any Governmental Authority under any provision of any Applicable Law.

Permitted Authority Encumbrance means, with respect to the Plant or Plant site: (i) the rights and interests of the Concessionaire under this Agreement; (ii) any Encumbrance that is being contested by the Authority in accordance with Section 4.4(b) (but only for so long as such contestation effectively

postpones enforcement of any such Encumbrance); (iii) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's or other like Encumbrances arising in the ordinary course of business of the Plant or the Authority's performance of its obligations hereunder, and in respect of obligations that are either (A) not delinquent or (B) that are being contested by the Authority in accordance with Section 4.4(b) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iv) any easement, covenant, condition, permit, right-of-way, servitude or other similar rights, or any zoning, building, environmental, health or safety law relating to the development, use or operation of the Plant or other defects and irregularities in the title to the Plant Site that, in each case, do not materially interfere with the Project (in whole or in part) or the rights and benefits of the Concessionaire under this Agreement or materially impair the value of the Concessionaire Interest; (v) any right reserved to or vested in any Governmental Authority (including the Authority or the State) by any statutory provision (it being understood and agreed that nothing in this clause (v) shall limit or otherwise affect the Authority's obligations or the Concessionaire's rights hereunder); (vi) any other Encumbrance permitted hereunder or approved by the Concessionaire in writing; (vii) any Encumbrances created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it except to the extent caused by an act or omission of the Authority and (viii) any amendment, extension, renewal or replacement of any of the foregoing on substantially the same or similar terms as the relevant Permitted Authority Encumbrance.

Permitted Concessionaire Encumbrance means, with respect to the Plant or the Plant Site: (i) any Encumbrance that is being contested by the Concessionaire in accordance with Section 4.4(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (ii) any (A) lien or security interest for obligations not yet due and payable to a Contractor or other Person (including in respect of Taxes not yet due and payable), (B) statutory lien, deposit or other non-service lien or (C) lien, deposit or pledge to secure mandatory statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature, any of which are incurred in the ordinary course of business of the Project or the Concessionaire's performance of its obligations and exercise of its rights hereunder and in respect of obligations that are either (1) not delinquent or (2) that are being contested by the Concessionaire in accordance with Section 4.4(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iii) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's, or other like Encumbrances arising in the ordinary course of business of the Plant or the Concessionaire's performance of its obligations hereunder, and in respect of obligations that are either (A) not delinquent or (B) that are being contested by the Concessionaire in accordance with Section 4.4(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iv) any right reserved to or vested in any Governmental Authority by any Applicable Law; (v) any other Encumbrance permitted hereunder; (vi) liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance, social security and other governmental rules and that do not in the aggregate materially impair the use, value or operation of the Plant; (vii) any Encumbrances created, incurred, assumed or suffered to exist by the Authority or any other Governmental Authority or any Person claiming through it except to the extent caused by an act or omission by the Concessionaire; (viii) the Encumbrance created under the AIDEA Deed of Trust and the AIDEA Security Agreement; (ix) any easement, covenant, condition, permit, right-of-way, servitude or other similar rights, or any zoning, building, environmental, health or safety law relating to the development, use or operation of the Plant or other defects and irregularities in the title to the Plant that, in each case, do not materially interfere with the Project (in whole or in part); and (x) any amendment, extension, renewal or replacement of any of the foregoing on substantially the same or similar terms as the relevant Permitted Concessionaire Encumbrance.

Permitted Indebtedness means (i) Indebtedness under any Third Party Loan Agreement, (ii) Indebtedness in an aggregate principal amount not to exceed \$5,000,000 that may be used for operations and

maintenance, capital or other expenses related to the Project provided that no Concessionaire Default has occurred or is continuing; (iii) Indebtedness incurred in respect of security or other credit support required under Applicable Laws or any Transaction Documents (including any Letter of Credit related thereto); and (iv) unsecured Indebtedness in an aggregate principal amount not to exceed \$5,000,000.

Person means any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

Plan of Development has the meaning ascribed thereto in Section 2.3(a).

Plant means, whether completed or at any stage of its construction, the liquefied natural gas liquefaction facility to be located on the Plant Site and described in detail in Schedule A, including all natural gas pipeline, natural gas cleaning and treatment, liquefaction, LNG storage tanks, LNG truck loading facilities, all energy producing equipment, propane production equipment, all auxiliary equipment, natural gas and electric interconnection facilities, and all other improvements located on the Plant Site and the Easement Areas.

Plant Operations means (i) the operation, management, maintenance and improvement of, and collection of Revenues from (or in connection with), the Plant and (ii) all other actions relating to the operation of the Plant or otherwise that are to be performed by or on behalf of the Concessionaire pursuant to this Agreement.

Plant Services means the services to be provided to its customers by the Concessionaire in its capacity as the concession holder under this Agreement.

Plant Site means those parcels of real property included in Schedule B-1 and, following the acquisition thereof, any additional parcels of real property used for an Expansion or Modification or other capital improvements that are acquired as Additional Lands as contemplated hereunder.

Plant Site Improvements means the improvements to the Plant Site as described in Schedule H.

Pre-Closing Liabilities has the meaning ascribed thereto in Section 3.2(b).

Pre-existing Environmental Condition means the condition of the Plant and Plant Site (including the soil, subsurface soils, subsurface gases, surface and groundwaters) and any and all structures, facilities and improvements located at, on, in, under, above, or in the vicinity of any portion of the Plant or Plant Site to the extent existing or occurring (i) on or before the Closing Date or (ii) in the case of Additional Lands acquired in connection with any Preferred Customer Plant Expansion or any Modification, at any time prior to acquisition, including in both cases (i) and (ii), the presence at, on, in, under, above or in the vicinity of the Plant of any Hazardous Materials. For the avoidance of doubt, any such condition in respect of Additional Lands acquired in connection with a Commercial Plant Expansion will not be deemed a Pre-existing Environmental Condition for purposes of this Agreement.

Pre-existing Hazardous Materials means any Hazardous Materials present at the Plant Site or portion thereof to the extent existing or occurring as of the date that the Concessionaire assumes responsibility of such Plant Site or portion thereof pursuant to Section 25.1(a).

Preferred Customer Plant Expansion means (a) an AIDEA Plant Expansion or (b) a Concessionaire Plant Expansion, to the extent that such Concessionaire Plant Expansion is (i) driven by demand from

Preferred Customers, as stated on the Concessionaire Expansion Notice, and (ii) funded in whole or in part from the Expansion Reserve Account and/or from additional funding sources available to AIDEA.

Preferred Customers has the meaning ascribed thereto in Section 7.2(a).

Preferred LNG Purchaser means GVEA, FNG, IGU and each other LNG Purchaser that is a Preferred Customer.

Primary Milestones has the meaning ascribed thereto in Section 2.3(c).

Principal has the meaning ascribed thereto in Section 13.1.

Proceeding means any action, arbitration, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority or arbitrator instituted by a third party.

Project means the Plant, the Plant Site and all property, whether real, personal or mixed, which is at any time as of and subsequent to the Effective Date owned, leased, held, developed, constructed or acquired by or on behalf of the Authority or the Concessionaire in connection with the Plant or the operation or maintenance of the Plant, including (i) all AIDEA Permits and Concessionaire Permits to the extent utilized with respect to the Plant, including any applications therefor and all other records and correspondence pertaining thereto; and (ii) all Project Agreements to which the Authority or the Concessionaire is a party.

Project Agreements means, individually or collectively as the context may require, this Agreement, the Construction Contract, the AIDEA Early Works Agreement, each Equipment Supply Contract, each LNG SPA, each LNG TSA, the Gas Supply Agreement, the O&M Agreement, the Site Lease Agreement and each additional agreement or contract entered into by the Concessionaire that imposes a material obligation on the Concessionaire with respect to the Project; **provided, however**, that each Project Agreement that has a stated term (including any stated renewal term) that has expired in full at the end of such stated term (or stated renewal term) and each Project Agreement which does not have a stated term that has been fully performed in accordance with its terms (including through the final payment of all amounts due or to become due thereunder) shall cease to be a Project Agreement as of the date thereof.

Project Assets means the assets owned by the Authority in connection with the Project, but excluding, at and after the Time of Closing, the Assigned Project Assets.

Project Costs means all of the costs and expenses incurred in connection with the performance of the Work.

Project Party means the Construction Contractor, the Operator, each LNG Purchaser and each Equity Participant.

Project Schedule has the meaning ascribed thereto in Section 2.3(c).

Property Taxes means any ad valorem property Tax attributable to the Plant or the Concessionaire Interest.

Propane Revenues means all revenue receivable in connection with the sale of propane produced by the Plant.

Proprietary Intellectual Property means any Intellectual Property that is patented or copyrighted by the Concessionaire, the Authority or any other Person, as applicable, or any of its respective Contractors, or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential, proprietary information by the Concessionaire, the Authority or any other Person, as applicable, or any of its respective Contractors, but excludes any item of Intellectual Property that is produced for multiple purposes and is not unique to the technology that is being applied to or for the Project.

Rating Agency means any of Standard & Poor's Rating Services, Moody's Investors Service, Inc., DBRS, Inc. or Fitch Investors Service, Inc., or any similar entity or any of their respective successors.

RCA has the meaning ascribed thereto in Section 9.2(i).

RCRA means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*

Reasonable Efforts means the taking of those steps within the power of the relevant Person that are capable of producing the desired result, being steps that a reasonable Person desiring to achieve such result would take; **provided** that, subject to the relevant Person's other express obligations under this Agreement, the relevant Person shall not be required to expend any funds other than those funds (a) that are necessary to meet the reasonable costs reasonably incidental or ancillary to the steps to be taken by the relevant Person and (b) the expenditure of which is not the obligation of another Person hereunder.

Refinance Period the meaning ascribed thereto in Section 12.9(a).

Refinancing means, at any time after the Closing Date:

- (a) any material amendment, variation, novation or supplement of any Third Party Loan, Third Party Financing Document or Collateral Assignment;
- (b) the incurrence by the Concessionaire of any Third Party Loan other than a Third Party Loan incurred pursuant to the Third Party Financing Documents entered into on the Closing Date, secured or unsecured, including issuance of any reimbursement agreement respecting a letter of credit;
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Third Party Loan, Third Party Financing Document or Collateral Assignment or the creation or granting of any other form of benefit or interest in any Third Party Loan, Third Party Financing Document or Collateral Assignment, or the revenues, assets or other contracts of the Concessionaire whether by way of security or otherwise; or
- (d) any other arrangement put in place by Concessionaire or another Person which has an effect similar to clause (a), (b) or (c) of this definition;

excluding, however, any capitalization of interest or accretion of principal or other committed increases on any Third Party Loan incurred or committed on or prior to the Closing Date, that is not part of any Refinancing that is planned by the Concessionaire and which is included in the Base Case Financial Model.

Reinstatement Amount has the meaning ascribed thereto in Section 21.2(c)(iii).

Reinstatement Proposal has the meaning ascribed thereto in Section 21.2(c).

Reinstatement Work has the meaning ascribed thereto in Section 21.2(b).

Reinstatement Schedule has the meaning ascribed thereto in Section 21.2(c)(ii).

Reinstatement Work Plan has the meaning ascribed thereto in Section 21.2(c)(i).

Reinstatement Work Scope has the meaning ascribed thereto in Section 21.2(b).

Remedial Actions has the meaning ascribed thereto in Section 25.1(a).

Remedial Action Plan means the plan developed by the Concessionaire with respect to Hazardous Materials encountered by the Concessionaire within the Plant Site.

Reporting Year means each fiscal year ending March 31 except that the first Reporting Year shall be a partial year commencing on the Closing Date and ending on March 31 and the last Reporting Year shall be a partial year commencing on April 1 and ending on the End Date.

Representative means, with respect to any Person, (a) any director, officer, employee, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer or Contractor, (b) any other Person for whom such Person is responsible at law or other representative of such Person and (c) any professional advisor, consultant or engineer designated by such Person as its "Representative"; **provided** that (i) in no event shall Concessionaire or any Concessionaire Party be deemed to be a Representative of the Authority and (ii) in no event shall the Authority or its Representatives be deemed to be a Representative of the Concessionaire.

Required Balance means, at any time:

- (a) in respect of the Operations and Maintenance Reserve Account, fifty percent (50%) of the projected average annual Operating Costs for the upcoming five (5) Reporting Years as contained in the then-current Annual Budget and Major Maintenance Plan;
- (b) in respect of the Major Maintenance Reserve Account, an amount equal to the sum of:
 - (i) 100% of the projected Maintenance Capex for the current Reporting Year;
 - (ii) 80% of the projected Maintenance Capex for the next Reporting Year;
 - (iii) 60% of the projected Maintenance Capex for the Reporting Year occurring two (2) Reporting Year after the current Reporting Year;
 - (iv) 40% of the projected Maintenance Capex for the Reporting Year occurring three (3) Reporting Years after the current Reporting Year; and
 - (v) 20% of the projected Maintenance Capex for the Reporting Year occurring four (4) Reporting Years after the current Reporting Year; and
- (c) in respect of the Concession Fee Reserve Account, twenty-five percent (25%) of the Concession Fee during the applicable year, based upon the Payment Schedule as updated following the Commercial Operation Date under Section 2.6(b).

Required Coverages has the meaning ascribed thereto in Section 16.1.

Required Modification has the meaning ascribed thereto in Section 6.4.

Reserve Balance has the meaning ascribed thereto in Section 16.4(a).

Residual Investor Contribution has the meaning ascribed thereto in Section 12.3(a).

Responding Party has the meaning ascribed thereto in Section 24.3.

Restoration, Restore, or Restoring means, with respect to any property loss, destruction or damage of the Plant, to repair or rebuild the affected parts of the Plant to restore them to at least the same condition in which they were before the occurrence of such casualty, loss, destruction or damage.

Restoration Cost has the meaning ascribed thereto in Section 16.4(a)(ii).

Restoration Funds has the meaning ascribed thereto in Section 16.4(a).

Revenues has the meaning ascribed thereto in Section 9.1.

Reversion Date means the day immediately following the End Date.

SB 18 has the meaning ascribed thereto in the Recitals.

SB 23 has the meaning ascribed thereto in the Recitals.

Scheduled Expansion Distribution has the meaning ascribed thereto in Section 6.1(a)(vii).

Scheduled Investor Distribution means a monthly distribution in accordance with Section 9.3(f) as set out in a schedule to be agreed by the Authority and the Concessionaire on the Closing Date based on the Base Case Financial Model, and updated in accordance with Section 2.6(b) following the Commercial Operation Date, which amounts shall be sufficient, as calculated pursuant to the Base Case Financial Model, to achieve the Target Equity Return over the Term.

Securities Act means the United States Securities Act of 1933, as amended.

Services Agreement means the Master Services Agreement dated as of March 18, 2014 by and between the Authority and MWH.

SETS Fund means the Authority's Sustainable Energy Transmission and Supply development program and fund.

Shared Facilities has the meaning ascribed thereto in Section 6.2(a)(iii).

Significant Force Majeure Event means one or more Force Majeure Events occurring after the Closing Date (a) that (i) causes physical damage or destruction to the Plant and (ii) results in twenty percent (20%) or more of Baseline Capacity being unavailable for a period in excess of one hundred and eighty (180) consecutive days; or (b) which halts the performance of the Work by the Construction Contractor during the Construction Phase for a period in excess of one hundred and eighty (180) consecutive days; **provided** that such Force Majeure Event will not become a Significant Force Majeure Event if the Concessionaire or the Construction Contractor fails to mitigate or cure the effects of such Force Majeure Event through the exercise of reasonably diligent efforts.

Site Lease Agreement means the Right-of-Way Lease dated as of July 31, 2014, by and between DNR and the Authority.

Software means (a) computer instructions, including programs, routines and databases and applications supplied, procured or developed by the Concessionaire or the Authority in connection with the operation of the Project, and (b) all modifications, updates and revisions made to the matter described in clause (a) above, including those made to correct errors or to support new models of computer equipment and/or new releases of operating systems.

Standard Adjustment Index means the U.S. Department of Labor, Consumer Price Index (CPI) United States City Averages for all Urban Consumers, All Items; provided that if the Standard Adjustment Index is changed so that the base year of the Standard Adjustment Index changes, the Standard Adjustment Index shall be adjusted and converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics; **provided further** that if the Standard Adjustment Index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Standard Adjustment Index had not been discontinued or revised (provided that any such revision shall not result in the retroactive adjustment of any amounts paid or payable pursuant to this Agreement prior to such revision).

Standard Industrial Rate means the weighted average FOB price of LNG to be charged to Preferred Customers identified in clause (iv) of Section 7.2 entering into LNG SPAs or LNG TSAs at any time on or prior to the Closing Date, which, for the avoidance of doubt, may be higher than the Standard Retail Rate.

Standard Industry Practice means the practices, methods, standards, procedures and acts which meet or exceed manufacturer's specifications, which are generally accepted and followed by a prudent, diligent, skilled and experienced contractor or operator, as applicable, acting in accordance with standards generally adopted by contractors or operators of LNG liquefaction facilities that have similar characteristics and site conditions to the Plant, and which in each such case, at the particular time in question, in the exercise of reasonable judgment by an independent engineering professional in light of the facts known, or which in the exercise of due diligence, should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with reliability, safety, environmental protection, project economics and Applicable Law. **Standard Industry Practice** is not intended to be limited to the consideration of any one practice, method, standard, procedure or act to the exclusion of all others, but rather is intended to include the consideration of that spectrum of possible practices, methods or acts which, in the exercise of reasonable judgment of an independent engineering professional in light of the facts known, could reasonably be expected to yield the desired result.

Standard Retail Rate means the weighted average FOB price of LNG to be charged to Preferred Customers identified in clauses (i) through (iii) of Section 7.2 entering into LNG SPAs or LNG TSAs at any time on or prior to the Closing Date.

State has the meaning ascribed thereto in the Recitals.

State Party means the State, the Authority or any other agency, instrumentality or political subdivision of the State.

Statutory Exceptions has the meaning ascribed thereto in Section 10.2.

Substantial Completion means that: (i) each of the substantial completion conditions precedent as set forth in the Construction Contract, including completion of testing and commissioning, have been satisfied in full and (ii) the Concessionaire has countersigned and issued the Substantial Completion Certificate in accordance with the terms of the Construction Contract.

Substantial Completion Certificate means the certificate issued by the Construction Contractor under the Construction Contract certifying that Substantial Completion has occurred, as accepted and countersigned by the Concessionaire.

Substantial Completion Date means the actual date on which Substantial Completion occurs, in accordance with the terms of the Construction Contract.

Substitute Gas Supply Agreement has the meaning ascribed thereto in Section 2.8(b).

Target Closing Date has the meaning ascribed thereto in Section 3.2(a).

Target Commercial Operation Date means the date set forth on the Project Schedule, by which the Plant shall have achieved Commercial Operation.

Target EPC Price has the meaning ascribed thereto in Section 2.4(e).

Target Equity Return means a Nominal IRR of 12.5% over the Term.⁵

Target Final Acceptance Date means the date set forth on the Project Schedule, by which the Plant shall have achieved Final Acceptance.

Target FOB LNG Price Range has the meaning ascribed thereto in Section 9.2(a).

Target Initial LNG Delivery Date has the meaning ascribed thereto in the Recitals.

Target Substantial Completion Date means the date set forth on the Project Schedule, by which the Plant shall have achieved Substantial Completion in accordance with the terms of the Construction Contract.

Tax means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, permit fees, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, intangibles, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, duty, fee, withholding or similar imposition of any kind payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not.

Technical Dispute has the meaning ascribed thereto in Section 24.4(a).

Technical Standards means the standards, specifications, policies, procedures and processes that apply to the development, construction, operation and maintenance of the Plant set forth in Schedule G, including any plans submitted by the Concessionaire to the Authority pursuant to the foregoing, in each case as may be modified from time to time in accordance with this Agreement.

Term has the meaning ascribed thereto in Section 3.1(a).

⁵ A&O Note: Assumes LNG SPAs are 30 years in length.

Termination Damages means Adverse Action Termination Damages, AGS Termination Damages, Default Termination Damages or FM Termination Damages, as the case may be.

Third Party Claim means any claim asserted against an Indemnified Party by any Person who is not a party or an Affiliate of such Indemnified Party.

Third Party Financing Documents means any Third Party Loan Agreements, the Collateral Assignments, any interest rate swaps or other hedging arrangements, if applicable, and all other loan documents as required under the Third Party Loan Agreements.

Third Party Financing Plan has the meaning ascribed thereto in Section 3.3(c)(iii).

Third-Party Hazardous Materials means any Hazardous Materials introduced or brought onto the Plant Site prior to the Closing Date by a Person other than a Concessionaire Party or their respective Representatives.

Third Party Lender means: (i) a financial institution other than the Investor, any other Equity Participant or an Affiliate of the Concessionaire, the Investor or any Equity Participant and that provides (A) construction or term financing to the Concessionaire for the initial construction of the Plant or (B) working capital needs of the Concessionaire; or (ii) the Authority if the Parties agree to the terms and conditions of a Third Party Loan to be provided by the Authority in accordance with Section **Error! Reference source not found.**

Third-Party Liability has the meaning ascribed thereto in Section 15.3(b).

Third Party Loan means a loan in the principal amount determined in accordance with Section 12.2(c)(ii), as provided by Third Party Lender to the Concessionaire in accordance with and subject to the terms of the Third Party Loan Agreement, the proceeds of which shall be used solely for Project Costs.

Third Party Loan Agreement means a loan agreement with respect to a Third Party Loan entered into by the Concessionaire and a Third Party Lender.

Time of Closing means 10:00 a.m. on the Closing Date or such other time on such date as the Authority and the Concessionaire may agree to in writing.

Transaction Document means each Third Party Financing Document, the Equity Contribution Agreement and each Project Agreement, individually or collectively as the context may require.

Transfer means to sell, convey, assign, lease, sublease, mortgage, encumber, transfer or otherwise dispose.

Transferee has the meaning ascribed thereto in Section 22.1(a).

Transition Period has the meaning ascribed thereto in Section 18.1(b)(i)(A).

Trigger Quantity has the meaning ascribed thereto in Section 18.1(b)(i).

TSCA means the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.

Unforeseen Event means a Delay Event or a Compensation Event.

Unforeseen Event Notice has the meaning ascribed thereto in Section 19.1(a).

Work has the meaning ascribed thereto in Section 2.3(a).

Work Product means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of the Concessionaire or the Authority, as applicable, for the Project or the Plant, including designs, drawings, plans and specifications, record and as-built plans and specifications, engineering documents, geotechnical soils and soil boring data, analyses, reports and records, property acquisition files, agreements and documents (including records of payment and related correspondence, title policies, parcel diaries and all construction documents relating to the Work, Expansions or Modifications), engineers' and inspectors' diaries and reports, right of way record maps and surveys, and other feasibility data, analyses, studies and reports, correspondence and memoranda relevant to design or construction decisions, contracting plans, air quality monitoring data, environmental reviews, studies and reports, mitigation studies and reports, data, assessments, studies and reports regarding Environmental Conditions or Hazardous Materials investigations, testings, borings, monitoring and analyses, manifests regarding handling, storage or transportation of Hazardous Materials, correspondence and agreements relating to Permits, change orders, final quantities, pile driving records, field test records and reports, concrete pour records, surfacing depth check records, grade and alignment books, cross-section notes, drainage notes, photographs, false work and form plans, records of construction materials, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which the Concessionaire and the Authority mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure and which is not conceived or first reduced to practice for the Project, such as proprietary financial and pricing information of the Concessionaire.

1.2 Number and Gender

In this Agreement, terms defined in the singular have the corresponding plural meaning when used in the plural and vice versa and words in one gender include all genders.

1.3 Headings

The division of this Agreement into Articles, Sections and other subdivisions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

1.4 References to this Agreement

The words *herein*, *hereby*, *hereof*, *hereto* and *hereunder* and words of similar import refer to this Agreement as a whole and not to any particular portion of it. The words **Article**, **Section**, **paragraph**, **sentence**, **clause** and **Schedule** mean and refer to the specified article, section, paragraph, sentence, clause or schedule of, or to, this Agreement.

1.5 References to Any Person

A reference in this Agreement to any Person at any time refers to such Person and such Person's permitted successors and assigns.

1.6 Meaning of Including

In this Agreement, the words *include*, *includes* or *including* mean *include without limitation*, *includes without limitation* and *including without limitation*, respectively, and the words following *include*, *includes* or *including* shall not be considered to set forth an exhaustive list.

1.7 Meaning of Discretion

In this Agreement, unless otherwise qualified or limited, the word *discretion* with respect to any Person means the sole and absolute discretion of such Person.

1.8 Meaning of Notice

In this Agreement, the word *notice* means *written notice* unless specified otherwise.

1.9 Meaning of Promptly

In this Agreement, the word *promptly* means as soon as reasonably practicable in light of then-prevailing circumstances.

1.10 Consents and Approvals

Unless specified otherwise, wherever the provisions of this Agreement require or provide for or permit an approval or consent by either Party, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party) and, unless specified otherwise, such approval or consent shall not be unreasonably withheld, conditioned or delayed.

1.11 Trade Meanings

Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.

1.12 Laws

Unless specified otherwise, a reference to any Applicable Law is considered to be a reference to (a) such Applicable Law as it may be amended, modified or supplemented from time to time, (b) all regulations and rules pertaining to or promulgated pursuant to such Applicable Law, and (c) the successor to the Applicable Law resulting from recodification or similar reorganizing of Applicable Laws.

1.13 Currency

Unless specified otherwise, all statements of or references to “Dollars” or dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

1.14 Generally Accepted Accounting Principles

All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with then generally accepted accounting principles in the United States of America, consistently applied, except that if and to the extent the Authority is required to maintain any books, records and accounts under this Agreement, the Authority’s books, records and accounts shall be established and maintained in accordance with generally accepted accounting principles as established or modified by the Governmental Accounting Standards Board.

1.15 Time

- (a) **References to Specific Time.** Unless specified otherwise, all statements of or references to a specific time in this Agreement are to Alaska Time.
- (b) **Period of Days.** For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event that began the period and to end at 5:00 p.m. on the last day of the period, **provided**, that if the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. on the next Business Day.

1.16 Schedules

The Schedules to this Agreement are incorporated by reference into, and shall form part of this Agreement, and shall have full force and effect as though they were expressly set out in the body of this Agreement; provided, however, that in the event of any conflict between the terms, conditions and provisions of this Agreement (excluding the Schedules hereto) and the Schedules hereto, the terms of this Agreement (excluding the Schedules hereto) shall prevail.

1.17 Transaction Documents

Any reference to a Transaction Document herein shall be a reference to such Transaction Document as amended, restated, supplemented or otherwise modified from time to time.

2. DEVELOPMENT PHASE; PRE-CONCESSION OBLIGATIONS

2.1 Development Phase

The development phase of the Project (the *Development Phase*) shall commence on the Effective Date and terminate on the earlier to occur of the Closing Date and the termination of this Agreement in accordance with its terms. During the Development Phase each Party shall use Reasonable Efforts to complete each of the milestones set forth in Sections 2.2 to 2.12 (the *Development Phase Milestones*).

2.2 Plant Site Improvements; Early Procurement Equipment

- (a) In order to expedite the Project Schedule, the Authority and the Construction Contractor have entered into a Preliminary Master Design, Engineering, Procurement and Construction Services Agreement dated as of May 30, 2014 (the *AIDEA Early Works Agreement*) pursuant to which the Construction Contractor shall, among other things, undertake certain work for completion of the Plant Site Improvements and undertake certain engineering work as set forth in Schedule H (the *Early Works*).
- (b) The Plant Site Improvements shall be deemed to be fixtures of the Plant Site and the Concessionaire shall not have title to or any ownership interest in the Plant Site Improvements, but the Concessionaire shall have the possession and use of such Plant Site Improvements in accordance with the terms of this Agreement.
- (c) The Authority in its discretion and through the Construction Contractor in accordance with the terms of the AIDEA Early Works Agreement, may issue a notice to proceed to the Construction Contractor to procure the Early Procurement Equipment; **provided** that if the notice to proceed to procure the Early Procurement Equipment is not issued prior to [●], the Project Schedule shall be adjusted to take into account such delay. Prior to the issuance of the notice to proceed, the

Authority, the Concessionaire and the Construction Contractor shall select the supplier of the Early Procurement Equipment (such supplier, the **Early Equipment Supplier**). The Early Equipment Supplier shall design, engineer, fabricate, construct and deliver the Early Procurement Equipment to the Plant Site (the **Early Equipment Work**) in accordance with the Project Schedule.

- (d) Prior to the Closing Date, the Authority shall not amend, supplement or modify, including by way of change order, or terminate the AIDEA Early Works Agreement without the prior written consent of the Concessionaire. The Authority shall promptly deliver to the Concessionaire copies of any and all notices, submissions, proposals and change orders delivered by or to the Authority under or in connection with the AIDEA Early Works Agreement.
- (e) To the extent any elements of the Early Works contemplated to be performed under the AIDEA Early Works Agreement have not been completed in full prior to the Closing Date, the Authority shall assign the AIDEA Early Works Agreement to the Concessionaire on the Closing Date and the Concessionaire and the Construction Contractor shall integrate the AIDEA Early Works Agreement and the Work to be performed thereunder into the Construction Contract. Upon the Closing Date, (i) the Authority shall assign all Work Product produced under the AIDEA Early Works Agreement to the Concessionaire, (ii) all work performed in accordance with the AIDEA Early Works Agreement shall be deemed integrated and governed by the terms and conditions of the Construction Contract, and (iii) the AIDEA Early Works Agreement shall terminate and be superseded in its entirety by the Construction Contract in accordance with the terms of the Construction Contract. For the avoidance of doubt, the Authority will be responsible for all payments due to the Construction Contractor under the AIDEA Early Works Agreement for works performed under the AIDEA Early Works Agreement on or prior to the Closing Date.

2.3 Plan of Development; Project Schedule

- (a) Not later than [●], 2014⁶, the Concessionaire shall prepare and deliver to the Authority a proposed final form of the scope of work and development plan (the **Plan of Development**) for all the work (including the Early Works) required to design, engineer, procure equipment and materials for, construct, start-up and commission the Plant (the **Work**), subject to any changes as may be agreed between the Authority and the Concessionaire. The Authority shall notify the Concessionaire as soon as reasonably practicable, but no later than ten (10) Business Days after receipt of the proposed final form of Plan of Development, of either: (i) the Authority's questions, comments, objections or suggested amendments to such plan or (ii) the Authority's approval of the version of the Plan of Development as submitted by the Concessionaire.
- (b) If the Authority raises questions, comments, objections or proposed amendments to the proposed Plan of Development in accordance with Section 3.4(a), then within ten (10) Business Days after the Concessionaire's receipt of such request, the Concessionaire shall submit to the Authority responses to such questions, comments, objections or suggested amendments together with a revised Plan of Development, as required, incorporating all amendments requested by the Authority to the extent that the Concessionaire agrees with such proposed amendments. When submitting the revised Plan of Development to the Authority, the Concessionaire shall identify any amendments requested by the Authority that have not been incorporated into such revised plan, together with the Concessionaire's reasons for not making such amendments. Within ten (10) Business Days following the Authority's receipt of such responses or such revised Plan of

⁶ BG Note: We need input from commercial and technical teams in order to set various milestone dates and the applicable notice, review and approval periods. A&O Note: Agreed. How do we move this forward?

Development, the Authority and the Concessionaire shall attempt in good faith to resolve all outstanding issues related thereto; **provided** that if the Authority and the Concessionaire cannot resolve any Dispute within such ten (10) Business Day period, then such Dispute shall be resolved in accordance with the Dispute resolution procedures set forth in Section 24.

- (c) The Plan of Development shall include a schedule for the Work (the ***Project Schedule***). The Project Schedule shall include milestones for commencement and completion of the Early Works and the remainder of the Work, including the Target Substantial Completion Date, the Target Initial LNG Delivery Date, the Target Commercial Operation Date and the Target Final Acceptance Date (the ***Primary Milestones***). The Project Schedule may be modified (i) as agreed by the Parties or (ii) following a Delay Event, in accordance with Section 19.2. The Project Schedule, as so modified, shall be incorporated into the Construction Contract.

2.4 Construction Contract; Construction Budget

- (a) The Concessionaire has selected Construction Contractor to design, engineer, procure materials and equipment for and construct the Plant on a turnkey basis pursuant to a Construction Contract that shall be on terms that are usual and customary for turnkey construction contracts for projects that are similar to the Plant and similar to the Plant Site conditions and consistent with the form of the Construction Contract Term Sheet attached as Schedule J, subject to any changes as may be agreed between the Concessionaire, Construction Contractor and the Authority.
- (b) Under the AIDEA Early Works Agreement the Construction Contractor will perform all work necessary to deliver to the Authority and the Concessionaire, on or before [November 5, 2014], a Class 1 Cost Estimate for the Plant and all deliverables required in connection therewith and identified in the AIDEA Early Works Agreement, including a construction budget (the ***Construction Budget***) in a form and with the level of detail agreed by the Concessionaire, the Authority and the Construction Contractor. The Construction Contractor shall develop the Class 1 Cost Estimate and the Construction Budget on an Open Book Basis with the Concessionaire and the Authority. Based upon the Class 1 Cost Estimate, the Project Schedule and the risk allocations between the Concessionaire, the Construction Contractor and the Authority under the Construction Contract and this Agreement, the Construction Contractor, the Concessionaire and the Authority will seek to agree upon:
 - (i) a total price (the ***Target EPC Price***) to complete the Work (which price shall be the "turn-key" cost through commissioning and start-up of the Plant and will include all of the Construction Contractor's mark-ups, fees and profit, as disclosed on an Open Book Basis); and
 - (ii) a final Construction Budget, which shall include the Target EPC Price and any Additional Project Costs up to the Guaranteed EPC Price. The final Construction Budget, as approved by the Concessionaire, the Authority and the Construction Contractor is referred to herein as the ***Approved Construction Budget***. The Approved Construction Budget shall not be modified after the Closing Date without the prior written approval of the Authority except for modifications that do not, together with any previous modifications, increase the Approved Construction Budget by more than [five percent (5%)].

- (c) The Construction Contract will provide that:
- (i) if prior to the Final Acceptance Date the aggregate amount of the Project Costs incurred by the Construction Contractor exceeds the Target EPC Price, then:
 - (A) all Project Costs incurred by the Construction Contractor that exceed the Target EPC Price and up to an amount equal to the Guaranteed EPC Price (the ***Additional Project Costs***) shall be invoiced at cost and shall exclude all mark-up, fees and profit of the Construction Contractor,
 - (B) at such time that the Project Costs incurred by the Construction Contractor exceed the Guaranteed EPC Price, the Construction Contractor shall not be entitled to any further payment from the Concessionaire and the Construction Contractor shall complete the Work at the Construction Contractor's sole cost and expense; and
 - (ii) if the aggregate amount of the Project Costs paid to the Construction Contractor as of the Final Acceptance Date is less than the Target EPC Price, then the Concessionaire shall pay the Construction Contractor a bonus to be agreed in the Construction Contract.⁷
- (d) Any and all Additional Project Costs incurred by the Concessionaire pursuant to Section 2.4(c)(i)(A) shall be paid in accordance with Section 12.6.
- (e) If the Construction Contractor, the Concessionaire and the Authority are unable to agree upon a Target EPC Price or upon a final Construction Budget after receipt of the Class 1 Cost Estimate on or before [November 5, 2014], then the Concessionaire and the Authority shall discuss in good faith whether to cease pursuing the Construction Contract with TIC – The Industrial Company as Construction Contractor and to pursue a replacement construction contract with an alternate construction contractor mutually agreed by the Parties; **provided** that if the Concessionaire and the Authority agree to enter into any such replacement construction contract (i) the Closing Date shall be extended for the period necessary to enable the Concessionaire to select an alternate construction contractor and negotiate a replacement construction contract consistent with the form of the Construction Contract Term Sheet, subject to any changes that may be agreed between the construction contractor, the Concessionaire and the Authority, (ii) the Parties shall discuss in good faith the allocation of ongoing development costs and expenses incurred prior to the extended Closing Date including those costs related to selection of an alternate construction contractor, negotiation and completion of a replacement construction contract and any work performed to assist the alternate construction contractor in completion of any related deliverables required in connection therewith including, but not limited to, an initial indicative price and a Class 1 Cost Estimate, (iii) all references herein to the Construction Contract and the Construction Contractor shall be deemed to be references to the replacement construction contract and alternate construction contractor, respectively, and (iv) the Parties shall amend this Agreement as necessary to allow for the terms of such replacement construction contract.
- (f) Construction Contractor, with the Concessionaire's approval, will select each Equipment Supplier to supply equipment for incorporation into the Plant. After the Effective Date, the Concessionaire shall use Reasonable Efforts to procure that Construction Contractor and each Equipment Supplier agree on the final form of the definitive Equipment Supply Contract during the

⁷ A&O Note: Gain-share mechanism under consideration.

Development Phase. Each Equipment Supply Contract shall be entered into by and between Construction Contractor and the respective Equipment Supplier.

- (g) As between the Concessionaire and the Authority, the Concessionaire shall be responsible for the design, engineering and construction of the Plant, notwithstanding the Authority's assistance and participation in the equipment procurement and construction contracting process.

2.5 Permits

- (a) The Authority shall, prior to the Closing Date, apply for, procure and obtain all of the Permits set forth in Part 1 of Schedule C (the **AIDEA Permits**). The AIDEA Permits constitute all Permits that are capable of being obtained prior to the Closing Date and, other than any Concessionaire Permits, are required to be obtained under Applicable Law: (i) in order to commence and complete the Early Works and other Work; (ii) in order to commence the construction of the Plant; and (iii) as otherwise required in connection with the engineering, construction, ownership, operation and maintenance of the Plant. Each of the AIDEA Permits shall be transferred by the Authority to the Concessionaire at the Time of Closing. The Concessionaire shall provide the Authority with such assistance and cooperation as may reasonably be required in order for the Authority to apply for, procure and obtain all such AIDEA Permits.
- (b) All AIDEA Permits shall be obtained, and shall have become final and non-appealable, on or before the Time of Closing. The Authority shall pay for the costs of obtaining all AIDEA Permits and transferring such AIDEA Permits to the Concessionaire at the Time of Closing.
- (c) If the Authority fails to obtain any AIDEA Permit or there is a delay in obtaining any AIDEA Permit for any reason other than the Concessionaire's failure to reasonably cooperate with the Authority in obtaining such AIDEA Permit, or if an additional Permit of the type described in Section 2.5(a) is not identified in Part 1 of Schedule C and AIDEA fails to obtain such Permit, then (i) such occurrence shall be a Delay Event or a Compensation Event, as applicable in accordance with the definitions thereof, and (ii) if the Closing Deadline is extended in accordance with Section 3.3(g)(ii) as a result of such failure or delay, the Authority shall reimburse the Concessionaire for any additional fees, costs or expenses reasonably incurred by or on behalf of the Concessionaire in connection with such failure or delay in obtaining such AIDEA Permit.
- (d) The Concessionaire shall, at or prior to such time that such Permits are required under Applicable Law, apply for, procure and obtain all of the Permits set forth in Part 2 of Schedule C and any other Permit (other than the AIDEA Permits) required for the Concessionaire to engineer, construct, own, operate or maintain the Plant (collectively, the **Concessionaire Permits**). The Concessionaire shall pay for the costs of obtaining all Concessionaire Permits.
- (e) After the Closing Date, the Concessionaire shall be responsible for maintaining and complying with all Permits and paying all costs related thereto.
- (f) The Authority shall provide the Concessionaire with such assistance and cooperation (including assigning any AIDEA Permits to the Concessionaire at the Time of Closing to the extent permitted by the AIDEA Permits and Applicable Law), as may reasonably be required in order for the Concessionaire to apply for, procure, obtain, comply with and maintain all such Concessionaire Permits.
- (g) If the Concessionaire is, at any time during the Term, required to obtain any Permit from a Governmental Authority that can be obtained only by the Authority or a Governmental Authority,

the Authority shall (i) use its Reasonable Efforts to assist the Concessionaire in obtaining such Permit and (ii) subject to Applicable Law, promptly provide the Concessionaire a copy of any notice, summons, letter or other communication with respect to any Permits obtained, renewed or maintained in the Authority's name following the Authority's receipt thereof.

2.6 Initial Base Case Financial Model and Base Case Financial Model

- (a) Within thirty (30) days following the Effective Date, the Concessionaire and the Authority shall agree to the composition of the Initial Base Case Financial Model. The Initial Base Case Financial Model will be updated as of the Closing Date and, upon being adjusted, shall become the Base Case Financial Model. The Concessionaire shall deliver the proposed Base Case Financial Model to the Authority for review at least thirty (30) days prior to the anticipated Closing Date, and the Authority shall provide any comments on such proposed Base Case Financial Model as promptly as possible following delivery.
- (b) Within thirty (30) days following the Commercial Operation Date, the Base Case Financial Model shall be updated to reflect (i) the actual final cost to design, engineer and construct the Plant and (ii) the final amount of the AIDEA Appropriation Funds, AIDEA SETS Funds, Investor Equity Contributions and Third Party Loans disbursed or otherwise contributed between the Closing Date and the Commercial Operation Date. Based on the updated Base Case Financial Model, the Concessionaire shall produce an updated Payment Schedule and updated schedule for the Scheduled Investor Distributions.
- (c) The Concessionaire will not cause (or permit any other Person to cause) the Initial Base Case Financial Model or the Base Case Financial Model to contain any hidden data. The Concessionaire will furnish to the Authority any password or other access rights for each of the Initial Base Case Financial Model and the Base Case Financial Model.

2.7 Financial Model Disputes

- (a) The Authority will have the right to dispute the proposed Base Case Financial Model on the basis of mathematical errors or deficiencies in calculations or methodology. Within ten (10) days after receipt, the Authority will accept or dispute the proposed Base Case Financial Model. If the Authority disputes the proposed Base Case Financial Model, the Authority shall specify its reasons for such dispute in sufficient detail to enable the Concessionaire to correct any mathematical errors or deficiencies in calculations or methodology. To the extent that the Concessionaire and the Authority cannot agree on the changes within twenty (20) days of the Concessionaire delivering the proposed Base Case Financial Model to the Authority, the Dispute will be resolved in accordance with the Dispute resolution procedures set forth in Section 24.
- (b) In the event of a Dispute, the Initial Base Case Financial Model will remain in effect until such Dispute is resolved. If the proposed Base Case Financial Model has not been disputed, or if any such Dispute has been resolved, the proposed Base Case Financial Model will serve as the Base Case Financial Model

2.8 Gas Supply Agreement; Substitute Gas Supply Agreement

- (a) During the Development Phase the Concessionaire and GVEA will use Reasonable Efforts to negotiate a Gas Supply Agreement (the *Gas Supply Agreement*) on terms that are reasonably acceptable to GVEA and the Concessionaire, which terms shall include providing for (i) a supply of natural gas to the Plant during the Term under the BP Gas Supply Agreement that is not less

than the amount required to satisfy the Concessionaire's sale and delivery obligations under the LNG Sale and Purchase Agreements and LNG Tolling Services Agreements and (ii) a term of at least thirty (30) years from the Commercial Operation Date.

- (b) At any time prior to the fifth (5th) anniversary of the Commercial Operation Date, the Authority may negotiate a Gas Supply Agreement with a Gas Supplier (the ***Substitute Gas Supply Agreement***) that provides for a lower price of natural gas delivered to the Plant over the remaining Term than the price contained in the Gas Supply Agreement. If the Authority and the Gas Supplier reach an agreement on such pricing terms, and such pricing terms and the other terms of the Substitute Gas Supply Agreement are acceptable to one or more of the LNG Purchasers and to the Concessionaire in their reasonable discretion, then: (i) the Concessionaire may enter into the Substitute Gas Supply Agreement with such Gas Supplier on terms acceptable to the Concessionaire and the Gas Supplier; (ii) the Concessionaire and the LNG Purchasers that elect to change their gas supply from the Gas Supply Agreement to the Substitute Gas Supply Agreement shall use Reasonable Efforts to amend the applicable LNG SPA or LNG TSA to incorporate such amendments as are required to implement the Substitute Gas Supply Agreement; (iii) the Gas Supply Agreement shall be amended by the Concessionaire and GVEA to incorporate such amendments as are required to implement the Substitute Gas Supply Agreement and reduce quantities to be delivered to the Concessionaire under the Gas Supply Agreement; and (iv) the Authority shall pay all costs and expenses reasonably incurred by the Concessionaire in connection with the Concessionaire's review and completion of the Substitute Gas Supply Agreement.

2.9 LNG Sale and Purchase Agreements and Tolling Agreements

During the Development Phase, the Concessionaire shall negotiate a definitive LNG SPA or LNG TSA with each Preferred LNG Purchaser, which LNG SPAs shall be based upon the terms and conditions set forth in the LNG SPA Term Sheet attached as Schedule K-1 and which LNG TSAs shall be based on the terms and conditions set forth in the LNG TSA Term Sheet, attached as Schedule K-2. The Concessionaire shall use Reasonable Efforts to agree with each Preferred LNG Purchaser to the final form of its respective LNG SPA or LNG TSA during the Development Phase. The terms of the final version of each LNG SPA or LNG TSA with a Preferred LNG Purchaser shall conform in all material respects to the LNG SPA Term Sheet or the LNG TSA Term Sheet, as applicable, subject to any changes as may be agreed between the Concessionaire and each Preferred LNG Purchaser and consented to by the Authority.

2.10 Operation and Maintenance Agreement

During the Development Phase, the Concessionaire shall (a) select an Operator with the expertise, qualifications, experience, competence, skills and know-how to perform the operations and maintenance obligations of the Concessionaire in accordance with this Agreement, which selection shall be subject to the Authority's approval and (b) use Reasonable Efforts to negotiate a definitive O&M Agreement with the Operator on terms that are usual and customary for projects that are similar to the Plant and similar to the Plant Site conditions, which O&M Agreement shall be subject to the Authority's review in accordance with Section 2.13.

2.11 Third Party Financing Documents

Within [sixty (60)] days following the Effective Date, Investor shall deliver an initial draft of the Third Party Loan Agreement, if any, to the Concessionaire. Thereafter, Investor shall deliver to the Concessionaire drafts of the other Third Party Financing Documents. The Concessionaire shall use Reasonable Efforts to agree to the final form of the Third Party Loan Agreement and the other Third Party

Financing Documents during the Development Phase. In the event that the Authority is able to provide a Third Party Loan to the Concessionaire on terms and conditions that are, in the reasonable discretion of the Concessionaire, more beneficial to the Project, the Concessionaire and the Investor than the terms and conditions that are proposed by other potential Third Party Lenders, the Parties shall use Reasonable Efforts to agree upon such terms and conditions. If the Parties are able to agree upon such terms, the Parties shall use Reasonable Efforts to negotiate and complete Third Party Financing Documents during the Development Phase.

2.12 Equity Contribution Agreement

Within thirty (30) days following the Effective Date, Investor shall deliver an initial draft of the Equity Contribution Agreement to the Concessionaire and the Authority based upon the terms and conditions set forth in the Equity Contribution Agreement Term Sheet. The Concessionaire and Investor shall use Reasonable Efforts to negotiate the final form of the Equity Contribution Agreement during the Development Phase.

2.13 Authority Review of Project Agreements

- (a) During the negotiation of the Construction Contract, the Major Equipment Supply Contracts, the O&M Agreement, the LNG SPAs and the LNG TSAs, the Authority and its designated Representatives (including the AIDEA Independent Engineer) shall have the right to review and provide comment on the initial draft and a near-final draft of each such agreement; **provided** that the Authority and its Representatives shall provide any comments within (i) ten (10) Business Days of receipt of an initial draft and (ii) five (5) Business Days of receipt of a near-final draft. The Concessionaire shall provide the AIDEA Representative with a copy of the initial draft and the near-final draft promptly following the Concessionaire's receipt or transmission thereof.
- (b) If during the course of negotiations of such Project Agreements, the Concessionaire and the respective Project Party seek to change a term of a Project Agreement and such change will or could reasonably be expected to (i) have a material adverse effect on the Approved Construction Budget, Plan of Development or Project Schedule, (ii) have an AIDEA Material Adverse Effect or (iii) otherwise result in a material change from the initial draft of such Project Agreement, as provided to the Authority, then the Concessionaire shall provide notice thereof together with a revised draft of the relevant Project Agreement to the Authority for the Authority's review and comment; **provided** that the Authority and its Representatives shall provide any comments within five (5) Business Days of receipt of such notice and draft.
- (c) In the case of the Construction Contract, the Authority and its designees shall have the right to attend meetings between the Concessionaire and the Construction Contractor in connection with the design, engineering and construction of the Plant. The Parties agree to co-locate personnel with the Construction Contractor personnel during the design of the Plant and negotiation of the Construction Contract. The Authority acknowledges that the Concessionaire shall have lead responsibility for interfacing with the Construction Contractor and the Authority shall coordinate all communication between the Authority and the Construction Contractor with the Concessionaire.
- (d) Notwithstanding the Authority's and its Representatives' participation in the document review and negotiation process, the Concessionaire shall be solely responsible for completing the Project Agreements.

2.14 Authority Review of Third Party Financing Documents and Equity Contribution Agreement

- (a) The Authority and its designated Representatives shall have the right to review and provide comment on the initial draft and near-final draft of each of the Third Party Financing Documents and the Equity Contribution Agreement during the negotiation of such agreements. The Concessionaire shall provide the AIDEA Representative with a copy of each such draft promptly following the Concessionaire's receipt or transmission thereof, and the Authority may review such documents and provide comment to the extent that the Authority believes that the terms of the Third Party Financing Documents and the Equity Contribution Agreement adversely affect the terms of this Agreement or the Authority's rights hereunder, provided that AIDEA and its Representatives shall provide any comments within (a) seven (7) Business Days following receipt of an initial draft and (b) five (5) Business Days following receipt of each subsequent draft.
- (b) If during the course of negotiations of the Third Party Financing Documents and the Equity Contribution Agreement, the Concessionaire and the parties thereto seek to change a term of such Third Party Financing Documents or Equity Contribution Agreement and such change will or could reasonably be expected to (i) have a material adverse effect on the Approved Construction Budget, Plan of Development or Project Schedule, (ii) have an AIDEA Material Adverse Effect or (iii) otherwise result in a material change from the initial draft of such agreement as provided to the Authority, then the Concessionaire shall provide notice thereof together with a revised draft of the relevant Third Party Financing Document to the Authority for the Authority's review and comment; **provided** that the Authority and its Representatives shall provide any comments within five (5) Business Days of receipt of such notice.

2.15 AIDEA Representative

Within ten (10) days following the Effective Date, the Authority shall appoint a person to act as its representative (the ***AIDEA Representative***) under this Agreement and such person shall be designated to act as the primary point of contact with the Concessionaire and the Concessionaire Representative regarding all matters relating to this Agreement. Except as provided below, the AIDEA Representative shall be authorized to act on behalf of the Authority on all matters concerning this Agreement and the other Project Agreements to which the Authority is a party, and the performance by the Authority of its obligations hereunder and thereunder and shall be the person with whom the Concessionaire may consult at all times. The AIDEA Representative may designate in writing to the Concessionaire one or more persons to act on behalf of the AIDEA Representative (each, an ***AIDEA Representative Designee***) during times that the AIDEA Representative is unavailable. Whenever this Agreement requires the approval, consent or some other action of the Authority or the AIDEA Representative, the Concessionaire may rely on the approval of or consent of, or other action taken by, the AIDEA Representative or its duly authorized AIDEA Representative Designees; **provided, however**, that the AIDEA Representative and AIDEA Representative Designees shall not have any authority to amend this Agreement, which authority and power shall be reserved to the Authority.

2.16 Concessionaire Representative

Within ten (10) days following the Effective Date, the Concessionaire shall appoint a person to act as its representative (the ***Concessionaire Representative***) under this Agreement and such person shall be designated to act as the primary point of contact with the Authority and the AIDEA Representative regarding all matters relating to this Agreement. Except as provided below, the Concessionaire Representative shall be authorized to act on behalf of the Concessionaire on all matters concerning this Agreement and the other Project Agreements to which the Concessionaire is a party, and the performance

by the Concessionaire of its obligations hereunder and thereunder and shall be the person with whom the Authority may consult at all times. The Concessionaire Representative may designate in writing to the Authority one or more persons to act on behalf of the Concessionaire Representative (each, a ***Concessionaire Representative Designee***) during times that the Concessionaire Representative is unavailable. Whenever this Agreement requires the approval, consent or some other action of the Concessionaire or the Concessionaire Representative, the Authority may rely on the approval of or consent of, or other action taken by, the Concessionaire Representative or its duly authorized Concessionaire Representative Designees; **provided, however**, that the Concessionaire Representative and the Concessionaire Representative Designees shall not have any authority to amend this Agreement, which power and authority shall be reserved to the Concessionaire.

2.17 Reimbursement of Costs and Expenses prior to the Closing Date

- (a) MWHHA and the Authority have entered into the Services Agreement pursuant to which MWHHA has agreed to perform certain services in connection with the development of the Plant upon the Authority's issuance of notices to proceed (each, an ***Authority NTP***) under the Services Agreement. The Authority will issue an Authority NTP to MWHHA under the Services Agreement for the following scopes of work, as shall be further detailed in the applicable Authority NTP:
- (i) selection of an Operator and negotiation and completion of the O&M Agreement;
 - (ii) procurement of LNG Purchasers as required to satisfy the condition precedent to Closing set forth in Section 3.3(c)(i)(D) and the negotiation and completion of the LNG SPAs and LNG TSAs;
 - (iii) negotiation and completion of the Gas Supply Agreement, together with any necessary modifications of the BP Gas Supply Agreement that are necessary for the Project; and
 - (iv) work performed to assist the Construction Contractor in the completion of the initial indicative price and the Class 1 Cost Estimate.

Each Authority NTP will include a budget, schedule and not to exceed price for the applicable scope of work, which shall be prepared by the Authority and the Concessionaire. Each scope of work shall only apply, and the Authority's payment obligations shall only apply, to work performed by MWHHA under each Authority NTP after May 31, 2014.

- (b) The Concessionaire shall provide an invoice to the Authority each month during the Development Period in accordance with the terms of the Services Agreement, which invoice shall identify the amount of costs and expenses incurred by the Concessionaire (the ***Concessionaire Costs***) during the immediately preceding month under each Authority NTP individually and in total. The Authority shall pay the Concessionaire the following amounts in accordance with the payment terms set forth in the Services Agreement:
- (i) One hundred percent (100%) of the aggregate invoiced Concessionaire Costs up to \$750,000;
 - (ii) Fifty percent (50%) of the aggregate invoiced Concessionaire Costs in excess of \$750,000 up to \$1,500,000;
 - (iii) Twenty-five percent (25%) of the aggregate invoiced Concessionaire Costs in excess of \$1,500,000 up to \$2,000,000; and

- (iv) Zero percent (0%) of the aggregate invoiced Concessionaire Costs in excess of \$2,000,000.

For the avoidance of doubt, the Authority's liability for the Concessionaire Costs under this Section 2.17 shall not exceed \$1,250,000.

- (c) The Parties acknowledge that the Authority has agreed to reimburse the Concessionaire for the Concessionaire Costs incurred under the Authority NTPs in anticipation of Closing and to reduce the Concessionaire's risk in the event that Closing does not occur hereunder. If Closing does occur hereunder, then on the Closing Date (i) the Concessionaire shall reimburse the Authority for the Concessionaire Costs paid by the Authority up to the Closing Date and (ii) if any amounts have been invoiced under the Authority NTPs but not paid by the Authority as of the Closing Date, such invoiced amounts shall be withdrawn and the Authority shall not have any further obligation to pay such amounts to the Concessionaire.

3. THE CONCESSION; CLOSING; CONDITIONS PRECEDENT; COVENANTS

3.1 Grant of Concession

Upon the terms and subject to the conditions of this Agreement, effective at the Time of Closing, the Authority shall and does hereby:

- (a) grant to the Concessionaire the exclusive right, franchise and concession to (i) develop, construct, use, operate, manage, maintain and improve the Plant, (ii) access, use and occupy the Plant Site as necessary for the Concessionaire to fully enjoy the rights granted under clause (i), (iii) otherwise perform the Project in accordance with and pursuant to this Agreement and (iv) collect and retain all Revenues from the Project, in each case for and during the period commencing and accruing as of the Time of Closing and expiring at 11:59 p.m. on the End Date (such period, the **Term**); and
- (b) assign, transfer and otherwise convey to the Concessionaire each of the Project Assets (the actions contemplated in these clauses (a)–(b) collectively, the **Concession**);

and the Concessionaire shall accept each such grant, assignment, transfer and conveyance.

3.2 Closing

- (a) **Closing Date.** The closing of the transactions contemplated by this Agreement (the **Closing**) shall take place on the first Business Day on which all conditions precedent set forth in Section 3.3 have been satisfied or waived by the Party entitled to waive them (the **Closing Date**). The Closing shall be held at such place as agreed to in writing by the Authority and the Concessionaire. The Parties shall use Reasonable Efforts to satisfy the conditions precedent to Closing as set forth in Section 3.3 on or before October 31, 2014 (the **Target Closing Date**), **provided** that the Parties acknowledge that such date shall not be construed as a deadline for Closing, which Closing Deadline is set forth in Section 3.3(d)(iii).
- (b) **Liability Allocation at Closing.** Subject to the terms of this Agreement, the Authority shall be responsible for all charges, costs and expenses with respect to debts, liabilities or obligations relating to the Plant that shall have accrued as of 11:59 p.m. on the day immediately preceding the Closing Date (**Pre Closing Liabilities**). All charges, costs and expenses with respect to such Pre-Closing Liabilities that, if arising on or after the Closing Date, would be Assumed Liabilities and that are calculated on a periodic basis shall be pro-rated between the Authority and the

Concessionaire based on the actual number of days in the month and a 365-day year and any required payment resulting from such proration shall be made in same-day funds by wire transfer. If final proration cannot be made at Closing for any Pre-Closing Liabilities being pro-rated under this Section 3.2(b), then the Authority and the Concessionaire shall allocate such items on a fair and equitable basis as soon as statements, invoices or bills are available with final adjustment to be made as soon as reasonably possible after the Closing Date. The Authority and the Concessionaire shall have reasonable access to, and the right to inspect and audit, the other Party's books to confirm such final determinations to the extent permitted by Applicable Law.

3.3 Conditions Precedent; Termination

- (a) **Conditions for the Benefit of the Concessionaire.** The Concessionaire shall be obligated to consummate the Closing in accordance with the terms hereof only if each of the following conditions has been satisfied in full at or before the Time of Closing, unless waived in writing by the Concessionaire in its discretion:
- (i) the representations and warranties of the Authority set forth in Section 11.1 shall be true and correct on and as of the Effective Date and at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except (A) that representations and warranties that by their terms are applicable only as of the Effective Date or some other date need be true and correct only as of such date and (B) for failures of representations and warranties to be true or correct that, individually or in the aggregate, have not had and are not reasonably likely to have (1) a material adverse effect on the ability of the Authority to consummate the transactions contemplated hereby or perform its obligations hereunder or (2) a Concessionaire Material Adverse Effect;
 - (ii) since the Effective Date, there has not been any transaction or occurrence related to the Plant Site, the Early Works or the transactions contemplated in this Agreement, including the Concession, that has resulted or is reasonably likely to result in a Concessionaire Material Adverse Effect;
 - (iii) no outstanding Authority Default shall exist;
 - (iv) the Authority shall have performed and complied with the agreements, covenants and obligations required by this Agreement to be so performed or complied with by the Authority at or prior to the Time of Closing;
 - (v) the Authority shall have delivered to the Concessionaire the following agreements, documents or instruments, or the Concessionaire shall have received such agreements, documents or instruments from the relevant counterparty, in form and substance reasonably acceptable to the Concessionaire:
 - (A) the Site Lease Agreement, duly executed by the Authority and DNR;
 - (B) the AIDEA Security Agreement, duly executed by the Authority;
 - (C) the AIDEA Deed of Trust, duly executed by the Authority and the trustee party thereto; and
 - (D) an assignment agreement assigning the AIDEA Early Works Agreement to the Concessionaire, together with a true and complete copy of the AIDEA Early

Works Agreement in effect as of the Closing Date, which agreement shall not have been amended, supplemented or otherwise modified (including through any change orders) without the Concessionaire's prior written consent.

- (vi) the Authority shall have delivered such applications, notices and other instruments to the applicable Governmental Authorities as required under Applicable Law to transfer the AIDEA Permits to the Concessionaire (to the extent assignable under the AIDEA Permits and Applicable Law) effective as of the Time of Closing;
 - (vii) the Authority shall have obtained all AIDEA Permits, except any ministerial AIDEA Permit which, under Applicable Law, may be applied for and obtained in the normal course of business during the Work; **provided** that (A) the absence of such AIDEA Permit does not limit or restrict, and would not delay the timely completion of the Work or otherwise have a Concessionaire Material Adverse Effect, (B) the Authority has no reason to believe that any such AIDEA Permit will not be granted prior to the time such AIDEA Permit is required to be obtained under Applicable Law and (C) once any such AIDEA Permit is obtained, it shall be transferred to the Concessionaire as required under Section 2.5(b);
 - (viii) the Concessionaire shall have received confirmation in a form reasonably satisfactory to the Concessionaire that the full amount of the AIDEA Funds has been received by the Depository and deposited into the AIDEA Disbursement Account;
 - (ix) the Authority shall have delivered to the Concessionaire a legal opinion of counsel to the Authority, in the form attached hereto as Schedule L;
 - (x) from the Effective Date to the Time of Closing, neither the Authority nor any Governmental Authority established under the Applicable Law of the State shall have enacted any legislation or ordinance or promulgated any rule or regulation that would constitute an Adverse Action hereunder were such action to take place during the Term; and
 - (xi) the Authority shall have delivered to the Concessionaire a certificate confirming (A) the Authority's compliance with the terms and conditions of this Agreement, (B) that each of the conditions set forth in Sections 3.3(a)(i) through (x) have been satisfied in full by the Authority (except for any such condition which has been waived in writing by the Concessionaire) and (C) the validity of the Authority's representations and warranties set forth in Section 11.1.
- (b) **Conditions for the Benefit of the Authority.** The Authority shall be obligated to consummate the Closing in accordance with the terms hereof only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived in writing by the Authority in its discretion:
- (i) the representations and warranties of the Concessionaire set forth in Section 11.2 shall be true and correct on and as of the Effective Date and at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except (A) that representations and warranties that by their terms are applicable only as of the Effective Date or some other date need be true and correct only as of such date and (B) for failures of representations and warranties to be true or correct that, individually or in the aggregate, have not had and are not reasonably likely to have (1) a material adverse effect

on the ability of the Concessionaire to consummate the transactions contemplated hereby or perform its obligations hereunder or (2) an AIDEA Material Adverse Effect;

- (ii) since the Effective Date, there has not been any transaction or occurrence related to the transactions contemplated in this Agreement, including the Concession, that has resulted or is reasonably likely to result in an AIDEA Material Adverse Effect;
- (iii) no outstanding Concessionaire Default shall exist;
- (iv) the Concessionaire shall have performed and complied with the agreements, covenants and obligations required by this Agreement to be so performed or complied with by the Concessionaire at or prior to the Time of Closing;
- (v) the Authority shall have received confirmation from the Depositary in a form satisfactory to the Authority that: (A) an equity contribution of the Investor in an amount not less than \$20,000,000 has been received by the Depositary, (B) if the amount received by the Depositary is less than Actual Investor Equity Contribution, a Letter of Credit of which the Authority is a beneficiary and on which the Authority shall have the right to draw, in the amount of the Residual Investor Contribution (the ***Investor Equity Contribution Letter of Credit***) has been posted, and (C) if there is any Actual Additional Equity Commitment as of the Closing Date, a Letter of Credit of which the Authority is a beneficiary and on which the Authority shall have the right to draw, in the amount of the Actual Additional Equity Commitment (the ***Additional Equity Commitment Letter of Credit***) has been posted, each in accordance with the terms of the Equity Contribution Agreement;
- (vi) the Authority shall have received confirmation from each Third Party Lender in a form satisfactory to the Authority that all conditions precedent to closing and to the availability and utilization of Third Party Loans as set forth in such Third Party Lender's Third Party Loan Agreement (if any) have been satisfied;
- (vii) the Concessionaire shall have delivered to the Authority a legal opinion of counsel to the Concessionaire, in substantially the form attached hereto as Schedule M;
- (viii) the Concessionaire shall have delivered to the Authority a legal opinion of counsel to each Equity Participant, in substantially the form attached hereto as Schedule N;
- (ix) to the extent the Concessionaire can obtain such opinions using Reasonable Efforts, the Concessionaire shall have delivered to the Authority a legal opinion of counsel to each Project Party (other than the Equity Participants), in substantially the form attached hereto as Schedule O;
- (x) the Concessionaire shall have delivered to the Authority its unaudited quarterly financial statements for the quarter most recently ended, as certified by the Concessionaire's chief financial officer that such financial statements fairly present the financial condition and the results of operations, changes in equity and cash flows of the Concessionaire as at the respective dates of and for the periods referred to in such financial statements;
- (xi) the Concessionaire shall have delivered to the Authority evidence that each of the Required Coverages that the Concessionaire is required to maintain pursuant to Section 16.2 have been obtained and are in full force and effect; and

- (xii) the Concessionaire shall have delivered to the Authority a certificate confirming (A) the Concessionaire's compliance with the terms and conditions of this Agreement, (B) that each of the conditions set forth in Section 3.3(b)(i) through (xi) have been satisfied in full by the Concessionaire (except for any such condition which has been waived in writing by the Authority) and (C) the validity of the Concessionaire's representations and warranties set forth in Section 11.2.
- (c) **Mutual Conditions.** The Authority and the Concessionaire shall be obligated to consummate the Closing in accordance with the terms hereof only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived in writing by both the Authority and the Concessionaire in their discretion:
 - (i) the Authority and the Concessionaire shall have received the following agreements, documents or instruments, duly executed by each party thereto, in form and substance reasonably acceptable to each of the Authority and the Concessionaire:
 - (A) to the extent applicable, all Third Party Financing Documents entered into at the time of Closing and the corresponding Collateral Assignment and Consent and Agreement;
 - (B) the Equity Contribution Agreement reflecting an amount at least equal to the Minimum Equity Contribution and reflecting the commitment of the Investor to provide the equity funds reflected in the Base Case Financial Model, which are required for meeting its obligations related to the Project;
 - (C) the Gas Supply Agreement;
 - (D) each LNG SPA and each LNG TSA, pursuant to which the LNG Purchasers, in the aggregate, contract for LNG quantities sufficient to satisfy the assumptions set forth in the Base Case Financial Model, including the repayment of the Investor Equity Contributions, AIDEA SETS Funds and Third Party Loans (if any) in accordance with such assumptions (including the term of each of the LNG SPAs, LNG TSAs and this Agreement);
 - (E) the Construction Contract, together with the Construction Contractor Performance Security and the Construction Contract Parent Guarantee as required under the Construction Contract;
 - (F) each Major Equipment Supply Contract;
 - (G) the O&M Agreement;
 - (H) the Depositary Agreement; and
 - (I) the Nondisturbance and Attornment Agreement in respect of the Site Lease Agreement, duly executed by DNR and the Concessionaire.
 - (ii) the Concessionaire shall have provided to the Authority the Base Case Financial Model in form and substance reasonably acceptable to the Concessionaire and the Authority (including each of the assumptions, inputs and outputs of the Base Case Financial Model as set forth therein), as adjusted pursuant to Section 2.6, and such Base Case Financial

Model shall not be subject to a Dispute between the Authority and the Concessionaire pursuant to Section 2.7, **provided** that the determination of whether such assumptions, inputs and outputs are reasonable will include a review of how the various risks presented by the transactions hereunder have been allocated among the Parties and the Project Parties;

- (iii) the Concessionaire shall have provided the Authority with the Concessionaire's initial plan for obtaining Third Party Loans after the Closing Date (the ***Third Party Financing Plan***) in accordance with Section 12.9 to replace the Actual Investor Residual Commitment that would otherwise be funded by the Investor, including the estimated interest rate for such Third Party Loans and showing a weighted average cost of capital of such Actual Investor Equity Contributions and such Third Party Loans no greater than [●], and, based upon such estimates, such Third Party Loans shall be acceptable to the Authority and the Concessionaire;
- (iv) there shall not be any pending or threatened Proceedings or law or order restraining, enjoining or otherwise prohibiting or making illegal or threatening to restrain, enjoin or otherwise prohibit or make illegal the consummation of any of the transactions contemplated by this Agreement or the Transaction Documents;
- (v) there shall be no preliminary or permanent injunction or temporary restraining order or other order issued by a Governmental Authority of competent jurisdiction or other legal restraint or prohibition enjoining or preventing the Concession;
- (vi) other than the AIDEA Permits and the Concessionaire Permits, no registration, filing with or approval of any Governmental Authority is required on the part of the Authority or the Concessionaire in connection with the performance by such Party of its obligations under this Agreement or any of the other Transaction Documents to which such Party is a party;
- (vii) the Concessionaire shall have prepared and the Authority shall have approved the Plan of Development (including the Project Schedule) in accordance with Section 2.3;
- (viii) the Concessionaire and the Authority have agreed that (A) the plan for trucking LNG from the Plant to the delivery point of each Preferred LNG Purchaser and the LNG storage and regasification plans for each Preferred LNG Purchaser are sufficient to enable each Preferred LNG Purchaser to perform its respective obligations under its LNG SPA or LNG TSA, (B) each Preferred LNG Purchaser has obtained sufficient financing to complete construction and commissioning of its LNG storage facilities and regasification infrastructure, and to the extent applicable, the initial portion of its gas distribution infrastructure, on or before the Target Initial LNG Delivery Date; and (C) each Preferred LNG Purchaser has established a plan that is reasonably expected to enable such Preferred LNG Purchaser to complete construction and commissioning of its LNG storage facilities and its regasification infrastructure and, to the extent applicable, the initial portion of its gas distribution infrastructure, on or before the Target Initial LNG Delivery Date;
- (ix) the Concessionaire shall have prepared and the Authority shall have approved the final form of the Approved Construction Budget in accordance with Section 2.4;
- (x) the Construction Contractor shall have delivered the Class 1 Cost Estimate, as developed by the Construction Contractor pursuant to the AIDEA Early Works Agreement, together

with all deliverables related thereto, which shall be in form and substance reasonably acceptable to the Authority and the Concessionaire;

- (xi) Investor shall have received final investment committee approval for its investment in the Concessionaire in an amount not less than the Actual Investor Investment Commitment Amount;
 - (xii) the Concessionaire and the Authority shall have agreed to (A) the final Payment Schedule developed pursuant to Section 13.2(a), (B) the schedule for making Scheduled Investor Distributions and (C) the Target FOB LNG Price Range pursuant to Section 9.2(a); and
 - (xiii) the Base Case Financial Model has demonstrated that the Plant is projected to be capable of producing the LNG at a price within the Target FOB LNG Price Range during the Term, based upon the assumptions set forth in the Base Case Financial Model.
- (d) **Termination.** This Agreement may be terminated at any time prior to the Closing:
- (i) by mutual consent of the Authority and the Concessionaire in a written instrument;
 - (ii) by either the Authority or the Concessionaire, upon notice to the other Party, if any Governmental Authority of competent jurisdiction shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the Concession, and such order, decree, ruling or other action has become final and nonappealable;
 - (iii) by either the Authority or the Concessionaire, upon notice to the other Party, if the Closing shall not have occurred as of 11:59 p.m. on December 30, 2014, unless such date is extended in accordance with Section 3.3(g) (such date as extended, the **Closing Deadline**); **provided, however**, that the right to terminate this Agreement under this Section 3.3(d)(iii) shall not be available to any Party whose failure to comply with any provision of this Agreement has been the cause of, or resulted in, any order, decree, ruling or other action of a Governmental Authority being imposed or becoming final and nonappealable or, whose actions or failure to act caused the Closing not to occur;
 - (iv) by the Concessionaire, upon notice to the Authority, following an Authority Default under Section 20.2 and the expiration of the applicable cure period (if any) provided to the Authority therein;
 - (v) by the Authority, upon notice to the Concessionaire, following a Concessionaire Default under Section 20.1 and the expiration of the applicable cure period (if any) provided to the Concessionaire therein; or
 - (vi) by either the Authority or the Concessionaire, upon notice to the other Party, pursuant to Section 24.4(d)(vii) if such Party does not accept an Expert determination and the Parties are unable to resolve the underlying Technical Dispute.
- (e) **Effect of Termination.** In the event of termination of this Agreement by either the Authority or the Concessionaire as provided in Section 3.3(d), this Agreement shall forthwith become void and there shall be no liability or obligation on the part of the Authority or the Concessionaire or their respective Representatives, except as set forth in this Section 3.3(e) and Section 15 and subject to and in accordance with Section 24 and Section 27 and except that no Party shall be relieved or

released from any liabilities or damages arising prior to the termination of this Agreement. Notwithstanding the foregoing, if this Agreement is terminated prior to the Closing Date due to:

- (i) an Authority Default, then the Authority shall pay the Concessionaire \$1,000,000 as liquidated damages, which payment shall be the Concessionaire's sole and exclusive remedy for such Authority Default and the Concessionaire's termination of this Agreement prior to the Closing Date; and
- (ii) a Concessionaire Default, then the Concessionaire shall pay the Authority \$1,000,000 as liquidated damages, which payment shall be the Authority's sole and exclusive remedy for such Concessionaire Default and the Authority's termination of this Agreement prior to the Closing Date.

It is understood and agreed by the Parties that (A) the Concessionaire may be damaged by an Authority Default, and the Authority may be damaged by a Concessionaire Default, prior to the Closing Date, (B) if a Party is damaged by such default, it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) any sums which may be payable by a Party to the other Party under this Section 3.3(e) are in the nature of liquidated damages and not a penalty, and (D) such payments each represent a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such default. Upon any such termination, the Concessionaire shall promptly deliver to the Authority, and shall take all necessary action to transfer all right, title and interest in, all Work Product, whether partial or complete, produced to date under this Agreement.

- (f) **Closing Security.** The Concessionaire acknowledges that it has provided to the Authority the Closing Security as security for the Concessionaire's commitment to achieve the Closing, and the Authority acknowledges that it has received the Closing Security from the Concessionaire. The Authority has the right to immediately draw on the Closing Security in full, upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under the Closing Security if, and only if, this Agreement is terminated prior to the Closing Date due to a Concessionaire Default. The Authority will return to the Concessionaire the Closing Security marked "cancelled" at the Time of Closing.⁸

(g) **Extension of Closing Deadline**

- (i) The Closing Deadline shall be tolled during the period of time during which any Dispute regarding whether a condition precedent to Closing has been satisfied is being resolved in accordance with Section 24. In such case, the Closing Deadline shall be extended to the date which is thirty (30) days following the date that such Dispute has been resolved and is final and all appeal periods with respect thereto have expired.
- (ii) The Closing Deadline shall be extended in the case that one or more Delay Events prevents or delays a Party from completing a condition precedent to Closing; **provided** that such extension period (A) shall be only for so long as reasonably required to enable such affected Party to recover from such Delay Event and satisfy such condition precedent to Closing and (B) shall, unless otherwise agreed by the Parties, in no event extend for more than ninety (90) days following the expiration of the original Closing Deadline.

⁸ A&O Note: To be discussed whether AIDEA should provide closing security for termination damages as well.

3.4 Covenants

- (a) **Cooperation.** The Parties shall cooperate with each other and work diligently towards meeting the Development Phase Milestones and satisfying their obligations and respective conditions precedent in order to permit the Closing to be consummated prior to the Closing Deadline.
- (b) **Reasonable Efforts.** Each Party shall use all Reasonable Efforts (i) to take, or cause to be taken, all actions necessary to comply promptly with all requirements of this Agreement and Applicable Law that may be imposed on such Party to consummate the transactions contemplated under this Agreement promptly and (ii) to obtain (and to cooperate with the other Party to obtain) any Permit of any Governmental Authority or any other public or private third-party which is required to be obtained or made by such Party in connection with the consummation of the transactions contemplated under this Agreement. Each Party shall promptly cooperate with and furnish information to the other Party at such other Party's reasonable request in connection with any such efforts by, or requirement imposed upon, any of them in connection with the foregoing.
- (c) **Communication.** Each Party shall provide progress updates on each of the Development Phase Milestones for which they are responsible to the other Party as necessary to keep the other Party informed of tasks completed, tasks not yet completed and estimated completion dates, as well as such other information as the other Party may reasonably request. The Parties shall schedule periodic meetings, at either Party's reasonable request, during the Development Phase to discuss the Plan of Development, the Project Schedule, the Approved Construction Budget and the progress made toward satisfying the Development Phase Milestones and the conditions precedent to Closing, and any other matters related to the Project as reasonably requested by either Party.
- (d) **Injunctions.** If any Governmental Authority of competent jurisdiction issues a preliminary or permanent injunction or temporary restraining order or other order before the Time of Closing which would prohibit or materially restrict, hinder or adversely affect the Closing, each Party shall use Reasonable Efforts to have such injunction, restraining order or other order dissolved or otherwise eliminated or to eliminate the condition that formed the basis for such injunction, restraining order or other order, in each case promptly and, in any event, prior to the Time of Closing. Any and all costs incurred by any Party pursuant to any action taken in accordance with this Section 3.4(d) shall be borne by the Party against whom such injunction, restraining order or other order has been entered or whose alleged action or inaction in violation of Applicable Law is the basis for issuance of such injunction, restraining order or other order.
- (e) **Development and Construction of the Plant.** From the Effective Date up to the Time of Closing, the Authority shall (i) consult with the Concessionaire on all material matters relating to the procurement of the Early Works, the Early Procurement Equipment and all other matters related to the development and construction of the Plant, (ii) not dispose of any Project Assets, (iii) perform in all material respects all of its obligations under the Authority Contracts and not enter into any Authority Contracts other than in the ordinary course of business and (iv) not incur any indebtedness or Encumbrances (other than Permitted Authority Encumbrances) in connection with the Plant or the Plant Site that are not satisfied by the Closing Date. The Authority shall not enter into any contract for any aspect of the development or construction of the Plant other than with a contractor, and on terms and conditions, in each case acceptable to the Concessionaire acting reasonably.
- (f) **Disclosure of Changes.** From the Effective Date up to the Time of Closing, each Party shall promptly disclose to the other Party any matter which becomes known to it which is inconsistent in any material respect with any of the representations or warranties made by the disclosing Party

to the other Party under Section 11. No such disclosure shall be deemed to change any representation and warranty, cure any breach thereof or affect any inability to make such a representation and warranty for purposes of Section 3.3(a) or for any other purpose.

- (g) **Transition.** From the Effective Date up to the Time of Closing, the Parties shall cooperate with each other to ensure the orderly transition of control and custody of the Plant Site to the Concessionaire at the Time of Closing.
- (h) **Authority Contracts.** The Authority shall prior to the Closing Date cooperate with the Concessionaire to identify contracts and warranties, if any, relating to the development and construction of the Plant, the assignment of which would be desirable in order to facilitate the development and construction of the Plant by the Concessionaire after the Closing Date or which should be terminated by the Closing Date and shall use Reasonable Efforts to procure such assignment or termination as the case may be.
- (i) **Structuring Changes.** In the event that on or before the Closing Date the Concessionaire determines, on the basis of tax, regulatory or other considerations of the Concessionaire or any Equity Participant, that it would be beneficial to such parties to make any changes to the organizational structure of the Concessionaire and Equity Participants contemplated in this Concession Agreement, the Authority shall cooperate with the Concessionaire in good faith to effect such changes, including entering into any required amendment to this Concession Agreement, provided that such changes are not reasonably likely to have a Concessionaire Material Adverse Effect or an AIDEA Material Adverse Effect.
- (j) **Amendment or Termination of Transaction Documents.** After the Closing Date, the Concessionaire shall not: (i) suspend, cancel or terminate any Transaction Document to which the Concessionaire is a party or consent to or accept any cancellation or termination thereof; or (ii) amend any Transaction Document, if such suspension, cancellation, termination or amendment could reasonably be expected to have a Concessionaire Material Adverse Effect or an AIDEA Material Adverse Effect, except to the extent the Authority has approved such suspension, cancellation, termination or amendment. The Concessionaire shall deliver a copy of each amendment to a Transaction Document to the Authority within five (5) Business Days following the execution and delivery thereof by the Concessionaire and the other party thereto (whether or not the Authority's approval of such amendment is required hereunder).

3.5 Closing Date Deliveries

At the Time of Closing, each Party shall execute and deliver all agreements, bills of sale, assignments, endorsements, instruments, affidavits and documents as are reasonably necessary in the opinion of the other Party to effect the transactions contemplated under this Agreement (and in form and substance that are reasonably satisfactory to such other Party).

3.6 Intended Treatment for Income Tax Purposes

The Parties acknowledge and agree that the Authority shall retain full ownership over the Plant and Project Assets for United States federal and State income tax purposes and also for purposes of State law.

4. TERMS OF THE CONCESSION

4.1 Right to Use; Present Condition

- (a) **Right to Use.** Without limiting any of its remedies upon and during the continuance of a Concessionaire Default, the Authority agrees that the Concessionaire shall, at all times during the Term, be entitled to and shall have the exclusive right to develop and construct the Plant and conduct the Plant Operations and the rights and privileges granted to the Concessionaire hereunder, subject to the provisions contained in this Agreement. The Authority acknowledges and agrees that, subject to the Concessionaire's compliance with the terms and conditions of the Site Lease Agreement, the Authority shall refrain, and shall use Reasonable Efforts to cause all other State Parties to refrain, from taking any action that would materially adversely affect the development and construction of the Plant or the Plant Operations, except in accordance with Section 4.6(a) and pursuant to the exercise of the Authority's rights and remedies set forth in this Agreement. The Authority shall have the right, in accordance with the terms of this Agreement, to monitor Concessionaire's compliance with this Agreement to ensure that the Plant is developed, constructed, used and operated as required by this Agreement.
- (b) **Quiet Enjoyment.** The Concessionaire, so long as it pays all amounts due hereunder and performs all of the covenants, conditions and provisions of this Agreement on its part to be performed, shall and may peacefully and quietly have and enjoy the Plant Site throughout the Term, except as otherwise expressly set forth to the contrary in this Agreement and subject to the exercise by the Authority of its rights and remedies under this Agreement. The Authority will, at all times during the Term, defend (a) the Authority's leasehold interest in the Plant Site granted pursuant to the Site Lease Agreement and the Authority's ownership interest in the Plant; and (b) the license to use granted to the Concessionaire hereunder, or any portion thereof, in each case, against any Person claiming any ownership interest, leasehold interest or license to use adverse to the Authority or the Concessionaire in the Plant or the Plant Site, or any portion thereof, as applicable, except where such adverse interest arises as a result of the act or omission by the Concessionaire or any other Concessionaire Party in breach of the provisions of this Agreement or the gross negligence, willful misconduct or violation of Applicable Law by the Concessionaire or any other Concessionaire Party.
- (c) **Compliance with Site Lease Agreement.** The Concessionaire has received and reviewed the Site Lease Agreement and Concessionaire shall at all times during the Term comply with the terms and conditions of the Site Lease Agreement to the same extent as the Authority is required to comply thereunder; **provided** that the Concessionaire shall not have any liability or obligation to DNR under the following provisions of the Site Lease Agreement, which shall remain the sole obligation of the Authority: Section 3 (Rental), Section 4 (Payment), Section 9 (Indemnity) (except to the extent the Concessionaire is liable for any claim thereunder pursuant to Section 15.1 hereto), Section 11 (Liability Insurance and Security Payments), Section 22 (Reimbursement of State Expenses), Section 35 (Authority to Enter into Lease) and Exhibit C (Financial Assurances Agreement).
- (d) **Present Condition.** Except with respect to (i) any Unforeseen Events encountered in the development, construction and operation of the Plant and (ii) the Excluded Liabilities as provided for in Section 4.2, and except as specifically set forth in Section 11.1, the Concessionaire understands, agrees and acknowledges that the Concessionaire, by the execution of this Agreement, agrees to accept the Plant Site and the Project Assets "AS IS" at the Time of Closing.

4.2 Assumed Liabilities

The Concessionaire agrees to assume and discharge or perform when due, all debts, liabilities and obligations whatsoever relating to the Plant, the Plant Site or the Project Agreements, that occur, arise out of or relate to, or are based on facts or actions occurring, during the Term, but only to the extent such debts, liabilities or obligations do not arise from or relate to any breach by the Authority of any covenant, representation or warranty set forth in this Agreement (collectively, the ***Assumed Liabilities***); **provided, however**, that the Assumed Liabilities shall not include, and the Authority shall perform and discharge as and when due all Excluded Liabilities. The ***Excluded Liabilities*** shall consist of any debts, liabilities and obligations relating to the Plant:

- (a) arising prior to the Time of Closing, other than any debts, liabilities or obligations relating to the Plant to the extent the foregoing (i) relate to or arise from the Concessionaire's obligations or failure to perform its obligations under any Project Agreement or (ii) are caused by the Concessionaire or any other Concessionaire Party or any of their respective Representatives;
- (b) with respect to, or arising out of or in connection with, any Authority Contract not assigned to the Concessionaire; and
- (c) with respect to, or arising out of or in connection with any Environmental Losses in connection with, or arising from any Pre-existing Environmental Condition or Pre-existing Hazardous Material.

4.3 Qualifications

The Concessionaire shall, at all times during the Term, maintain in full force and effect its existence and all qualifications necessary to carry on its business pertaining to the Project, including all rights, franchises, permits, licenses, privileges and qualifications required in connection with the Project. Nothing contained in the foregoing shall be deemed to prohibit or limit the Concessionaire from changing its organizational form or status (including a change from a limited liability company to a corporation or a limited partnership), subject to the terms of Section 22.1(e).

4.4 No Encumbrances

- (a) **By the Concessionaire.** The Concessionaire shall not do any act or thing that will create or permit to exist any Encumbrance (other than a Permitted Concessionaire Encumbrance) against the Plant Site or the Plant, or any part thereof. The Concessionaire shall promptly remove any Encumbrance (other than a Permitted Concessionaire Encumbrance) against the Plant Site or the Plant, unless the Encumbrance came into existence as a result of an act or omission of the Authority, the State or any Governmental Authority or a Person claiming through any of them which in turn was not caused by an act or omission of the Concessionaire or any other Concessionaire Party or a Person claiming through any of them. The Concessionaire shall not be deemed to be in default hereunder if the Concessionaire continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance; **provided** that the Concessionaire (i) has given advance notification to the Authority that the Concessionaire intends to contest the validity or collection thereof or cause such contest and (ii) has given a satisfactory indemnity to the Authority or has deposited with the Authority a letter of credit, surety bond, cash or Eligible Investment reasonably satisfactory to the Authority in an amount equal to the amount of the claim or Encumbrance, plus such interest and penalties, court costs, or other charges as the Authority may reasonably estimate to be payable by the

Concessionaire at the conclusion of such contest or as is required to provide insurance over any potential Encumbrance; **provided, however**, that in the event such letter of credit, surety bond, cash or Eligible Investment shall be so deposited, the same shall be held until such claim or other Encumbrance shall have been released and discharged and shall thereupon be returned to the Concessionaire, less any amounts reasonably expended by the Authority, if any, to procure such release or discharge, or any loss, cost, damage, reasonable attorneys' fees or expense incurred by the Authority, if any, by virtue of the contest of such Encumbrance.

- (b) **By the Authority.** The Authority shall not do any act or thing that will create or permit to exist any Encumbrance (other than a Permitted Authority Encumbrance) against the Plant Site or the Plant, or any part thereof. The Authority shall promptly remove any Encumbrance (other than a Permitted Authority Encumbrance) against the Plant or Plant Site that came into existence as a result of an act or omission of the Authority, the State or a Person claiming through any of them. The Authority shall not be deemed to be in default hereunder if the Authority continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or cause such contest) by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance; **provided** that the Authority has given advance notification to the Concessionaire that it is the intent of the Authority to contest the validity or collection thereof or cause such contest.
- (c) **Removal.** Each Party, at the reasonable request of the other Party, shall use its Reasonable Efforts to assist such other Party in attempting to remove any Encumbrance (other than a Permitted Authority Encumbrance or a Permitted Concessionaire Encumbrance) that has come into existence as a result of an act, omission, negligence, gross negligence, willful misconduct or violation of Applicable Law by such other Party; **provided** that the costs and expenses incurred by any Party in connection with such efforts shall be borne by the Party whose act, omission, negligence, gross negligence, willful misconduct or violation of Applicable Law has given rise to such Encumbrance.

4.5 Single Purpose Covenants

The Concessionaire shall, at all times during the Term: (a) be formed and organized solely for the purpose of owning the Concessionaire Interest and developing, constructing, using, possessing, maintaining, operating, collecting Revenues with respect to and otherwise dealing with the Plant and performing or subcontracting the Plant Services (and carrying out other activities permitted pursuant to this Agreement and any other activities reasonably incidental thereto (including the financing thereof and of the Concession)); (b) not engage in any business unrelated to clause (a) above and not incur any Indebtedness other than Permitted Indebtedness; (c) not have any assets other than those related to its activities in accordance with clauses (a) and (b) above; (d) maintain its own separate full and complete books and records and its own accounts, in each case which are separate and apart from the books and records and accounts of any other Person; **provided, however**, that the Concessionaire's assets may be included in a consolidated financial statement of a direct or indirect equity holder or other owner of a beneficial interest of the Concessionaire if inclusion on such consolidated financial statement is required to comply with the requirement of generally accepted accounting principles of the relevant jurisdiction, but only if (i) such consolidated financial statement shall be appropriately footnoted to the effect that the Concessionaire's assets are owned by the Concessionaire and that they are being included on the consolidated financial statement of such shareholder or other owner of a beneficial interest only to comply with the requirements of generally accepted accounting principles of the relevant jurisdiction and (ii) such assets shall be listed on the Concessionaire's own separate balance sheet; (e) hold itself out as being a Person, separate and apart from any other Person; (f) not commingle its funds or assets with those of any other Person; (g) conduct its own business in its own name independently and through its own authorized officers and

agents; (h) except as noted in clause (d) above, maintain separate financial statements and file its own tax returns (to the extent required by Applicable Law); (i) pay its own debts and liabilities when they become due out of its own funds; (j) observe all corporate, limited partnership or limited liability company, as applicable, formalities and do all things necessary to preserve its existence; (k) have sufficient officers and personnel to run its business operations or to supervise an Operator pursuant to one or more contractual arrangements; (l) pay the salaries of its own employees, if any, and maintain a sufficient number of employees in light of its contemplated business operations; (m) not guarantee or otherwise obligate itself with respect to the debts or obligations of any other Person, or hold out its credit as being available to satisfy the debts or obligations of any other Person; (n) not acquire obligations of or securities issued by its shareholders, partners or members, as applicable; (o) allocate fairly and reasonably shared expenses, including any overhead for shared office space; (p) use separate stationery, invoices and checks bearing its own name; (q) except as expressly permitted hereby or by any Collateral Assignment or in connection with the ordinary course of business of the Plant, not pledge its assets for the benefit of any other Person or make any loans or advances to any other Person; (r) correct any known misunderstanding regarding its separate identity; (s) maintain adequate capital in light of its contemplated business operations; (t) observe all customary organizational and operational formalities, including the taking and maintaining of complete minutes of all member, manager, shareholder, board or similar meetings; (u) maintain an arm's length relationship with its Affiliates and enter into transactions with Affiliates only pursuant to Arms'-Length Affiliate Contracts or otherwise in accordance with Section 4.13; and (v) have organizational documents that comply with the requirements set forth in this Section 4.5.

4.6 Rights of the Authority to Access and Perform Work on the Plant

- (a) **Reservation of Access Rights.** The Authority reserves (for itself and its Representatives or other designees) the right and shall, at all times during the Term, have the right to enter the Plant and each and every part thereof at all reasonable times and upon reasonable prior notice (except as provided in Section 4.6(a)(iii)), in the following circumstances:
- (i) to inspect the Plant or determine whether or not the Concessionaire is in compliance with its obligations under this Agreement or Applicable Law pursuant to Section 10.3;
 - (ii) if a Concessionaire Default then exists, to make any necessary repairs to the Plant, perform any necessary work therein and take any reasonable actions in connection therewith, including remediation of Hazardous Materials, pursuant to Section 20.1(b)(iii); and
 - (iii) in the event of an actual or reported emergency, danger, threat, circumstance or event that is reasonably believed by the Authority or its designee (including relevant police, fire, emergency services, armed forces, and any other security or emergency personnel in accordance with Section 4.12) to have caused (or to present the imminent potential to cause) injury to individuals, damage to property, or threat to the Environment or to public safety, to take, at such times as the Authority reasonably determines necessary in its discretion and with notice to the Concessionaire if practicable under the circumstances, such actions as the Authority or such designee reasonably determines necessary to respond to or to rectify such emergency, danger, threat, circumstance or event.

In connection with any entry made pursuant to this Section 4.6(a), the Authority shall (A) use Reasonable Efforts to minimize interference with the Plant Operations in connection with any entry on the Plant, including to avoid any breach of applicable Environmental Laws that would adversely affect the Plant or Plant Operations and (B) indemnify the Concessionaire, upon demand, in respect of any liability or obligation of or to the Concessionaire under any

Environmental Law directly caused by the Authority's (or its Representative's or other designee's) entry pursuant to this Section 4.6(a) to the extent that such liability or obligation does not arise as a result of the Concessionaire's act or omission.

- (b) **Access Rights.** The Authority and its Representatives, during the progress of any work referred to in this Section 4.6, at no additional cost to the Authority or its Representatives, shall have all necessary or appropriate access rights. To the extent that the Authority, or any other Person on its behalf, undertakes work or repairs under this Section 4.6 or any other provision of this Agreement, such work or repairs shall be commenced and diligently completed in a good and workmanlike manner, in accordance with any applicable Technical Standards and in such a manner so as not to unreasonably interfere with the Concessionaire's conduct of business in or use of such space to the extent reasonably possible without incurring any additional cost.
- (c) **Effect of Reservation.** Any reservation of a right by the Authority to enter upon the Plant and to make or perform any repairs, alterations, Restoration or other work in, to, or about the Plant which is the Concessionaire's obligation pursuant to this Agreement shall not be deemed to (i) impose any obligation on the Authority to do so, (ii) render the Authority responsible to the Concessionaire or any other Person for the failure to do so or (iii) relieve the Concessionaire from any obligation to indemnify the Authority as otherwise provided in this Agreement. Nothing in this Agreement shall impose any duty upon the part of the Authority to do any work required to be performed by the Concessionaire hereunder and performance of any such work by the Authority shall not constitute a waiver of the Concessionaire's default in failing to perform the same.

4.7 Coordination

- (a) **Coordination with Third Parties.** The Concessionaire shall be responsible for coordinating or ensuring the coordination of the development and construction of the Plant and all Plant Operations with other facilities, in each case at the sole cost and expense of the owner of such facilities or the Concessionaire, as applicable. The Authority shall cooperate with the Concessionaire if the Authority's cooperation is required or reasonably requested by the Concessionaire to facilitate coordination between the Concessionaire and such other facilities.
- (b) **Affected Property Coordination.** The Concessionaire shall be responsible for coordinating or ensuring the coordination of the Project with Affected Property.
- (c) **No Interference.** The Parties understand and agree that nothing in the foregoing clauses (a) and (b) is in any way intended to interfere with the development and construction or the normal operations of the Plant by the Concessionaire, and the Authority shall cooperate with the Concessionaire to seek to minimize any effect that the obligations of the Concessionaire under such clauses (a) and (b) may have on the Project and the Revenues.

4.8 Taxes

- (a) **Amounts Exclusive of Taxes.** Notwithstanding any provision in this Agreement to the contrary, amounts set forth in this Agreement are exclusive of all Taxes. If any Tax is chargeable to a Party in respect of amounts payable under this Agreement by one Party to the other Party, the Party responsible under Applicable Law for paying such Tax shall pay such Tax directly to the appropriate Governmental Authority. The Concessionaire acknowledges that, as a public corporation of the State of Alaska, the Authority and its revenues and properties are exempt from taxation under the Internal Revenue Code of 1986, as amended, and under state and local law. Nothing in this Agreement is intended to or shall be construed as waiving the Authority's

exemption from taxation or otherwise constituting the Authority's consent to be subject to taxation.

- (b) **Tax Credits.** The Concessionaire or Investor may apply for and receive the benefit of any federal or state tax credits, deductions, depreciation treatment, or payments that are available to the Concessionaire as the operator of the Plant and any carbon or other emissions or similar credits, to the extent available.
- (c) **Ongoing Tax Liability.** Except as otherwise provided in this Section 4.8, the Concessionaire shall pay when due all Taxes (including Property Taxes) that are or become payable in respect of periods during the Term in respect of the development and construction of, operations at, occupancy of, or conduct of business in or from the Plant and fixtures or personal property included in the Plant (if any). The Concessionaire shall have the right to contest in good faith the validity or amount of any Taxes which it is responsible to pay under this Section 4.8; **provided** that (i) the Concessionaire has given prior notice to the Authority of each such contest, (ii) no contest by the Concessionaire may involve, in the reasonable opinion of the Authority, a possibility of forfeiture or sale of the Plant and (iii) upon the final determination of any contest by the Concessionaire, if the Concessionaire has not already done so, the Concessionaire shall pay the amount found to be due, if any, together with any costs, penalties and interest. The Concessionaire shall not be liable for, and the Authority shall to the extent permitted under Applicable Law, pay or otherwise reimburse and hold the Concessionaire harmless from and against, any (A) sales, use or similar Tax imposed by the State of Alaska or any other unit of local government in the State of Alaska on the Concession Fee and (B) transfer, stamp, deed recording or similar Tax imposed by the State of Alaska or any other unit of local government in the State of Alaska by reason of the execution and delivery of this Agreement or any grant or transfer to the Concessionaire by the Authority at Closing.

4.9 Utilities

The Concessionaire shall pay when due all charges (including all applicable Taxes and fees) for gas, electricity, light, heat, power, telephone, and other utilities and services used at the Plant Site in connection with the Project. The Authority shall have no obligation or responsibility to furnish the Concessionaire with any utilities and makes no representations or warranties as to the availability of any utilities. The Authority does not warrant that any utility services will be free from interruptions, including interruptions caused by a Force Majeure Event that impacts a utility service provider or its facilities.

4.10 Notices of Defaults and Claims

- (a) The Concessionaire shall promptly upon becoming aware of such event or circumstance give notice to the Authority (i) if a Concessionaire Default occurs under this Agreement, (ii) if a Concessionaire default occurs under any Third Party Loan Agreement or if any event occurs that with the giving of notice or passage of time could reasonably be expected to become a Concessionaire default thereunder, (iii) if a Concessionaire default or Project Party default occurs, or if any event occurs that with the giving of notice or passage of time could reasonably be expected to become a Concessionaire default or Project Party default, under any Project Agreement to which the Concessionaire is a party and (iv) of all material Claims, disputes (including labor disputes) or litigation pertaining to the Plant Site, the Project, the Concessionaire or the Plant Operations (whether or not such Claim or litigation is covered by insurance) of which the Concessionaire is aware. The Concessionaire shall provide the Authority with all reasonable information requested by it from time to time concerning the status of such Claims or litigation.

- (b) The Authority shall upon becoming aware of such event or circumstance promptly give notice to the Concessionaire (i) if an Authority Default occurs under this Agreement, (ii) if an AIDEA default or Project Party default occurs, or if any event occurs that with the giving of notice or passage of time could reasonably be expected to become an AIDEA default or Project Party default, under any Project Agreement to which AIDEA is a party and (iii) of all material Claims, disputes (including labor disputes) or litigation pertaining to the Plant Site, the Project or the Plant Operations (whether or not such Claim or litigation is covered by insurance) of which the Authority is aware. The Authority shall provide the Concessionaire with all reasonable information requested by it from time to time concerning the status of such Claims or litigation.

4.11 Safety and Security

- (a) The Concessionaire shall contract for emergency and security services with respect to the Plant. The form and amount of such security and emergency services shall be as agreed between the Concessionaire and the providers of such services but shall be consistent with Standard Industry Practice to provide for the protection of the Plant and its personnel and shall otherwise comply with this Agreement and Applicable Law.
- (b) The Concessionaire shall promptly respond to emergency situations relating to the Plant in accordance with Standard Industry Practice and promptly notify the Authority following the occurrence of such emergency. The Concessionaire may suspend all or part of the construction of the Plant or the Plant Operations at any time if, in the Concessionaire's reasonable opinion, such suspension is necessary to avoid or mitigate a material loss or damage to the Plant or a material threat to health or safety.

4.12 Police, Fire, Emergency and Public Safety Access Rights

Notwithstanding any other provision of this Agreement, at all times during the Term and without notice to the Concessionaire, any police, fire and emergency services and any other security or emergency personnel, including the armed forces, and any Governmental Authority with jurisdiction over the Plant, shall have access to the Plant as necessary for fire and rescue services, protection of public safety, emergency management and homeland security purposes. The Concessionaire shall cooperate with police, fire and emergency services and any other security or emergency personnel, including the armed forces, in respect of such emergency management and homeland security purposes.

4.13 Affiliate Contracts

The Concessionaire will not enter into or materially amend an Affiliate Contract without notice to and consent of the Authority; **provided**, that the Authority's consent shall not be required (a) if the Concessionaire notifies the Authority that such Affiliate Contract is an Arm's-Length Affiliate Contract, (b) for reasonable overhead sharing fees and reimbursement of third-party costs payable to an Affiliate for legal, accounting, tax, computer and other centralized management services provided to the Concessionaire in lieu of the Concessionaire having its own employees for such functions or (c) except as set forth in Sections 2.13 and 3.3(c)(i)(C), for the Gas Supply Agreement to be entered into by and between the Concessionaire and GVEA. The Concessionaire shall deliver to the Authority a copy of each Affiliate Contract, including each Arm's-Length Affiliate Contract, within five (5) Business Days following the execution thereof.

5. PLANT DEVELOPMENT AND CONSTRUCTION

5.1 Plant Development and Construction

- (a) Subject to the terms of this Agreement, the Concessionaire shall complete or cause the completion of the Work for the design, development, engineering, procurement and construction of the Plant (other than any Expansion or Modification made pursuant to Section 6) and achievement of the Commercial Operation Date, including the Work described in the Plan of Development, in accordance with the Technical Standards and Applicable Law, by no later than the Completion Deadline, except as such date may be extended from time to time in accordance with Section 19.1. The period commencing on the Closing Date and terminating on the earlier to occur of (i) the termination of this Agreement and (ii) the Commercial Operation Date shall be the ***Construction Phase***.
- (b) The development and construction of the Plant shall be funded as described in Section 12.
- (c) The Concessionaire will furnish all design, construction and other services, provide all materials, equipment and labor to perform the Work reasonably inferable from this Agreement and perform the Work, or cause such Work to be performed, in accordance with this Agreement.
- (d) [Except as otherwise expressly provided in this Agreement, the Authority makes no warranties or representations as to any surveys, data, reports or other information provided by the Authority or other Persons, concerning surface or subsurface conditions, the presence of Hazardous Materials, Environmental Conditions, archeological, paleontological and cultural resources, and endangered and threatened species, affecting the Plant Site or surrounding locations. The Concessionaire acknowledges that such information is for the Concessionaire's reference only and has not been verified by the Authority, and that the Concessionaire will be responsible for conducting all surveys, studies and assessments as it deems appropriate for the Project; **provided** that the foregoing will not limit the Concessionaire's rights with respect to Unforeseen Events as provided in this Agreement.]⁹
- (e) Except as otherwise expressly provided in this Agreement, the Concessionaire will bear the risk of all conditions occurring on, under or about the Plant Site on which the Work is performed, including:
 - (i) physical conditions of an unusual nature that differ materially from those ordinarily encountered in the area;
 - (ii) changes in surface topography;
 - (iii) variations in subsurface moisture content;
 - (iv) location of electric, gas, water, telecommunication and other utility facilities;
 - (v) Hazardous Materials or Environmental Conditions at or impacting the Plant or Plant Site (except with respect to Pre-existing Environmental Conditions or Pre-existing Hazardous Materials);
 - (vi) any archeological, paleontological or cultural resources; and

⁹ A&O Note: TBD.

(vii) any species listed as threatened or endangered under Applicable Law;

provided that the foregoing will not limit the Concessionaire's rights with respect to Unforeseen Events as provided in this Agreement.

- (f) The Concessionaire will be responsible for coordinating and scheduling the Work with all Contractors working on the Plant Site in accordance with the Technical Standards. Except in the case of an Authority-Caused Delay, the Authority will not be liable for any delays, disruptions or damages caused by such Contractors.
- (g) The Concessionaire will not enter into any agreement with any Governmental Authority with jurisdiction over any Permit, property owner or other Person having regulatory jurisdiction over any aspect of the Project or the Work or having any property interest affected by the Project or the Work that in any way purports to obligate the Authority, or states or implies that the Authority has an obligation, to the third party to carry out any activity during or after the end of the Term, unless the Authority otherwise approves the same in writing in its discretion. Except in the case of an agreement approved by the Authority pursuant to the preceding sentence, the Concessionaire has no power or authority to enter into any such agreement with a third party in the name or on behalf of the Authority and the Parties agree that any purported agreement to that effect will be null and void.
- (h) If and to the extent any liquidated damages become payable to the Concessionaire under the Construction Contract as a result of a delay in completion or the failure of the Plant to achieve performance requirements as set forth in the Construction Contract, such liquidated damages shall be treated as Revenues and applied in accordance with Section 9.3 following the Commercial Operation Date.

5.2 Warranties; Defective Design and Construction

(a) Warranties.

- (i) The Concessionaire will require the Construction Contractor to warrant that (A) the Work is complete and conforms to Standard Industry Practice; and (B) the Work, including all materials and equipment furnished as part of the Work, is new unless otherwise specified in the Technical Standards or elsewhere in this Agreement, of good quality, free of Defects in design, materials and workmanship.
- (ii) With respect to the warranty furnished by the Construction Contractor pursuant to Section 5.2(a)(i) and if and to the extent the Concessionaire obtains general or limited warranties from any Contractor in favor of the Concessionaire with respect to design, materials, workmanship, construction, equipment, tools, supplies, Software or services, such warranties shall be automatically assigned to the Authority as of the Reversion Date pursuant to the terms of the Construction Contract or such other Contract, to the extent such warranties remain in effect as of such date; **provided** that the foregoing requirement will not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including Software products), equipment or supplies where the warranty cannot be extended to the Authority using Reasonable Efforts.
- (iii) Contractor warranties are in addition to all rights and remedies available pursuant to this Agreement or Applicable Law or in equity, including Claims against the Construction Contractor Performance Security or the Construction Contractor Parent Guarantee, and will not limit the Concessionaire's liability or responsibility imposed by this Agreement

or Applicable Law or in equity with respect to the Work, including liability for Non-Conforming Work, design Defects, patent and latent construction Defects, strict liability, breach, negligence, willful misconduct or fraud.

- (b) **Non-Conforming Work.** In the event of the occurrence of a Defect in the design or construction Work, including in any materials and equipment furnished as part of the construction, and including any Non-Conforming Work, the Authority will be entitled, in addition to any other remedies, to demand that the Concessionaire rectify, or require the Construction Contractor to rectify, such Defect at its sole expense, it being understood that, in such event, the Concessionaire will be permitted to draw on the Construction Contractor Performance Security or enforce on the Construction Contractor Parent Guarantee if the Construction Contractor fails to perform such Work, to the extent of the cost of any work performed by the Concessionaire.

5.3 Right to Inspect

- (a) The Authority and its Representatives shall have the right to inspect the Work, and to visit the facilities of each Equipment Supplier where the major equipment for the Plant is being manufactured for such purpose, subject in all cases to the Concessionaire's, the Construction Contractor's and such Equipment Supplier's reasonable safety precautions. Such inspection and presence shall not unreasonably interfere with or delay the completion of the Work. The Concessionaire shall provide the Authority with not less than three (3) Business Days' advance notice of the planned commencement of the testing and commissioning of the Plant (or any equipment or system) to be performed under the Construction Contract. The Authority and its Representatives shall have the right to witness all such tests and commissioning activities. The Concessionaire may proceed with any such test notwithstanding the failure of the Authority or its designated Representatives to attend and witness such test; **provided** that the Concessionaire has provided the Authority proper and timely notice as required under this Section 5.3(a).
- (b) Neither the Authority nor any of its Representatives shall have any obligation to take any action based upon what it may or could discover in the course of any document review, inspection or witnessing of any test under this Agreement, and (i) exercise of its right to inspect and review or (ii) failure to exercise such right to inspect or review shall not in any such case constitute a waiver of any rights or remedies that the Authority may have under this Agreement; **provided** that if the Authority or any of its Representatives through any such witnessing, inspection or review becomes aware of any fact or circumstance that the Authority reasonably believes could adversely impact any portion of the Plant or the Work, the Authority shall, or shall cause its Representatives to, notify the Concessionaire of such issue as soon as practicable.

5.4 Reports; Documents; Notices

- (a) Not later than the fifth (5th) Business Day of the first (1st) month of the Construction Phase through the month during which the Commercial Operation Date occurs, the Concessionaire shall provide a monthly progress report to the Authority (the **Monthly Progress Report**), which Monthly Progress Report shall include:
 - (i) a summary of the Work completed in the immediately preceding month;
 - (ii) a summary of the Work to be performed in the succeeding months through the Commercial Operation Date;
 - (iii) an updated Project Schedule to reflect the status of the Work;

- (iv) the estimated completion dates for each of the Primary Milestones and completion of the major components of the Work;
 - (v) any changes to the Approved Construction Budget;
 - (vi) a report on the amount of the Approved Construction Budget spent through the end of the preceding month and a variance report indicating each line item in the Approved Construction Budget and the actual amount expended for each such line item;
 - (vii) a copy of each report prepared for the Concessionaire by Construction Contractor and delivered during the preceding month; and
 - (viii) such other information as may reasonably be requested by the Authority.
- (b) Promptly following delivery thereof to the Concessionaire, the Concessionaire will deliver, or will cause the Construction Contractor to deliver, to the Authority a copy of all Design and Construction Documentation provided by the Construction Contractor to the Concessionaire under the Construction Contract.
- (c) The Concessionaire will promptly notify the Authority if any amendment, supplement or modification of the Design and Construction Documentation (i) constitutes a material change in the scope of the Work or a material deviation from any of the Technical Standards, (ii) results in increases in the time to achieve Substantial Completion beyond the Target Substantial Completion Date, or (iii) except to the extent directly attributable to a Compensation Event, imposes on the Authority any new or increased costs, liabilities or obligations.
- (d) The Concessionaire will deliver a copy of the Substantial Completion Certificate, Commercial Operation Certificate and Final Acceptance Certificate to the Authority promptly following the Concessionaire's acceptance and countersignature of each certificate.

5.5 Meetings

During the Construction Phase the Parties and the Construction Contractor shall hold monthly meetings, or more often if requested by the Authority or the Concessionaire, to discuss progress of the Work, the Project Schedule, the Approved Construction Budget and any other matters related to the Project as reasonably requested by either Party.

5.6 Care, Custody and Control

On and after the Closing Date and during the Term, the Concessionaire will (a) have care, custody and control of the Plant Site and the Plant, including all Early Works completed prior to the Closing Date, and (b) be responsible for the security and protection of (i) active construction areas on the Plant and the Plant Site, (ii) all materials, equipment, supplies and any other property of any Concessionaire Party and (iii) all materials, equipment, supplies and any other property of the Authority being held in a secure location at or on the Plant Site or otherwise being used or procured in connection with the Work, whether or not on the Plant Site.

5.7 Suspension of Work

- (a) The Authority will have the right and authority, without liability to the Concessionaire, to suspend any affected portion of the Work by written order to the Concessionaire to comply with

any court order or judgment, to protect against a risk to the health, safety or welfare, including to workers, other personnel or the general public from unsafe or dangerous conditions, or upon the occurrence of any of the following:

- (i) failure of the Concessionaire or any Concessionaire Party to comply with any Applicable Law or Permit (including failure to handle, preserve and protect archeological, paleontological or cultural resources, or failure to handle Hazardous Materials, in accordance with Applicable Law and Permits), which could reasonably be expected to have a Concessionaire Material Adverse Effect; or
 - (ii) failure of the Concessionaire to provide the Authority with evidence that the Concessionaire has obtained the Required Coverages and that such Required Coverages are in full force and effect.
- (b) The Authority will lift the suspension order promptly after it is permitted by the terms of the court order or judgment, after the dangerous or unsafe condition is rectified, or after the Concessionaire fully cures and corrects the applicable breach or failure to perform.
 - (c) If the Concessionaire believes that the Authority did not have a reasonable basis to issue a suspension order, the Concessionaire will have the right to dispute the Authority's suspension order by notice to the Authority, which notice will provide supporting information for the Concessionaire's position. Unless directed otherwise by the Authority after receipt of such notice, the Concessionaire will suspend the Work as required by the Authority. If it is determined in accordance with the Dispute resolution procedures set forth in Section 24 that the Concessionaire was in compliance with its obligations under this Agreement, then the suspension order and any additional Work required by the Authority and performed by the Concessionaire will be treated as an Unforeseen Event pursuant to Section 19.
 - (d) The issuance of a suspension order will not affect the Concessionaire's rights to cure or correct any such incidents giving rise to the issuance of the suspension order in accordance with this Agreement.

6. EXPANSIONS AND MODIFICATIONS

6.1 Expansion of the Plant by the Concessionaire

- (a) If the Concessionaire desires to expand the Baseline Capacity of the Plant (a ***Concessionaire Plant Expansion***), the Concessionaire shall provide a notice to the Authority (the ***Concessionaire Expansion Notice***), which Concessionaire Expansion Notice shall include:
 - (i) the proposed increase in the LNG production capacity of the Plant from the Baseline Capacity following completion and commissioning of the proposed Concessionaire Plant Expansion;
 - (ii) the proposed schedule and budget for commencing and completing the work required for the Concessionaire Plant Expansion (the ***Concessionaire Plant Expansion Budget and Schedule***);
 - (iii) whether the increase in LNG production capacity from the Concessionaire Plant Expansion will be used to serve only Preferred Customers, only Non-Preferred Customers, or both Preferred Customers and Non-Preferred Customers;

- (iv) whether the Concessionaire Plant Expansion is reasonably expected to materially increase the price of LNG to Preferred Customers;
 - (v) a description and proposed timetable for obtaining any new Permits or modifications to existing Permits to construct and operate the proposed Concessionaire Plant Expansion;
 - (vi) whether such Concessionaire Plant Expansion constitutes a Preferred Customer Plant Expansion or a Commercial Plant Expansion;
 - (vii) if such Concessionaire Plant Expansion constitutes a Commercial Plant Expansion, a schedule of projected monthly distributions required to achieve a Nominal Expansion IRR equal to the Maximum Expansion IRR over the remaining Term (each such monthly distribution, a *Scheduled Expansion Distribution*); and
 - (viii) information regarding the party providing funds for the Concessionaire Plant Expansion and the proposed security arrangements, if any, with such party.
- (b) The Concessionaire may apply any and all funds standing to the credit of the Expansion Reserve Account to commence and complete the work required for any Concessionaire Plant Expansion. If no such Concessionaire Plant Expansion has been initiated by the end of the fifth (5th) year following the year in which the Commercial Operation Date occurs, funds standing to the credit of the Expansion Reserve Account may be released and applied in accordance with clauses (h) through (j) of Section 9.3.
- (c) The Concessionaire's right to proceed with and implement any proposed Concessionaire Plant Expansion shall require the consent of the Authority, **provided** that the Authority shall not unreasonably withhold or delay its consent so long as (i) the proposed Concessionaire Plant Expansion is not reasonably expected to (A) increase the price of LNG to Preferred Customers or (B) adversely impact the reliability of the Plant to produce LNG to satisfy the Concessionaire's delivery obligations to the Preferred Customers under their respective LNG SPAs or LNG TSAs or (ii) at the time of the decision to approve such Concessionaire Plant Expansion, an Alternative Gas Supply Source has not been publicly announced and there is not a reasonable likelihood that such Alternative Gas Supply Source will enter into service prior to the end of the Term.
- (d) Within twenty (20) Business Days of receiving the Concessionaire Expansion Notice, the Authority shall notify the Concessionaire that either: (i) the Authority has questions, comments or objections regarding the proposed Concessionaire Plant Expansion, including the Concessionaire Plant Expansion Budget and Schedule; or (ii) the Authority approves the proposed Concessionaire Plant Expansion and Concessionaire Plant Expansion Budget and Schedule as submitted by the Concessionaire. If the Authority provides questions, comments or objections to the Concessionaire within such time period, the Concessionaire shall respond to the Authority's questions, comments or objections within ten (10) Business Days after receipt thereof. Within ten (10) Business Days following the Authority's receipt of the Concessionaire's response, the Authority and the Concessionaire shall attempt in good faith to resolve all outstanding issues related thereto; **provided** that if the Authority and the Concessionaire cannot resolve any Dispute within such ten (10) Business Day period, then such Dispute between the Parties shall be resolved in accordance with the Dispute resolution procedures set forth in Section 24.
- (e) Following the Authority's approval of the Concessionaire Plant Expansion and the Concessionaire Plant Expansion Budget and Schedule, and if the Concessionaire has decided to proceed with the Concessionaire Plant Expansion, the Concessionaire shall proceed with and complete the

Concessionaire Plant Expansion substantially in accordance with the Concessionaire Plant Expansion Budget and Schedule as approved by the Authority. Not later than the fifth (5th) Business Day of each month during the period from the commencement of the work related to the Concessionaire Plant Expansion until final completion of such work, the Concessionaire shall provide a monthly progress report to the Authority. Each progress report shall include:

- (i) a summary of the work completed in the immediately preceding month;
 - (ii) a summary of the work to be performed in the succeeding months through the final completion of the Concessionaire Plant Expansion;
 - (iii) an updated schedule to reflect the status of the work;
 - (iv) the estimated completion dates for each of the major milestones and completion of the major components of the work;
 - (v) any changes to the approved Concessionaire Plant Expansion Budget and Schedule;
 - (vi) a report on the amount of the budget spent through the end of the preceding month and a variance report indicating each line item in the final budget and the actual amount expended for each such line item;
 - (vii) a copy of each report prepared for the Concessionaire by the construction contractor and delivered during the preceding month;
 - (viii) a report regarding the status of any new Permit or modification to existing Permits necessary to construct and operate the Concessionaire Plant Expansion; and
 - (ix) such other information as may reasonably be requested by the Authority.
- (f) The Authority and the Concessionaire shall diligently cooperate with each other in relation to any and all activities undertaken to implement a Concessionaire Plant Expansion.
- (g) Except to the extent as otherwise agreed by the Authority in its discretion, the Concessionaire Plant Expansion shall not adversely impact the Authority's ownership interest in the Plant and the Authority shall not be required to change or modify its ownership interests in the Plant or change or modify its rights under any Transaction Documents as a result of the Concessionaire Plant Expansion.
- (h) For the avoidance of doubt, as between the Authority and the Concessionaire, the Concessionaire shall have the sole right to take and sell all of the output from the Concessionaire Plant Expansion at its discretion; **provided** that if such Concessionaire Plant Expansion is a Preferred Customer Plant Expansion, the provisions of this Agreement in respect of treatment of Preferred Customers shall accordingly apply to such Preferred Customer Plant Expansion.

6.2 Expansion of the Plant by the Authority

- (a) If, at any time, (A) Preferred Customers' demand for LNG exceeds 75% of (x) Preferred Customers' aggregate contracted LNG with the Concessionaire plus (y) the uncontracted capacity of the Plant over the remainder of the Term, (B) the Concessionaire has not, within ninety (90) days of becoming aware of such excess demand, proposed a Concessionaire Plant Expansion in

accordance with Section 6.1(a) and (C) the Authority desires to expand the Baseline Capacity of the Plant to serve Preferred Customers (an *AIDEA Plant Expansion*), the Authority shall provide a notice to the Concessionaire (the *AIDEA Expansion Notice*), which AIDEA Expansion Notice shall include:

- (i) the proposed increase in the LNG production capacity of the Plant from the Baseline Capacity following completion and commissioning of the proposed AIDEA Plant Expansion;
 - (ii) the proposed schedule and budget for commencing and completing the work required for the Concessionaire Plant Expansion (the *AIDEA Plant Expansion Budget and Schedule*);
 - (iii) a list of any Plant facilities that will be shared by the Plant and the AIDEA Plant Expansion (the *Shared Facilities*), together with a proposed allocation of costs to operate and maintain such Shared Facilities;
 - (iv) whether the AIDEA Plant Expansion is reasonably expected to materially increase the price of LNG to Preferred Customers;
 - (v) the Authority's source of funds to finance the AIDEA Plant Expansion;
 - (vi) a description and proposed timetable for obtaining any new Permits or modifications to existing Permits to construct and operate the proposed AIDEA Plant Expansion; and
 - (vii) the identity and roles of any proposed third party partners in the design, engineering, construction, ownership, operation and maintenance of such AIDEA Plant Expansion.
- (b) Within twenty (20) Business Days of receiving the AIDEA Expansion Notice, the Concessionaire shall notify the Authority that either: (i) the Concessionaire elects to undertake the AIDEA Plant Expansion, in which case such expansion shall be undertaken by the Concessionaire as a Concessionaire Plant Expansion or (ii) the Concessionaire elects not to undertake the AIDEA Plant Expansion, in which case the Authority shall have the right to undertake the AIDEA Plant Expansion with the Concessionaire's approval in accordance with Section 6.2(c); **provided** that in no event shall such AIDEA Plant Expansion compete with the Plant with respect to Non-Preferred Customers.
- (c) If the Concessionaire elects not to undertake the AIDEA Plant Expansion, the Concessionaire's notice thereof as provided in Section 6.2(b) shall also provide that either: (i) the Concessionaire has questions, comments or objections regarding the proposed AIDEA Plant Expansion, including the AIDEA Plant Expansion Budget and Schedule; or (ii) the Concessionaire approves the proposed AIDEA Plant Expansion and AIDEA Plant Expansion Budget and Schedule as submitted by the Authority. If the Concessionaire provides questions, comments or objections to the Authority within such time period, the Authority shall respond to the Concessionaire's questions, comments or objections within ten (10) Business Days after receipt thereof. Within ten (10) Business Days following the Concessionaire's receipt of the Authority's response, the Authority and the Concessionaire shall attempt in good faith to resolve all outstanding issues related thereto; **provided** that if the Authority and the Concessionaire cannot resolve any Dispute within such ten (10) Business Day period, then such Dispute between the Parties shall be resolved in accordance with the Dispute resolution procedures set forth in Section 24.

- (d) Following the Concessionaire's approval of the AIDEA Plant Expansion and the AIDEA Plant Expansion Budget and Schedule, and if the Authority has decided to proceed with the AIDEA Plant Expansion, the Authority shall proceed with and complete the AIDEA Plant Expansion substantially in accordance with the AIDEA Plant Expansion Budget and Schedule as approved by the Concessionaire. The construction contractor selected by the Authority to construct the AIDEA Plant Expansion shall have experience in the construction of facilities similar to the AIDEA Plant Expansion. The Authority shall notify the Concessionaire of the identity and qualifications of such construction contractor prior to the commencement of the work on such AIDEA Plant Expansion. The Concessionaire may object to such construction contractor if the Concessionaire has a reasonable basis to believe that such construction contractor is not qualified to perform the work. If the Authority and the Concessionaire cannot resolve a Dispute concerning the Authority's selection of such construction contractor, then such Dispute shall be resolved in accordance with the Dispute resolution procedures set forth in Section 24. Not later than the fifth (5th) Business Day of each month during the period from the commencement of the work related to the AIDEA Plant Expansion until final completion of such work, the Authority shall provide monthly progress report to the Concessionaire. Each progress report shall include:
- (i) a summary of the work completed in the immediately preceding month;
 - (ii) a summary of the work to be performed in the succeeding months through the final completion of the AIDEA Plant Expansion;
 - (iii) an updated schedule to reflect the status of the work;
 - (iv) the estimated completion dates for each of the major milestones and completion of the major components of the work;
 - (v) any changes to the approved schedule of the work;
 - (vi) a copy of each report prepared for the Authority by the construction contractor and delivered during the preceding month;
 - (vii) a report regarding the status of any new Permits or modifications to existing Permits necessary to construct and operate the AIDEA Plant Expansion; and
 - (viii) such other information as may reasonably be requested by the Concessionaire.
- (e) The Authority and its construction contractor shall perform the AIDEA Plant Expansion Work in a manner that does not interrupt the normal operation of the Plant. Except as otherwise agreed by the Concessionaire and the Authority, the AIDEA Plant Expansion shall not adversely impact (i) the Concessionaire or its operations or Revenues from the Plant or (ii) the security interest of any Collateral Assignee in the collateral set forth in the Collateral Assignment and no Collateral Assignee shall be required to release any such collateral, change or modify its security interests in such collateral or change or modify its rights under such Collateral Assignee's Third Party Financing Documents as a result of the AIDEA Plant Expansion. AIDEA shall enter into (i) a gas purchase agreement with BP to supply natural gas to the AIDEA Plant Expansion and (ii) LNG sale and purchase arrangements with each Preferred Customer purchasing LNG produced by the AIDEA Plant Expansion.
- (f) The Parties agree that the AIDEA Plant Expansion and the Plant, including the Shared Facilities, should be operated by a single operator and that the costs of operating and maintaining (i) the

Plant should be allocated to the Concessionaire, (ii) the AIDEA Plant Expansion should be allocated to the Authority, and (iii) the Shared Facilities should be allocated to the Concessionaire and the Authority as agreed by the Parties. The Concessionaire and the Authority shall negotiate in good faith with each other, the Operator or any other third party operator at the time of any AIDEA Plant Expansion to implement the provisions of this Section 6.2(f).

- (g) The Authority and the Concessionaire shall diligently cooperate with each other in relation to any and all activities undertaken to implement an AIDEA Plant Expansion.
- (h) For the avoidance of doubt, as between the Authority and the Concessionaire, the Authority shall have the sole right to take and sell all of the output from the AIDEA Plant Expansion.

6.3 Agreed Modifications

- (a) Either the Authority or the Concessionaire may propose a Modification. Promptly after any proposal of a Modification by the Authority or the Concessionaire, the Concessionaire shall prepare and deliver to the Authority a written statement setting forth (i) a description of the Modification and any services, obligations, rights, Permits or work related to the Modification, (ii) if applicable, a schedule for the implementation of the Modification, (iii) if applicable, a firm price for implementing the Modification and a proposal regarding the costs and expenses that each of the Authority and the Concessionaire will cover and whether such costs and expenses will be passed through to LNG Purchasers pursuant to the terms of the LNG SPAs or LNG TSAs, (iv) the impact the Modification would have on Plant Operations and Revenues both during any related construction or work and after implementation or completion of the Modification, (v) related changes to the Technical Standards, if any, and increases or decreases to the forecasted cost of operation and maintenance of the Plant following completion of the Modification, (vi) any requirement to acquire Additional Lands and (vii) any other obligations of either Party under this Agreement related to the proposed Modification. The costs of preparing such written statement shall be borne by the Party proposing the Modification.
- (b) Upon receipt by the Authority of the Concessionaire's written statement of the Modification, the Authority and the Concessionaire will negotiate in good faith to determine the following, while having no obligation to agree with respect thereto: (i) the final scope of the Modification and any work required to implement the Modification, (ii) if the Modification is proposed by the Authority, the contribution to the cost of implementing the Modification to be made by the Authority, (iii) if the Modification is proposed by the Concessionaire, the source of funds that will be used to pay for the costs of such Modification, (iv) if applicable, the schedule for implementing the Modification, (v) if applicable with respect to Modifications proposed by the Authority, the compensation for any decrease in Revenues projected to be incurred during the implementation of the Modification to be paid to the Concessionaire by the Authority, (vi) related changes to the Technical Standards, if any, (vii) any requirement for the Authority to acquire Additional Lands or Permits or to modify existing Permits, and (viii) any other related changes in the Parties' obligations under this Agreement (including any obligation to pay monies with respect to such Modification or any of the matters contemplated in these clauses (i) through (viii)). If the Parties agree on the terms of the Modification, they shall memorialize their agreements in a written document (an **Agreed Modification**) that shall take effect when executed by the Parties or as otherwise agreed to by the Parties. To the extent applicable, an Agreed Modification shall provide for the receipt of all necessary Permits by the Concessionaire and the acquisition of Additional Lands by the Authority as a condition precedent to the commencement of any such Modification.

6.4 Required Modifications

If the Authority and the Concessionaire cannot agree on the terms of a Modification proposed pursuant to Section 6.3, then either Party shall have the right to require the implementation of any Modification which it reasonably believes is necessary or desirable for the performance of the Plant Operations (a ***Required Modification***); **provided** that the Concessionaire shall not be required or permitted to commence any work related to the Required Modification, until:

- (a) the terms of the Required Modification have been resolved pursuant to Section 24;
- (b) in the case of a Modification required by the Authority (an ***Authority Required Modification***), the Authority has provided to the Concessionaire evidence reasonably satisfactory to the Concessionaire of the Authority's ability to pay or finance any Authority Required Modification, including any costs incurred in connection with the acquisition of Additional Lands in accordance with Section 6.6(b) and, if the Concessionaire has requested the Authority to advance funds necessary to implement the Authority Required Modification, the Concessionaire has received such funds from the Authority;
- (c) in the case of a Modification required by the Concessionaire (a ***Concessionaire Required Modification***), the Concessionaire has provided to the Authority evidence reasonably satisfactory to the Authority of the Concessionaire's ability to pay or finance those costs and expenses that the Parties have agreed that the Concessionaire will be responsible for, including any costs incurred in connection with the acquisition of Additional Lands in accordance with Section 6.6(b); and
- (d) the Concessionaire has obtained all Permits and the Authority has acquired all Additional Lands required to begin work on the Required Modification and the Concessionaire has no reasonable basis to believe that other required Permits that cannot be obtained until a later date will not be obtained when required under Applicable Law.

6.5 Implementation of Modifications

The Concessionaire shall (a) ensure that any work or construction performed in connection with a Modification is performed in a good and workmanlike manner and (b) ensure the terms of an Agreed Modification or a Required Modification are diligently complied with and implemented in such manner that the costs and delays relating to a Modification are minimized. Without limiting the generality of the foregoing, the Concessionaire shall comply with, to the extent not superseded by the terms of the relevant Agreed Modification or Required Modification, the provisions of the Technical Standards with respect to the manner in which Modifications are implemented.

6.6 Acquisition or Leasing by Authority of Additional Lands

- (a) **Pursuant to an Agreed Modification.** In the case of an Agreed Modification requiring acquisition or leasing of Additional Lands, the Authority shall take such actions as may be reasonably necessary to initiate and diligently pursue to completion the proceedings necessary for the acquisition or leasing of such Additional Lands. In such event, all costs and expenses in connection therewith, including all judgments and settlements in condemnation, all awards of compensation, costs and litigation expenses, all awards of damages, all costs incurred in prosecuting the condemnation action, including the cost of all legal and support services and the fees of all witnesses, shall be borne as provided in the related Agreed Modification; **provided, however,** that any payment by the Concessionaire of any of the costs or expenses in relation to

such acquisition or lease shall not, by itself, entitle the Concessionaire to any real property interest in the Additional Lands so acquired.

- (b) **Pursuant to a Required Modification.** In the case of a Required Modification pursuant to Section 6.4 that requires acquisition or leasing of Additional Lands, the Authority shall take such actions as may be reasonably necessary to initiate and diligently pursue to completion the proceedings necessary for the acquisition or leasing of such Additional Lands. The Concessionaire's obligation to implement any such Required Modification shall be subject to the prior completion of the proceedings described in the preceding sentence. In such event, all costs and expenses in connection therewith, including all judgments and settlements in condemnation, all awards of compensation, costs and litigation expenses, all awards of damages, all costs incurred in prosecuting the condemnation action, including the cost of all legal and support services and the fees of all witnesses, shall be paid in accordance with Section 6.4; **provided, however** that any payment by the Concessionaire of any of the costs or expenses in relation to such acquisition or lease shall not, by itself, entitle the Concessionaire to any real property interest in the Additional Lands so acquired.
- (c) **Transfer.** Any lands acquired or leased pursuant to this Section 6.6 shall be deemed to be part of the Plant Site subject to this Agreement upon and following such acquisition or lease. In connection with the foregoing, the Concessionaire shall, and shall cause any Collateral Assignee to, execute such instruments as may be reasonably requested or required by the Authority to give effect to the foregoing.

6.7 Propane Production

The Parties acknowledge and agree that propane production equipment and facilities, the specifications of which will be agreed by the Authority and the Concessionaire prior to the Closing Date, may, at the Authority's sole election and expense, be incorporated into the final design of the Plant and included in the Work; **provided** that (a) AIDEA shall fund all Project Costs in connection with such propane production equipment and facilities, (b) the Concessionaire shall not be required to cause the Plant to produce propane until LNG production levels are sufficient to enable the efficient production of propane in commercial quantities, (c) the Authority shall pay all Operating Costs related to propane production together with a reasonable marketing and contract administration fee as agreed by the Parties and (d) AIDEA shall be entitled to all Propane Revenues, less the amounts that become due and payable to the Concessionaire under subsection (c) above.

7. PLANT OPERATIONS

7.1 Plant Operations

- (a) **Use.** Except to the extent that the Authority exercises its rights under Section 4.6(a), the Concessionaire shall, at all times commencing on the Commercial Operation Date and ending on the End Date (the **Operations Phase**), (i) be responsible for all aspects of the Plant Operations and (ii) cause the Plant Operations to be performed in accordance with the provisions of this Agreement (including Standard Industry Practice and the Technical Standards) and Applicable Law (including Permits). The Concessionaire shall, at all times during the Operations Phase, cause the Plant to be continuously operational, except for shut-downs that are (A) specifically permitted under this Agreement, (B) required or permitted by Applicable Law, (C) necessary to comply with any other requirement of this Agreement, (D) contemplated pursuant to the Technical Standards or (E) required to address emergencies and Unforeseen Events; **provided** that the duration of any such shut-down shall be limited to such period that is reasonably

necessary under Standard Industry Practice to remedy the event or circumstance that caused the shut-down.

- (b) **Costs and Expenses.** The Concessionaire shall, at all times during the Term, be responsible for, and shall, pay or cause to be paid all Operating Costs as and when the same are due and payable, subject to the Authority's obligation to pay Concessionaire Damages following a Compensation Event, which Concessionaire Damages may include costs that are included in Operating Costs.
- (c) **Operator.** The Concessionaire will enter into the O&M Agreement with the Operator to operate and maintain the Plant. Notwithstanding its use of an Operator, the Concessionaire remains ultimately responsible for the operation and maintenance of the Plant during the Term in accordance with this Agreement. The Operator will be subject at all times to the direction and control of the Concessionaire, and any delegation to an Operator does not relieve the Concessionaire of any of its obligations, duties or liabilities pursuant to this Agreement. The Concessionaire will immediately notify the Authority upon the termination, replacement, removal or resignation of an Operator. Subject to the Consent and Agreement, any agreement between the Concessionaire and any Operator will by its terms terminate, without penalty, at the election of the Authority upon notice to such Operator upon the termination of this Agreement. The Operator shall have no interest in, or rights pursuant to, this Agreement or the Project.

7.2 Priority of Supply

- (a) LNG produced by the Plant shall be delivered to the following customers (the ***Preferred Customers***), to the extent they have entered into LNG Sale and Purchase Agreements or LNG Tolling Services Agreements with the Concessionaire, in the following order of priority in accordance with LNG availability:
 - (i) IGU and FNG for residential and commercial space heating, in the volumes specified in and pursuant to the terms of their respective LNG Sale and Purchase Agreement or LNG Tolling Services Agreement;
 - (ii) GVEA for use as a fuel at GVEA's electric generating plants, in the volumes specified in and pursuant to the terms of GVEA's LNG Sale and Purchase Agreement or LNG Tolling Services Agreement;
 - (iii) electric and local gas distribution utilities that are located in (A) the North Slope Borough or (B) Interior Alaska but outside of the FNSB, in the volumes specified in and pursuant to the terms of their respective LNG Sale and Purchase Agreement or LNG Tolling Services Agreement; and
 - (iv) industrial customers located in Interior Alaska, such as refineries and mines, in the volumes specified in and pursuant to the terms of their respective LNG Sale and Purchase Agreement or LNG Tolling Services Agreement.
- (b) All customers that are not included as Preferred Customers under Section 7.2(a) shall be referred to herein as ***Non-Preferred Customers*** and shall rank in priority for LNG delivery after Preferred Customers and in the order of priority listed below, but for the avoidance of doubt shall not be subject to this Agreement's provisions with respect to the Target FOB LNG Price Range or the Maximum Permitted IRR. Non-Preferred Customers shall include:

- (i) any parties that are not RCA-regulated electric and local gas distribution utilities and are consuming such LNG in the State but outside of Interior Alaska;
 - (ii) any parties that use LNG pursuant to the terms of their respective LNG Sale and Purchase Agreements or LNG TSAs, as applicable, as a transportation fuel in the State, other than such LNG used as fuel to transport LNG from the Plant to Preferred Customers; and
 - (iii) any parties consuming such LNG outside the State.
- (c) All propane produced by the Plant will be made available to Preferred Customers on the same priority basis as LNG and on terms materially consistent with the terms of the LNG SPAs and LNG TSAs, and then to Non-Preferred Customers.
- (d) Each LNG Sale and Purchase Agreement will include provisions providing for the allocation of LNG to Preferred Customers and Non-Preferred Customers, in the event of an LNG availability shortfall, in accordance with the order of priority set forth in this Section 7.2.
- (e) The Concessionaire agrees that, at all times during the Term, to the extent that any portion of the Baseline Capacity remains uncontracted under the LNG SPAs or LNG TSAs then in effect, the Concessionaire shall use Reasonable Efforts to first seek to contract such additional capacity with Preferred Customers, then with Non-Preferred Customers, in the order of priority set forth in Sections 7.2(a) and (b) above. For the avoidance of doubt, notwithstanding the order of priority set forth in Sections 7.2(a) and (b) above, once any amount of capacity is contracted with an LNG Purchaser pursuant to an executed LNG SPA or LNG TSA, the Concessionaire shall not be obligated to offer such capacity to any other potential LNG customer.

7.3 Procedures Relating to Maintenance Work

- (a) **General.** The Concessionaire will perform all maintenance obligations with respect to the Project in accordance with this Agreement, Standard Industry Practice, applicable recommendations and instructions of the equipment manufacturers and the Technical Standards.
- (b) **Major Maintenance Plan.** No later than the Commercial Operation Date and ninety (90) days before the beginning of each Reporting Year after the Commercial Operation Date, the Concessionaire will prepare and deliver to the Authority a full five (5) Reporting Year period maintenance plan on a rolling basis that describes life cycle asset maintenance for the Plant (each, a **Major Maintenance Plan**) in accordance with Standard Industry Practice, applicable recommendations and instructions of the equipment manufacturers and the Technical Standards. The Major Maintenance Plan will include a description of all Major Maintenance to be undertaken during such five (5) Reporting Year period, by component, item or discrete project the estimated costs and timing relating to each such component, item or project, the underlying assumptions used to develop such plan, including assumptions arising from the re-evaluations of the physical condition of the Plant conducted pursuant to Section 7.3(c).

(c) **Inspection and Implementation.**

After the Commercial Operation Date, the Concessionaire will conduct inspections of the physical condition of the Plant pursuant to Standard Industry Practice, applicable recommendations and instructions of the equipment manufacturers and the Technical Standards. Every five (5) years after the Commercial Operation Date, the Concessionaire will conduct an assessment of the physical condition of the Plant pursuant to the

Technical Standards, and will prepare and deliver to the Authority a comparative analysis of such conditions to the conditions as previously reported (or, with respect to any Expansions, their condition upon completion thereof), such analysis to take into account any changes in Applicable Law. The condition of the Plant will be assessed in accordance with the Technical Standards. If any part of the Plant is determined by the Concessionaire to fall below the applicable performance standard, level or rating specified in the Technical Standards for such part of the Plant, the Concessionaire will, within ninety (90) days of such assessment, develop and deliver to the Authority a plan to restore the Plant to a condition that will enable the Plant to meet all applicable performance standards, levels and ratings, and such plan will also include a budget, timeline and identification of the funding sources (if known at the time) that will be utilized to restore the Plant.

7.4 Annual Budget

- (a) For each Reporting Year and partial Reporting Year from and after the Commercial Operation Date, the Concessionaire will provide the Authority with an annual budget for the Plant for such full or partial Reporting Year at least thirty (30) days prior to the start thereof (an ***Annual Budget***). Each Annual Budget will show in reasonable detail in respect of such full or partial Reporting Year:
 - (i) projected Revenues;
 - (ii) projected Operating Costs, including the Concession Fee and all other amounts payable to the Authority;
 - (iii) projected maintenance expenses, including the Maintenance Capex and all other costs of Major Maintenance activities to be performed pursuant to the Major Maintenance Plan;
 - (iv) projected debt service and other amounts payable with respect to Third Party Loans, including deposits to reserve funds held for benefit of the Third Party Lenders; and
 - (v) projected Distributions.
- (b) The Concessionaire will provide such other information in connection with the Annual Budget as the Authority may reasonably request, including any amendments to operating budgets pursuant to the O&M Agreement.

7.5 Quarterly Reports; Operator Reports

- (a) Not later than sixty (60) days after the end of each fiscal quarter ending after the Commercial Operation Date through the End Date the Concessionaire shall provide a quarterly operations report to the Authority, which quarterly report shall include:
 - (i) to the extent not previously reported to the Authority in a prior quarterly report, any material change to the Annual Budget from the form of Annual Budget delivered to the Authority pursuant to Section 7.4;
 - (ii) to the extent not previously reported to the Authority in a prior quarterly report, any material change to the Major Maintenance Plan from the form of Major Maintenance Plan delivered to the Authority pursuant to Section 7.3(b), together with a summary of the major maintenance tasks completed in the immediately preceding quarter and for the year to date;

- (iii) a report on the amount of the Annual Budget spent through the end of the preceding quarter and a variance report indicating each line item in the Annual Budget and the actual amount expended for each such line item.
- (b) Promptly following delivery thereof to the Concessionaire, the Concessionaire will deliver, or will cause the Operator to deliver, to the Authority a copy of each report prepared for the Concessionaire or the Investor by the Operator under the O&M Agreement.

8. TECHNICAL STANDARDS

8.1 Compliance with Technical Standards

The Concessionaire shall comply with and implement, and shall cause all Work and the Plant Operations to comply with, Standard Industry Practice, applicable recommendations and instructions of the equipment manufacturers and the Technical Standards in all material respects at all times during the Term (including any changes or modifications to the Technical Standards made pursuant to the terms of this Agreement); **provided** that the Concessionaire shall have a reasonable period of time (a) following the Closing Date to carry out any changes to the development and construction of the Plant in order to cause the development and construction of the Plant to comply with the Technical Standards in effect as of the Closing Date and (b) from time to time to comply with the introduction of changes or modifications to the Technical Standards that are made in accordance with the terms of this Agreement. The Technical Standards shall be construed flexibly in light of their objectives. The Technical Standards shall not be deemed to be violated if a failure to comply could not reasonably be expected to (i) give rise to an Environmental Non-Compliance or (ii) have a material adverse effect on Plant Operations or the condition of the Plant or Plant Site, other than actions or omissions that endanger human health or safety. To the extent that any term or provision of the Technical Standards conflicts with any term or provision otherwise specified in this Agreement, then such term or provision of this Agreement shall govern and shall supersede any such conflicting term or provision in the Technical Standards. Except as specifically set forth in this Agreement, the Concessionaire shall perform all Work required to comply with and implement the Technical Standards as part of the development and construction of the Plant and the Plant Operations at its sole cost and expense.

8.2 Proposed Operating Standards

If the Concessionaire, at its cost and expense, wishes to implement and use operating standards other than the Technical Standards, the Concessionaire must provide notice of such proposed operating standards to the Authority for the Authority's approval. The Concessionaire's proposed operating standards must be accompanied by an explanation of the Concessionaire's rationale for making its proposal and all relevant supporting information, certificates, reports, studies, investigations and other materials as are necessary to demonstrate that the Concessionaire's proposed operating standards are reasonably designed to achieve the objectives of the applicable Technical Standards. The Authority may request any additional supporting information, certificates, reports, studies, investigations and other materials as are reasonably required by the Authority to determine if the Concessionaire's proposed operating standards are reasonably designed to achieve the objectives of the applicable Technical Standards. Until the Authority provides its approval for the implementation of the Concessionaire's proposed operating standards, the Concessionaire shall not implement the proposed operating standards and shall continue to implement and comply with the then existing Technical Standards. The Concessionaire's proposed operating standards, which comply with Standard Industry Practice and Applicable Law, shall be deemed incorporated into the Technical Standards upon approval by the Authority in accordance with the terms hereof. If the Authority does not approve any proposed operating standards and the Concessionaire disagrees with the

Authority, the Concessionaire may submit the matter to Dispute resolution procedures set forth in Section 24.

9. REVENUES; REVENUE PAYMENT

9.1 Revenues.

Subject to the terms and conditions of this Agreement and the Third Party Financing Documents, the Concessionaire shall collect and, at all times during the Term, have the right, title, entitlement and interest in, and to, all revenues generated by the Plant, including all revenues receivable by or on behalf of the Concessionaire in respect of the sale of LNG produced by the Plant but excluding all Propane Revenues (the **Revenues**).

9.2 LNG Pricing for Preferred Customers

- (a) The Concessionaire acknowledges and agrees that a principal policy objective of the below market financing and financial support for the Project as part of the IEP authorized by SB 23 is to provide that the cost of LNG produced by the Plant and delivered to Preferred Customers will result in a LNG price FOB the Plant within the Target FOB LNG Price Range. The **Target FOB LNG Price Range** shall be a range of the estimated price per MMBtu of LNG delivered FOB, as determined and agreed by the Parties on or prior to the Closing Date, and which shall be based upon (i) the cost of natural gas delivered to the Plant, *plus* (ii) the estimated Operating Costs for the Plant (expressed in Dollars per MMBtu), *plus* (iii) amounts required for payment of debt service, *plus* (iv) amounts required to provide the Investor with the Target Equity Return, each as set forth in the Base Case Financial Model. The Target FOB LNG Price Range shall be Adjusted for Standard Inflation as of the first day of each Reporting Year, using the value of the Standard Adjustment Index, as reported for February of the calendar year in which such Reporting Year begins. For the avoidance of doubt, the Target FOB LNG Price Range excludes all trucking and transportation costs from the Plant to the point of delivery and all regasification, storage and delivery costs.
- (b) In order to achieve a cost of LNG produced by the Plant that permits the achievement of the Target FOB LNG Price Range, the Concessionaire agrees that the Nominal IRR on the Actual Investor Equity Contribution and on services provided by any of Investor's Affiliates (provided, for the avoidance of doubt, that none of MWHI, MWAH, GVEA or their respective Affiliates shall be considered Affiliates of the Investor for purposes of this provision) in connection with LNG sales made to, or deliveries of LNG to Preferred Customers, shall not exceed twelve and one-half percent (12.5%) (the **Maximum Permitted IRR**), as measured in accordance with the formula set forth in the Base Case Financial Model, and the amount of the Scheduled Investor Distributions shall be determined accordingly.
- (c) Notwithstanding the foregoing, the Concessionaire may charge differential pricing to Preferred Customers as agreed in their respective LNG SPAs or LNG TSAs, as applicable, as follows:
 - (i) for Preferred Customers identified in clauses (i) through (iii) of Section 7.2(a) entering into LNG SPAs or LNG TSAs on or before the Closing Date, in respect of the amount of LNG contracted in such LNG SPAs or LNG TSAs, as applicable, and coming into effect at any time within the first four years following the Commercial Operation Date, the Standard Retail Rate;

- (ii) for Preferred Customers identified in clause (iv) of Section 7.2(a) entering into LNG SPAs or LNG TSAs on or before the Closing Date, in respect of the amount of LNG contracted in their LNG SPAs or LNG TSAs, as applicable, and coming into effect at any time within the first four years following the Commercial Operation Date, the Standard Industrial Rate;
 - (iii) for Preferred Customers identified in clauses (i) through (iii) of Section 7.2(a) entering into LNG SPAs or LNG TSAs after the Closing Date, in respect of the amount of LNG contracted in such LNG SPAs or LNG TSAs, as applicable, a price representing up to a [●]% markup above the Standard Retail Rate; and
 - (iv) for Preferred Customers identified in clause (iv) of Section 7.2(a) entering into LNG SPAs or LNG TSAs after the Closing Date, in respect of the amount of LNG contracted in their LNG SPAs or LNG TSAs, as applicable, a price representing up to a [●]% markup above the Standard Industrial Rate.
- (d) If the Concessionaire determines that any Excess Earnings or Additional Expansion Earnings have accrued during a Reporting Year, as reported by the Concessionaire in the financial reports prepared and delivered under Section 10.1(b), then the Concessionaire shall apply any Excess Earnings or Additional Expansion Earnings, as applicable, as a rebate to Preferred LNG Purchasers on a pro rata basis in accordance with the amounts paid to the Concessionaire under their respective LNG SPAs or LNG TSAs during the relevant Reporting Year. As used herein:
 - (i) **Excess Earnings** means for any Reporting Year, if during such Reporting Year the Concessionaire, after application of Revenues in accordance with Sections 9.3(a) through (i), has retained Revenues attributable to Preferred Customers in excess of the Scheduled Investor Distributions for such Reporting Year, the aggregate amount of such excess Revenues.
 - (ii) **Additional Expansion Earnings** means for any Reporting Year, if during such Reporting Year the Concessionaire, after application of Revenues in accordance with Sections 9.3(a) through (i), has retained Revenues attributable to a Commercial Plant Expansion in excess of the Scheduled Expansion Distributions for such Reporting Year, [●]% of the aggregate amount of such excess Revenues.
- (e) If, pursuant to its review of the financial reports delivered by the Concessionaire to the Authority pursuant to Section 10.1(b) or an audit pursuant to Section 10.3(a), the Authority determines that the amount of Excess Earnings or Additional Expansion Earnings, as applicable, is greater than the amount calculated and reported by the Concessionaire, the Authority shall notify the Concessionaire in writing of the details of such finding. The Concessionaire shall have an opportunity to dispute any such finding by presenting appropriate evidence to the Authority within fifteen (15) Business Days of receipt of such notice. If the Concessionaire and the Authority are unable to come to agreement on the existence or amount of the Excess Earnings or Additional Expansion Earnings, as applicable, the Dispute shall be resolved in accordance with Section 24.
- (f) The Parties agree that the Maximum Permitted IRR shall not apply to equity returns with respect to sales of LNG from the Plant that are made by the Concessionaire or its Affiliates to Non-Preferred Customers; **provided** that the Concessionaire agrees that LNG sales to Non-Preferred Customers shall be subject to review and audit by the Authority as and when requested by the Authority to confirm that the costs of providing such sales and services have not been shifted or

allocated in any manner to the Preferred Customers. Notwithstanding the foregoing, any amount of Revenue received by the Concessionaire in respect of sales of LNG to Non-Preferred Customers which would result in a Nominal IRR in excess of the Maximum Permitted IRR in the first five (5) years following the year in which the Commercial Operation Date occurs shall be applied to fund the Expansion Reserve Account pursuant to Section 9.3(g).

- (g) For the avoidance of doubt, the Concessionaire in no event guarantees to the Authority or to Preferred Customers that the Target FOB LNG Price Range will be met, and the sole mechanism for achieving the Target FOB LNG Price Range shall be the limitation on Maximum Permitted IRR set forth in this Section 9.2. Notwithstanding whether the Target FOB LNG Price Range is met at any time, if the Concessionaire's Nominal IRR in respect of any Preferred LNG Purchasers in any Reporting Year is below the Maximum Permitted IRR, the Concessionaire may, subject to the terms of the relevant LNG SPAs and LNG TSAs, adjust pricing to Preferred LNG Purchasers on a pro rata basis in the following Reporting Year to make up for such deficiency.
- (h) If at any time, notwithstanding the foregoing measures, the Target FOB LNG Price Range is not met for Preferred Customers (including due to pass through of costs to LNG Purchasers as permitted under this Agreement), the Authority may in its discretion apply additional funds available to it, including any AIDEA Appropriation Funds or the Completion Reserve, to reduce the LNG prices, whether by way of additional funding provided to the Concessionaire or direct rebates to Preferred Customers, or may seek to adjust Project economics through a reduction of interest payable on AIDEA SETS Funds or otherwise.
- (i) If the Person transporting LNG from the Plant is owned by any Equity Participant or their respective Affiliates, the pricing of inter-company transportation services may be subject to the jurisdiction of, and the review and approval by, the Regulatory Commission of Alaska (the **RCA**).

9.3 Application of Revenues

The Concessionaire shall, not later than the third (3rd) Business Day of each month commencing in the first month following the Commercial Operation Date, apply all Revenues (other than Revenues generated by a Commercial Plant Expansion) and any other cash flows received by it in the preceding month in the following order of priority:

- (a) *first*, to pay all Operating Costs incurred by the Concessionaire to operate and maintain the Plant that are then due and payable;
- (b) *second*, to pay scheduled debt service on any Third Party Loans (including any Third Party Loans to the extent that such Third Party Loans are in connection with a Preferred Customer Plant Expansion);
- (c) *third*, to the extent funds standing to the credit of the Operations and Maintenance Reserve Account are less than the Required Balance for such account, to fund the Operations and Maintenance Reserve Account up to the Required Balance;
- (d) *fourth*, to the extent funds standing to the credit of the Major Maintenance Reserve Account are less than the Required Balance for such account, to fund the Major Maintenance Reserve Account up to the Required Balance;

- (e) *fifth*, to fund any additional reserve accounts required by any Third Party Lender (including any Third Party Loans to the extent that such Third Party Loans are in connection with a Preferred Customer Plant Expansion);
- (f) *sixth*, to distribute to the Equity Participants the Scheduled Investor Distribution for such month, together with any portion of Scheduled Investor Distributions not paid in prior months due to insufficient cash flows, plus such additional amount as necessary to achieve the Target Equity Return;
- (g) *seventh*, until the month immediately succeeding the month during which the fifth (5th) anniversary of the Commercial Operation Date occurs, to fund the Expansion Reserve Account;
- (h) *eighth*, commencing in the month during which the fifth (5th) anniversary of the Commercial Operation Date occurs, to pay the Concession Fee then due and payable (including all Deferred Concession Fees from prior Payment Dates);
- (i) *ninth*, commencing in the month during which the fifth (5th) anniversary of the Commercial Operation Date occurs, and to the extent funds standing to the credit of the Concession Fee Reserve Account are less than the Required Balance for such account, to fund the Concession Fee Reserve Account up to the Required Balance; and
- (j) *tenth*, commencing in the month during which the fifth (5th) anniversary of the Commercial Operation Date occurs, if there are any funds remaining after application of Revenues in accordance with clauses (a) through (i) above, and subject to the Concessionaire's obligation to apply Excess Earnings and Additional Expansion Earnings, as applicable, in accordance with Section 9.2, to (i) fund a distribution account in the name of the Concessionaire for application at the Concessionaire's discretion, including distributions by the Concessionaire to the Equity Participants and (ii) pay amounts due and payable under Affiliate Contracts that are not Arm's-Length Affiliate Contracts;

provided that during a Transition Period and following delivery of an AGS Notice, the provisions of this Section 9.3 shall cease to apply and Revenues will be applied in accordance with Section 18.1(b)(ii)(C).

9.4 Billing

The Concessionaire shall be responsible for the preparation, delivery, maintenance and collection of all bills and invoices to the customers of the Plant.

9.5 Reserve Accounts

The Concessionaire may, at any time and from time to time, post with the Depositary one or more Letters of Credit in an amount equal to or greater than the Required Balance for the Operations and Maintenance Reserve Account, the Major Maintenance Reserve Account or the Concession Fee Reserve Account, as applicable, or the then-current balance of the Expansion Reserve Account, in which case all funds then standing to the credit of the relevant reserve account(s) shall be released pursuant to the mechanisms to be set forth in the Depositary Agreement and applied in accordance with Section 9.3.

10. REPORTING; AUDITS; INSPECTIONS; RECORDS

10.1 Reports

- (a) **Incident Management, Notifications and Reports.** The Concessionaire shall promptly (but no later than twenty-four (24) hours, or as otherwise required by Applicable Law) notify the Authority and the appropriate Governmental Authority of all incidents, including emergencies and accidents for which a report must be filed pursuant to Applicable Law, occurring on, at or from the Plant or the Plant Site, and of all claims made by or against the Concessionaire by third parties. In addition, the Concessionaire shall provide to the Authority a quarterly report of all such incidents, including the following details: (i) type of incident (*e.g.*, human bodily injury, human death or property damage) and summary of each such incident, (ii) number of incidents, (iii) costs to correct incidents, (iv) communications with Governmental Authorities regarding such incidents, (v) claims made by the Concessionaire and revenue received and (vi) claims made against the Concessionaire and losses incurred or losses claimed. The Concessionaire shall provide such report to the Authority within thirty (30) Business Days following the end of each calendar quarter of each year.
- (b) **Financial Reports.** Commencing at the end of the second full calendar quarter to occur after the Closing Date and until the End Date, the Concessionaire shall deliver to the Authority:
- (i) within ninety (90) days after the end of each calendar quarter, a copy of the unaudited balance sheets of the Concessionaire at the end of each such calendar quarter period and the related unaudited statements of income, changes in equity and cash flows for such calendar quarter period, in a manner and containing information consistent with the Concessionaire's current practices, together with the Concessionaire's calculation of the Nominal IRR on the Actual Investor Equity Contribution for such quarter and for the Reporting Year to date, and
 - (ii) within one hundred and twenty (120) days after the end of each Reporting Year a copy of the audited balance sheets of the Concessionaire at the end of each such Reporting Year, and the related audited statements of income, changes in equity and cash flows for such Reporting Year.

in each case prepared in accordance with generally accepted accounting principles consistently applied in the United States and certified by the Concessionaire's chief financial officer that such financial statements fairly present the financial condition and the results of operations, changes in equity and cash flows of the Concessionaire as at the respective dates of and for the periods referred to in such financial statements, all in accordance with generally accepted accounting principles in the United States consistently applied, together with the Concessionaire's calculation of the Nominal IRR on the Actual Investor Equity Contribution for such Reporting Year to date and the amount of any Excess Earnings and Additional Expansion Earnings for such Reporting Year. Such financial statements shall reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements. In addition to the foregoing, together with the financial statements identified in clause (ii) of this Section 10.1(b), the Concessionaire shall provide an opinion thereon of an independent public accountant of national stature in the United States of America engaged by the Concessionaire.

10.2 Confidentiality

To the extent permitted by Applicable Law, the Parties shall keep all discussions and negotiations related to this Agreement and other Transaction Documents strictly private and confidential (it being understood that final Transaction Documents will be subject to public disclosure pursuant to Alaskan law). In addition, unless disclosure is required by Applicable Law, the Authority shall, without further action on the Concessionaire or any Equity Participant's part, keep confidential any materials or Information obtained from the Concessionaire, its Representatives or any Equity Participant to the extent that such materials or Information fit within any of the categories of Alaska Statutes 44.88.215(a)(1) through (8) (the *Statutory Exceptions*), and the Authority agrees that such materials and Information shall not be deemed to be a public record for purposes of Alaska Statutes 40.25.110 through 40.25.220. In the event that the Concessionaire requests the Authority to defend an action seeking the disclosure of Information that the Authority determines to be confidential pursuant to this Section 10.2, the Concessionaire shall pay for the reasonable costs and expenses incurred by the Authority in defending any such action. Notwithstanding the foregoing, either Party may disclose such Information: (i) to its external advisers; (ii) to the Investor and its limited partners, any potential investors and any potential third party debt providers; or (iii) as otherwise mutually agreed by the Parties.

10.3 Inspection, Audit and Review Rights of the Authority and the Concessionaire

- (a) **Maintenance of Books and Records.** The Concessionaire shall establish and maintain on a current basis proper, accurate and complete books, records and accounts of all operating data, all service and maintenance work performed on the Plant and all transactions hereunder. The Concessionaire shall maintain all books and records it is required to maintain hereunder for the longer of (a) the period required by Applicable Law; or (ii) otherwise for at least six (6) years after the end of the Reporting Year during which the record was created. Upon expiration of the applicable retention period, the Concessionaire shall not dispose of such records unless the Concessionaire has provided not less than sixty (60) days' prior notice to the Authority. The Authority shall have the right, upon notice to the Concessionaire during such 60-day notice period and at its sole cost and expense, to take custody of such records following expiration of the applicable retention period. In the event that the Authority takes custody of such records, or such records are otherwise disposed of, the Parties agree that the Concessionaire shall have the right to retain a copy of such records.
- (b) **Audit Right.** At all reasonable times, upon forty-eight (48) hours' prior notice, the Authority may, or may cause a Representative designated by it to, carry out an Audit of the Information required to be maintained or delivered by the Concessionaire under this Agreement in connection with the Project for the purpose of verifying the information contained therein and the Concessionaire's compliance with its obligations hereunder. The Authority shall be entitled to make copies of Information and to take extracts therefrom, at the Authority's expense, but in any event subject to Section 10.2. The Concessionaire, at the cost and expense of the Concessionaire, shall, at reasonable times, make available or cause to be made available to the Authority or its designated Representative such reasonable information and material as may reasonably be required by the Authority or its designated Representative for purposes of such Audit and otherwise provide such cooperation as may be reasonably required by the Authority in connection with the same.
- (c) **Inspection Right.** The Authority and its Representatives shall, at all reasonable times and upon reasonable prior notice, have access to the Plant and every part thereof and the Concessionaire, at the reasonable cost and expense of the Concessionaire, shall and shall cause its Representatives

to, furnish the Authority and its Representatives with every reasonable assistance for inspecting the Plant and the Plant Operations, in each case, for the purpose of Auditing the Information and ascertaining compliance with this Agreement and Applicable Law.

- (d) **No Waiver.** Failure by the Authority or its Representatives to inspect, review or Audit the Concessionaire's compliance under this Agreement or any part thereof or the Information, shall not constitute a waiver or modification of any of the rights or remedies of the Authority hereunder or any of the obligations or liabilities of the Concessionaire hereunder.
- (e) **No Undue Interference.** In the course of performing its inspections, reviews and Audits hereunder, the Authority shall use Reasonable Efforts to minimize the effect and duration of any disruption to or impairment of the development and construction of the Plant or the Plant Operations or the Concessionaire's rights or obligations under this Agreement, having regard to the nature of the inspections, reviews and audits being performed.

10.4 Audits, Assistance, Inspections and Approvals

Wherever in this Agreement reference is made to the Authority or its Representatives providing assistance, services, approvals or consents to or on behalf of the Concessionaire or its Representatives or to the Authority or its Representatives performing an Audit or inspecting, reviewing or examining the Plant, the Plant Operations, Environmental Conditions or any part thereof or the books, records or other Information of the Concessionaire or its Representatives, such undertaking by the Authority or its Representatives shall not relieve or exempt the Concessionaire from, or represent a waiver of, any requirement, liability, Concessionaire Default, covenant, agreement or obligation of the Concessionaire under this Agreement or at law or in equity and shall not create or impose any requirement, liability, covenant, agreement or obligation (including an obligation to provide other assistance, services or approvals) on the Authority or its Representatives not otherwise created or imposed pursuant to the express provisions of this Agreement.

10.5 Ownership of Work Product

- (a) All Work Product (including records thereof in Software form), including reports, studies, data, information, logs, records and similar terms, which is furnished by or on behalf of the Authority to the Concessionaire, whether before or after the Effective Date, and licensed to, made available to, used by or in the possession of the Concessionaire during the Term, will be and remain the exclusive property of the Authority; **provided** that the Authority will make available to the Concessionaire, without charge, and without representation or warranty of any kind, any documents in the possession of the Authority relating to the planning, design, engineering and permitting of the Project and any Expansions that the Concessionaire elects to or is directed to carry out.
- (b) All Work Product prepared by or on behalf of the Concessionaire, including pursuant to the Construction Contract, the O&M Agreement, and any Contract other than a Project Agreement to which the Concessionaire is a party, will remain exclusively the property of the Concessionaire, notwithstanding any delivery of copies thereof to the Authority. Upon expiration or earlier termination of this Agreement for any reason, including termination by the Concessionaire for an Authority Default, the Authority will have a nonexclusive, nontransferable, irrevocable, fully paid-up license to use any Work Product of the Concessionaire that is necessary for the design, construction, operation or maintenance of the Plant solely in connection with the Project and other activities incidental to the Project. To the extent that the Authority does not have copies of any such Work Product at the time of expiration or earlier termination of this Agreement, the

Concessionaire shall deliver copies to the Authority promptly following the Authority's request. The Authority agrees not to use any Work Product in any other project without the prior written approval of the Concessionaire.

- (c) If and to the extent the Work Product licensed to the Concessionaire satisfies one of the Statutory Exceptions, then: (i) the Authority agrees to maintain the confidentiality of such Work Product at all times; and (ii) the Authority agrees not to disclose any such Work Product under any circumstances (other than to its concessionaires, Contractors, employees, attorneys and agents in connection with the development, construction, operation and maintenance of the Project who agree to be bound by the confidentiality obligations of the Authority set forth in this Agreement). The Authority (A) acknowledges that the disclosure of any Work Product that satisfies a Statutory Exception would cause Concessionaire to suffer irreparable harm for which there is no adequate legal remedy and (B) agrees that immediate injunctive relief is an appropriate and necessary remedy for violation of the confidentiality provisions of this Agreement in addition to and not in lieu of any other legal or equitable remedies that may exist. The Concessionaire will continue to have a full and complete right to use any and all duplicates or other originals of such Work Product in any manner it chooses.

10.6 Ownership of Proprietary Intellectual Property

- (a) All Proprietary Intellectual Property of the Concessionaire will remain the sole and exclusive property of the Concessionaire, notwithstanding any delivery of copies thereof to the Authority. Upon the expiration or earlier termination of, or any assignment by the Concessionaire of its rights under, this Agreement for any reason whatsoever, the Authority will have a nonexclusive, nontransferable, irrevocable, fully paid-up license to use any Proprietary Intellectual Property of the Concessionaire that is necessary for the design, construction, operation or maintenance of the Plant solely in connection with the Project and other activities incidental to the Project. The Authority will not at any time sell any such Proprietary Intellectual Property or use or allow any party to use any such Proprietary Intellectual Property for any purpose whatsoever other than in connection with the Project.
- (b) If and to the extent the Proprietary Intellectual Property of the Concessionaire satisfies one of the Statutory Exceptions, then: (i) the Authority agrees to maintain the confidentiality of such Proprietary Intellectual Property at all times; and (ii) the Authority agrees not to disclose any such Proprietary Intellectual Property under any circumstances (other than to its concessionaires, Contractors, employees, attorneys and agents in connection with the development, construction, operation and maintenance of the Project who agree to be bound by the confidentiality obligations of the Authority set forth in this Agreement). The Authority (A) acknowledges that the disclosure of any Proprietary Intellectual Property that satisfies a Statutory Exception would cause Concessionaire to suffer irreparable harm for which there is no adequate legal remedy; and (B) agrees that immediate injunctive relief is an appropriate and necessary remedy for violation of the confidentiality provisions of this Agreement in addition to and not in lieu of any other legal or equitable remedies that may exist. The Concessionaire will continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.
- (c) With respect to any Proprietary Intellectual Property owned by a Person other than the Concessionaire or the Authority, the Concessionaire will use Reasonable Efforts to obtain from such owner, concurrently with execution of any Contract or purchase order with such owner, both for the Concessionaire and the Authority, a nonexclusive, nontransferable, irrevocable, fully paid up (other than with respect to ongoing maintenance and support fees) licenses to use such

Proprietary Intellectual Property solely in connection with the Project, of substantially similar scope, purpose, duration and applicability as the licenses granted by Section 10.6(a); **provided** that the foregoing requirement will not apply to standard, pre-specified manufacturer licenses of mass-marketed products (including Software products) or equipment where the license cannot be extended to the Authority using Reasonable Efforts or to other licenses of products or equipment where the products or equipment are not reasonably necessary for the operation or maintenance of the Plant. The limitations on sale and disclosure by the Authority set forth in Section 10.6(a) will also apply to the Authority's licenses in such Proprietary Intellectual Property.

- (d) The Concessionaire Marks may appear on some of the Plant, including supplies, materials, stationery and similar consumable items at the Project on the End Date. The Parties agree that the Concessionaire will remain the owner or licensee, as applicable, of the Concessionaire Marks at the end of the Term, and the Concessionaire may remove, at its expense, the Concessionaire Marks prior to the end of the Term. If the Concessionaire fails to do so, the Authority will be entitled to remove the Concessionaire Marks and, in such case, the Authority will be entitled to payment of its Allocable Costs in so doing from the Concessionaire. The Authority acknowledges and agrees that it will have no right, title, interest or license in the Concessionaire Marks.
- (e) On or before the Effective Date, the Authority will grant to the Concessionaire a nonexclusive, nontransferable, irrevocable, fully paid-up license to use any Proprietary Intellectual Property of the Authority that has been developed for the Project, that is necessary for the design, development, construction, operation or maintenance of the Plant solely in connection with the Project and other activities incidental to the Project. All Proprietary Intellectual Property of the Authority will remain the sole and exclusive property of the Authority, notwithstanding any delivery of copies thereof to the Concessionaire. The Concessionaire will not at any time sell any such Proprietary Intellectual Property or use or allow any party to use such Proprietary Intellectual Property for any purpose whatsoever other than in connection with the Project. The Authority will continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

11. REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties of the Authority

The Authority makes the following representations and warranties to the Concessionaire and acknowledges that the Concessionaire and its Representatives are relying upon such representations and warranties in entering into this Agreement:

- (a) **Organization.** The Authority is a public corporation of the State of Alaska duly organized and validly existing under the laws of the State of Alaska, and has the full power and authority to execute and deliver this Agreement and each Transaction Document to which it is a party and to perform its obligations under this Agreement and under such Transaction Documents to which it is a party.
- (b) **Authorization and Enforceability.** The Authority's execution and delivery of this Agreement and each Transaction Document to which the Authority is a party, and the consummation by the Authority of the transactions contemplated hereby and thereby, have been duly authorized by all necessary action of the Authority. This Agreement has been, and at the Closing the other Transaction Documents to which the Authority is a party shall be, duly executed and delivered by the Authority. This Agreement constitutes, and at the Time of Closing each other Transaction Document to which the Authority is a party will constitute, the legal, valid and binding obligation

of the Authority and is enforceable against it in accordance with its terms, except as such enforcement may be limited by (i) any bankruptcy, insolvency, moratorium or similar law from time to time in effect that affect creditors' rights generally or (ii) general equitable principles (regardless of whether enforcement is sought in a Proceeding in equity or at law).

- (c) **Title.** The Authority has, or will have as of the Closing Date, good and sufficient title (either in fee, leasehold or valid easement) to the Plant Site and good title to the Project Assets constructed pursuant to the AIDEA Early Works Agreement, subject only to Permitted Authority Encumbrances and Permitted Concessionaire Encumbrances (other than the Permitted Concessionaire Encumbrances specified in clause (vii) of the definition of the term ***Permitted Concessionaire Encumbrance***). Without limiting the foregoing, a description of the Plant Site is attached hereto as Schedule B-1. The Plant Site described in Schedule B-1 constitutes all parcels of real property necessary for the Project (excluding any Expansions or Modifications). Subject to any and all Permitted Authority Encumbrances and Permitted Concessionaire Encumbrances (other than the Permitted Concessionaire Encumbrances specified in clause (vii) of the definition of the term ***Permitted Concessionaire Encumbrance***) existing at the Time of Closing, the Authority has not entered into any agreement, contract, option, commitment, right, privilege or other right of another binding upon, or which at any time in the future may become binding upon, the Authority to sell, transfer, convey, subject to lien (other than the AIDEA Deed of Trust and AIDEA Security Agreement), charge, grant a security interest in, or in any other way dispose of or materially encumber the Plant or any material portion thereof that would cause a delay in the timely completion of the Work or otherwise have a Concessionaire Material Adverse Effect. To the Authority's knowledge after diligent inquiry, there are no recorded or unrecorded restrictions, exceptions, easements, rights of way, reservations, limitations, interests or other matters that affect title to the Plant or the Project Assets or any portion thereof and that could reasonably be expected to have a material adverse effect on the Concessionaire's ability to develop, construct and operate the Plant and use the Project Assets (in whole or in part) in accordance with the terms hereof. No indebtedness for borrowed money or any other obligation of the Authority or any Governmental Authority is or will be secured by any interest in the Plant or Plant Site and no Person will have any claim or right to, or interest in, any income, profits, rates or revenue derived from or generated with respect to the Plant and the Project Assets (other than the Concessionaire under this Agreement and any claims, rights or interests granted by or otherwise relating to the Concessionaire).
- (d) **No Conflicts.** None of the execution or delivery of this Agreement or the other Transaction Documents to which the Authority is a party, the performance by the Authority of its obligations under this Agreement or under such Transaction Documents, or the fulfillment of the terms and conditions of this Agreement or such Transaction Documents shall: (i) conflict with or violate any provision of the Authority's organizational documents; (ii) conflict with, violate or result in a breach of any Applicable Law in effect as of the Effective Date; or (iii) conflict with, violate or result in a breach of, or constitute a default under or result in the imposition or creation of, any security under any agreement or instrument to which the Authority is a party or by which it or any of its properties or assets are bound.
- (e) **Consents.** No consent, approval, authorization or permit of, or filing with or notification to, any Person is required for or in connection with the execution and delivery of this Agreement or any other Transaction Document by the Authority or for or in connection with the consummation of the transactions and performance of the terms and conditions contemplated by this Agreement or such Transaction Documents by the Authority, except (i) the AIDEA Permits and Concessionaire Permits and (ii) consents, approvals, authorizations, permits, filings or notices that, if not obtained or made, would not, individually or in the aggregate, have a material adverse effect on the

Authority or its ability to perform its obligations under this Agreement or such Transaction Documents.

- (f) **Compliance with Environmental Law.** On and as of July 31, 2014, which is the date that the Authority took possession of the Plant Site, the Plant Site and the Authority has been and is currently in compliance with Environmental Laws and no Environmental Non-Compliances with respect to the Plant Site have occurred or are continuing.
- (g) **Litigation.** There are no Proceedings pending or, to the best of the Authority's knowledge, threatened, whether at law or in equity, whether civil or criminal in nature, or whether before any Governmental Authority or arbitrator, against or affecting the Authority which could reasonably be expected to (i) cause a material delay in the timely completion of the Work or otherwise have a Concessionaire Material Adverse Effect or (ii) have a material adverse effect on the validity or enforceability of this Agreement or any Transaction Document to which the Authority is a party. There is no outstanding order, writ, injunction, decree, judgment or award by any court, arbitration panel or Governmental Authority against or affecting the Authority which could reasonably be expected to (A) cause a delay in the timely completion of the Work or otherwise have a Concessionaire Material Adverse Effect or (B) have a material adverse effect on the validity or enforceability of this Agreement or any Transaction Document to which the Authority is a party.
- (h) **Bankruptcy.** There are no bankruptcy, reorganization, or insolvency proceedings pending against, being contemplated by, or, to the knowledge of the Authority, threatened against the Authority.
- (i) **Absence of Changes.** Since the Effective Date, the Authority has not entered into any transaction or otherwise taken any action related to the Plant Site, the Early Works or the transactions contemplated in this Agreement, including the Concession, that has resulted or is reasonably likely to result in a Concessionaire Material Adverse Effect and, to the Authority's knowledge, the Authority is not aware of any other transaction or occurrence related to the Plant Site, the Early Works or the transactions contemplated in this Agreement, including the Concession, that has resulted or is reasonably likely to result in a Concessionaire Material Adverse Effect.
- (j) **Brokers.** There is no investment banker, broker, finder or other intermediary who has been retained by or is authorized to act on behalf of the Authority who might be entitled to any fee or commission from the Authority in connection with the transactions contemplated by this Agreement.
- (k) **Accuracy of Information.** To the knowledge of the Authority, having made diligent inquiry, the written factual information set forth in the documents listed on Schedule I regarding the Plant Site and the Project that the Authority has provided to the Concessionaire was accurate and complete in all material respects at the time such information was provided and continues to be accurate and complete in all material respects as of the Effective Date.
- (l) **Project Agreements.**
 - (i) As of the Effective Date and the Closing Date, to the best of the Authority's knowledge after diligent inquiry, there is no material default by the Authority or any Project Party under any Project Agreement to which the Authority is a party.

- (ii) As of the Effective Date and the Closing Date, each of the Project Agreements to which the Authority is a party and which has been executed as of such date is in full force and effect and none of such agreements has been amended, transferred or, to the Authority's knowledge after diligent inquiry, assigned.
- (m) **No Unforeseen Events.** As of the Effective Date and the Closing Date, to the best of the Authority's knowledge after diligent inquiry, no event which, with the passage of time or the giving of notice, would constitute an Unforeseen Event under this Agreement has occurred.
- (n) **No Default.** As of the Effective Date and the Closing Date, to the best of the Authority's knowledge after diligent inquiry, no event which, with the passage of time or the giving of notice, would constitute an Authority Default has occurred.

11.2 Representations and Warranties of the Concessionaire

The Concessionaire makes the following representations and warranties to the Authority (and acknowledges that the Authority is relying upon such representations and warranties in entering into this Agreement):

- (a) **Organization.** The Concessionaire is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is qualified to do business in the State, and has the full power and authority to execute and deliver this Agreement and each Transaction Document to which it is a party and to perform its obligations under this Agreement and under such Transaction Documents to which it is a party. As of the Effective Date, one hundred percent (100%) of the membership interests in the Concessionaire are owned by MWHI and no other Person has a membership interest in the Concessionaire.
- (b) **Authorization and Enforceability.** The Concessionaire's execution and delivery of this Agreement and each Transaction Document to which the Concessionaire is a party, and the consummation by the Concessionaire of the transactions contemplated hereby and thereby, have been duly authorized by all necessary action of the Concessionaire. This Agreement has been, and at the Closing the other Transaction Documents to which the Concessionaire is a party shall be, duly executed and delivered by the Concessionaire. This Agreement constitutes, and at the Time of Closing each other Transaction Document to which the Concessionaire is a party will constitute, the legal, valid and binding obligation of the Concessionaire and is enforceable against it in accordance with its terms, except as such enforcement may be limited by (i) any bankruptcy, insolvency, moratorium or similar law from time to time in effect that affect creditors' rights generally or (ii) general equitable principles (regardless of whether enforcement is sought in a Proceeding in equity or at law).
- (c) **No Conflicts.** None of the execution or delivery of this Agreement or the other Transaction Documents to which the Authority is a party, or the performance by the Concessionaire of its obligations under this Agreement or such Transaction Documents, or the fulfillment of the terms and conditions of this Agreement or such Transaction Documents shall: (i) conflict with or violate any provision of the Concessionaire's organizational documents; (ii) conflict with, violate or result in a breach of any Applicable Law in effect as of the Effective Date; or (iii) conflict with, violate or result in a breach of, or constitute a default under or result in the imposition or creation of, any security under any agreement or instrument to which the Concessionaire is a party or by which it or any of its properties or assets are bound.

- (d) **Consents.** No consent, approval, authorization or permit of, or filing with or notification to, any Person is required for or in connection with the execution and delivery of this Agreement or any other Transaction Document by the Concessionaire or for or in connection with the consummation of the transactions and performance of the terms and conditions contemplated by this Agreement or such Transaction Documents by the Concessionaire, except (i) the Concessionaire Permits and AIDEA Permits and (ii) consents, approvals, authorizations, permits, filings or notices that, if not obtained or made, would not, individually or in the aggregate, have a material adverse effect on the Concessionaire or its ability to perform its obligations under this Agreement or such Transaction Documents.
- (e) **Litigation.** There are no Proceedings pending or, to the best of the Concessionaire's knowledge, threatened, whether at law or in equity, whether civil or criminal in nature, or whether before any Governmental Authority or arbitrator, against or affecting the Concessionaire or Investor which could reasonably be expected to (i) cause a material delay in the timely completion of the Work or otherwise have an AIDEA Material Adverse Effect or (ii) have a material adverse effect on the validity or enforceability of this Agreement or any Transaction Document to which the Concessionaire is a party. There is no outstanding order, writ, injunction, decree, judgment or award by any court, arbitration panel or Governmental Authority against or affecting the Concessionaire which could reasonably be expected to (A) cause a delay in the timely completion of the Work or otherwise have an AIDEA Material Adverse Effect or (B) have a material adverse effect on the validity or enforceability of this Agreement or any Transaction Document to which the Concessionaire is a party.
- (f) **Initial Base Case Financial Model.** The Initial Base Case Financial Model (i) was prepared by or on the Concessionaire's behalf in good faith, (ii) fully discloses all Financial Model Formulas, and all cost, revenue and other financial assumptions and projections that the Concessionaire used or is using in making its decision to enter into this Agreement, (iii) fully discloses all Financial Model Formulas disclosed to the Equity Participants and Third Party Lenders and (iv) as of the Effective Date, represents the projections that the Concessionaire believes in good faith are realistic and reasonable for the Project; **provided** that such projections are based upon a number of estimates and assumptions and are subject to significant business, economic and competitive uncertainties and contingencies and that, accordingly, no representation or warranty is made that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results.
- (g) **Brokers.** There is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of the Concessionaire, any Equity Participant or any of their respective Affiliates who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.
- (h) **Bankruptcy.** There are no bankruptcy, reorganization, or insolvency proceedings pending against, being contemplated by, or, to the knowledge of the Concessionaire, threatened against, the Concessionaire or any Equity Participant.
- (i) **Project Agreements.**
 - (i) As of the Effective Date and the Closing Date, to the best of the Concessionaire's knowledge after diligent inquiry, there is no material default by the Concessionaire or any Project Party under any Project Agreement to which the Concessionaire is a party.

- (ii) As of the Effective Date and the Closing Date, each of the Project Agreements to which the Concessionaire is a party and which has been executed as of such date is in full force and effect and none of such agreements has been amended, transferred or, to the Concessionaire's knowledge after diligent inquiry, assigned.
- (j) **No Unforeseen Events.** As of the Effective Date and the Closing Date, to the best of the Concessionaire's knowledge after diligent inquiry, no event which, with the passage of time or the giving of notice, would constitute an Unforeseen Event under this Agreement has occurred.
- (k) **No Default.** As of the Effective Date and the Closing Date, to the best of the Concessionaire's knowledge after diligent inquiry, no event which, with the passage of time or the giving of notice, would constitute a Concessionaire Default has occurred.

11.3 Non-Waiver

No investigations made by or on behalf of any Party at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the other Party in this Agreement or pursuant to this Agreement.

11.4 Survival

- (a) **The Authority's Representations and Warranties.** The representations and warranties of the Authority contained in Section 11.1 shall survive and continue in full force and effect for the benefit of the Concessionaire as follows: (i) as to the representations and warranties contained in Sections 11.1(a) through 11.1(g) inclusive, without time limit; and (ii) as to all other representations and warranties in Section 11.1, for a period of twenty-four (24) months following the Closing Date unless a *bona fide* notice of a Claim shall have been given, in writing in accordance with Section 27.1, prior to the expiration of such period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim; **provided** such determination or settlement is being pursued diligently and in good faith by the applicable Party.
- (b) **Concessionaire's Representations and Warranties.** The representations and warranties of the Concessionaire contained in Section 11.2 shall survive and continue in full force and effect for the benefit of the Authority as follows: (i) as to the representations and warranties contained in Sections 11.2(a) through 11.2(e), inclusive, without time limit; and (ii) as to all other representations and warranties in Section 11.2, for a period of twenty-four (24) months following the Closing Date unless a bona fide notice of a Claim shall have been given, in writing in accordance with Section 27.1, prior to the expiration of such period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim; **provided** such determination or settlement is being pursued diligently and in good faith by the applicable Party.

12. PROJECT FUNDING

12.1 Concessionaire Responsibility for Financing

- (a) Subject to the Authority's funding obligations to make the AIDEA Funds available in accordance with Sections 12.3(a)(ii), 12.4 and 12.5 and the Authority's obligations to pay Concessionaire Damages and Termination Damages as set forth in this Agreement, the Concessionaire is solely responsible for obtaining and repaying all financing, at its own cost and risk and without recourse

to any State Party, necessary to develop, design, construct, maintain and operate the Project, any Concessionaire Plant Expansion and any Concessionaire Required Modification.

- (b) Each promissory note evidencing a Third Party Loan must include a conspicuous recital on its face to the effect that: (i) payment of the principal thereof and interest thereon (A) does not constitute a claim against the Authority's fee simple or leasehold title to or other good and valid real property interest in the Plant, the Plant Site, the Authority's interest hereunder or its interest and estate in and to the Plant or any part thereof, and (B) is not an obligation of any State Party, moral or otherwise; and (ii) neither the full faith and credit nor the taxing power of any State Party is pledged to the payment of the principal thereof and interest thereon.
- (c) No State Party will have any liability whatsoever for payment of the principal sum of any Third Party Loan, any other obligations issued or incurred by the Concessionaire in connection with this Agreement or the Project, or any interest accrued thereon or any other sum secured by or accruing under any Collateral Assignment. The Authority's review of any Collateral Assignments or other Third Party Financing Documents is not:
 - (i) a guarantee or endorsement of any Third Party Loan, any other obligations issued or incurred by the Concessionaire in connection with this Agreement, the Project or the Base Case Financial Model; nor
 - (ii) a representation, warranty or other assurance as to (A) the ability of the Concessionaire to perform its obligations with respect to any Third Party Loan or any other obligations issued or incurred by the Concessionaire in connection with this Agreement or the Project or (B) the adequacy of the Revenues to provide for payment of the AIDEA SETS Funds and Third Party Loans or any other obligations issued or incurred by the Concessionaire in connection with this Agreement or the Project.

12.2 Funding Sources

The Project will be financed from the following sources, which shall as of the Closing Date provide an amount of funds that is not less than the Guaranteed EPC Price:

- (a) the AIDEA Appropriation Funds from the Authority to the Concessionaire in an amount not to exceed \$35,000,000 (the **Maximum AIDEA Appropriation Funds Amount**), pursuant to the terms of the AIDEA Early Works Agreement and this Agreement, which funds may be used for: (i) the Early Works and procurement of the Early Procurement Equipment and payment of costs of obtaining the Permits required for the Project; and (ii) to the extent such funds are not fully expended for the uses described in clause (i) above, for equipment procurement and construction costs incurred in accordance with the Approved Construction Budget;
- (b) the AIDEA SETS Funds from the Authority to the Concessionaire from the SETS Fund, in an amount not to exceed \$100,000,000 (the **Maximum AIDEA SETS Funds Amount**) and on such other terms and conditions as shall be set forth herein;
- (c) a direct or indirect contribution of capital by Investor of not less than the difference between (a) when determined, the Target EPC Price and (b) the sum of the Maximum AIDEA Appropriation Funds Amount and the Maximum AIDEA SETS Funds Amount and not greater than \$[140,000,000] (the **Investor Investment Commitment**), which will be funded through a combination of:

- (i) an equity contribution by Investor to the Concessionaire or an entity designated by the Concessionaire (the ***Investor Equity Contribution***) in an amount not less than \$20,000,000 (the ***Minimum Equity Contribution Obligation***) and not greater than \$[50,000,000], and on such other terms and conditions as shall be set forth in the Equity Contribution Agreement based upon the terms and conditions set forth in the Equity Contribution Agreement Term Sheet; and
- (ii) to the extent that the Investor Equity Contribution is less than the Investor Investment Commitment (the lesser of (x) such difference and (y) \$[90,000,000] being the ***Investor Residual Commitment***), (A) a loan or loans from a Third Party Lender to the Concessionaire in a principal amount not less than the Investor Residual Commitment, such loans to be provided on the terms and conditions as shall be set forth in the Third Party Loan Agreement or (B) to the extent that such a loan or loans is not procured by the Closing Date, an unfunded additional equity commitment in an amount equal to such Investor Residual Commitment (the ***Additional Equity Commitment***); and
- (d) to the extent the actual costs and expenses incurred by the Concessionaire to develop and construct the Plant exceed the available funds from the sources identified in clauses (a) through (c) above, a completion reserve fund in an amount equal to (i) \$10,000,000, to be funded by AIDEA from available AIDEA funding sources on the Closing Date plus (ii) the Appropriation Reserve Amount (the ***Completion Reserve***).

On the Closing Date, the actual amount of the AIDEA Appropriation Funds (the ***Actual AIDEA Appropriation Funds Amount***), AIDEA SETS Funds (the ***Actual AIDEA SETS Funds Amount***), the Investor Investment Commitment (the ***Actual Investor Investment Commitment Amount***), the Investor Equity Contribution (the ***Actual Investor Equity Contribution***), the Investor Residual Commitment (the ***Actual Investor Residual Commitment***) and, to the extent applicable, the Additional Equity Commitment (the ***Actual Additional Equity Commitment***) to be provided for the Project will be determined based on the total amount of Project Costs as set forth in the Approved Construction Budget and mutually agreed by the Parties; **provided** that it is the intention of the Parties that (i) the Maximum AIDEA Appropriation Funds Amount will be applied in full to pay Project Costs, (ii) the Actual Investor Equity Contribution will be equal to or greater than the Minimum Equity Contribution Obligation, up to \$[50,000,000]; (iii) the Actual AIDEA SETS Funds Amount will be optimized to keep the Target FOB LNG Price Range low while, if possible based on Project economics, retaining some portion of the AIDEA SETS Funds to be deployed in respect of other components of the IEP and (iv) the Actual AIDEA Appropriations Funds Amount and the Actual AIDEA SETS Funds Amount will be sized as appropriate to cover one hundred percent (100%) of the Project Costs in connection with the propane production equipment and facilities of the Plant.

12.3 Utilization of Funding Sources¹⁰

- (a) On the Closing Date, unless otherwise agreed among the Parties, the funding sources identified in Section 12.2 shall be funded as follows:
 - (i) Investor shall (A) contribute to the Concessionaire all or a portion of the Actual Investor Equity Contribution, but not less than the Minimum Equity Contribution and (B) post the Investor Equity Contribution Letter of Credit in an amount equal to the difference between the Actual Investor Equity Contribution and the amount contributed under

¹⁰ A&O Note: Changes in Section 12.3, and resulting changes throughout, under consideration by MWH and Northleaf.

- clause (A) above (such amount, the *Residual Investor Contribution*) in accordance with the terms of the Equity Contribution Agreement;
- (ii) the Authority shall deposit into the AIDEA Disbursement Account the full amount of (A) the portion of the Actual AIDEA Appropriation Funds Amount, if any, that has not been expended prior to the Closing Date and (B) the Actual AIDEA SETS Funds Amount (collectively, the *AIDEA Funds*);
 - (iii) if any Third Party Loan Agreements in respect of Third Party Loans pursuant to Section 12.2(c)(ii) are being entered into as of the Closing Date, the Third Party Lenders shall execute and deliver the Third Party Financing Documents pursuant to which the Third Party Lenders commit to make the Third Party Loans to the Concessionaire up to the Actual Investor Residual Commitment and, to the extent that a Third Party Lender has a credit rating of BBB+ (or an equivalent rating) or lower, the Investor shall post a Letter of Credit on the Closing Date to cover the amount of such Third Party Lender's Third Party Loans not deposited on the Closing Date;
 - (iv) if there is any Actual Additional Equity Commitment as of the Closing Date, Investor shall post the Additional Equity Commitment Letter of Credit in an amount equal to the Actual Additional Equity Commitment in accordance with the terms of the Equity Contribution Agreement; and
 - (v) the Authority shall fund the Completion Reserve with the Depositary, which shall thereafter be available for disbursement to the Concessionaire in accordance with Section 12.6.
- (b) During the Construction Phase, unless otherwise agreed among the Parties, the funding sources identified in Section 12.2 shall be utilized in the following order:
- (i) *first*, any remaining portion of the Actual AIDEA Appropriation Funds Amount, less the Appropriation Reserve Amount, shall be disbursed in accordance with Sections 12.4 and 12.5 until such amount of the Actual AIDEA Appropriation Funds Amount has been fully disbursed;
 - (ii) *second*, the Actual Investor Equity Contribution and the Actual AIDEA SETS Funds Amount shall be utilized on a *pro rata* basis, with (A) any Residual Investor Contribution being contributed in cash to the Concessionaire or by drawing upon the Investor Equity Contribution Letter of Credit in accordance with the terms of the Equity Contribution Agreement and (B) the Actual AIDEA SETS Funds Amount being disbursed in accordance with Sections 12.4 and 12.5;
 - (iii) *third*, after exhaustion of the Actual Investor Equity Contribution and the Actual AIDEA SETS Funds Amount, (A) to the extent that Third Party Loans have been obtained in accordance with Section 12.3(a)(iii) or Section 12.9 at such time, any such Third Party Loans (or the Letter of Credit provided in accordance with Section 12.3(a)(iii)) will be drawn on a *pro rata* basis or in such other manner as agreed among Investor and the Third Party Lenders on monthly funding dates in accordance with approved notices of borrowing delivered by the Concessionaire, or (B) to the extent that Third Party Loans have not been obtained at such time, any Actual Additional Equity Commitment will be contributed in cash to the Concessionaire or the Additional Equity Commitment Letter of

Credit will be drawn on monthly funding dates in accordance with the terms of the Equity Contribution Agreement; and

- (iv) *fourth*, funds from the Completion Reserve, which shall be disbursed in accordance with Section 12.6.

Notwithstanding the foregoing, (A) Project Costs related to propane production equipment and facilities shall be funded solely with AIDEA Funds and, if necessary, amounts from the Completion Reserve, and (B) the timing and order of use of AIDEA Appropriation Funds, AIDEA SETS Funds, Investor Equity Contributions, the Investor Residual Commitment and the Completion Reserve is subject to further optimization as agreed among the parties on or prior to the Closing Date, which optimization shall determine which funds in addition to the Completion Reserve may be available to cover any Project Costs in excess of the Target EPC Price.

12.4 AIDEA Funding of Project Costs

The Authority shall make available the AIDEA Funds to the Concessionaire to pay for or reimburse Project Costs in amounts and within the time periods set forth in the Approved Construction Budget and Plan of Development. AIDEA Funds shall not be used for any purpose other than the payment of Project Costs that are included in the Approved Construction Budget.

12.5 Disbursement Procedures for AIDEA Funds

- (a) As a condition to any payment to the Concessionaire of AIDEA Funds for Project Costs, the Concessionaire shall be obligated to first submit to the Authority a request for payment or reimbursement of such Project Costs, inclusive of such back-up documentation and detail as shall be acceptable to the Authority (a *Disbursement Request*). The Concessionaire may submit a Disbursement Request to the Authority at a frequency not to exceed once every month during the period from the Closing Date until ninety (90) days after the Commercial Operation Date.
- (b) The Authority's obligation to approve a Disbursement in respect of each Disbursement Request shall be subject to satisfaction (unless waived by the Authority) of the following conditions precedent (the *Disbursement Conditions Precedent*):
 - (i) the representations and warranties of the Concessionaire in Section 11.2 shall be true and correct on and as of the date of the Disbursement Request with the same force and effect as if made at and as of such time and date except (A) that representations and warranties that by their terms are applicable only as of the Effective Date or some other date need be true and correct only as of such date and (B) for failures of representations and warranties to be true or correct that, individually or in the aggregate, have not had and are not reasonably likely to have (1) a material adverse effect on the ability of the Concessionaire to consummate the transactions contemplated hereby or perform its obligations hereunder or (2) an AIDEA Material Adverse Effect;
 - (ii) no outstanding Concessionaire Default shall exist and there shall be no default by the Concessionaire under any Third Party Loan Agreement or by the Investor under the Equity Contribution Agreement;
 - (iii) all of the Transaction Documents to which the Concessionaire is a party shall be in full force and effect and there shall be no default thereunder by the Concessionaire or any Project Party that is a party thereto, except for any such defaults that have not had and are

not reasonably likely to have (1) a material adverse effect on the ability of the Concessionaire to consummate the transactions contemplated hereby or perform its obligations hereunder or (2) an AIDEA Material Adverse Effect;

- (iv) all Permits with respect to the construction and operation of the Project required to have been obtained by the date of such Disbursement from any Governmental Authority have been issued and are in full force and effect as of the date of such Disbursement and not subject to appeal. The Concessionaire is in material compliance with all such Permits, except to the extent any non-compliance has not had and is not reasonably likely to have (1) a material adverse effect on the ability of the Concessionaire to consummate the transactions contemplated hereby or perform its obligations hereunder or (2) an AIDEA Material Adverse Effect. With respect to any of the Permits not required as of the date of such Disbursement, the Authority shall have reasonably concluded that there is no reason to believe that any such Permits will not be obtained by the time required under Applicable Law;
- (v) if a Significant Force Majeure Event has occurred, the Parties have resolved the adverse impacts of such Significant Force Majeure Event to their mutual satisfaction and, in the case of a Significant Force Majeure Event that causes physical damage to the Plant, the Concessionaire has diligently commenced to Restore the Plant;
- (vi) any fees and expenses due and payable from the Concessionaire to the Authority shall have been paid in full;
- (vii) the Authority shall have received confirmation in a form satisfactory to the Authority that all portions of the Investor Equity Contribution due on or prior to the date of the Disbursement Request have been received by the Depositary in accordance with the terms of the Equity Contribution Agreement; and
- (viii) the Authority shall have received from the Concessionaire a certificate evidencing the Disbursement Request (a ***Disbursement Request Certificate***) executed by an authorized fiscal officer of the Concessionaire, in the form attached hereto as Schedule T, which certificate shall include or be accompanied by the following:
 - (A) a certification that the Disbursement Conditions Precedent listed in clauses (i) through (vi) have been met;
 - (B) the Monthly Progress Report for the month preceding the month in which the Disbursement Request is made;
 - (C) a detailed list of Project Costs that have been incurred and that will be paid with the amount requested in the Disbursement Request, set forth in reasonable detail, and the amounts paid to the Construction Contractor or any other Contractors, and including copies of the invoices and other documentation supporting such costs;
 - (D) a certification that the AIDEA Funds disbursed pursuant to prior Disbursement Requests have been applied as set forth in the applicable Disbursement Request Certificates;

- (E) a certification that sufficient amounts remain from the Actual AIDEA Appropriation Funds Amount, Actual AIDEA SETS Funds Amount, Actual Investor Equity Contribution, Actual Investor Investment Commitment Amount, Completion Reserve and any additional amounts funded pursuant to Section 12.6 to complete the Project and achieve the Commercial Operation Date on or before the Completion Deadline;
 - (F) a certification by the Concessionaire that the Project and the Plant Site, and any and all interests and estates therein, and all improvements and materials placed on the Plant Site, are, to the extent of the most recent payment received by the Concessionaire, free and clear of any and all Encumbrances arising out of or in connection with the performance of the Work by the Concessionaire or any of the Contractors; and
 - (G) a copy of a release and waiver of Encumbrances, in form and substance satisfactory to the Authority, from the Concessionaire and each Contractor with a Contract of Five Hundred Thousand Dollars (\$500,000) or more in value, individually or in the aggregate, as necessary to support the Concessionaire's certificate required by clause (F) above or, subject to Section 12.5(e), if the Concessionaire is unable to obtain all such waivers, a letter of credit or bond in an amount equal to the amount that otherwise would have been covered by such unobtained waivers in a form reasonably acceptable to the Authority.
- (c) Within five (5) Business Days of receipt of a Disbursement Request that complies with the requirements of Sections 12.5(a) and 12.5(b), and provided that all Disbursement Conditions Precedent have been satisfied or waived, the Authority will counter-sign the relevant Disbursement Request Certificate to indicate its approval thereof and deliver such Disbursement Request Certificate to the Depositary, who shall make such Disbursement from the AIDEA Disbursement Account to or to the order of the Concessionaire.
 - (d) If the Authority determines that a Project Cost for which payment is requested pursuant to a Disbursement Request is not identified as a Project Cost in the Approved Construction Budget, the Authority may disapprove the requested funds corresponding to such portion of the Disbursement Request. The Authority will notify the Concessionaire of the reasons of such disapproval, and approve disbursement of undisputed amounts to the Concessionaire within five (5) Business Days after the Authority approves the undisputed amounts. Any such disapproved amounts will be available in a subsequent Disbursement Request if the reasons for disapproval are satisfied or if it is determined, pursuant to Section 24, that the Authority was not entitled to disapprove such Disbursement Request in accordance with this Section 12.5(e).
 - (e) If the Concessionaire fails to furnish a satisfactory letter of credit or bond as required by Section 12.5(b)(viii)(G) above, the Authority may withhold from any amount payable to the Concessionaire under this Agreement, an amount reasonably sufficient to discharge any or all Encumbrances, and the Authority may, in its discretion, (i) with ten (10)-days' prior notice to the Concessionaire, discharge any such Encumbrance with the monies withheld, whereupon for purposes of this Agreement such monies shall be deemed to have been paid to the Concessionaire hereunder or (ii) keep such withheld amount until the statutory period has expired by which any Encumbrance may be created. If the Concessionaire has furnished a satisfactory letter of credit or bond as required by Section 12.5(b)(viii)(G), the Authority shall return to the Concessionaire such letter of credit or bond once the Encumbrance it secures has been satisfied in full or if such Encumbrance has not been satisfied in full, upon the expiration of the applicable statutory period

(unless the Authority, in its discretion, following ten (10)-days' prior notice to the Concessionaire, has used such letter of credit or bond to discharge such Encumbrance in order to protect the Authority, the Project or the Plant Site).

- (f) The Concessionaire shall keep and maintain, and use Reasonable Efforts to cause its Contractors to keep and maintain, all records, documentation and other supporting information evidencing the application of AIDEA Funds to Project Costs for at least five (5) years from the date of creation.

12.6 Cost Overruns

- (a) To the extent the Project Costs payable under the Construction Contract exceed the Target EPC Price but are less than the Guaranteed EPC Price, AIDEA shall make available the Completion Reserve on the same terms and conditions as those applicable to the AIDEA SETS Funds as set forth in Sections 12.3 and 12.5. Any cost overruns above the amounts available from the Completion Reserve shall be funded (i) *first*, to the extent the Actual AIDEA Appropriation Funds Amount has not been exhausted, from any remaining Actual AIDEA Appropriation Funds Amount and (ii) *second*, by Investor from the remaining Investor Investment Commitment.
- (b) To the extent the Project Costs payable under the Construction Contract exceed the Guaranteed EPC Price as a result of an increase to the Guaranteed EPC Price after the Closing Date caused by change orders issued under the Construction Contract and approved by the Concessionaire and the Authority, such cost overruns shall be funded (i) *first*, to the extent agreed by AIDEA at such time, by AIDEA from available AIDEA funding sources and (ii) *second*, to the extent agreed by Investor at such time, by Investor; **provided** that (A) any additional amounts funded by Investor as a result of cost overruns shall be treated as an addition to the Actual Investor Equity Contribution for all purposes hereunder, including calculation of the Target Equity Return, and (B) for the avoidance of doubt, the Concessionaire shall have the right to recover such additional Investor Equity Contributions on an accelerated basis by passing through cost overruns to LNG Purchasers under the LNG SPAs and or LNG TSAs, without regard to whether such pass through of costs affects the ability to meet the Target FOB LNG Price Range. For the avoidance of doubt, if Investor declines to provide additional funding to cover cost overruns and as a result the Concessionaire fails to achieve Substantial Completion by the Completion Deadline, such an occurrence shall constitute a Concessionaire Default in accordance with Section 20.1(a)(iv).
- (c) If a balance remains in the Completion Reserve after the date of Final Acceptance, such funds shall be (i) deposited into the Major Maintenance Reserve Account and the Operations and Maintenance Reserve Account until the Required Balance of each account is satisfied and (ii) if the Required Balances are satisfied in full, any remaining amount shall be returned to the Authority.

12.7 Refinancing Requirements

- (a) **Notice of Refinancing.** The Concessionaire will provide the Authority notice of a Refinancing at least forty-five (45) days before the date of such Refinancing (or, if such advance notice is not reasonably possible under the circumstances, such notice as is possible and in any event with reasonable time for the Authority to review and, if applicable, provide its consent for such Refinancing as contemplated below). At the Authority's request, the Concessionaire will provide to the Authority available details of the proposed Refinancing, including (i) details of any changes to the projections set forth in the Base Case Financial Model, (ii) any material changes in the Concessionaire's obligations (including contingent obligations) to the Collateral Assignees, (iii) an outline detailing the changes and/or replacements, as the case may be, to the Third Party

Financing Documents then in effect and the Collateral Assignments contemplated by the Refinancing and (iv) any other details concerning the Refinancing that the Authority may reasonably require to determine whether the Refinancing would, or could reasonably be expected to, have a material adverse effect on the Authority, the Project or the ability of the Concessionaire to perform its obligations pursuant to this Agreement or any other Project Agreement, **provided** that, with respect to any Refinancing meeting the requirements of clause (i), (ii) or (iii) of Section 12.7(b), the Concessionaire shall only be required to provide to the Authority details to the extent reasonably required to establish that such proposed Refinancing satisfies the requirements of clause (i), (ii) or (iii) of Section 12.7(b).

- (b) **Authority's Right to Approve Refinancing.** Any Refinancing of Third Party Loans will be subject to the Authority's prior approval; **provided** that no such approval will be required if the Concessionaire first demonstrates to the Authority that:
- (i) the proposed Refinancing refinances the existing Third Party Loan and does not increase the Third Party Loan then outstanding other than by an amount equal to reasonable costs of closing the Refinancing, including lender fees, arranger fees and advisor fees, and the amount of any required reserves;
 - (ii) the proposed Refinancing has been assigned a rating (which may include a non-public rating) by a Rating Agency (without regard to bond insurance, if any) which is no lower than BBB minus or Baa3 or equivalent rating; or
 - (iii) no portion of the proceeds of the Refinancing will be used to make Distributions or to pay non-capital costs and expenses (other than related costs of issuance and any required reserves).

With respect to any proposed Refinancing for which the Authority's approval is required, the Authority shall not unreasonably withhold or delay its consent.

- (c) **Third Party Financing Documents Related to Refinancings.**

The Concessionaire will deliver, not later than fifteen (15) days after close of the Refinancing, to the Authority executed copies of all Third Party Financing Documents in connection with the Refinancing.

- (d) **Other Requirements.**

- (i) Every Refinancing will be subject to the provisions of Sections 12.1 and 23.1 and the other provisions of this Agreement pertaining to Third Party Loans and Collateral Assignments.
- (ii) Any reimbursement agreement and related documents that the Concessionaire enters into in connection with obtaining a letter of credit will, if they encumber the Concessionaire Interest, constitute a Collateral Assignment and be treated as a Refinancing for all purposes pursuant to this Agreement. No such reimbursement agreement and related documents will encumber less than the entire Concessionaire Interest.

12.8 Performance Security

- (a) **Construction Contractor Performance Security.** The Concessionaire will require the Construction Contractor to furnish liquid performance security in the form of a performance bond

and/or Letter of Credit (the **Construction Contractor Performance Security**) in an amount reasonably consistent with market practice and meeting any requirements of Applicable Law. The Construction Contractor Performance Security will provide that it may be transferred by the Concessionaire to the Authority, as beneficiary, with rights to draw upon or exercise other remedies thereunder if the Authority succeeds to the position of the Concessionaire under the Construction Contract.

- (b) **Construction Contractor Parent Guarantee.** Concurrently with the Time of Closing or, if earlier, the commencement of Work under the Construction Contract, the Concessionaire will cause to be delivered to the Authority an executed copy of a guarantee agreement of the Construction Contractor Guarantor (the **Construction Contractor Parent Guarantee**), in which the Construction Contractor Guarantor guarantees the performance of the Construction Contractor's obligations under the Construction Contract.

12.9 Refinancing of Actual Investor Residual Commitment

- (a) To the extent not secured on or before the Closing Date, the Concessionaire will commence Reasonable Efforts to secure a loan or loans from a Third Party Lender in a principal amount not less than the Actual Investor Residual Commitment and in accordance with the Third Party Financing Plan promptly following the Closing Date and continue such Reasonable Efforts during the period (such period, the **Refinance Period**) ending on the later of (i) the date which is six (6) months following the Closing Date and (ii) the date on which equity contributions of the Investor, whether contributed as part of the Investor's Actual Investor Equity Contribution or its Actual Additional Equity Commitment, equal to \$[50,000,000] have been fully utilized under Section 12.3(b). The Concessionaire shall pay all costs and expenses incurred by the Investor and the Concessionaire in seeking to obtain, and obtaining, such Third Party Loan.
- (b) If the Concessionaire is able to obtain a commitment for a Third Party Loan during such Refinance Period which is consistent in all material respects with the Third Party Financing Plan, the Concessionaire shall provide the terms and conditions thereof to the Authority for the Authority's review and approval. Within ten (10) days of the Authority's receipt of the commitment, the Authority shall notify the Concessionaire whether or not the Authority accepts the Third Party Loan on the terms set forth in the commitment. If the Authority accepts the proposed Third Party Loan as set forth in the commitment, then the Concessionaire shall complete and finalize the Third Party Loan substantially on the terms set forth in the commitment as soon as reasonably possible, but in any event on or prior to the Commercial Operation Date. The Authority shall have the rights provided to the Authority under Section 2.14 with respect to the Third Party Financing Documents for such Third Party Loan.
- (c) If the Authority does not accept the terms of the Third Party Loan as set forth in the commitment, and the Concessionaire, the Authority and the proposed Third Party Lender cannot agree to modifications requested by the Authority, then within twenty (20) days following the Authority's receipt of the commitment (i) the commitment shall be deemed rejected by the Authority, (ii) the Authority may provide a Third Party Loan to the Concessionaire in accordance with Section 12.9(e), (iii) the Concessionaire shall have no further obligation to seek a Third Party Loan, other than its obligations with respect to a Third Party Loan to be provided by the Authority in accordance with Section 12.9(e) and (iv) if the Authority and the Concessionaire do not enter into a Third Party Loan in accordance with Section 12.9(e), the Actual Additional Equity Commitment shall remain in place and be utilized to cover Project Costs in accordance with Section 12.3(b)(iii).

- (d) If the Concessionaire has used Reasonable Efforts to obtain a Third Party Loan during the Refinance Period but, due to one or more Market Events the Concessionaire has not been able to obtain a commitment for a Third Party Loan then, following the expiration of the Refinance Period (i) the Concessionaire shall have no further obligation to seek a Third Party Loan, other than its obligations with respect to a Third Party Loan to be provided by the Authority in accordance with Section 12.9(e) and (iv) if the Authority and the Concessionaire do not enter into a Third Party Loan in accordance with Section 12.9(e), the Actual Additional Equity Commitment shall remain in place and be utilized to cover Project Costs in accordance with Section 12.3(b)(iii).
- (e) In the event that the Authority does not accept the terms of the proposed Third Party Loan, or is otherwise able to provide a Third Party Loan to the Concessionaire, the Authority and the Concessionaire shall use Reasonable Efforts to agree to the terms and conditions of a Third Party Loan from the Authority. If the Parties are able to agree upon such terms, the Parties shall use Reasonable Efforts to negotiate and complete Third Party Financing Documents as soon as reasonably possible but in no event later than the Commercial Operation Date. Thereafter, AIDEA and the Concessionaire shall cooperate to refinance such Third Party Loans if AIDEA is able to provide such refinancing on terms that are beneficial to the Concessionaire and the Project.
- (f) The Actual Additional Equity Commitment shall terminate upon entry into any Third Party Loan in accordance with this Section 12.9. Any amount of the Actual Additional Equity Commitment utilized to cover Project Costs prior to entry into any such Third Party Loan, or as a result of a failure to secure any such Third Party Loans, shall be treated as an addition to the Actual Investor Equity Contribution for all purposes hereunder, including calculation of the Target Equity Return, and, for the avoidance of doubt, the Concessionaire shall have the right to recover such additional Investor Equity Contributions on an accelerated basis by passing through cost overruns to LNG Purchasers under the LNG SPAs and or LNG TSAs, without regard to whether such pass through of costs affects the ability to meet the Target FOB LNG Price Range.

13. CONCESSION FEE

13.1 Concession Fee Amount

The Concessionaire shall pay to the Authority as consideration for the Concession an amount equal to (a) the full amount of all AIDEA SETS Funds paid to the Concessionaire as Disbursements pursuant to the terms of Section 12 (**Principal**), **plus** (b) interest accrued on outstanding Principal, commencing on the first Payment Date, at a rate to be set on the Closing Date based on the Base Case Financial Model and taking into account the ability of the Plant to deliver LNG at a price within the Target FOB LNG Price Range, which rate shall not exceed three percent (3%) per annum (collectively, the **Concession Fee**).

13.2 Payment of Concession Fee

- (a) A portion of the Concession Fee shall be due and payable on the first (1st) day of each month commencing in the month during which the fifth (5th) anniversary of the Commercial Operation Date occurs (each, a **Payment Date**) in accordance with a payment schedule based on sculpted amortization with Principal payments made throughout the Operations Phase, to be agreed by the Parties prior to the Time of Closing and updated in accordance with Section 2.6(b) following the Commercial Operation Date (the **Payment Schedule**). Any remaining portion of the Concession Fee not yet paid on the last day of the Term shall become immediately due and payable in full on such date.

- (b) Notwithstanding the foregoing, the Concessionaire may, at any time and without any penalty or premium, pay the Concession Fee in whole or in part in advance of the Payment Schedule and, for the avoidance of doubt, the Concessionaire shall not be required to pay any portion thereof consisting of interest not yet accrued as of the date of such payment.

13.3 Concession Fee Reserve Account; Deferral of Payment Obligations

If, after application of Revenues in accordance with Section 9.3, available funds on any Payment Date are insufficient to fully pay the portion of the Concession Fee due and payable on such Payment Date (including any Deferred Concession Fees) in accordance with the Payment Schedule, then: (a) the Authority may draw funds from the Concession Fee Reserve Account up to the amount due and payable to the Authority on such Payment Date (including any Deferred Concession Fees); (b) if, after such draw, a portion of the Concession Fee due and payable on such Payment Date remains unpaid, then such unpaid amount (the *Deferred Concession Fee*) shall be deferred and shall become due and payable on subsequent Payment Dates until paid in full; and (c) notwithstanding any provision in this Agreement to the contrary, the failure of the Concessionaire to pay the amount due and payable on such Payment Date, if due solely to a shortfall in Revenues that are available for distribution after application of Revenues in accordance with Section 9.3 on such Payment Date and a shortfall in the Concession Fee Reserve Account, shall not constitute a Concessionaire Default. The Deferred Concession Fees shall bear interest at the rate determined and applied to the Principal under Section 13.1 until such Deferred Concession Fees are paid in full.

14. COMPLIANCE WITH LAWS

14.1 Compliance with Laws

The Concessionaire shall, at its own cost and expense, observe and comply, in all material respects, and cause the Project to observe and comply, in all material respects, with all Applicable Laws now existing or later in effect that are applicable to it or the Project, including those Applicable Laws that may in any manner apply with respect to the performance of the Concessionaire's obligations under this Agreement, **provided** that the Concessionaire shall have a reasonable period of time to ensure compliance with any Change in Law. The Concessionaire shall notify the Authority as soon as practicable after receiving notice from a Governmental Authority, but in no event later than ten (10) days, that the Concessionaire may have or is alleged to have violated any of the above.

14.2 Contractor and Supplier Contracts

The Concessionaire shall require Construction Contractor to include the provisions of this Section 14 in every material subcontract and supply contract so that they shall be binding on each Contractor.

15. INDEMNIFICATION

15.1 Indemnification by the Concessionaire.

- (a) The Concessionaire shall indemnify, defend and hold harmless the Authority, each other State Party and their respective Representatives (collectively, the *AIDEA Indemnified Parties*) from and against any and all Claims and Losses (excluding the indemnity of the Authority by the Concessionaire for Environmental Claims and Environmental Losses, which are the subject of Section 15.1(b)) arising from or attributable to the negligence, willful misconduct or fraud of the Concessionaire, any other Concessionaire Party or their respective Representatives.

- (b) The Concessionaire shall indemnify, defend and hold harmless each of the AIDEA Indemnified Parties from and against any and all Environmental Claims brought against such AIDEA Indemnified Parties and any and all Environmental Losses imposed upon or reasonably incurred by such AIDEA Indemnified Parties in connection with, or arising from, any Environmental Conditions, Hazardous Materials Conditions or Environmental Non-Compliances located at or otherwise relating to operation of the Plant, the Plant Site or the Work arising or occurring after the Closing Date, **provided, however**, that "Environmental Losses" shall only include those Environmental Losses which are reasonably necessary and are in reasonable amounts in view of the then existing circumstances giving rise to such Environmental Losses.
- (c) The Concessionaire shall indemnify, defend, and hold harmless each of the AIDEA Indemnified Parties from and against any and all Claims and Losses that may arise out of or in connection with actual or alleged infringement or misappropriation of any intellectual property rights of a third party, including trade secrets, patents, proprietary information, know-how, trade-marked or service marked materials, equipment, devices or processes, copyrights, inventions, or any other proprietary right, in each case, in connection with the Project.
- (d) The Concessionaire's obligations under this Section 15.1 shall exist regardless of whether any of the AIDEA Indemnified Parties is alleged or held to be strictly or jointly and severally liable under any action, legal provision, permit, rule, regulation, order or otherwise.

15.2 Indemnification by the Authority

- (a) Subject to a specific appropriation by the legislature of the State for this purpose in accordance with Section 15.2(b), the Authority shall indemnify, defend and hold harmless the Concessionaire, the Equity Participants and their respective Representatives (collectively, the ***Concessionaire Indemnified Parties***) from and against the Environmental Claims brought against such Concessionaire Indemnified Party and any and all Environmental Losses imposed upon or reasonably incurred by such Concessionaire Indemnified Party in connection with, or arising from (i) any Pre-existing Environmental Conditions, (ii) any Pre-existing Hazardous Materials or (iii) any Environmental Conditions or Environmental Non-Compliances that in each case are solely caused by the Authority or any of its Representatives, and that in each case described in clauses (i), (ii) and (iii) above are located at or otherwise related to the Plant Site; **provided, however**, that "Environmental Losses" shall only include those Environmental Losses which are reasonably necessary and are in reasonable amounts in view of the then existing circumstances giving rise to such Environmental Losses. The Authority's obligations under this Section 15.2 shall exist regardless of whether any Concessionaire Indemnified Party is alleged or held to be strictly or jointly and severally liable under any action, legal provision, permit, rule, regulation or order or otherwise.
- (b) Notwithstanding the foregoing, the Parties acknowledge and agree that the Authority has no appropriation currently available to it to indemnify any Concessionaire Indemnified Party under this Section 15.2 and that an enactment of an appropriation in the future to fund an indemnity payment under this Section 15.2 remains in the discretion of the State legislature and the State legislature's failure to make such an appropriation creates no further liability or obligation of the Authority under this Agreement or otherwise; **provided** that the Authority agrees that if a Concessionaire Indemnified Party and the Authority agree on the amount of the Indemnity Claim or a Concessionaire Indemnified Party obtains a final and non-appealable judgment against the Authority that establishes the Authority's liability for an Indemnity Claim under this Section 15.2, the Authority's Executive Director shall request to the State of Alaska's Office of Management and Budget, and shall use Reasonable Efforts to seek to obtain, an appropriation from the then-

current and the immediately next legislature (or, if no legislature is then in session, the immediately next two legislatures) that is equal to the amount of such Indemnity Claim as agreed by the Parties or as set forth in such final and non-appealable judgment, as applicable.

15.3 Conduct of Indemnity Claims

The following provisions shall apply to any claim for indemnification pursuant to this Section 15.3 (each, an *Indemnity Claim*):

- (a) Promptly after becoming aware of any matter that may give rise to an Indemnity Claim, the Indemnified Party shall provide the Indemnifying Party notice of the Indemnity Claim specifying (to the extent that such information is available):
 - (i) the factual basis for the Indemnity Claim and the amount of the Indemnity Claim or, if an amount is not then determinable, an estimate of the amount of the Indemnity Claim, if an estimate is feasible in the circumstances;
 - (ii) a reasonably detailed description of the basis for its potential claim for indemnification with respect to such Indemnity Claim; and
 - (iii) a complete copy of all notices, pleadings and other papers related to such Indemnity Claim that have been received by the Indemnified Party prior to the date such notice is provided to the Indemnifying Party;

provided that failure to give such notice or to provide such information and documents shall not relieve the Indemnifying Party of any indemnification obligation it may have under this Section 15.3 unless and only to the extent that such failure shall materially diminish the ability of the Indemnifying Party to respond to the Indemnity Claim or to defend the Indemnified Party.

- (b) If any Indemnity Claim relates to an alleged liability to a third party (a *Third-Party Liability*), including any Governmental Authority, the Indemnified Party shall not, except as contemplated by Section 15.3(d), settle, compromise or pay any Third-Party Liability as to which the Indemnified Party proposes to assert an Indemnity Claim, except with the prior consent of the Indemnifying Party.
- (c) If the Indemnifying Party first admits the Indemnified Party's right to receive indemnification for the amount of the Third-Party Liability which may at any time be determined or settled, and provides evidence reasonably satisfactory to the Indemnified Party of the Indemnifying Party's financial capacity to satisfy the Third-Party Liability, then in any Proceedings in connection with the matters forming the basis of the Third-Party Liability, the following procedure shall apply:
 - (i) the Indemnifying Party shall have the right to assume the conduct and control of the defense of or any negotiations in connection with the compromise or settlement of any Proceeding in respect of the Third-Party Liability; **provided** that the Indemnified Party shall have the right and shall be given the opportunity to: (A) participate in the defense of such Proceeding, subject to the Indemnifying Party's control; (B) consult with the Indemnifying Party in the settlement of the Third-Party Liability and the conduct of the Proceeding (including consultation with the Indemnifying Party's counsel); (C) disagree on reasonable grounds with the selection and retention of the Indemnifying Party's counsel, in which case counsel reasonably satisfactory to the Indemnifying Party and the Indemnified Party shall be retained by the Indemnifying Party; and (D) retain, at the Indemnified Party's sole cost and expense, its own counsel to monitor the progress and

status of the Indemnity Claim; **provided further**, however, that if the Indemnified Party reasonably concludes that there may be legal defenses available to it which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and participate in the defense, at the Indemnified Party's sole cost and expense;

- (ii) the Indemnified Party shall: (A) cooperate with the Indemnifying Party in relation to the Third-Party Liability; (B) keep the Indemnifying Party fully advised with respect thereto; (C) provide the Indemnifying Party with copies of all relevant documentation as it becomes available; (D) provide the Indemnifying Party with access to all records and files relating to the defense of the Third-Party Liability; and (E) meet with, and cause its officers, directors, and employees with knowledge of the Third-Party Liability to meet with, the attorneys and other Representatives of the Indemnifying Party at all reasonable times to discuss the Third-Party Liability;
 - (iii) the Indemnifying Party shall not compromise or settle any such Third-Party Liability without the Indemnified Party's consent unless (A) there is no finding or admission of any violation of Applicable Law, (B) such compromise or settlement does not involve the entry by the Indemnified Party of a consent order or similar agreement with any Governmental Authority, (C) there is no effect on or precedent established with respect to any other Third-Party Liabilities that may be made against the Indemnified Party, and (D) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party; and
 - (iv) the Indemnified Party shall not compromise or settle any such Third-Party Liability without the Indemnifying Party's consent; provided that if notice is given to the Indemnifying Party of the commencement of any Proceeding and the Indemnifying Party denies liability with respect to the Third-Party Liability, the Indemnifying Party shall be bound by any determination made in such Proceeding or any compromise or settlement effected by the Indemnified Party and shall be liable for all costs and expenses including attorneys' fees and expenses incurred by the Indemnified Party in such Proceeding, if and only to the extent that the Indemnifying Party has, as between the Indemnified Party and the Indemnifying Party, been determined to be liable for the Third-Party Liability pursuant to the Dispute resolution procedures set forth in Section 24.
- (d) If the Indemnifying Party does not admit the Indemnified Party's right to indemnification or declines to assume the conduct and control of the defense or settlement of, or any Proceeding relating to, the Third-Party Liability, then the following provisions shall apply:
- (i) the Indemnified Party, in its discretion, shall conduct and control the defense or settlement of the Proceeding relating to the Third-Party Liability and may defend or settle the Third-Party Liability on any terms the Indemnified Party, acting in good faith, considers advisable, subject to Section 15.3(c)(iv) above; and
 - (ii) any Dispute as to whether the Indemnified Party's right to indemnification applies or the amount of the Indemnity Claim (as it may have been compromised or settled by the Indemnified Party, or determined in a Proceeding, pending resolution of such Dispute) shall be resolved in accordance with the Dispute resolution procedures set forth in Section 24.

15.4 Payment Not Necessary Before Claim

It is not necessary for a Party to incur expense or make payment in connection with an Indemnity Claim before enforcing a right of indemnity provided in this Agreement.

15.5 Claims Net of Insurance; Reductions and Subrogation

- (a) Any amount of Claims payable to an Indemnified Party for an Indemnity Claim under this Section 15 shall be net of any insurance proceeds paid to such Indemnified Party under insurance policies maintained by the Indemnified Party or the Indemnifying Party, it being understood that the such amount payable shall not be so reduced to the extent that any such recovery results in an increase in the Indemnified Party's insurance premiums, or results in any other additional cost or expense to any such Indemnified Party.
- (b) If the amount of any Claims incurred by an Indemnified Party at any time subsequent to the making of a payment required under this Section 15 on account of such Claims (an ***Obligation Payment***) is reduced by any subsequent recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the amount of such reduction (less any costs, expenses (including Taxes) or premiums incurred or increased in connection therewith), together with interest thereon from the date of such recovery, settlement or reduction at the Bank Rate, shall promptly be repaid by the Indemnified Party to the Indemnifying Party.
- (c) Upon making a full Obligation Payment, the Indemnifying Party shall, to the extent of such Obligation Payment, be subrogated to all rights of the Indemnified Party against any third-party in respect of the Claims to which the Obligation Payment relates. Until the Indemnified Party recovers full payment of its Claims, any and all claims of the Indemnifying Party against any such third-party on account of such Obligation Payment shall be postponed and subordinated in right of payment to the Indemnified Party's rights against such third-party.

15.6 Payment and Interest

All amounts to be paid by an Indemnifying Party hereunder shall bear interest at a rate per annum equal to the Bank Rate, calculated annually and payable monthly, both before and after judgment, from the date that the Indemnified Party disbursed funds, suffered damages or losses or incurred a loss or expense in respect of a Loss for which the Indemnifying Party is responsible to make payment pursuant to this Section 15, to the date of payment by the Indemnifying Party to the Indemnified Party.

15.7 Offset Rights; Limitations on Certain Damages

- (a) Any other provision herein notwithstanding, each Party's obligations under this Agreement are subject to, and each Party shall have the benefit of, all defenses, counterclaims, rights of recoupment or other claims and rights, including the right to offset or deduct payments due to the other Party hereunder to the extent such offset or deduction is an undisputed amount (collectively, ***Offsets***) which such Party may have at any time against such other Party (or any of their respective successors and assigns) or any transferee or assignee of any such other Party's rights hereunder (to the extent permitted hereunder) as against such Party or any part thereof or interest therein. No transfer or assignment of this Agreement or any other obligation of such other Party, or of any rights in respect thereof, pursuant to any plan of reorganization or liquidation or otherwise shall affect or impair the availability to each Party of the Offsets.

- (b) In no event shall any Party be responsible to the other Party under this Agreement for consequential, exemplary or punitive damages (except for claims for fraud or for intentional misrepresentation or intentional breach) and **provided** that this limitation on consequential damages shall not be applicable to (i) the Concessionaire's rights to receive Termination Damages, (ii) a Party's obligation to indemnify an Indemnified Party pursuant to Section 15 if the consequential damages are included in a third party Indemnity Claim against the Indemnifying Party, and (iii) a Party's obligation to indemnify the other Party or any other Person with respect to any Claims caused by the fraud of such Party.
- (c) Except (i) in the event of a termination of this Agreement pursuant to Section 3.3(d), Section 16.4(b), Section 17.2, Section 18.1(b) and Section 20.2(b)(i) or (ii) in cases involving fraud or intentional misrepresentation subject to all of the terms and conditions hereof, the provisions of this Section 15 shall constitute the sole and exclusive right and remedy available to any Party hereto for any Third Party Claim.

15.8 Survival

This Section 15 shall remain in full force and effect in accordance with its terms and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants hereunder or by any termination or rescission of this Agreement by any Party.

16. INSURANCE¹¹

16.1 Insurance Policies and Coverage.

On or prior to the Closing Date, the Concessionaire shall procure and maintain at its own expense (a) worker's compensation and employer's liability insurance, (b) commercial general liability insurance, (c) automobile liability and property damage insurance, (d) "all risk" property insurance, (e) excess umbrella liability insurance and (f) pollution liability insurance, in each case in accordance with this Section 16 and with the minimum coverage requirements set out in Schedule R (the **Required Coverages**).¹²

16.2 General Insurance Requirements.

- (a) **Evidence of Insurance.** The Concessionaire shall, at the Time of Closing and throughout the Term:
 - (i) within ten (10) days following the renewal or replacement of any Required Coverage deliver or cause to be delivered to the Authority, or Representatives of the Authority, properly executed certificates of insurance that clearly evidence all Required Coverages;
 - (ii) provide a copy of endorsements adding any Person as an insured in accordance with this Section 16.2;
 - (iii) place insurance with insurers that have an A.M. Best (or equivalent) rating of no less than "VII:A-" and are authorized to do business in the State;

¹¹ A&O Note: MWH review by insurance brokers/carriers is ongoing.

¹² AIDEA Note: Insurance provisions to be reviewed with AIDEA risk management in conjunction with Schedule R when Schedule R is received.

³¹ A&O Note: To be considered together with sizing of termination payment.

- (iv) ensure that all Required Coverages are executed by an agent or broker duly licensed and authorized to conduct business in the State; and
- (v) maintain aggregate liability limits through primary and excess policies no less than the required "per occurrence" limit if aggregate liability limits apply to the insurance policy.
- (b) **Insurance Requirements of Contractors.** The Concessionaire shall require each Contractor to maintain coverages reasonably appropriate for its operations at limits sufficient to protect the Concessionaire and the Authority, as set forth in Schedule R. Such insurance shall insure the interests of the Authority (and its Representatives) and the State as an additional insured with respect to claims arising from this Agreement, the Concessionaire and any applicable Contractors with respect to the activities being performed. On or prior to the Closing Date, the Concessionaire shall furnish certificates of insurance evidencing coverage that is reasonably acceptable in form and content to the Authority.
- (c) **Cooperation.** The Authority and the Concessionaire shall do all acts, matters and things as may be reasonably necessary or required to expedite the adjustment of any loss or damage covered by insurance required hereunder so as to expedite the release and dedication of proceeds of such insurance in a manner and for the purposes herein contemplated.
- (d) **Inflation Adjustment.** The amounts of coverage required by Section 16.1 and 16.2 shall be Adjusted for Standard Inflation each succeeding fifth (5th) anniversary of the Closing Date by using the value of the Standard Adjustment Index as reported for the month two (2) months prior to such anniversary to determine the adjustment.
- (e) **Notice of Cancellation, Non-Renewal or Material Change.** All Required Coverages shall provide for thirty (30) days prior notice to be given to the Concessionaire, who shall then promptly provide notice to the Authority, in the event coverage is materially changed, canceled or non-renewed.
- (f) **Waiver of Subrogation by Insurers.** Each of the Required Coverages shall include a waiver by the relevant insurer of its rights of subrogation against the State, the Authority and their respective Representatives.
- (g) **Commercial Availability.** If any Required Coverage is not available at commercially reasonable rates, the Concessionaire shall have the right to request that the Authority waive the requirement to maintain such insurance for so long as such insurance continues to not be available at commercially reasonable rates; **provided** that during such period, the Concessionaire maintains the maximum amount of such insurance otherwise available at commercially reasonable rates. The Authority shall not unreasonably withhold, condition, or delay its consent to any waiver requested pursuant to this Section 16.2(g).
- (h) **Insurance Not Limited by Indemnification.** The required insurance shall not be limited by any limitations expressed in Section 15 or any limitation placed on the indemnity therein given as a matter of Applicable Law.
- (i) **Additional Insured.** The Required Coverages, other than the workers compensation and employers liability insurance, shall name the Authority and the State as additional insured.

16.3 Authority Insurances

- (a) **General.** AIDEA is self-insured at the Time of Closing and shall remain self-insured throughout the Term.

16.4 Damage and Destruction

- (a) **Obligations of the Parties.** If all or any part of the Plant is destroyed or damaged during the Term in whole or in part by a Force Majeure Event (including any cause for which insurance was not obtainable on commercially reasonable terms or was not obtained pursuant to an agreement of the Parties), then:
- (i) the Concessionaire shall give the Authority notice thereof promptly after the Concessionaire receives actual notice of such destruction or damage;
 - (ii) the Concessionaire shall provide an estimate of the cost of repairs, alterations, restorations, replacement and rebuilding (the **Restoration Cost**); and
 - (iii) the Concessionaire shall proceed to diligently Restore the Plant to its pre-casualty condition, **provided** it has received the Restoration Funds, and the Concessionaire and the Authority shall deposit all insurance proceeds received by such Party in connection with any Restoration with a Depositary; **provided further** that in the case of a Significant Force Majeure Event, the Concessionaire may elect not to Restore the Plant, in which case, this Agreement shall terminate in accordance with Section 16.4(b).

provided, however, subject to Section 16.4(b), that if at any time the Restoration Cost exceeds the aggregate of the net insurance proceeds actually deposited with the Depositary or payable by insurers plus the aggregate amounts standing to the credit of the Major Maintenance Reserve Account and the Operations and Maintenance Reserve Account, if any, at such time (the **Reserve Balance**), then the Concessionaire shall also deposit with the Depositary such cash as is sufficient to cover the difference between the Restoration Cost and the aggregate of the net insurance proceeds actually deposited with the Depositary or payable by insurers and the Reserve Balance (such net insurance proceeds and such additional cash, together with any interest earned thereon, the **Restoration Funds**) and the price of LNG under the LNG Sale and Purchase Agreements will be adjusted to provide for recovery by the Concessionaire of any such cash so deposited over the remaining term of the Concession; **provided further** that, if the Authority is eligible to receive any federal financial disaster aid or assistance for the Plant in connection with any event necessitating a Restoration under this Section 16.4(a), then, the Authority shall secure and, upon receipt promptly pay or cause to be paid to the Concessionaire, any funds provided by the federal government in connection with such aid or assistance. This Section 16.4 shall only apply to casualty events in which the cost of Restoration exceeds \$5,000,000 Adjusted for Standard Inflation on January 1, 2015 and on January 1 of each year thereafter.

- (b) **Termination for Damages and Destruction.** If a Significant Force Majeure Event occurs, the Concessionaire may elect to terminate this Agreement and receive FM Termination Damages in accordance with Section 20.5. Upon such election and the termination of this Agreement, the Concessionaire shall surrender and deliver the Plant to the Authority pursuant to Section 20.3(b). The Third Party Lenders shall be entitled to enforce the rights and remedies provided under Section 23 and any and all insurance proceeds paid with respect to such Significant Force Majeure Event shall be paid to the Depositary and applied in accordance with Section 20.4(b) in connection with the calculation of the FM Termination Damages.

- (c) **Rights of the Authority.** If (i) the Concessionaire has received the Restoration Funds and either has not commenced such Restoration or has commenced such Restoration but thereafter shall fail to diligently complete the Restoration in accordance with the terms of this Agreement or (ii) prior to the completion of any such Restoration by the Concessionaire, this Agreement shall expire or be terminated in accordance with the terms of this Agreement, the Authority may, but shall not be required to, complete such Restoration and shall be entitled to be paid out of the Restoration Funds for the Restoration costs incurred by the Authority. In any case where this Agreement shall expire or be terminated prior to the completion of the Restoration, the Concessionaire shall (i) account to the Authority for all amounts spent in connection with any Restoration which was undertaken, (ii) immediately pay over or cause the Depositary to pay over to the Authority the remainder, if any, of the Restoration Funds received by the Concessionaire prior to such termination or cancellation and (iii) pay over or cause the Depositary to pay over to the Authority, within five (5) Business Days after receipt thereof, any Restoration Funds received by the Concessionaire or the Depositary subsequent to such termination or cancellation. The Concessionaire's obligations under this Section 16.4(c) shall survive the expiration or termination of this Agreement.
- (d) **Payment of Restoration Funds to the Concessionaire.** Except if the Concessionaire elects not to Restore the Plant pursuant to Section 16.4(b) and to terminate this Agreement on the basis of a Significant Force Majeure Event pursuant to Section 20.5, subject to the satisfaction by the Concessionaire of all of the terms and conditions of this Section 16.4(d), the Depositary shall pay to the Concessionaire from time to time, any Restoration Funds, but not more than the amount actually collected by the Depositary upon the loss, together with any interest earned thereon, after reimbursing itself therefrom, as well as the Authority, to the extent, if any, of the reasonable expenses paid or incurred by the Depositary and the Authority in the collection of such monies, to be utilized by the Concessionaire solely for the Restoration, such payments to be made as follows:
- (i) prior to commencing any Restoration, the Concessionaire shall furnish to the Authority for its approval the estimated cost, estimated schedule and detailed plan for the completion of the Restoration, each prepared by an architect or engineer selected by the Concessionaire and approved by the Authority;
 - (ii) the Restoration Funds shall be paid to the Concessionaire in installments as the Restoration progresses, subject to Section 16.4(d)(iii), based upon requisitions to be submitted by the Concessionaire to the Depositary and the Authority in compliance with Section 16.4(e), showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by the Concessionaire; **provided, however,** that if any Encumbrance (other than a Permitted Concessionaire Encumbrance described in clause (ii) and in clauses (iv) through (vii) of the definition thereof) is filed against the Plant or any part thereof in connection with the Restoration, the Concessionaire shall not be entitled to receive any further installment until such Encumbrance is satisfied or discharged (by bonding or otherwise); **provided further** that notwithstanding the foregoing, but subject to the provisions of Section 16.4(d)(iii), the existence of any such Encumbrance shall not preclude the Concessionaire from receiving any installment of Restoration Funds so long as such Encumbrance will be discharged with funds from such installment and at the time the Concessionaire receives such installment the Concessionaire delivers to the Authority and the Depositary a release of such Encumbrance executed by the lienor and in recordable form;

- (iii) the amount of each installment to be paid to the Concessionaire shall be the aggregate amount of Restoration Costs theretofore incurred by the Concessionaire minus the aggregate amount of Restoration Funds theretofore paid to the Concessionaire in connection therewith; **provided, however,** that all disbursements to the Concessionaire shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and Contractors to the extent that such disbursements are customary in the industry and that the unapplied portion of the funds held by the Depositary, together with other funds available to the Concessionaire for such Restoration, as certified by the Concessionaire, are sufficient to complete the Restoration; and
 - (iv) except as provided in Section 16.4(c), upon completion of and payment for the Restoration by the Concessionaire, subject to the rights of the Collateral Assignee, the Depositary shall pay the balance of the Restoration Funds, if any, (A) to the Major Maintenance Reserve Account and Operations and Maintenance Reserve Account until such accounts achieve the Required Balance, and (B) any remainder, to the Concessionaire.
- (e) **Conditions of Payment.** The following shall be conditions precedent to each payment made to the Concessionaire as provided in Section 16.4(d):
- (i) the Concessionaire shall have furnished the Authority with estimates of costs, a schedule and a detailed plan for the completion of the Restoration, as provided for in Section 16.4(d)(i);
 - (ii) at the time of making such payment, no Concessionaire Default exists; and
 - (iii) the Restoration shall be carried out under the supervision of the relevant architect or engineer, and there shall be submitted to the Depositary and the Authority the certificate of such architect or engineer stating that (A) the materials and other items which are the subject of the requisition have been delivered to the Plant (except with respect to requisitions for advance deposits permitted under Section 16.4(d)(iii)) and, to the best of the knowledge and belief of such architect or engineer, are free and clear of any Encumbrances and no unsatisfied mechanic's or other liens have been claimed, or, if claimed, have been otherwise discharged, (B) the sum then requested to be withdrawn either has been paid by the Concessionaire or is due and payable to Contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (C) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Restoration Funds or has been made out of the Restoration Funds received by the Concessionaire, (D) the sum then requested does not exceed the value of the services and materials described in the certificate, (E) the work relating to such requisition has been performed in accordance with this Agreement and (F) in the case of the final payment to the Concessionaire, the Restoration has been completed in accordance with this Agreement.
- (f) **Payment and Performance Bonds.** If the Concessionaire obtains payment or performance bonds related to a Restoration (which the Concessionaire may or may not obtain in its discretion),

the Concessionaire shall name the Authority, the State and the Concessionaire and the Collateral Assignee, as their interests may appear, as additional obligees, shall deliver copies of any such bonds to the Authority promptly upon obtaining them, and shall otherwise comply with the requirements of Applicable Law in relation to such payment or performance bonds.

- (g) **Benefit of the Authority.** The requirements of this Section 16.4 are for the benefit only of the Authority, and no Contractor or other Person shall have or acquire any claim against the Authority as a result of any failure of the Authority actually to undertake or complete any Restoration as provided in this Section 16.4 or to obtain the evidence, certifications and other documentation provided for herein.
- (h) **Investment of Restoration Funds.** Restoration Funds deposited with a Depositary may be invested and reinvested in Eligible Investments, and all interest earned on such investments shall be added to the Restoration Funds.
- (i) **Rights of Collateral Assignees.** The Authority acknowledges and agrees that any Restoration Funds not applied to a Restoration as provided in this Section 16.4 shall be subject to the lien or liens under any Collateral Assignment.

17. ADVERSE ACTIONS

17.1 Adverse Action

- (a) An **Adverse Action** shall occur if (i) the Concessionaire or the Project becomes subject to (A) a Discriminatory Change in State Law, (B) a Condemnation or (C) any other State or local government action, but only to the extent that such other State or local government action can be reasonably expected to reduce the fair market value of the Concessionaire Interest by twenty percent (20%) or more, (ii) such action has a Material Adverse Effect on the Fair Market Value of the Concessionaire Interest and (iii) in the case of a local government action, within one (1) year of the Authority's receipt of an Adverse Action Preliminary Notice the local government action has not been terminated or otherwise modified to eliminate the Material Adverse Effect on the Fair Market Value of the Concessionaire Interest. Notwithstanding the foregoing, a State or local government action shall not include (a) any State or local government action (i) taken in response, in whole or in part, to any failure to perform or breach of this Agreement or another Project Agreement, violation of Applicable Law or Permit or willful misconduct on the part of Concessionaire or any other Concessionaire Party (including the Construction Contractor and the Operator) or (ii) that is otherwise permitted under this Agreement or (b) any changes in Taxes of general application. For purposes of this Section 17.1, **Material Adverse Effect on the Fair Market Value of the Concessionaire Interest** shall mean, at any time, a material and adverse effect on the fair market value of the Concessionaire Interest, as compared to such fair market value prior to the occurrence of such Adverse Action, as determined by an Appraiser based on a discounted cash flow method and taking into account whether the Concessionaire is receiving and is reasonably likely to continue to receive at such time additional Revenues sufficient to meet the additional costs and expenses, and to compensate the Concessionaire for all Losses and reduced Revenues, arising from any such action and whether the Concessionaire is able to meet its obligations under this Agreement and under Applicable Law.
- (b) If an Adverse Action occurs, the Concessionaire shall have the right, at its election, to either (i) treat such Adverse Action as a Compensation Event pursuant to Section 19 by giving notice in accordance with Section 19.1 or (ii) if the effect of such Adverse Action, individually or in the aggregate, after taking into account any entitlement to adjust the price of LNG under the LNG

Sale and Purchase Agreements and LNG Tolling Service Agreements, can be reasonably expected to reduce the fair market value of the Concessionaire Interest by [fifteen percent (15%)] or more, terminate this Agreement by giving notice in the manner described in Section 17.1(c).

- (c) Within thirty (30) days following the date on which the Concessionaire first became aware of the Adverse Action (or, in the case of a local government action, an action that with the passage of time could become an Adverse Action), the Concessionaire shall give notice (the ***Adverse Action Preliminary Notice***) to the Authority stating that an Adverse Action has occurred. Within one hundred and eighty (180) days or, in the case of a local government action, one (1) year following the date of delivery of the Adverse Action Preliminary Notice, the Concessionaire shall give the Authority another notice (the ***Adverse Action Notice***) setting forth (i) details of the Adverse Action, (ii) details of the Material Adverse Effect on the Fair Market Value of the Concessionaire Interest arising out of such Adverse Action and (iii) a statement as to which right referred to in Section 17.1(b) the Concessionaire elects to exercise. The Authority shall, after receipt of the Adverse Action Notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the Authority may reasonably consider necessary. If the Authority wishes to dispute the occurrence of an Adverse Action claimed in the Adverse Action Notice, the Authority shall give notice of the dispute (the ***Adverse Action Disputes Notice***) to the Concessionaire within sixty (60) days following the date of receipt of the Adverse Action Notice stating in reasonable detail the grounds for such dispute. If neither the Adverse Action Notice nor the Adverse Action Disputes Notice has been withdrawn within sixty (60) days following the date of receipt of the Adverse Action Disputes Notice by the Concessionaire, the matter shall be submitted to the Dispute resolution procedures set forth in Section 24.

17.2 Termination

If the Concessionaire has elected to exercise its right to terminate this Agreement in connection with an Adverse Action pursuant to Section 17.1, this Agreement shall terminate sixty (60) days following the date of receipt of the Adverse Action Notice by the Authority, and the Authority shall pay Adverse Action Termination Damages to the Concessionaire in accordance with Section 20.4(a).

18. ALTERNATIVE GAS SUPPLY

18.1 Alternative Gas Supply

- (a) **Alternative Gas Supply Source.** As used in this Agreement, ***Alternative Gas Supply Source*** means:
- (i) a pipeline constructed to transport natural gas from the North Slope to the FNSB:
 - (A) that extends the entirety of the pipeline route from the North Slope to the FNSB or any ultimate destination point beyond the FNSB and includes, but is not limited to, related spur lines to the FNSB;
 - (B) in which the State or any agency or instrumentality thereof is a direct financial participant either as an equity owner, a provider of debt financing, a provider of grants or through extension of tax incentives;
 - (C) that is actively under development by the owner (the ***AGS Owner***) of the upstream, midstream and downstream infrastructure to produce and deliver natural gas to the FNSB and other Interior Alaska communities;

- (D) that is capable of delivering, FOB Fairbanks, an aggregate annual supply of natural gas to the Preferred LNG Purchasers for each year of the remainder of the term of their respective LNG SPAs or LNG TSAs that is equal to or greater than the Baseline Capacity of the Plant (the **Aggregate Annual Gas Quantity**); and
 - (E) that satisfies in all material respects the policy objectives of SB 23 and other public policy objectives of the IEP;
- (ii) the AGS Owner has entered into a binding agreement with one or more Preferred LNG Purchasers to deliver natural gas equal to or greater than the Aggregate Annual Gas Quantity to the FNSB by a date certain, with the only condition to effectiveness of such commitment being an AGS Determination (such date, the **AGS Expected Initial Delivery Date**); and
 - (iii) the average price to Preferred LNG Purchasers of natural gas to be delivered by the AGS Owner to the FNSB and made available to the Preferred LNG Purchasers during the remainder of the Term following commencement of deliveries by the Alternative Gas Supply Source, taking into account the full price of development, construction, operation and maintenance of the Alternative Gas Supply Source, is projected to be more than twenty-five percent (25%) lower than the projected price of LNG for such Preferred LNG Purchasers under their respective LNG SPAs or LNG TSAs (plus LNG trucking costs to the FNSB) during such period.

(b) **Alternative Gas Supply Determination**

- (i) If one or more of the Preferred LNG Purchasers that, in the aggregate, account for more than fifty percent (50%) of the Aggregate Annual Gas Quantity (the **Trigger Quantity**) believes that an Alternative Gas Supply Source exists and has provided notice thereof to the Concessionaire pursuant to its LNG SPA or LNG TSA at any time after the [tenth (10th)] anniversary of the Commercial Operation Date, then (A) the Concessionaire shall promptly provide notice thereof to the Authority and (B) within ten (10) Business Days of the Concessionaire's receipt of such notice from such Preferred LNG Purchasers, the Concessionaire, such Preferred LNG Purchasers and the Authority shall meet to discuss whether such Preferred LNG Purchasers plan to terminate their respective LNG SPAs or LNG TSAs in connection with such Alternative Gas Supply Source. If the Concessionaire, the Preferred LNG Purchasers and the Authority determine that the Alternative Gas Supply Source satisfies the requirements set forth in Section 18.1(a) (such determination, the **AGS Determination**), and the Preferred LNG Purchasers representing not less than the Trigger Quantity (each, an **Electing Purchaser**) have elected under their respective LNG SPAs or LNG TSAs to terminate their LNG SPAs or LNG TSAs, respectively, then:
 - (A) the Concessionaire and the Electing Purchasers shall develop a schedule for terminating the LNG SPA or LNG TSA of the Electing Purchasers and transitioning the Electing Purchasers to the Alternative Gas Supply when deliveries thereof commence, which schedule shall include a transition period of at least five (5) years from the date of the AGS Determination to the date of termination of the LNG SPAs or LNG TSAs, during which time the Electing Purchasers will continue to be obligated to take or pay for the full amount of its Annual Contract Quantity under and as defined in its LNG SPA or LNG TSA, as applicable (the **Transition Period**); and

- (B) within sixty (60) days from the date of the AGS Determination the Concessionaire shall provide notice to the Authority (such notice, the **AGS Notice**) that the Concessionaire has made an election to terminate operation of the Plant effective upon the last day of the Transition Period (the **AGS Termination Date**). The AGS Notice shall include a proposed schedule for winding-down operations of the Plant.

If the Concessionaire, the Preferred LNG Purchasers and the Authority are unable to agree on an AGS Determination, such dispute shall be submitted to the Dispute resolution procedures set forth in Section 24.

- (ii) During the Transition Period and following delivery of an AGS Notice:
 - (A) the Concessionaire shall continue to operate the Plant in accordance with the requirements of this Agreement and the other Transaction Documents;
 - (B) All payments of the Concession Fee shall be suspended and the amount of such suspended Concession Fees shall be treated as Deferred Concession Fees;
 - (C) All Revenues received by the Concessionaire each month shall be applied in the following order of priority: (1) *first*, to payment of all costs and expenses incurred in the operation and maintenance of the Plant; (2) *second*, to payment of outstanding principal and interest on any Third Party Loans until each such loan has been paid in full; (3) *third*, after all principal and interest on the Third Party Loans have been paid in full, to distributions from the Concessionaire to the Equity Participants until the Target Equity Return over the Term (assuming for purposes of such calculation that no AGS Determination has been made and this Agreement was no otherwise terminated early) has been achieved; and (4) *fourth*, to the payment of the Concession Fee and all Deferred Concession Fees; and
 - (D) At the end of the Transition Period, this Agreement shall terminate in accordance with Section 18.2.
- (iii) If, notwithstanding the AGS Determination and termination of one or more of the LNG SPAs or LNG TSAs, the Concessionaire does not issue an AGS Notice within the applicable sixty (60) day period, then: (A) the Concessionaire shall be deemed to have irrevocably elected to continue to operate and maintain the Plant without any change or modification as a result of the AGS Determination; and (B) all of the then-effective Project Agreements and Third Party Financing Documents shall remain in full force and effect without any change or modification and the Concessionaire shall continue to perform all of its obligations thereunder.
- (iv) Following issuance of an AGS Notice, the Authority and the Concessionaire shall discuss in good faith opportunities to redeploy the Plant for alternative applications and, if such opportunities are identified and mutually agreed, negotiate in good faith to amend this Concession Agreement to allow for such redeployment in lieu of terminating this Agreement and winding down operations of the Plant at the end of the Transition Period.

(c) **Termination of Alternative Gas Supply Source**

- (i) If, following delivery of an AGS Notice and prior to the expiration of the Transition Period, it is subsequently determined that the relevant Alternative Gas Supply Source will

not become available, the Electing Purchasers shall provide notice thereof to the Authority and the Concessionaire. Within thirty (30) days following receipt of such notice by the Authority and the Concessionaire, the Concessionaire shall notify the Electing Purchasers:

- (A) if the Concessionaire elected to terminate this Agreement at the end of the Transition Period pursuant to Section 18.1(b)(i)(B), whether the Concessionaire in its discretion is willing to revoke its election to terminate this Agreement and continue operation of the Plant and sell LNG to such Electing Purchasers; and
 - (B) if the Concessionaire did not elect to terminate this Agreement at the end of the Transition Period pursuant to Section 18.1(b)(i)(B), whether the Concessionaire is able to continue to sell LNG to the Electing Purchasers after the expiration of the Transition Period and the quantity of LNG that will be available for sale.
- (ii) If the conditions for continued effectiveness of this Agreement set forth in Section 18.1(b)(i)(A) or (B) are satisfied, then:
- (A) the Authority will accept the Concessionaire's revocation of its election to terminate this Agreement and neither the Concession Agreement nor the LNG SPAs or LNG TSAs shall terminate on the AGS Termination Date;
 - (B) the Electing Purchasers shall reimburse the Concessionaire and the Authority for the costs and expenses incurred by such Party in dealing with the AGS Determination, in the case of the Concessionaire to the extent not covered by additional Revenues received by the Concessionaire during the Transition Period pursuant to the application of Revenues in accordance with Section 18.1(b)(ii); and
 - (C) as of the month following the month during which the conditions to continued effectiveness are satisfied, the application of Revenues shall be in accordance with Section 9.3 and the application provisions set forth in Section 18.1(b)(ii) shall terminate.

18.2 Termination

- (a) If the Concessionaire has elected to exercise its right to terminate this Agreement in connection with an AGS Determination pursuant to Section 18.1(b), this Agreement shall terminate on the last day of the Transition Period and the Authority shall pay AGS Termination Damages to the Concessionaire in accordance with Section 20.4(b).
- (b) Any dispute arising out of the determination of the AGS Termination Damages shall be submitted to the Dispute resolution procedures set forth in Section 24.

18.3 Other Projects

- (a) Except for the right of the Concessionaire to receive compensation set forth in Section 18.1 in connection with an Alternative Gas Supply Source: (i) the Authority may exercise all of its authority to advise and recommend on energy planning, development and funding; and (ii) the State Parties will have the unlimited right, each in its discretion, at any time and without liability, to finance, develop, approve, construct, expand, improve, modify, upgrade, add capacity to,

reconstruct, rehabilitate, restore, renew and replace any existing and new LNG liquefaction facilities, LNG regasification facilities, natural gas pipeline or other facilities other than the Plant (collectively, the **Other Projects**); **provided** that: (A) Other Projects shall not seek to, and will not, produce or provide LNG or natural gas that displaces quantities of LNG sold to LNG Purchasers under any of the Concessionaire's then-existing LNG SPAs or LNG TSAs; and (B) Other Projects shall not seek to, and will not, supply LNG or natural gas to any customers for use in the North Slope Borough or in Interior Alaska other than (1) an Alternative Gas Supply Source meeting the terms of Section 18 of this Agreement or an Expansion of the Plant in accordance with Section 6.1 or Section 6.2 of this Agreement and (2) until such time as eighteen (18) Bcf per annum is contracted under LNG SPAs or LNG TSAs with terms of equivalent length to the then-remaining Term of this Agreement.

- (b) The Other Projects include those facilities (i) owned or operated by the State Parties, including those owned or operated by a private entity pursuant to a contract with a State Party; (ii) owned or operated by a joint powers authority or similar entity to which a State Party is a member; (iii) owned or operated by any other Governmental Authority pursuant to a contract with a State Party, and (iv) owned or operated by any other Governmental Authority with respect to which a State Party has contributed funds, in-kind contributions or other financial or administrative support.
- (c) In no event will the taking of any action described in this Section 18.3 by a State Party (i) constitute a default by the Authority pursuant to this Agreement or (ii) entitle the Concessionaire to Concessionaire Damages or other relief, except to the extent provided in Section 18 with respect to an Alternative Gas Supply Source.

19. UNFORESEEN EVENTS

19.1 Unforeseen Event Notice

- (a) If the Concessionaire is affected by an Unforeseen Event, it shall give notice to the Authority (an **Unforeseen Event Notice**) as soon as practicable and in no event later than sixty (60) days following the date on which it first became aware that an event has occurred and that it is or will become an Unforeseen Event (such period, the **Initial UE Notice Period**). The Unforeseen Event Notice shall include (i) a statement of which Unforeseen Event the claim is based upon, (ii) a detailed description of the Unforeseen Event, (iii) details of the circumstances from which the Unforeseen Event arises, (iv) to the extent applicable, an estimate of the delay in performance of any of the Concessionaire's obligations pursuant to this Agreement attributable to such Unforeseen Event and information in support thereof, if known at that time, and (v) to the extent applicable, the amount claimed as Concessionaire Damages and details of the calculation thereof including a written analysis and calculation of the estimated Net Cost Impact, if any, and estimated Net Revenue Impact, if known at that time; **provided** that, if the duration of the delay or the amount of Concessionaire Damages and details of the calculation thereof are not available within the Initial UE Notice Period, the Concessionaire may submit an estimate of the duration of the delay or the amount, or if known, the actual duration of the delay or amount claimed as Concessionaire Damages and details of the calculation thereof no later than sixty (60) days from submission of the Unforeseen Event Notice; **provided, however**, that the Concessionaire may update the duration of the delay or the amount of claimed Concessionaire Damages and details thereof every thirty (30) days. The Authority shall, after receipt of such notice, be entitled by notice to require the Concessionaire to update such information, as the Authority may reasonably consider necessary, in respect of any continuing Unforeseen Event.

- (b) If, for any reason, the Concessionaire fails to deliver such Unforeseen Event Notice within the Initial UE Notice Period, the Concessionaire will be deemed to have irrevocably and forever waived and released any Claim or right to Concessionaire Damages or other adverse effects on Revenues or on costs, expenses and liabilities attributable to such Unforeseen Event.
- (c) Upon the occurrence of an Unforeseen Event, the Concessionaire will promptly undertake efforts to mitigate the effects of such Unforeseen Event, including all steps that would generally be taken in accordance with Standard Industry Practice. The Concessionaire will promptly deliver to the Authority an explanation of the measures being undertaken to mitigate the delay, additional costs and other consequences of the Unforeseen Event. The Concessionaire will notify the Authority within thirty (30) days following the date on which it first became aware (or should have become aware, using all reasonable due diligence) that such Unforeseen Event had ceased.
- (d) Notwithstanding the occurrence of an Unforeseen Event, the Concessionaire will continue its performance and observance pursuant to this Agreement of all of its obligations and covenants to be performed to the extent that it is reasonably able to do so and will use its Reasonable Efforts to minimize the effect and duration of the Unforeseen Event. Without limiting the foregoing, the occurrence of an Unforeseen Event will not excuse the Concessionaire from timely payment of monetary obligations pursuant to this Agreement, from compliance with Applicable Law, or from compliance with the Technical Standards, except temporary inability to comply with the Technical Standards as a direct result of the Unforeseen Event.
- (e) After the Concessionaire submits an Unforeseen Event Notice, the Authority may, but is not required to, obtain, at its sole cost, (i) a comprehensive report as to the Concessionaire's estimate of the Net Cost Impact attributable to the Unforeseen Event and (ii) a study, prepared in accordance with Standard Industry Practice, analyzing and calculating the estimated Net Revenue Impact attributable to the Unforeseen Event. Within sixty (60) days after receiving an Unforeseen Event Notice and the supporting documentation required by Section 19.1(a)(i), the Authority will provide to the Concessionaire a copy of such reports as it has elected to obtain.

19.2 Delay Events During the Construction Phase

A Delay Event occurring during the Construction Phase will excuse the Concessionaire from performance of its obligations, including its obligations to perform the Work, pursuant to this Agreement to the extent that its ability to perform such obligations are directly affected by such Delay Event. In addition, during the Construction Phase, extensions of milestones and/or activities identified on the Project Schedule (including the Target Substantial Completion Date and the Completion Deadline) for Delay Events affecting the Work will be made based on time impact analysis, using the then current Project Schedule and taking into account impacts of the Delay Events on Critical Path items, in accordance with the Technical Standards. If the Authority and the Concessionaire cannot agree upon the extension, then either Party will be entitled to refer the matter to the Dispute resolution procedures set forth in Section 24.

19.3 Delay Events During the Operations Phase

A Delay Event occurring after Commercial Operation during the Operations Phase will excuse the Concessionaire from performance of its obligations pursuant to this Agreement to the extent directly affected by such Delay Event.

19.4 Determination of Concessionaire Damages

- (a) Concessionaire Damages with respect to any Unforeseen Event will be calculated based on the sum of (i) any adverse Net Cost Impact and (ii) any adverse Net Revenue Impact for each Reporting Year that there is an impact attributable to such Unforeseen Event; **provided**, that, subject to Section 19.5(a)(ii), any Net Cost Savings and positive Net Revenue Impact attributable to such Unforeseen Event will be used to decrease the amount of Concessionaire Damages. The calculation of Concessionaire Damages will be based on the difference in the projected cost and revenue related to the Project immediately prior to the occurrence of the Unforeseen Event and the projected cost and revenue related to the Project after taking into account the impact of the Unforeseen Event.
- (b) The Concessionaire Damages (i) will be net of all applicable insurance proceeds payable to the Concessionaire or its Contractors associated with the Unforeseen Event (or that would have been payable to the Concessionaire or its Contractors but for the failure by the Concessionaire or its Contractors to comply with the insurance requirements set forth in Section 19.1(d) and Section 16), except as any payment of such insurance proceeds is affected by the bankruptcy or insolvency of the provider of such insurance, and (ii) will include all costs of asserting a Claim for such insurance proceeds and any increased insurance premium resulting from any such Claim; **provided**, that any increased insurance premium resulting from such Claim is certified in writing by the insurance provider of the Concessionaire or its Contractor, as applicable, prior to payment by the Authority.
- (c) The Concessionaire will conduct all discussions and negotiations with the Authority to determine any Concessionaire Damages and will share with the Authority all data, documents and information pertaining thereto, on an open book basis. As part of such negotiations, the Parties will continue to refine and exchange, on an open book basis, plans, drawings, configurations and other information related to the Unforeseen Event, revenue data, information, analyses and studies and financial modeling and quantifications of projected Net Cost Impacts, Net Revenue Impacts or Net Cost Savings, if any.
- (d) If the Concessionaire and the Authority are unable to agree upon whether the Concessionaire is entitled to Concessionaire Damages or the amount of the Concessionaire Damages claimed by the Concessionaire within one hundred and twenty (120) Days after the delivery of the Unforeseen Event Notice, then either Party, by notice to the other Party, may terminate the negotiations and request the Dispute be resolved in accordance with the Dispute resolution procedures set forth in Section 24; **provided**, that the Authority will proceed to make payment to the Concessionaire of the undisputed portion of the Concessionaire Damages in accordance with Section 19.2 without regard to the Dispute resolution procedures set forth in Section 24.

19.5 Payment of Concessionaire Damages

- (a) Following a determination of the Concessionaire Damages pursuant to Section 19.4 (or, in the event of a Dispute, any undisputed portion thereof), the Concessionaire shall recover such Concessionaire Damages as follows:
 - (i) Notwithstanding whether the Target FOB LNG Price Range is met at any time, the Concessionaire shall, subject to the terms of the relevant LNG SPAs or LNG TSAs, adjust pricing to LNG Purchasers on a pro rata basis to recover such Concessionaire Damages over the remaining term of the LNG SPAs or LNG TSAs, as applicable; and

- (ii) In the case of Concessionaire Damages arising from Compensation Events only, to the extent the full amount of the Concessionaire Damages cannot be passed through to the LNG Purchasers under the LNG SPAs or LNG TSAs, the Authority shall pay such remaining portion of such Concessionaire Damages to the Concessionaire either (i) as a lump sum payment or (ii) in installments pursuant to a payment schedule that matches as reasonably as possible the projected timing of the Concessionaire Damages, and in either such case such payments shall be based on the net present value of the remaining Concessionaire Damages as determined using the then appropriate risk adjusted discount rate(s), as agreed between the Authority and the Concessionaire.
- (b) The amount and timing of payment of Concessionaire Damages related to a Compensation Event will take into account the ability of the Authority, first, to obtain funding in relation to such Concessionaire Damages and, second, to have funds available in such time and in such amounts as are required to make current payments to third parties in respect of any portion of Net Cost Impact related to such Compensation Event.

19.6 Sole Remedy and Release of Claims

- (a) Without limiting the Concessionaire's rights with respect to relief for Compensation Events under Sections 19.2 and 19.3, as applicable, the Concessionaire Damages as determined according to this Section 19 will represent the sole and exclusive right to compensation and remedy for the adverse effects of a Compensation Event.
- (b) As a condition precedent to the Authority's obligation to compensate any portion of the Concessionaire Damages, following a determination of the Concessionaire Damages, the Concessionaire will execute a full, unconditional, irrevocable release, in form reasonably acceptable to the Authority, of any Claims, Losses or other rights to compensation or other relief associated with such Compensation Event, except for (i) the Claim and right to the subject Concessionaire Damages, (ii) the Concessionaire's right to schedule relief to the extent the Compensation Event is also a Delay Event, and (iii) the right to terminate this Agreement in accordance with Section 20.5 for a Significant Force Majeure Event and to receive FM Termination Damages in connection therewith.

20. DEFAULTS; REMEDIES; TERMINATION

20.1 Default by the Concessionaire

- (a) **Events of Default.** The occurrence of any one or more of the following events shall constitute a *Concessionaire Default* under this Agreement:
 - (i) if the Concessionaire fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement, and such failure continues unremedied for a period of thirty (30) days following notice thereof (giving particulars of the failure in reasonable detail) from the Authority to the Concessionaire or for such longer period as may be reasonably necessary to cure such failure up to a maximum period of ninety (90) days (the **Maximum Cure Period**); **provided, however** that (A) the Maximum Cure Period may be extended one time if at least thirty (30) days prior to the end of the Maximum Cure Period the Concessionaire delivers a written work plan to the Authority outlining the actions by which the Concessionaire will cure such failure and setting forth a specific final date by which the Concessionaire will cure such failure, which work plan is approved by the Authority within thirty (30) days of its submission;

and (B) in all cases and regardless of the duration of the cure period, (x) the Concessionaire is proceeding with all due diligence to cure or cause to be cured such failure, (y) such failure is capable of being cured within the applicable cure period provided hereunder and (z) such failure is in fact cured within such cure period; and **provided further** that this Section 20.1(a)(i) shall not apply to events covered by the other provisions of this Section 20.1(a);

- (ii) if the Concessionaire fails to comply with, perform or observe the requirements or directives of a final decision issued in connection with a matter submitted to the Dispute resolution procedures set forth in Section 24, and such failure continues unremedied for a period of thirty (30) days following notice thereof (giving particulars of the failure in reasonable detail) from the Authority to the Concessionaire or for such longer period as may be reasonably necessary to cure such failure up to the Maximum Cure Period; **provided** that, in the latter case, the Maximum Cure Period shall only apply if the Concessionaire has demonstrated to the satisfaction of the Authority, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause such failure to be cured, (B) its actions can be reasonably expected to cure or cause such failure to be cured within a reasonable period of time acceptable to the Authority, acting reasonably and (C) such failure is in fact cured within such period of time;
- (iii) if this Agreement or all or any portion of the Concessionaire Interest is Transferred in contravention of Section 22.1 and is not remedied within thirty (30) days after the earlier of the date (1) the Authority provides the Concessionaire with written notice that a Transfer is in contravention of Section 22.1 or (2) the Concessionaire otherwise becomes aware that that a Transfer is in contravention of Section 22.1;
- (iv) if the Concessionaire fails to achieve Substantial Completion of the Plant by the Completion Deadline, as such date may be extended pursuant to this Agreement;
- (v) if the Concessionaire fails to maintain, or to cause to be maintained, in effect the Required Coverages as and when required pursuant to this Agreement, or fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same and such failure continues without cure for a period of thirty (30) days following notice thereof from the Authority to the Concessionaire;
- (vi) if, after exhaustion of all rights of appeal, (A) there occurs any disqualification, suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, of the Concessionaire, any Affiliate of the Concessionaire or any Contractor whose work on the Project is not completed, from bidding, proposing or contracting with any Governmental Authority or (B) the Concessionaire or any Contractor who has ongoing Work, or any of its respective officers, directors, or employees have been convicted of, or pled guilty or nolo contendere to, a violation of Applicable Law for fraud, conspiracy, collusion, bribery, perjury, or material misrepresentation, as a result in whole or in part of activities relating to the Project, and such failure continues without cure for a period of ninety (90) days following notice thereof from the Authority to the Concessionaire (giving particulars of the failure in reasonable detail); **provided** that if such occurrence is a result of an isolated to the actions of a specific Person, a removal of such Person from their involvement in the Project shall constitute a cure of the Concessionaire Default under this Section 20.1(a)(vi);

- (vii) if the Concessionaire (A) admits, in writing, that it is unable to pay its debts as such become due, (B) makes an assignment for the benefit of creditors, (C) files a voluntary petition under Title 11 of the United States Code, or if the Concessionaire files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future Applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Concessionaire, or of all or any substantial part of its properties or of the Plant or any substantial interest therein, or (D) takes any corporate action in furtherance of any action described in this Section 20.1(a)(iv);
- (viii) if within ninety (90) days after the commencement of any proceeding against the Concessionaire seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future Applicable Law, such proceeding has not been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of the Concessionaire, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire or of all or any substantial part of its properties or of the Plant or any substantial interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or if within ninety (90) days after the expiration of any such stay, such appointment has not been vacated;
- (ix) if a levy under execution or attachment has been made against all or any material part of the Plant or any substantial interest therein (including the Concessionaire Interest) as a result of any Encumbrance (other than a Permitted Concessionaire Encumbrance) created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of sixty (60) days following the date of such action, unless such levy resulted from acts or omissions of the Authority or its Representatives;
- (x) if the Concessionaire repudiates in writing any of its material obligations under this Agreement;
- (xi) if the Concessionaire Abandons the Work or the operation of the Plant;
- (xii) if the Concessionaire fails to (A) pay when due any amount payable under this Agreement, including pursuant to any monetary award in a matter submitted to the Dispute resolution procedures set forth in Section 24 or (B) deposit funds in any reserve account in the amount and by the time required by this Agreement and such failure remains unremedied for forty-five (45) days following notice thereof from the Authority to the Concessionaire;
- (xiii) if a final and non-appealable judgment renders this Agreement or any material obligation under it unenforceable against the Concessionaire; and
- (xiv) any representation or warranty made by the Concessionaire in this Agreement, or any representation, warranty or statement in any certificate, financial statement or other document delivered to the Authority by or on behalf of the Concessionaire, shall prove to have been false or misleading as of the time made or delivered; **provided**, that such

misrepresentation or such false statement shall not constitute a Concessionaire Default if the adverse effect of such incorrect representation or warranty (A) could not reasonably be expected to result in a Concessionaire Material Adverse Effect or AIDEA Material Adverse Effect or (B) is capable of being cured and is cured within sixty (60) days after the earlier of the date (1) the Authority provides the Concessionaire with written notice of such Concessionaire Default or (2) the Concessionaire becomes aware of such Concessionaire Default.

- (b) **Remedies of the Authority upon Concessionaire Default.** Upon the occurrence and during the continuance of a Concessionaire Default, the Authority may, by notice to the Concessionaire with a copy to any Collateral Assignee in accordance with the terms hereof, declare the Concessionaire to be in default and may, subject to rights of any Collateral Assignee pursuant to the Consent and Agreement(s), do any or all of the following as the Authority, in its discretion, shall determine:
- (i) the Authority may terminate this Agreement (without the need for reentry or any other action on behalf of the Authority) by giving ninety (90) days' prior notice to the Concessionaire (which period shall operate as a notice and transition period and not an additional cure period for the underlying Concessionaire Default);
 - (ii) if the Concessionaire Default is by reason of the failure to pay any monies to a third party, the Authority may (without obligation to do so) make payment on behalf of the Concessionaire of such monies, and any amount so paid by the Authority shall be payable by the Concessionaire to the Authority within three (3) Business Days after written demand therefor; **provided** that (A) the Authority will not incur any liability to the Concessionaire for any act or omission of the Authority or any other Person in the course of remedying or attempting to remedy such Concessionaire Default by making such payment on behalf of the Concessionaire and (B) the Authority's cure of such Concessionaire Default will not waive or affect the Authority's rights against the Concessionaire by reason of such Concessionaire Default;
 - (iii) the Authority may cure the Concessionaire Default (but this shall not obligate the Authority to cure or attempt to cure a Concessionaire Default or, after having commenced to cure or attempted to cure a Concessionaire Default, to continue to do so), and all costs and expenses reasonably incurred by the Authority in curing or attempting to cure the Concessionaire Default shall be payable by the Concessionaire to the Authority within three (3) Business Days after written demand therefor; **provided, however**, that (A) the Authority shall not incur any liability to the Concessionaire for any act or omission of the Authority or any other Person in the course of remedying or attempting to remedy any Concessionaire Default (other than as a result of gross negligence or willful misconduct of the Authority or its Representatives) and (B) the Authority's cure of any Concessionaire Default shall not waive or affect the Authority's rights and remedies against the Concessionaire by reason of the Concessionaire Default;
 - (iv) the Authority is entitled to seek to recover its Losses arising from such Concessionaire Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any rights or remedies available to any Person who is owed damages or a debt; and
 - (v) except to the extent specifically limited by the terms of this Agreement, the Authority may exercise any of its other rights and remedies provided for hereunder or at law or

equity, including the right to seek specific performance, injunction or other equitable remedies.

20.2 Defaults by the Authority

- (a) **Events of Default.** The occurrence of any one or more of the following events shall constitute an *Authority Default* under this Agreement:
- (i) if the Authority fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement, and such failure continues unremedied for a period of thirty (30) days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to the Authority or for such longer period as may be reasonably necessary to cure such failure subject to the Maximum Cure Period; **provided, however** that: (A) the Maximum Cure Period may be extended one time if at least thirty (30) days prior to the end of the Maximum Cure Period, the Authority delivers a written work plan to the Concessionaire outlining the actions by which the Authority will cure such failure and setting forth a specific final date by which the Authority will cure such failure, which work plan is approved by the Concessionaire within thirty (30) days of its submission; and (B) in all cases and regardless of the duration of the cure period, (x) the Authority is proceeding with all due diligence to cure or cause to be cured such failure, (y) such failure is capable of being cured within the applicable cure period provided hereunder, and (z) such failure is in fact cured within such cure period; **and provided further** that this Section 20.2(a)(i) shall not apply to events covered by the other provisions of this Section 20.2(a);
 - (ii) if the Authority fails to comply with, perform or observe the requirements or directives of a final decision issued in connection with a matter submitted to the Dispute resolution procedures set forth in Section 24, and such failure continues unremedied for a period of thirty (30) days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to the Authority or for such longer period as may be reasonably necessary to cure such failure up to the Maximum Cure Period; **provided** that, in the latter case, the Maximum Cure Period shall only apply if the Authority has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause such failure to be cured, (B) its actions can be reasonably expected to cure or cause such failure to be cured within a reasonable period of time acceptable to the Concessionaire, acting reasonably and (C) such failure is in fact cured within such period of time;
 - (iii) if a levy under execution or attachment has been made against all or any material part of the Plant or the Concessionaire Interest or any substantial interest therein as a result of any Encumbrance (other than a Permitted Authority Encumbrance) created, incurred, assumed or suffered to exist by the Authority or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of sixty (60) days following the date of such action, unless such levy resulted from acts or omissions of the Concessionaire or its Representatives or if all or any material part of the Plant shall be subject to a Condemnation;
 - (iv) if this Agreement or all or any portion of the Plant is Transferred in contravention of Section 22.2 and is not remedied within thirty (30) days after the earlier of the date (1) the Concessionaire provides the Authority with written notice that a Transfer is in

contravention of Section 22.2 or (2) the Authority otherwise becomes aware that that a Transfer is in contravention of Section 22.2;

- (v) if the Authority fails to pay when due any amount payable under this Agreement, including pursuant to any monetary award in a matter submitted to the Dispute resolution procedures set forth in Section 24, and such failure remains unremedied for forty-five (45) days following notice thereof from the Concessionaire to the Authority;
 - (vi) if the Authority repudiates in writing any of its material obligations under this Agreement;
 - (vii) if a final and non-appealable judgment renders this Agreement or any material obligation under it unenforceable against the Authority or determines that the Authority's entry into this Agreement is illegal; and
 - (viii) any representation or warranty made by the Authority in this Agreement, or any representation, warranty or statement in any certificate, financial statement or other document delivered to the Concessionaire by or on behalf of the Authority, shall prove to have been false or misleading as of the time made or delivered; **provided**, that such misrepresentation or such false statement shall not constitute an Authority Default if the adverse effect of such incorrect representation or warranty (A) could not reasonably be expected to result in a Concessionaire Material Adverse Effect or AIDEA Material Adverse Effect or (B) is capable of being cured and is cured within sixty (60) days after the earlier of the date (1) the Concessionaire provides the Authority with written notice of such Authority Default or (2) the Authority becomes aware of such Authority Default.
- (b) **Remedies of Concessionaire upon Authority Default.** Upon the occurrence and during the continuance of an Authority Default, the Concessionaire may by notice to the Authority declare the Authority to be in default and may, subject to the provisions of Section 24, do any or all of the following as the Concessionaire, in its discretion, shall determine:
- (i) the Concessionaire may terminate this Agreement by giving ninety (90) days' prior notice to the Authority (which period shall operate as a notice and transition period and not an additional cure period for the underlying Authority Default);
 - (ii) except to the extent specifically limited by the terms of this Agreement, the Concessionaire may exercise any of its other rights and remedies provided for hereunder or at law or equity, including the right to seek specific performance, injunction or other equitable remedies; and
 - (iii) the Concessionaire is entitled to seek to recover its Losses arising from such Authority Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any rights and remedies available to any Person who is owed damages or a debt by the Authority.
- (c) If the Concessionaire terminates this Agreement pursuant to Section 20.2(b)(i), upon such termination the Authority shall be obligated to pay to the Concessionaire an amount equal to the Default Termination Damages as determined in accordance with Section 20.4.

20.3 Consequences of Termination or Reversion

- (a) **Performance During Termination Notice Periods.** During any period of notice of the termination of this Agreement until the Reversion Date, the Concessionaire shall continue to develop and construct the Plant and, following the Commercial Operation Date, to perform the Plant Operations and to minimize disruption to the Plant Services so as not to adversely impact the customers of the Plant, **provided** that the Concessionaire is receiving sufficient Revenues or direct payment from the Authority to meet the cost of such performance.
- (b) **Other Consequences.** Upon the termination of this Agreement and concurrently with the payment to the Concessionaire of all Termination Damages due as a result of such termination (notwithstanding any claims the Parties may have against each other and subject to Section 20.1(b)(v), Section 20.2(b)(iii) and Section 23), the following provisions shall apply:
 - (i) the Concessionaire shall, without action whatsoever being necessary on the part of the Authority and at no cost to the Authority, surrender and deliver to the Authority the Plant (including all improvements on the Plant Site comprising the Plant), the Project Assets and all tangible and intangible personal property (including inventories) located within the Plant or used in connection with the Plant Operations (except in the case of a termination in the circumstances contemplated by Section 16.4(c)) in good order, condition and repair (reasonable wear and tear excepted), determined reasonably in accordance with the applicable Technical Standards, free and clear of all Encumbrances other than (A) Permitted Concessionaire Encumbrances set forth in clauses (iv) and (vii) of the definition of that term, (B) Permitted Authority Encumbrances affecting title to the Plant existing at the Time of Closing, (C) those created by or suffered to exist or consented to by the Authority or any Person claiming through it, and (D) with respect to any property added to the Plant after the Time of Closing, title defects affecting such property in existence on the date such property is added to the Plant;
 - (ii) the Concessionaire hereby waives any notice now or hereafter required by Applicable Law with respect to the transfer of the Plant on the Reversion Date, other than those notices expressly required by the terms of this Agreement;
 - (iii) the Authority shall, as of the Reversion Date, assume full responsibility for the Plant Operations, and as of such date, the Concessionaire shall have no liability or responsibility for the development or construction of the Plant or provision of Plant Services or the performance of Plant Operations occurring after such date;
 - (iv) the Concessionaire shall be responsible for all costs, expenses and other amounts for which it is responsible hereunder incurred or arising up to but not including the Reversion Date, and the Authority shall be responsible for all costs, expenses and amounts incurred or arising in connection with the Plant Operations on and after the Reversion Date;
 - (v) the Authority shall have the option by providing notice to the Concessionaire requiring that the Concessionaire assign, without warranty or recourse to the Concessionaire, all of its right, title and interest in, to and under all or any of the Project Agreements then in effect and all Permits to the Authority or its designee for the remainder of their respective terms; **provided, however**, that if the Authority exercises such option, the right, title and interest of the Concessionaire in, to and under such Project Agreements and Permits shall be assigned to the Authority or its nominee as of the Reversion Date and the Concessionaire shall surrender the Plant to the Authority and shall cause all Persons

claiming under or through the Concessionaire to do likewise, and the Authority shall assume in writing, pursuant to an assumption agreement satisfactory to the Concessionaire, acting reasonably, the Concessionaire's obligations under the Project Agreements that arise in respect of, or relate to, any period of time falling on and after the Reversion Date; **provided further** that if the Authority does not exercise such option, the Concessionaire shall, subject to the terms of the Collateral Assignment, terminate the Project Agreements to the extent permitted thereunder and in accordance with the terms thereof;

- (vi) all plans, drawings, specifications and models prepared in connection with any construction of the Plant and in the Concessionaire's possession and all "as-built" drawings shall become the sole and absolute property of the Authority, and the Concessionaire shall promptly deliver to the Authority (to the extent not previously provided to the Authority) all such plans, drawings, specifications and models and all such "as-built" drawings (but may keep copies of those plans, drawings, specifications and models that were developed by the Concessionaire or its Representatives);
 - (vii) the Concessionaire, at its sole cost and expense, shall promptly deliver to the Authority copies of all records and other documents relating to the Revenues that are in the possession of the Concessionaire or its Representatives and all other then- existing records and Information relating to the Plant as the Authority, acting reasonably, may request;
 - (viii) the Concessionaire shall execute and deliver to the Authority a release or other instrument reasonably required by the Authority or its title insurer to evidence such expiration or termination;
 - (ix) the Concessionaire shall assist the Authority in such manner as the Authority may reasonably require to ensure the orderly transition of control, operation, management, maintenance and improvement of the Plant, and shall, if appropriate and if requested by the Authority, take all steps as may be necessary to enforce the provisions of the Project Agreements pertaining to the surrender of the Plant; and
 - (x) the Authority and the Concessionaire shall make appropriate adjustments, including adjustments relating to any Project Agreement assigned to the Authority, tariffs, fees and other similar charges collected on and after the Reversion Date that are incurred prior to the Reversion Date, and utilities, and any adjustments and payment therefor shall be made by the appropriate Party on the Reversion Date, but shall be subject to readjustment if necessary because of error in matters such as information, calculation, payments and omissions that are identified within the period of one hundred and eighty (180) days following the Reversion Date; **provided, however**, that the Authority and the Concessionaire acknowledge that certain adjustments or readjustments may have to be made when a third-party provides to the Authority or the Concessionaire a final adjustment amount in respect of a matter, and for such matters the adjustment and readjustment date shall each be correspondingly extended.
- (c) **Sole and Exclusive Remedy.** Payment of the entire sum of Termination Damages by the Authority to the Concessionaire shall constitute full and final satisfaction of all amounts that may be claimed by the Concessionaire for and with respect to the occurrence of an AGS Determination, Authority Default, Adverse Action or Significant Force Majeure Event, as applicable. As a condition precedent to the Authority's obligation to pay the Termination

Damages, following a determination of the Termination Damages, the Concessionaire will execute a full, unconditional, irrevocable release, in form reasonably acceptable to the Authority, of any Claims, Losses or other rights to compensation or other relief associated with the AGS Determination, Authority Default, Adverse Action or Significant Force Majeure Event, as applicable, that resulted in such Termination Damages, except for the Claim and right to the subject Termination Damages.

- (d) **Survival.** This Section 20.3 shall survive the expiration or any earlier termination of this Agreement.

20.4 Determination of Concession Value and Termination Damages

- (a) In the event that the Concessionaire elects to terminate this Agreement pursuant to Section 20.2(b)(i) following an Authority Default, the **Default Termination Damages** payable by the Authority to the Concessionaire shall be equal to the following amount, as determined in this Section 20.4:
- (i) The sum of (A) the greater of (x) the Concession Value as of the Reversion Date and (y) the sum of (I) the net present value of the monthly Scheduled Investor Distributions over the remaining Term, calculated as if no termination had occurred, utilizing an annual discount rate of 12.5% applied against monthly cash flows, and (II) any portion of the Scheduled Investor Distributions not paid in prior months due to insufficient cash flows in accordance with Section 9.3(f), plus such additional amount as necessary to achieve the Target Equity Return, in each case calculated on the date of termination, plus (B) Demobilization Costs, plus (C) the amount of outstanding principal and interest on all Third Party Loans, plus (D) Breakage Costs; less
 - (ii) any insurance or condemnation proceeds received by the Concessionaire with respect to all or any portion of the Plant as a result of the occurrence of such Authority Default or other event causing the termination or which have been received in respect of damage or destruction to the Plant which has not been remedied prior to the Reversion Date; less
 - (iii) to the extent not taken into account above, any amounts due and owing to the Authority by the Concessionaire under this Agreement (other than Concession Fees not yet due and payable or Deferred Concession Fees); less
 - (iv) any credit balances in the Major Maintenance Reserve Account, Operations and Maintenance Reserve Account and Concession Fee Reserve Account.
- (b) In the event that the Concessionaire elects to terminate this Agreement pursuant to Section 20.5 as the result of a Significant Force Majeure Event, the **FM Termination Damages** payable by the Authority to the Concessionaire shall be equal to the following amount, as determined in this Section 20.4:
- (i) The sum of (A) the aggregate amount of the Investor Equity Contribution contributed by the Investor to the Concessionaire, plus the accrued Target Equity Return on such amount, less amounts previously distributed to the Equity Participants pursuant to Section 9.3, in each case as of the Reversion Date, plus (B) Demobilization Costs, plus (C) the amount of outstanding principal and interest on all Third Party Loans, plus (D) Breakage Costs; less

- (ii) any insurance or condemnation proceeds received by the Concessionaire with respect to all or any portion of the Plant as a result of the occurrence of such Significant Force Majeure Event causing the termination or which have been received in respect of damage or destruction to the Plant which has not been remedied prior to the Reversion Date; less
 - (iii) to the extent not taken into account above, any amounts due and owing to the Authority by the Concessionaire under this Agreement (other than Concession Fees not yet due and payable or Deferred Concession Fees); less
 - (iv) any credit balances in the Major Maintenance Reserve Account, Operations and Maintenance Reserve Account and Concession Fee Reserve Account.
- (c) In the event that the Concessionaire elects to terminate this Agreement pursuant to Section 18.1(b) in connection with an AGS Determination, the **AGS Termination Damages** payable by the Authority to the Concessionaire shall be equal to the following amount, as determined in this Section 20.4:
 - (i) The sum of (A) the Concession Value as of the Reversion Date, plus (B) Demobilization Costs, plus (C) the amount of outstanding principal and interest on all Third Party Loans, plus (D) Breakage Costs; less
 - (ii) any insurance or condemnation proceeds received by the Concessionaire with respect to all or any portion of the Plant which have been received in respect of damage or destruction to the Plant which has not been remedied prior to the Reversion Date; less
 - (iii) to the extent not taken into account above, any amounts due and owing to the Authority by the Concessionaire under this Agreement (other than Concession Fees not yet due and payable or Deferred Concession Fees); less
 - (iv) any credit balances in the Major Maintenance Reserve Account, Operations and Maintenance Reserve Account and Concession Fee Reserve Account.
- (d) In the event that the Concessionaire elects to terminate this Agreement pursuant to Section 17.1 as the result of an Adverse Action, the **Adverse Action Termination Damages** payable by the Authority to the Concessionaire shall be calculated in the same manner as FM Termination Damages are calculated under Section 20.4(b).
- (e) Termination Damages shall be paid by the Authority to the Concessionaire on the Reversion Date or, if the Termination Damages are determined on a date subsequent to the Reversion Date, then not later than sixty (60) days following the date of determination of the Termination Damages (together with interest at the Bank Rate from the Reversion Date to the date on which payment is made). For the avoidance of doubt, the Concessionaire shall have the right to receive, and the Authority shall have the obligation to pay, Termination Damages solely in the event that the Concessionaire elects to terminate this Agreement pursuant to Section 20.2(b)(i) following an Authority Default, pursuant to Section 17.2 in connection with an Adverse Action, pursuant to Section 18.1(b) in connection with an AGS Determination or pursuant to Section 20.5 as the result of a Significant Force Majeure Event.
- (f) The Concession Value will be determined according to the following procedures:

- (i) within thirty (30) days after a Party requests the appointment of an appraiser, the Authority and the Concessionaire will confer in good faith to mutually appoint an independent third-party appraiser that is nationally recognized and experienced in appraising businesses similar to the Project to determine the Concession Value by written appraisal;
 - (ii) if the Parties are unable to agree upon such a single appraiser within such thirty (30) day period, then within ten (10) days thereafter the Authority and the Concessionaire will each appoint an independent third-party appraiser and both such appraisers will be instructed jointly to select, within fifteen (15) days after they are appointed, a third independent third-party appraiser who is nationally recognized and experienced in appraising similar assets to make the appraisal referred to above;
 - (iii) if the appraisers appointed by the Parties are unable to appoint an independent third-party appraiser under Section 20.4(f) within sixty (60) days after a Party has requested the appointment of an appraiser under Section 20.4(a)(i), then either Party may petition the Superior Court for the State of Alaska, Third Judicial District, at Anchorage, Alaska to appoint an independent third-party appraiser having such reputation and experience;
 - (iv) each Party will pay the costs of its own appraiser. The Authority and the Concessionaire will pay in equal shares the reasonable costs and expenses of the third independent appraiser;
 - (v) each Party will diligently cooperate with the Person selected or appointed as the appraiser (the **Appraiser**), including promptly providing the Appraiser with data and information regarding the Plant, Plant Site, asset condition, historical cost and revenue data, and other information the Appraiser may request that is in the possession of or reasonably available to the Parties. Each Party will provide the Appraiser with access to such Party's books and records regarding the Plant on an open book basis; and
 - (vi) once appointed, the Appraiser will conduct an appraisal of the Concession Value and deliver to both Parties a draft appraisal report and draft valuation. The appraisal will determine Concession Value as of the effective date of termination of the Agreement, based on the condition of the Plant at such time (but without regard to any damage or loss resulting from an Authority Default). The Appraiser will appraise the Concession Value in accordance with the criteria set forth in the definition of Concession Value. In conducting the appraisal, and before issuing a draft appraisal report, the Appraiser will afford a reasonable and comparable opportunity to each Party to provide the Appraiser with information, data, analysis and reasons supporting each Party's view on the Concession Value. The Parties will have fifteen (15) days after receipt of the draft appraisal report to comment thereon. After the fifteen (15) day comment period has expired, the Appraiser will consider and evaluate all comments, prepare a final appraisal report stating the Concession Value, and deliver the final appraisal report to both Parties. The Appraiser shall deliver its final report within fifteen (15) days following the expiration of the comment period.
- (g) In calculating Termination Damages, the calculation of Default Termination Damages, Adverse Action Termination Damages and AGS Termination Damages (including the calculation of Concession Value, as applicable) shall include all Commercial Plant Expansions that have been incorporated into the Plant as of the date of such calculation. FM Termination Damages shall not include any Commercial Plant Expansions, and accordingly shall not include (A) any Third Party

Loans incurred and equity contributed for such Commercial Plant Expansions or (B) the Operating Costs and Revenues related to such Commercial Plant Expansions. For the avoidance of doubt, Preferred Customer Plant Expansions shall be included in the calculation of all Termination Damages (including, where applicable, the calculation of Concession Value).

- (h) If either Party disagrees with the Concession Value as determined by the Appraiser, either Party may invoke the Dispute resolution procedures set forth in Section 24, by delivery of notice to the other Party within thirty (30) days following receipt of the Appraiser's final report. Failure to invoke the Dispute resolution procedures within such time period will conclusively constitute acceptance by the Parties of the Concession Value.

20.5 Termination for Significant Force Majeure Event

- (a) If a Significant Force Majeure Event occurs, then:
 - (i) the Concessionaire may elect to terminate this Agreement unless the Authority elects, within ten (10) Business Days following receipt of the Concessionaire's written notice of election to terminate, to treat the Significant Force Majeure Event as a Compensation Event; and
 - (ii) the Authority may elect to terminate this Agreement unless the Concessionaire elects, within sixty (60) days following the Significant Force Majeure Event, to restore any resulting damage or destruction at the Concessionaire's sole cost and expense and furnishes a restoration plan acceptable to the Authority with respect to such damage or destruction in accordance with Section 16.4;

provided, that a Party will exercise its right to terminate this Agreement pursuant to this Section 20.5 by delivering to the other party written notice of its election to terminate this Agreement (a *Significant Force Majeure Termination Notice*).

- (b) If the Concessionaire has elected to restore the Plant in accordance with Section 20.5(a)(ii), it will promptly carry out the restoration of the Plant in accordance with the terms of this Agreement and the restoration plan approved by the Authority in accordance with Section 16.4.
- (c) If this Agreement is terminated pursuant to Section 20.5, the Authority will pay to the Concessionaire the FM Termination Damages in accordance with the procedure set forth in Section 20.4.

20.6 Source of Payment for Termination Damages

- (a) If any Termination Damages become payable by the Authority to the Concessionaire under this Agreement, then such Termination Damages shall be payable solely (i) from any funds available in the SETS Fund at the time such Termination Damages become due and payable; and (ii) if the SETS Funds are not sufficient to fully pay the Termination Damages, from a specific appropriation by the State legislature. For the avoidance of doubt, the Termination Damages shall in no event constitute a general obligation of the Authority and no funds of the Authority, other than the SETS Funds or funds provided by the State legislature pursuant to a specific appropriation, shall be subject to levy, execution or attachment to satisfy such payment obligation or any judgment obtained in connection therewith.
- (b) Notwithstanding anything to the contrary set forth in this Agreement, the Parties acknowledge and agree that the Authority has no appropriation currently available to it to pay any Termination

Damages that may become due under this Agreement and that an enactment of an appropriation in the future to fund such Termination Damages remains in the discretion of the State legislature and the State legislature's failure to make such an appropriation creates no further liability or obligation of the Authority under this Agreement or otherwise; **provided** that the Authority agrees that if the Parties agree on the amount of Termination Damages or the Concessionaire obtains a final and non-appealable judgment against the Authority that establishes the amount of such Termination Damages, the Authority's Executive Director shall request to the State of Alaska's Office of Management and Budget, and shall use Reasonable Efforts to seek to obtain, an appropriation from the then-current and the immediately next State legislature (or, if no legislature is then in session, the immediately next two legislatures) that is equal to the amount of such Termination Damages as agreed by the Parties or as set forth in such final and non-appealable judgment, as applicable.

- (c) The obligation of the Authority to pay any Termination Damages that are determined to be due and payable under this Agreement shall be secured by the AIDEA Security Agreement and AIDEA Deed of Trust. If the Termination Damages have not been paid in full within thirty (30) days following the end of the immediately next State legislature following final determination of the amount of such Termination Damages, then the Concessionaire may enforce its rights and remedies under the AIDEA Security Agreement and AIDEA Deed of Trust.

21. HANDOVER AND REINSTATEMENT WORK REQUIREMENTS ON THE END DATE

21.1 Handover and Reinstatement Work Requirements

- (a) The Concessionaire shall, on the End Date, hand over the Plant and the Project Assets and, to the extent not already owned by the Authority, transfer ownership of title to any Project Assets, in each case free of all Encumbrances and free of charge to the Authority. On the End Date the Plant shall be in a condition which, at a minimum:
 - (i) could reasonably be expected of an equivalent natural gas liquefaction facility which has been in existence and operated for a period equal to the period during which the Plant has been operated and which has been operated and maintained in accordance with Standard Industry Practice, applicable recommendations and instructions of the equipment manufacturers and the Technical Standards during that period; and
 - (ii) enables the Plant to comply with Standard Industry Practice, applicable recommendations and instructions of the equipment manufacturers and the Technical Standards (as changed or modified pursuant to the terms of this Agreement prior to the End Date) for a period of not less than five (5) years from the End Date,

(collectively, the *Handover and Reinstatement Work Requirements*).

21.2 Reinstatement Work

- (a) Not less than one (1) year prior to the End Date, the Concessionaire and the Authority shall conduct and complete a handover condition assessment to determine whether: (a) all necessary Major Maintenance as required pursuant to the terms of the Concession Agreement, as well as all other maintenance required to be performed to preserve the current condition of the Plant in accordance with the Standard Industry Practice and the Technical Standards and that is routine in nature, has been undertaken and (b) the Plant is operating in compliance with Applicable Law, all Technical Standards and the terms and conditions of the Concession Agreement.

- (b) If such handover condition assessment establishes that the foregoing requirements have not been satisfied or the Plant and Project Assets are not otherwise being returned to the Authority in a condition that is as good or better on an aggregate basis than the Handover and Reinstatement Work Requirements, then no later than thirty (30) days after completion of the handover condition assessment the Concessionaire and the Authority shall agree to the necessary scope of work (the ***Reinstatement Work***) to bring the Plant and the Project Assets into the condition that is as good or better on an aggregate basis than Handover and Reinstatement Work Requirements (the ***Reinstatement Work Scope***).
- (c) No later than thirty (30) days following issuance of the Reinstatement Work Scope, the Concessionaire shall provide a proposal to the Authority for performance of the work items listed within the Reinstatement Work Scope (the ***Reinstatement Proposal***), detailing the following for each Reinstatement Work Scope item:
 - (i) the specific work plan for the Reinstatement Work Scope (the ***Reinstatement Work Plan***);
 - (ii) the proposed schedule for implementation of the Reinstatement Work, such that all Reinstatement Work is completed not less than ninety (90) days prior to the End Date (the ***Reinstatement Schedule***); and
 - (iii) an estimate of the cost to the Concessionaire to perform the Reinstatement Work in the proposed manner (the ***Reinstatement Amount***).
- (d) The Authority will, no later than thirty (30) days after receipt of the Reinstatement Proposal, either accept the Reinstatement Proposal or make reasonable objection to any item within the Reinstatement Proposal in respect of any or all of the Reinstatement Work Plan, the Reinstatement Schedule and the Reinstatement Amount. Any such objection to the Reinstatement Proposal shall detail the reasons for such objection and include the Authority's proposed revisions to the Reinstatement Proposal in respect of the Reinstatement Work Plan, the Reinstatement Schedule and/or the Reinstatement Amount, as applicable.
- (e) The Concessionaire shall, no later than fifteen (15) days after receipt of any such objection by the Authority to the Reinstatement Proposal, either accept the Authority's proposed revisions or declare its disagreement with specific items and refer those specific items for resolution in accordance with the dispute resolution procedures set forth in Section 24.

21.3 Implementation of the Reinstatement Work

- (a) Upon agreement or resolution of a Dispute with respect to the Reinstatement Work Scope and each element of the Reinstatement Proposal, and subject to the establishment of the Handover Security and receipt of the Authority's direction to proceed with Reinstatement Work for each item identified in the Reinstatement Work Scope, the Concessionaire shall carry out, or arrange for the carrying out of, the items of the Reinstatement Work in accordance with the Reinstatement Proposal, in each case at its own cost notwithstanding that the actual cost of the Reinstatement Work may be higher than the Reinstatement Amount.
- (b) The Reinstatement Work shall not include those items which the Authority elects in writing upon (5) days' notice to the Concessionaire to defer. The Authority shall waive its rights to a Letter of Credit under Section 21.1(e) with respect to any portion of the Reinstatement Work that it directs the Concessionaire not to perform.

- (c) The Concessionaire shall ensure that provision is made in all applicable contracts that they have entered into to ensure that it will be in a position to carry out the Reinstatement Work.
- (d) The Concessionaire shall ensure that the Reinstatement Work is carried out on or prior to the End Date. If the Reinstatement Work is not completed in any material respect on or before the End Date as a result of any act or omission of the Concessionaire, the Concessionaire shall operate, at the direction of the Concessionaire, the Plant until the Reinstatement Work is complete without being entitled to any Revenues from such operations.
- (e) If the Authority determines that not all elements of the Plant and Project Assets comply with the Handover and Reinstatement Work Requirements, the Authority shall, within ten (10) days, notify the Concessionaire of its opinion and the Parties shall meet at the earliest opportunity to attempt to resolve the issues raised by the Authority. If such issues are not resolved by the Parties, any Dispute shall be resolved in accordance with the Dispute resolution procedures set forth in Section 24.
- (f) If it is agreed by the Parties or determined in accordance with the Dispute resolution procedures that the Plant or Project Assets do not comply in all material respects with the Handover and Reinstatement Work Requirements, without prejudice to any other right or remedy of the Authority, the Concessionaire may draw upon the Handover Security in an amount equal to the estimated cost of ensuring that the Plant or Project Assets comply in all material respects with the Handover and Reinstatement Work Requirements.

21.4 Handover Security.

- (a) The Concessionaire will, no later than seven (7) days after agreement of the Reinstatement Proposal or determination or resolution of a Dispute with respect thereto, provide one or more on demand Letters of Credit for the benefit of the Authority in respect of the Reinstatement Work valid for a period of ninety (90) days after the End Date in an aggregate amount that is ten percent (10%) higher than the Reinstatement Amount (the *Handover Security*).
- (b) If there is any Dispute in relation to the Reinstatement Amount, the existence of the Dispute shall not in any way reduce or limit the liability of the Concessionaire to provide the Handover Security, except to the extent of any such part of the Reinstatement Amount that is in dispute. Upon resolution of the Dispute, the value of the Handover Security shall be adjusted to reflect the outcome of the Dispute.

22. RESTRICTIONS ON TRANSFERS

22.1 Transfers by the Concessionaire

- (a) The Concessionaire shall not Transfer, or otherwise permit the Transfer of, any or all of the Concessionaire Interest to or in favor of any Person (a *Transferee*):
 - (i) prior to the Commercial Operation Date, other than a Transfer to the Investor on the Closing Date and assignments to any Collateral Assignee, as permitted under this Agreement; and
 - (ii) after the Commercial Operation Date, unless (A) the Authority has approved (based upon a determination in accordance with Section 22.1(b)) such proposed Transferee (unless it is a Collateral Assignee or its designee or nominee permitted under Section 23); and (B)

the proposed Transferee (unless it is a Collateral Assignee or its designee or nominee permitted under Section 23) enters into an agreement with the Authority in form and substance reasonably satisfactory to the Authority wherein the Transferee acquires the rights and assumes the obligations of the Concessionaire and agrees to perform and observe all of the obligations and covenants of the Concessionaire under this Agreement. Any Transfer made in violation of the foregoing provision shall be null and void *ab initio* and of no force and effect.

- (b) The Authority's approval of a proposed Transferee may be withheld only if the Authority reasonably determines that (i) the proposed Transfer is prohibited by Applicable Law, (ii) such proposed Transferee's entering into this Agreement with the Authority is prohibited by Applicable Law, (iii) such proposed Transfer would result in a violation of Applicable Law, (iv) such proposed Transfer would result in a Tax obligation or liability of the Authority (unless the Authority shall have received an obligation of payment from the Concessionaire or such proposed Transferee, as determined in the Authority's reasonable discretion with respect thereto), (v) such proposed Transferee fails to satisfy any requirements set forth in Section 14 or (vi) such proposed Transferee is not capable of performing the obligations and covenants of the Concessionaire under this Agreement, which determination shall be based upon and take into account the following factors: (A) the financial strength and integrity of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates (provided that the financial strength and integrity of the proposed Transferee shall be deemed to be sufficient if such Transferee has a net worth of \$100,000,000, Adjusted for Standard Inflation, or in the case of an investment fund, the proposed Transferee has committed funds or funds under management (or a combination thereof) of at least \$100,000,000, Adjusted for Standard Inflation); (B) the absence of criminal, civil or regulatory claims or actions against or initiated by any such Person and the quality of any such Person's past or present performance on other projects, in each case finally determined by appropriate proceedings and which demonstrate that the Transferee is not capable of performing the obligations and covenants of the Concessionaire under this Agreement; and (C) the identity of the construction contractor (if applicable) and operator engaged by the proposed Transferee.
- (c) No Transfer of all or any of the Concessionaire Interest (except a Transfer to a Collateral Assignee or its nominee upon the Collateral Assignee's exercise of remedies under its Collateral Assignment as provided in Section 23 and any subsequent Transfer to the Transferee of the Collateral Assignee or its nominee that has been approved under Section 22.1(b)) shall be made or have any force or effect if, at the time of such Transfer, there has occurred and is continuing a Concessionaire Default that has not been remedied or an event that with the lapse of time, the giving of notice or otherwise would constitute a Concessionaire Default.
- (d) A Change in Control of the Concessionaire (other than a Change in Control occasioned by the exercise by any Collateral Assignee of its remedies under any pledge of shares, limited liability company interests or partnership interests) shall be deemed to be a Transfer of the Concessionaire Interest for purposes of the foregoing provisions; **provided** that Section 22.1(a)(ii) shall not apply to a deemed Transfer under this Section 22.1(d) and **provided further** that clauses (v) and (vi) of Section 22.1(b) shall apply to the entity exercising control after the Change in Control.
- (e) Nothing contained in the foregoing shall be deemed to prohibit or limit the Concessionaire from changing its organizational form or status (including a change from a limited liability company to a corporation or limited partnership); **provided** that such change in organizational form or status does not result in a Change in Control of the Concessionaire.

- (f) Neither (i) a change of ownership that is attributable to a lease, sublease, concession, management agreement, operating agreement or other similar arrangement that is subject and subordinate in all respects to the rights of the Authority under this Agreement, nor (ii) the creation of a trust or any other transaction or arrangement that is solely a transfer of all or part of the Concessionaire's economic interest under this Agreement to another entity, nor (iii) any event excluded from the definition of Change in Control shall be deemed to be a Transfer of the Concessionaire Interest for purposes of Section 22.1(a).

22.2 Assignment by the Authority

- (a) Subject to Section 22.2(b), the Authority shall not Transfer or otherwise permit the Transfer of any or all of the Authority's interest in the Plant or this Agreement without the consent of the Concessionaire, which consent may be withheld in the Concessionaire's discretion if:
 - (i) (A) (1) the proposed Transferee does not agree to assume all of the rights and obligations of the Authority hereunder as of and following the Transfer date or (2) the proposed Transferee is not Financially Capable, and (B) if the condition in either clause (A)(1) or (A)(2) is not satisfied, the Authority does not agree to be jointly and severally obligated with the Transferee for the performance and observance of the obligations and covenants of the proposed Transferee under this Agreement and any agreement entered into by the proposed Transferee under this Agreement (including agreeing directly with the Collateral Assignee to be bound by the agreement entered into in accordance with the Consent and Agreement); or
 - (ii) the Transferee is a direct competitor of the Concessionaire or any of its Affiliates.
- (b) The Authority may, subject to giving the Concessionaire not less than ninety (90) days prior notice or as required by Applicable Law, Transfer its interests, in whole or in part, in the Plant and this Agreement to any other public agency or public entity of the State, including any wholly-owned subsidiary of the Authority, as permitted by Applicable Law; **provided**, that (i) the Authority shall be jointly and severally obligated with the Transferee for the performance and observation of the obligations and covenants of the Authority under this Agreement and any agreement entered into by the Authority under this Agreement (including agreements directly with the Collateral Assignee to be bound by the agreement entered into in accordance with the Consent and Agreement) and (ii) the Transferee has assumed all of the Authority's obligations, duties and liabilities pursuant to this Agreement and has provided the Concessionaire with reasonable assurance of its legal authority to perform same.

23. LENDERS' RIGHTS AND REMEDIES

23.1 Collateral Assignment

The Concessionaire shall have the right, at its sole cost and expense, to grant one or more Collateral Assignments to a Collateral Assignee in connection with a Third Party Loan that satisfies the requirements of Section 12.1, upon and subject to the following terms and conditions:

- (a) the Collateral Assignment shall not cover all or a portion of the Plant Site or Plant or any other real, personal or other property of the Authority or any Person other than the Concessionaire, or secure any debt (A) that is issued or guaranteed by any Person other than the Concessionaire (or a financial institution providing a financial guarantee or similar credit enhancement in respect of any debt of the Concessionaire), any special purpose company that directly or indirectly owns the

Concessionaire and has no assets except as are directly related to the Project, or any special purpose subsidiary wholly owned by such company or (B) the proceeds of which are used in whole or in part for any purpose other than the development, construction, operation or maintenance of the Plant and activities incidental thereto; **provided** that it may cover shares or equity interests in the capital of the Concessionaire or any cash reserves or deposits held in the name of the Concessionaire;

- (b) each Collateral Assignment may only secure a Third Party Loan that satisfies the requirements set forth in Section 12.1 and the proceeds of which are used exclusively for the purpose of (A) developing, designing, permitting, constructing, financing, maintaining, repairing, rehabilitating, renewing or operating the Project or any Expansions or establishing or maintaining reserves in connection therewith and activities incidental thereto, (B) paying reasonable fees, development costs and expenses incurred by the Concessionaire in connection with the execution of this Agreement and the Third Party Financing Documents and not otherwise paid, and (C) any Refinancing of pre-existing Third Party Loans that conforms to the provisions of this Section 23, including use of proceeds to pay the reasonable costs of closing the Refinancing (including Collateral Assignee's fees, but excluding any amounts paid to Affiliates of the Concessionaire);
- (c) no Collateral Assignment or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against any or all of the Concessionaire Interest shall extend to all or any portion of the Plant, the State's fee simple title interest and estate in the Plant Site, or the Authority's fee simple interest, reversionary interest, leasehold interest or other property interest and estate in and to the Plant, the Plant Site or any interest of the Authority hereunder or any part thereof (other than a Permitted Concessionaire Encumbrance);
- (d) any number of Collateral Assignments may be outstanding at any one time, and any Collateral Assignment permitted hereunder may secure two or more separate loans from two or more separate Collateral Assignees; **provided** that each such loan and the Collateral Assignment securing the same complies with the provisions of this Section 23;
- (e) no Collateral Assignment will grant to the Collateral Assignee any right to apply Restoration Funds, other than in accordance with Section 16.4;
- (f) the Authority will have no obligation to join in, execute or guarantee any Collateral Assignment but the Collateral Assignee, the Authority and the Concessionaire shall enter into a consent and agreement substantially in the form of Schedule Q with such amendments and modifications as may be reasonably requested by the Collateral Assignee, whereby all parties consent to the Collateral Assignment (the ***Consent and Agreement***); and
- (g) no Collateral Assignment, including relating to any Refinancing, will be valid or effective, and no Collateral Assignee will be entitled to the rights, benefits and protections of the Collateral Assignment unless the Collateral Assignment complies with this Section 23. If the Authority has actual knowledge that any Collateral Assignment or amendment thereto has been entered into and does not comply with this Section 23, then the Authority will deliver a notice to the Collateral Assignee, with a copy to the Concessionaire. Unless and until such non-compliance is remedied, the Collateral Assignment will be neither valid nor effective, and the Collateral Assignees thereunder will be entitled to none of the rights, benefits and protections of the Collateral Assignment.

24. DISPUTE RESOLUTION AND LITIGATION

24.1 Dispute Resolution Process

All Claims, controversies or disputes arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 24) (each, a **Dispute**) arising under this Agreement between the Parties shall be resolved in accordance with the Dispute resolution procedures set forth in this Section 24.

24.2 Negotiations

The Parties shall inform each other promptly following the occurrence or discovery of any item or event that would reasonably be expected to result in a Dispute. The initial mechanism to resolve a Dispute will be negotiations between the Concessionaire Representative and the Authority Representative, and failing resolution by such representatives, the Dispute shall be referred to senior officers of each Party in accordance with Section 24.3.

24.3 Referral to Senior Officers

- (a) If the Parties cannot resolve a Dispute satisfactorily within thirty (30) days after receipt of the initial notice in accordance with Section 24.2, either Party (the **Disputing Party**) may deliver to the other Party (the **Responding Party**) notice of the Dispute together with a detailed description of the underlying circumstances of such Dispute (a **Dispute Notice**). The Dispute Notice shall include a schedule of the availability of the Disputing Party's senior officers duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice (such period, the **Initial Resolution Period**).
- (b) The Responding Party shall, within three (3) Business Days following receipt of the Dispute Notice, provide to the Disputing Party a parallel schedule of availability during the Initial Resolution Period of such Responding Party's senior officers duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Disputing Party and the Responding Party shall meet and confer as often as they deem reasonably necessary during the remainder of the Initial Resolution Period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.
- (c) Except in the case of a Technical Dispute (as defined below) which shall be resolved in accordance with Sections 24.2, 24.3(a) and (b) and 24.4, in the event a Dispute is not resolved pursuant to the procedures set forth in Sections 24.2 and 24.3(a) and (b) by the expiration of the Initial Resolution Period, then either Party may, by notice to the other Party, commence an action or proceeding in the courts set forth in Section 24.6 to resolve such Dispute.

24.4 Expert Determination

- (a) In the event that a Dispute is not resolved pursuant to Sections 24.2 and 24.3(a) and (b), and such Dispute is in relation to agreement on a Plan of Development or Project Schedule in accordance with Section 2.3, the Base Case Financial Model in accordance with Section 2.4, a Concessionaire Plant Expansion in accordance with Section 6.1, an AIDEA Plant Expansion in accordance with Section 6.2, a Modification in accordance with Section 6.3 or 6.4, the Technical Standards or is a Dispute which the Parties agree in writing is of a technical nature (for the purposes of this Section 24.4, a **Technical Dispute**), then either Party may notify the other Party,

within ten (10) days following the expiration of the Initial Resolution Period, that it wishes to submit such Technical Dispute to an independent expert for determination (the *Expert*).

- (b) Within seven (7) days following receipt of a Party's notice referring a Technical Dispute to an Expert, the Parties' Representatives shall confer in an effort to agree upon an Expert to hear the Technical Dispute. If the Parties are unable to agree upon the appointment of an Expert, then at the end of such seven (7) day period each Party shall, within five (5) days, notify the other Party in writing of its designation of a proposed Expert. The two (2) proposed Experts shall, within three (3) days, select one of them to hear the Technical Dispute; **provided** that if one of the Parties still objects to the Technical Dispute being heard by such proposed Expert, then, within three (3) days of such objection, such two (2) proposed Experts shall select a third Expert and such third Expert shall hear the Dispute. The Parties shall agree on the terms of the Expert's appointment.
- (c) The Expert must satisfy the following requirements:
 - (i) No person will be appointed to act as the Expert under this Section 24.4 unless qualified by education, experience and training to determine the Technical Dispute.
 - (ii) Any person appointed or selected as the Expert in accordance with the above provisions will be entitled to act as such Expert; **provided** that before accepting such appointment the proposed Expert will have fully disclosed in writing to the Parties any fact or circumstance which would call into question the Expert's neutrality, independence and impartiality or would conflict with the function under the appointment or may prejudice a determination.
 - (iii) No person will, without the prior written agreement of both Parties, be appointed as Expert who is (or has been at any time within the preceding six (6) years) an employee of either Party or either Party's Affiliate or who is (or has been at any time within the preceding three (3) years) a consultant to or contractor of either Party or either Party's Affiliate or who holds any financial interest in either Party.
 - (iv) No person will be appointed as an Expert who has not agreed in writing to hold in confidence any and all information furnished by the Parties in connection with the Technical Dispute under this Agreement.
- (d) The following provisions shall apply to the Expert's determination:
 - (i) The Expert may request data, information or submissions respecting relevant information the Expert finds necessary for his determination, and the Parties will comply promptly with such requests. All information supplied to the Expert in writing by a Party will be copied simultaneously to the other Party.
 - (ii) The Expert will allow each Party reasonable opportunity to make oral or written submissions and to respond to the other Party's submissions.
 - (iii) The Expert will make a determination in writing and in such determination give reasons for the determination.
 - (iv) The Expert may obtain such independent professional or technical advice as may reasonably be required.

- (v) The Expert shall issue a written determination to the Parties within forty-five (45) days after the Expert's appointment, as such deadline may be extended upon the mutual agreement of the Parties. The determination shall state the Expert's decision and an explanation of the reasons for such decision.
- (vi) The Expert will be deemed not to be an arbitrator but will render a determination as an Expert, and laws relating to arbitration, including the Federal Arbitration Act, will not apply to such Expert or the determinations or the procedure by which such determinations are reached.
- (vii) The determination of the Expert will not be binding on the Parties. Within seven (7) days of receiving the Expert's determination, each Party shall notify the other Party whether such Party accepts the determination of the Expert. If either Party does not accept the Expert's determination, and the Parties are not otherwise able to resolve the Technical Dispute within fourteen (14) days of receiving the Expert's determination, then (A) if the Closing Date has not yet occurred, either Party may terminate this Agreement in accordance with Section 3.3(d)(vi) and (B) either Party may file such Technical Dispute in the Superior Court for the State of Alaska, Third Judicial District, at Anchorage, Alaska in accordance with Section 24.6.
- (viii) Each Party will bear the costs and expenses of all counsel, witnesses and employees retained by such Party in connection with the resolution of a Technical Dispute referred for Expert determination under this Section 24.4. The costs and expenses of the Expert will be shared equally by the Parties and the Expert shall not have the authority to award costs or attorneys' fees to either Party.
- (ix) If both Parties accept the Expert's determination in accordance with Section 24.4(d)(iv), then the Parties shall implement any action required by the Expert determination within the later of (A) fourteen (14) days following the Expert determination being notified to the Parties or (B) the time period as specified within the determination.

24.5 Continued Performance

Subject to the rights of the Non-Defaulting Party to exercise any remedies available to such Non-Defaulting Party under Section 19, other than its right to terminate this Agreement, during the continuation of any Dispute arising under this Agreement, the Parties shall continue to perform their obligations under this Agreement.

24.6 Venue; Jurisdiction; Attorneys' Fees

Venue for any suit, legal action or other legal proceeding arising out of or relating to this Agreement shall be brought exclusively in the Superior Court for the State of Alaska, Third Judicial District, at Anchorage, Alaska, and not in any other court. Each Party irrevocably consents to the jurisdiction of such court in any such suit, action or proceeding and waives any objection or defense which such Party may have to the laying of venue of any such suit, action or proceeding in such court, including the defense of an inconvenient forum to the maintenance in such court of such suit, action or proceeding. The Parties agree that a final and non-appealable judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or by any other manner provided by law. The prevailing party in any court proceeding shall be entitled to recover its full, reasonable attorneys' fees in addition to any other relief the court awards.

24.7 Tolling

If a Party receiving a notice of default under this Agreement contests, disputes or challenges the propriety of such notice by making application to the Dispute resolution procedures set forth in this Section 24, any cure period that applies to such default shall be tolled for the time period between such application and the issuance of a final decision; **provided** that such Party shall continue to comply with the obligations to remedy or cure such default.

25. HAZARDOUS MATERIALS

25.1 General Obligations

- (a) The Concessionaire shall be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport and/or disposal of any Hazardous Materials at the Plant Site, including any Hazardous Materials Condition or Environmental Non-Compliance discovered at, on, in or under the Plant Site on which the Work is performed, after the date that Concessionaire or its Contractors commence Work on the Plant Site. After such date, if the Concessionaire encounters any Hazardous Materials Condition or Environmental Non-Compliance that must be addressed, managed, treated, handled, stored, monitored, removed, transported or disposed of (collectively, **Remedial Actions**), then the Concessionaire shall promptly notify the Authority. In the case of a Hazardous Materials Condition or Environmental Non-Compliance that is solely attributable to Pre-Existing Environmental Conditions or Pre-existing Hazardous Materials, the Concessionaire shall thereafter proceed with such Remedial Actions in accordance with Applicable Law and Standard Industry Practice. In the case of all other Hazardous Materials Conditions or Environmental Non-Compliances, the Concessionaire shall develop a Remedial Action Plan setting out the scope of the Remedial Actions that the Concessionaire proposes to take, such actions to include: (i) conducting such further investigations as may be necessary or appropriate to determine the nature and extent of the Hazardous Materials and submitting copies of such data and reports to the Authority for its review and approval; (ii) taking reasonable steps, including in the case of excavation, construction, reconstruction or rehabilitation, modifications and/or construction techniques, to avoid or minimize excavation or dewatering in areas with Hazardous Materials; (iii) preparing and obtaining Permits for remedial action plans, including Authority approval; (iv) carrying out the Remedial Action Plan, including, as necessary, disposal of the Hazardous Materials; and (v) timely informing the Authority of all such actions.
- (b) Before any Remedial Actions are taken that would inhibit the Authority's ability to ascertain the nature and extent of the Hazardous Materials Condition, the Concessionaire will afford the Authority the opportunity to inspect any areas and locations that require Remedial Actions; **provided**, that in the case of a sudden Discharge of Hazardous Materials, the Concessionaire may take all reasonable actions necessary to stabilize and contain the Discharge of Hazardous Materials without prior notice or inspection, but will promptly notify the Authority of the sudden Discharge of Hazardous Materials and its location.
- (c) The Concessionaire will obtain all Permits relating to Remedial Actions. The Concessionaire will be solely responsible for compliance with such Permits and applicable Environmental Laws concerning or relating to Hazardous Materials. In carrying out Remedial Actions that are compensable by the Authority pursuant to this Agreement, the Concessionaire will not take any steps or actions which impair the Authority's potential Claims for indemnity and contribution, statutory or otherwise.

- (d) Unless directed otherwise by the Authority, the Concessionaire will seek to recover costs from any available reimbursement program or from any third party responsible for generating or otherwise creating or contributing to conditions that lead to the need for Remedial Action. The Parties will cooperate with and notify each other with respect to activities undertaken pursuant to this Section 25.1(d).
- (e) Except as provided in Section 25.2, the Concessionaire will bear all costs and expenses of preparing and complying with any Remedial Action Plan, of complying with Applicable Law and obtaining and complying with Permits pertaining to Hazardous Materials, and otherwise of carrying out Remedial Actions.

25.2 Pre-Existing Hazardous Materials

- (a) The Authority will pay, to the extent permitted by Applicable Law, the Concessionaire for the Concessionaire's Allocable Costs for Remedial Actions reasonably necessary to address any Pre-existing Hazardous Materials and Third-Party Hazardous Materials, the presence of either of which constitutes a Hazardous Materials Condition. To the extent the Concessionaire recovers such costs from any available reimbursement program or third parties with respect to Pre-existing Hazardous Materials or Third-Party Hazardous Materials, the Concessionaire will pay such costs to the Authority, less the Allocable Costs incurred by the Concessionaire in seeking recovery in accordance with Section 25.1(e). The Concessionaire will furnish to the Authority documentation supporting the amount recovered from any reimbursement program or third parties and the Allocable Costs incurred by the Concessionaire in pursuing such recovery.
- (b) The Authority will assume, to the extent permitted by Applicable Law, responsibility for third party claims against the Concessionaire or any Concessionaire Party for personal injury, damages or harm to property or business due to any Pre-existing Hazardous Materials and Third-Party Hazardous Materials, the presence of either of which constitutes a Hazardous Materials Condition, and all related penalties, fines and administrative or civil sanctions arising out of or related to such Pre-existing Hazardous Materials and Third-Party Hazardous Materials, except to the extent such claims are due to the negligence, gross negligence, or willful misconduct of a Concessionaire Party.
- (c) At all times during the Term, the Concessionaire will provide cost estimates with respect to such Remedial Actions which may be paid by the Authority, for the Authority's review and approval prior to proceeding with any such Remedial Actions, **provided**, that in the case of a sudden Discharge of Hazardous Materials, the Concessionaire may take all reasonable actions necessary to stabilize and contain the release without prior submission of such cost estimates. If the Authority has not responded to a request for such approval pursuant to this Section 25.2(c) within twenty-one (21) days after the Authority's acknowledgement of receipt (or in the case of an emergency a reasonably appropriate shorter period expressly requested by the Concessionaire), the request will be deemed to be approved, except to the extent matters deviate from applicable Technical Standards or Applicable Law.

25.3 Generator Status

- (a) The Authority will be deemed the generator of Pre-existing Hazardous Materials and Third-Party Hazardous Materials, to the extent the presence of either of which constitutes a Hazardous Materials Condition, at the Plant Site. The Authority agrees to be identified as the generator of such Pre-Existing Hazardous Materials in waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Authority.

- (b) The Concessionaire will be deemed the generator of any other Hazardous Materials introduced to the Plant Site. The Concessionaire agrees to be identified, or cause the applicable Concessionaire Party to be identified, as the generator of such Hazardous Materials in waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Authority.

26. CONTRACTING PRACTICES

26.1 Obligation to Refrain from Discrimination

The Concessionaire covenants and agrees that it will not discriminate and it will require all Contractors not to discriminate against any person, or group of persons, on account of age, sex, marital status, race, creed, color, national origin, religion or the presence of any sensory, mental or physical handicap in the permitting, design, acquisition, construction, maintenance, operation or management of the Plant, nor will the Concessionaire establish or permit any such practice or practices of discrimination or segregation with reference to the selection, use, hiring, firing, promotion or termination of employees, Contractors, and vendors or with reference to the use, occupancy or enjoyment of or access to or toll rates charged for use of the Plant; **provided**, that the prohibition against discrimination on the basis of sensory, mental or physical handicap will not apply if the particular disability prevents the proper performance of the particular person involved.

26.2 Contracting

- (a) **General.** The Concessionaire may perform the Work through use of its own personnel, materials and equipment, or by contracting to Persons with the expertise, qualifications, experience, competence, skills and know-how to perform the responsibilities being contracted in accordance with all Applicable Law, all Permits, and the terms, conditions and standards set forth in this Agreement.
- (b) **Construction Contractor.** Notwithstanding its use of the Construction Contractor, the Concessionaire remains responsible for the Work during the Term in accordance with this Agreement. The Concessionaire will immediately notify the Authority upon the termination, replacement or removal of the Construction Contractor.
- (c) **Operator.** The Operator and its O&M Agreement will comply with the terms and conditions of this Section 26.2. In addition, the material terms of the proposed O&M Agreement must be consistent with the corresponding duties and obligations of the Concessionaire pursuant to this Agreement and the other Project Agreements.
- (d) **Replacement of Construction Contractor or Operator.** Before entering into any Contract replacing the initial Construction Contractor or Operator, as applicable, the Concessionaire shall submit a true and complete copy of the proposed Contract for the Authority's review and approval, subject to the following:
 - (i) The Authority may disapprove such proposed Contract if such Contract or the Work to be performed thereunder does not comply, or is inconsistent, in any material respect with the applicable requirements of this Agreement; and
 - (ii) the Authority may disapprove, in its discretion, of the replacement Contractor after taking into account the following factors:

- (A) the financial strength and integrity of the proposed Contractor, each of its direct Contractors and their respective direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates;
 - (B) the capitalization of the proposed Contractor or any parent guarantor, as applicable;
 - (C) the experience of the proposed Contractor and each of its direct Contractors in constructing or operating LNG liquefaction facilities and performing other projects;
 - (D) the presence of any actions, suits or proceedings, at law or in equity, or before any Governmental Authority, pending or, to the best of such Contractor's knowledge, threatened against such Contractor, that would or could reasonably be expected to have a material adverse effect on its ability to perform its obligations under the Contract;
 - (E) the background of the proposed Contractor, each of its direct Contractors, and their respective direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory Claims or actions against any such Person and the quality of any such Person's past or present performance on other projects); and
 - (F) the Contractor's compliance with, or ability to comply with, any of the other provisions of this Section 26.2.
- (e) Each Major Contract for the performance of the Work that the Concessionaire executes at a minimum:
- (i) will set forth a standard of professional responsibility or a standard for commercial practice equal to prudent industry standards for work of similar scope and scale and will set forth effective procedures for Claims and change orders;
 - (ii) will require the Contractor to carry out its scope of work in accordance with Applicable Law, the Technical Standards, all Permits, Standard Industry Practice and the terms, conditions and standards set forth in this Agreement;
 - (iii) will set forth warranties, guaranties and liability provisions of the contracting party in accordance with Standard Industry Practice for work of similar, scope and scale;
 - (iv) will be fully assignable to the Authority upon termination of this Agreement, such assignability to include the benefit of all Contractor warranties, indemnities, guarantees and professional responsibility;
 - (v) will include express requirements that, if the Authority succeeds to the Concessionaire's rights under the subject Contract (by assignment or otherwise), then the relevant Contractor agrees that it will (A) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment supplier, designer, service provider), (B) permit audit thereof by the Concessionaire, and provide progress reports to the Concessionaire appropriate for the

type of Contract it is performing sufficient to enable the Concessionaire to provide the reports it is required to furnish to the Authority pursuant to this Agreement and (C) allow the Authority to assume the benefit of the Concessionaire's Contract rights and the work performed thereunder, with liability only for those remaining obligations accruing after the date of assumption, but excluding any monetary claims or obligations that the Concessionaire has against such Contractor that existed prior to the Authority's assumption of such Contract;

- (vi) will not be assignable by the Contractor without the Concessionaire's prior written consent; **provided**, that the foregoing will not limit permitted subcontracting of the Work;
 - (vii) will expressly require the Contractor to participate in meetings between the Concessionaire and the Authority, upon the Authority's reasonable request, concerning matters pertaining to such Contractor or its work; **provided**, that all direction to such Contractor will be provided by the Concessionaire; and **provided further**, that nothing in this Section 26.2(e)(vii) will limit the authority of the Authority to give such direction or take such action which in the opinion of the Authority is necessary to remove an immediate and present threat to the safety of life or property;
 - (viii) will expressly provide that all Encumbrances and claims of any Contractors at any time will not attach to any interest of the Authority in the Plant or the Plant Site; and
 - (ix) will be consistent in all other respects with the terms and conditions of this Agreement to the extent such terms and conditions are applicable to the scope of work of such Contractor.
- (f) The Concessionaire will not enter into any Major Contract at any level with any Person if that Person or any of its Affiliates, or any of their respective officers, directors and employees, (i) is then suspended or debarred, subject to a proceeding to suspend or debar it, or subject to an agreement for voluntary exclusion, from bidding, proposing or contracting with any Governmental Authority, (ii) has been convicted, pled guilty or nolo contendere to a violation of Applicable Law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that shows a similar lack of moral or ethical integrity or (iii) is then barred or restricted from owning, operating or providing services for the Plant under Applicable Law.
- (g) The Concessionaire will include provisions in each Major Contract for the performance of the Work that the Concessionaire executes requiring the Contractor: (i) to maintain all licenses required by Applicable Law; and (ii) to include in Major Contracts for the performance of the Work that such Contractor executes the provisions set forth in this Section 26.2(g).
- (h) The Concessionaire will include provisions in each Major Contract for the performance of the Work that the Concessionaire executes (i) naming the Authority as a third-party beneficiary of all Contractor representations and warranties contained in such Major Contract and (ii) requiring the Contractor to include in Major Contracts for the performance of the Work that such Contractor executes to name the Authority as a third-party beneficiary of all Contractor representations and warranties contained in such Major Contract; **provided**, that the Authority will have the right to exercise its rights under such representations and warranties only so long as the Concessionaire or the Contractor is not pursuing remedies thereunder.

- (i) The appointment of Contractors will not relieve the Concessionaire of its responsibility hereunder or for the quality of work, materials and services provided by it. The Concessionaire will at all times be held fully responsible to the Authority for the acts and omissions of its Contractors and persons employed by them and no Contract entered into by the Concessionaire will impose any obligation or liability upon the Authority to any such Contractor or any of its employees. Further, absent the Authority's express written consent, no Contract or delegation of Work thereunder will affect the obligation of the Concessionaire to directly communicate with the Authority and to oversee the Work of the Contractor. Nothing in this Agreement will create any contractual relationship between the Authority and a Contractor.
- (j) From and after the Effective Date, the Concessionaire will be solely responsible for paying each Contractor and any other Person to whom any amount is due from the Concessionaire for services, equipment, materials and supplies in connection with the Work.
- (k) Upon entering into a Contract for the Work under the Construction Contract or work under the O&M Agreement in excess of \$100,000, the Concessionaire will provide the Authority with a copy of such Contract and, if such Contract is with an Affiliate of the Concessionaire, a list of all Contracts in effect to which such Affiliate is a party and under which all or a substantial portion of the Affiliate's responsibilities or obligations under its Contract are delegated to its Contractor. The Concessionaire will allow the Authority ready access to all Contracts and records regarding Contracts, including amendments and supplements to Contracts and guarantees thereof.

As soon as the Concessionaire identifies a potential Contractor for a potential Contract described in the first sentence of Section 26.2(k), but in no event later than five (5) days after Contract execution, the Concessionaire will notify the Authority in writing of the name, address, phone number and authorized representative of such Contractor.

27. MISCELLANEOUS

27.1 Notice

All notices, other communications and approvals required or permitted by this Agreement shall be in writing and shall be either (i) delivered personally, (ii) sent by electronic mail, (iii) sent by facsimile communication, (iv) sent by nationally-recognized overnight courier or delivery service or (v) sent by registered mail, return receipt requested; **provided** that any notice, demand, request or other communication made or delivered in connection with an alleged breach or default of this Agreement shall only be delivered personally or by a nationally-recognized overnight courier or delivery service, in each case addressed as follows:

- (a) in the case of the Authority:

Alaska Industrial Development and Export Authority

813 West Northern Lights Blvd.

Anchorage, Alaska 99503

Attn: Executive Director

Fax: 907-269-3044

Email: [●]

with a copy to:

Office of the Attorney General

1031 W. 4th Avenue, Suite 200

Anchorage, Alaska 99501
Fax No : 907-258-4978
Attn: Assistant A.G. Representing AIDEA
Email: jerry.juday@alaska.gov

(b) in the case of the Concessionaire:

Northern Lights Energy, LLC

[Concessionaire Address Line 1]

[Concessionaire Address Line 2]

Attn: [General Manager?]

Fax: [Fax #]

Email: [●]

with a copy to:

[●]

or such other persons or addresses as either Party may from time to time designate by notice to the other. A notice, other communication or approval shall be deemed to have been sent and received (i) if personally delivered, on the date of delivery; (ii) in the case of a notice sent by electronic mail, on the day of actual receipt if a Business Day and received prior to 4:30 p.m. at the place of receipt, or if not so received, on the next following Business Day in the place of receipt; (iii) in the case of a notice sent by facsimile communication, on the day of actual receipt if a Business Day and received prior to 4:30 p.m. at the place of receipt, or if not so received, on the next following Business Day in the place of receipt, **provided** that the sender's facsimile machine has received the correct answerback of the addressee and confirmation of uninterrupted transmission by a transmission report or the recipient confirming by telephone to the sender that he has received the facsimile message; (iv) in the case of a notice sent by mail, when actually received by the addressee; and (v) if sent for next day delivery to a domestic address by a nationally-recognized overnight courier or delivery service, the Business Day immediately following the day it is sent. The addressee, when requested by the sender, shall promptly provide the sender with acknowledgment of receipt, but any delay or failure to give or receive any such acknowledgment will not affect the validity or effectiveness of the notice, communication, consent or approval in respect of which such acknowledgment of receipt is sought.

27.2 Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. The Parties acknowledge and agree that (a) each has substantial business experience and is fully acquainted with the provisions of this Agreement, (b) the provisions and language of this Agreement have been fully negotiated and (c) no provision of this Agreement shall be construed in favor of any Party or against any Party by reason of such provision of this Agreement having been drafted on behalf of one Party rather than the other.

27.3 Amendment

This Agreement may be amended, changed or supplemented only by a written agreement signed by the Parties. The Parties agree that this Agreement shall not be amended in any manner by any course of dealing between the Parties.

27.4 Waiver of Rights

Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

27.5 Exclusivity

The Authority agrees that, until the termination of this Agreement, it will deal and work exclusively with the Concessionaire and the Investor as the developers and owners to develop, finance, construct, operate and maintain the Project. The Authority shall not engage in substantive discussions (whether solicited or unsolicited) with, or make any commitment to, any person other than the Concessionaire and the Investor with respect to the development of the Project; **provided** that the Authority shall have the right to negotiate with third parties in connection with an AIDEA Plant Expansion conducted in accordance with Section 6.2.

27.6 Severability

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law. The invalidity of any one or more phrases, sentences, clauses or Sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof. If any provision of this Agreement or the application thereof to any Person or circumstances is held or deemed to be or determined to be invalid, inoperative or unenforceable in any particular case in any particular jurisdiction or jurisdictions because it conflicts with any other provision or provisions hereof or of any Applicable Law, or public policy, or for any other reason, (a) such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever, and (b) the Parties shall negotiate in good faith to amend this Agreement to implement the provisions set forth herein. If the Parties cannot agree on an appropriate amendment, either Party may refer the matter for determination pursuant to the Dispute resolution procedures set forth in Section 24. If, by means of the Dispute resolution procedures, the Parties are unable, as a result of Applicable Law, to resolve the matter in a manner that effectively entitles the Authority to have the same rights, after the aforesaid determination of invalidity or unenforceability as before, the State and the Authority shall each have the right to enact, and cause to come into force, any law to provide for the same or substantially the same rights as were determined to be invalid or unenforceable; **provided** that the rights of the Concessionaire shall in no event be diminished by any such law.

27.7 Governing Law

This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State without regard to its conflicts of law principles.

27.8 Further Acts

The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each Party will, at any time and from time to time, execute and deliver or cause to be executed and delivered such further

instruments and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution or delivery of this Agreement.

27.9 Costs

Except as otherwise specifically provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

27.10 Interest

Unless otherwise indicated, any amount payable under this Agreement and not paid when due under this Agreement shall bear interest at the Bank Rate from the date such payment is due until payment and both before and after judgment.

27.11 Inurement and Binding Effect

This Agreement shall inure to the benefit of the Parties and their respective permitted successors and assigns and shall be binding upon the Parties and their respective successors and assigns.

27.12 No Partnership or Third Party Beneficiaries

Nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the Authority and the Concessionaire. Except as expressly provided herein to the contrary (including with respect to such rights as are expressly granted to each Collateral Assignee pursuant to this Agreement), no term or provision hereof shall be construed in any way to grant, convey or create any rights or interests to or in any Person not a Party to this Agreement.

27.13 Cumulative Remedies

The rights, remedies, powers and privileges provided to each Party in this Agreement are cumulative and, except as expressly provided otherwise in this Agreement, are not exclusive of any rights, remedies, powers and privileges provided by law.

27.14 Counterparts; Facsimile Execution

This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each Party and delivered to all Parties. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by electronic transmission. Such Party shall be deemed to have executed and delivered this Agreement on the date it sent such electronic transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

[Signature Page Follows]

DRAFT 08/25/2014

IN WITNESS WHEREOF, the Authority and the Concessionaire each has caused this Agreement to be duly executed as of the day and year first above written.

NORTHERN LIGHTS ENERGY, LLC

By: _____
Name: _____
Title: _____

ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

By: _____
Name: _____
Title: _____

DRAFT 08/25/2014

SCHEDULE A

PLANT



Schedule A:

North Slope Liquefied Natural Gas Plant Facility Definition

August 2014

Prepared by:



HDR Alaska, Inc.
2525 C Street, Suite 305
Anchorage, AK 99503

In cooperation with:



Rev. No.	Date	Issue Type/Description	Prepared	Reviewed	Approved
1	08/01/2014	Issued for Internal Review	WE	CC	
Notes:					

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Exhibits

- Exhibit A: General Vicinity Map
- Exhibit B: Specific Location Map
- Exhibit C: Schematic Facility Layout Drawings

Acronyms and Abbreviations

Acronyms, Abbreviations	
AIDEA	Alaska Industrial Development and Export Authority
BAT	best available technology
BPXA	BP Exploration (Alaska)
Bcf	billion standard cubic feet
CCTV	closed-circuit television
CFR	Code of Federal Regulations
CO ₂	carbon dioxide
DCS	distributed control system
EPC	engineering, procurement, and construction
ESD	Emergency shutdown
F&G	fire and gas
FNSB	Fairbanks North Star Borough
gpd	gallons per day
HHV	higher heating value
H ₂ S	hydrogen sulfide
HMI	human machine interface
LHV	lower heating value
LIN	liquid nitrogen
LNG	liquefied natural gas
LPG	liquefied propane
MCR	main control room
MDEA	N-methyl-diethanolamine
NFPA 59A	National Fire Protection Association's "Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)"
NGSP	Northern Gas Supply Plant
O&M	operations and maintenance
PHMSA	Pipeline and Hazardous Materials Safety Administration
ppm	parts per million
psig	gauge pressure in pounds per square inch
SCADA	supervisory control and data acquisition
SIS	Safety Instrumented System
TSA	temperature swing absorption

Definitions

Term	Definition
Contractor	Entity responsible for EPC aspects of the project
EPC	Engineer, procure, and construct entity
Project	North Slope natural gas liquefaction facility, control room, on-site storage, trucking terminal, power generation, maintenance building/warehouse and associated feed gas pipeline

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1.0 FACILITY DEFINITION

The engineering, procurement, and construction Contractor (Contractor) will be responsible for all general requirements, including communications with local authorities and vendor suppliers regarding construction aspects and logistics, compliance with applicable codes and laws, consideration of arctic conditions, and design considerations for availability and reliability of supplied gas. The Northern Gas Supply Plant (NGSP) is envisioned to be of modular design to allow for future expansion and increase in production of LNG and commercial grade propane.

The NGSP design is envisioned to include multiple liquefaction trains with a total production capacity of 200,000 gallons per day (gpd) LNG (equal to a total annual capacity of 6 billion cubic feet [Bcf] natural gas), and all required gas treatment and as-required on-site electric power generation. Production expansion beyond 6 Bcf would require a second pretreatment system and potentially additional power generation equipment. The Contractor will provide utility systems including plant and instrument air, gaseous and liquid nitrogen, fire protection systems, demineralized and potable water, and wastewater systems. Electric power may be supplied using on-site gas turbine generators, including backup power generation equipment. In addition, the Contractor will provide a feed gas receiving facility, design and construction of the field pipeline tie-in, and custody transfer metering.

Major components include:

- Feed gas pipeline extension (approximately 1,100 linear feet (LF) of 8-inch pipeline)
- New gravel pad (approximately 15 acres) and access road
- One receiving area with fiscal meter and front-end clean-up and purification equipment
- Mercury guard-bed
- Liquefiers able to collectively produce 200,000 gpd LNG (Multiple electric drive, nitrogen (N₂) refrigerant cycle liquefiers able to collectively produce 200,000 gpd LNG and 10,000 gpd propane)
- Bullet-type LNG “surge” holding tanks (280,000 gallons total capacity)
- Bullet-type propane holding tank (30,000 gallons total capacity)
- Two (2) LNG trailer loading stations (500 gallons per minute) with associated tractor LNG fueling stations
- Gas turbine drive electric power generation and distribution as required to supply all facility power demands, and turndown
- Thermal oxidizer & flare stack
- Plant process control, interface, and monitoring systems
- Safety systems for fire and gas hazard detection, closed-circuit television (CCTV) and alarms, and appropriate fire protection systems
- Climate controlled maintenance, warehouse, control room buildings, and other facilities to enclose equipment as required.

Control systems will be designed for efficiency and safety, including redundant control architecture, control automation, site improvements, and maintenance equipment planning. Emissions and waste disposal will be minimized using best available technologies (BAT).

The Contractor is requested to evaluate and propose an alternative Facility Definitions that will improve either the scheduled completion date for the NGSP or the life-cycle costs (combination of capital + expense of operations) for the plant.

1.1 Facility Location

The proposed North Slope Liquefied Natural Gas project will be located in the North Slope Borough at Township 10 North, Range 14 East, Section 3, Umiat Meridian, within the Prudhoe Bay Unit near Deadhorse, Alaska. The site is located along the north side of Spine Road between Drill Site 6 and Drill Site 14 at approximately Latitude 70.247, Longitude -148.565 (see Exhibits A and B). Both the surface and the sub-surface estate are owned and managed by the State of Alaska.

1.2 General Requirements

Codes Regulations, and Standards

Facility shall be design and constructed in compliance with all applicable Codes and Standards including but not limited to those outlined in Schedule G. The Contractor shall be responsible for identifying and providing to the Owner a list of the Industry and Alaskan codes, regulations, and standards that are applicable for design of the facility and to which the facility is to be in compliance.

Permitting Requirements

Owner-obtained permits are outlined in Schedule C. The Contractor shall be responsible for all construction-related or any other permits required to satisfy the scope of the project.

Requirements of Authorities with Local Jurisdiction

With the assistance of the Owner, the Contractor shall be responsible for communications with the State and local authorities regarding the overall construction schedule and transport of large equipment and modules requiring special traffic arrangements.

1.3 Arctic Conditions

The NGSP shall be designed for year-round 24 hours per day operations. Special attention shall be given to the design so that the facility's performance (that is, safety, reliability, availability, operability, and maintainability) is not compromised by the harsh arctic climatic conditions of the location.

Buildings and other enclosures shall be provided so that personnel and equipment are protected from adverse weather to allow normal operations, maintenance activities, and emergency response activities.

The Contractor shall plan and execute the work such that all construction related activities are conducted in a manner that is consistent with the climatic and operating conditions of the North Slope. This includes, but is not limited to, utilizing appropriate materials and equipment necessary to meet the performance expectations of the facility.

The Contractor shall coordinate with the Owner's Operation Representative to ensure that Alaska North Slope operations input will be included in the design of the NGSP.

1.4 Modular Construction

Modular construction shall be used, and all modules must be capable of being trucked, or sea-lifted, to the North Slope. Modules shall be designed to facilitate operations and unplanned maintenance during all weather conditions. Modules and connectors shall be designed and installed so that equipment and modules may be disconnected without damage, and relocated by trucking for further use as determined by the Owner.

The Contractor will be responsible for understanding module fabrication capacity in Alaska. The Contractor will be aware that competition for module fabrication space may exist in the timeframe defined by the Contractor's execution plan. The Contractor will be responsible for any necessary arrangements with module fabrication firms in Alaska.

1.5 North Slope Logistics

The Contractor will be responsible for understanding Alaska's unique logistical issues, such as seasonal road restrictions and any and all transport weight and dimension restrictions in moving truckable, or sea-lift, modules from fabrication sites to the North Slope of Alaska.

The Contractor will be aware of the existing camp space, equipment rental, and other services available in the Deadhorse area. The Contractor will be aware that Deadhorse is a service community to support North Slope Producers' on-going operations and construction activities. The Contractor will be aware of potential competition from the Producers and other for these limited services and plan accordingly to support the construction schedule and desired startup date for the NGSP project.

The Contractor will be responsible for construction of a temporary ice road and pads for pipeline and tie-in, and possible metering area at tie-in location.

The Contractor is responsible for preparing and monitoring areas designated for material lay-down; construction vehicle parking and maneuvering; traffic control; and procurement, delivery, and security of materials.

The Contractor is responsible for mobilization; other transportation as required on-site; health and safety requirements for the total project workforce; room and board for all Contractor personnel, including sub-contractor and vendor personnel required on-site for the project; de-mobilization; and all other activities required for a turnkey, fully functional, LNG production facility.

The Contractor is responsible for managing and coordinating the schedule, logistics, and construction around major weather events that may occur, such as rain, ice fog, snow, and ice storms.

1.6 Value Engineering

The NGSP Design will optimize the total lifecycle cost of the NGSP. The Contractor will provide methods and decision information to the Owner for decisions that evaluate trade-offs between capital and operations and maintenance (lifecycle) costs and that improve the schedule of NGSP production of first gas.

2.0 CONSTRUCTION PHASING

2.1 Phase I

Phase I is to include the installation of all requirements for the NGSP Facility so that it can produce 200,000 gpd of LNG as measured at the outlet of the liquefiers.

2.2 Phase II

Provisions are to be made in Phase I to allow for a possible Phase II expansion. These provisions include setting aside identified site space to allow LNG to be increased by 100 percent (to 400,000 gpd [12 Bcf]) and additional HD 5 commercial grade propane byproduct production. Phase II space is to be sufficient to include completely redundant systems. These provisions include appropriate tie-in points and safe isolations such that Phase II could be installed without disrupting production by Phase I. Phase I provisions for Phase II should not include installation of any foundations, structures, equipment, piping, or wiring for Phase II.

2.3 Early LNG

The Contractor is to suggest possible schedule improvements through optimization of critical path activities and any associated additional costs for early delivery of LNG to Fairbanks. It is recognized that this could involve early operation of one liquefier.

3.0 GRAVEL PAD

Gravel Pad construction is currently being executed under a design-build contract and is scheduled to be completed by October 1, 2014. Construction of the access road and the LNG facility operations pad will begin with placing an initial lift of gravel off of the edge of Spine Road and continue within the project area until the extent of the pad is defined. Gravel will be placed by working off existing gravel surfaces, working forward. Successive lifts of gravel will then be placed and compacted until the finish grades are achieved. This same process will take place with the pig launching pad. Construction of the pig launching pad will be completed in the future and will begin with placing an initial lift of gravel off of the existing pipeline access road and continue within the project area until the extent of the pig launching pad is defined.

3.1 Permanent Impacts

- Construction of the project will result in the following potential permanent impacts to a total of approximately 15.71 acres of wetlands (Table 1). Fill impacts by wetland type are detailed in Table 2.
 - **LNG Facility Operations Pad:** An 800 by 810 foot (14.88 acres) gravel pad will be constructed near the Spine Road to support the LNG facility.
 - **Access Roads:** Two 60 foot wide gravel access roads will be constructed to connect the LNG facility operations pad to Spine Road. The West access road will be 180 feet long, and the East access road will be 310 feet long (0.74 acres total, including turning radii).
 - **Pig Launching Pad:** A 135 by 25 foot (0.08 acres) gravel pad will be constructed near the tie in location for a feed gas pipeline.
 - **Vertical Support Members (VSMs):** Approximately 26 VSMs, each 8-inches in diameter, will be installed at approximately 50 foot intervals in order to support the 1,100 linear foot long, 8-inch diameter feed gas pipeline (0.01 acre). The VSMs will be imbedded a minimum of 20 feet below ground surface, and will elevate the bottom of the pipeline horizontal support members 7 feet above existing ground.

Table 1. Types and Amount of Discharged Material

Project Component	Excavation Volume Total (CY)	Permanent Wetland Impacts (Acres)	Fill Volume Total (CY)
Operations Pad	0	14.88	172,000
Access Road	0	0.74	6,570
Pipeline Vertical Support Members	80	0.01	80
Pigging Pad	0	0.08	720
Total	80	15.71	179,370
Total Currently Authorized	0	11.52	88,656
Difference	80	4.19	90,714

Table 2. Fill Impacts by Wetland Type

Pad (Acres)	Wetland Type
0.71	PEM1/SS1B
0.05	PEM1F
5.94	PSS1/EM1B, PEM1C
0.03	PSS1/EM1B, PEM1C
0.00	PSS1/EM1B, PEM1F
2.61	PSS1/EM1B, PEM1F
5.53	PSS1/EM1B, PEM1F

Road (Acres)	Wetland Type
0.14	PSS1/EM1B
0.12	PSS1/EM1B, PEM1F
0.01	PSS1/EM1B, PEM1C
0.01	PSS1/EM1B, PEM1F
0.44	PSS1/EM1B, PEM1F

3.2 Temporary Impacts

Construction of the LNG facility is scheduled to occur in 2015 and will use two temporary ice pads and one temporary ice road. Temporary ice pads will be used to stage equipment, store construction materials, and provide space for various construction activities. The road will be used for constructing the VSMs and the feed gas pipeline. The details of the temporary impacts are as follows:

- **Southeast Ice pad laydown area:** A 200 by 400 foot (1.84 acres) ice pad, located adjacent to the southeast corner of the LNG Facility Operations Pad, will be used primarily to support activities associated with project elements built on the LNG facility operations pad.
- **North Ice pad laydown area:** A 200 by 200 foot (0.92 acres) ice pad, located near the north terminus of the feed gas pipeline, will be used to support the construction of the pipeline pig launcher, and for tying the feed gas pipeline into the existing natural gas pipeline.
- **Ice road:** A 1,012 foot long, 60 foot wide (1.39 acres) ice road, following the centerline of the feed pipeline, will be used to support construction of the VSMs and the pipeline.

Table 3. Single-Season Ice Road/Pad Footprints

Project Component	Temporary Wetland Impacts (Acres)
200 FT x 200 FT Ice Pad	0.92
200 FT x 400 FT Ice Pad	1.84
60 FT x 1,012 FT Ice Road	1.39
Total	4.15

4.0 FIELD FUEL GAS SUPPLY

4.1 Field Fuel Gas Supply Tie-in

A proposed 1,100 linear foot 8-inch feed gas pipeline will transport field fuel gas from the PBU 24-inch field fuel gas pipeline and extend south along the existing BPXA pipeline ROW to the pig receiver that would be located on the LNG Facility Operations. The point of origin for the proposed feed gas pipeline would be at the PBU field fuel gas pipeline tie-in flange (see attached Project Description document for exact tie-in location). It is the Owners understanding that the proposed pipeline tie-in (hot-tap) project will be completed (planned, permitted, design and constructed by BPXA); however, to ensure the tie-in meets the required facility requirements design, the Owner has formally requested involvement in this process (e.g. design approval prior to the construction). It is anticipated that this involvement will be outlined in a formal agreement between the Owner and BPXA prior to project execution.

4.2 Gas Supply Conditions at Battery Limit

It is anticipated that the field fuel gas pipeline will operate at approximately 450-475 pounds per square inch (psig) at the point of that connection. The maximum allowable operating pressure of the field fuel gas pipeline connector is to be provided to the Contractor.

The field fuel gas will be supplied with the approximate composition, as shown in Table 4.

Table 4. Approximate Field Fuel Gas Composition

Component of Gas Supply to LNG Facility	Average Mol %	Trace Components	Range Mol %
Carbon Dioxide (CO ₂)	12.200		11.800 - 13.000
Nitrogen (N ₂)	0.620		0.580 - 0.640
Methane (C1)	79.955		78.430 - 80.600
Ethane (C2)	5.270		5.200 - 5.600
Propane (C3)	1.640		1.500 - 1.900
iso-Butane (i-C4)	0.109		0.080 - 0.150
normal-Butane (n-C4)	0.155		0.100 - 0.200
iso-Pentane (i-C5)	0.018		0.015 - 0.022
normal-Pentane (n-C5)	0.017		0.014 - 0.020
Hexane and Higher Hydrocarbons (C6+)	0.016		0.013 - 0.020
Hydrogen sulfide (H ₂ S)		< 100 ppm	
Oxygen (O ₂)		< 10 ppm	
Mercury (Hg)		<10 µg/Nm ³	
Water (H ₂ O)		Neg.	

4.3 Field Fuel Gas Receiving Area

The field fuel gas (raw gas) supply is to be received at a meter station,¹ and its quality and composition measured with sufficient accuracy for accounting purposes.

The receiving systems are to be sufficient for the range of raw gas flows (peak and turndown) to be purified for the mechanical drivers for the liquefiers, power generation, and other plant needs.

The Contractor is responsible for providing all pressure regulation, overpressure protection, and pigging facilities needed for in-line-inspections as required at the transfer from the field fuel gas pipeline to the receiving systems.

¹ The custody transfer meter station may be required immediately downstream of the tie-in of the pipeline connector to the existing field fuel gas header. However, if the pipeline connector is not more than approximately 0.5 miles, the supplier may allow the custody transfer meter station to be installed at the LNG facility battery limit

5.0 NATURAL GAS AND PROPANE LIQUEFACTION PROCESSES

All process equipment, controls, piping, and fittings are to be provided by the Contractor including, but not limited to, all buildings, structures, insulation, foundations, and supports required for their proper function.

5.1 Production Capacity

The production capacity of the NGSP is as follows:

- **LNG Production²**: Not less than 200,000 gpd combined flow from the LNG outlet flanges of the liquefiers.
- **Propane Production³**: Approximately 5,000 gallons HD-5 commercial grade propane per 100,000 gallons LNG.

Due to the forecasted growth in demand for natural gas in the Fairbanks area, and the approximate twelve-to-one swing in the seasonal demands between the winter maximum and summer minimum, the required production is estimated to vary as shown in Table 5.

Table 5. Approximate Variability in Required LNG Production

Year	Approximate minimum LNG production demand, gallons per day	Approximate maximum LNG production demand, gallons per day
2016	15,000	65,000
2019	80,000	200,000

Overall Availability and Reliability

Because of the requirement that the supply of piped gas to customers in the Fairbanks North Star Borough (FNSB) is to be maintained at all times, the NGSP must be designed and constructed to provide a high level of availability and reliability.

Appropriate on-site LNG storage, sparing, and redundancy should be incorporated to achieve this key requirement.

5.1.1.1 Availability

The facility should be available for continuous production during winter months. Planned outage during summer months (when LNG demand by FNSB is low) for major maintenance should not exceed 7 days. Overall, the facility should be available for production for no less than 351 days per year; that is, availability should not be less than 92.6 percent.

5.1.1.2 Planned Plant Shutdown

Planned shutdowns should be restricted to periods of low production demand.

5.1.1.3 Reliability

Unplanned LNG production downtime should be no more than 24 hours in any 30 day period; that is, reliability should not be less than 96.6 percent based on availability of 92.6 percent.

² Minimum production in winter

³ Dependent on composition of field fuel gas

Because it will be possible to obtain only limited assistance from other entities in Deadhorse, the NGSP is essentially to be largely self-sufficient.

5.2 Gas Clean-up and Purification

Provisions shall be made to remove all components from the field fuel gas supplied to the facility that are harmful or detrimental to the performance of the mechanical drivers for the liquefaction process and equipment, and power generation equipment. All fuel gas supplied to any power generation gas combustion turbines is to be free of CO₂, all components containing sulfur, and any other gaseous or particulate components that are harmful to the gas combustion turbines.

It is anticipated that the gas clean-up and purification systems will include a required front-end mercury guard bed, an amine gas treatment system using N-methyl-diethanolamine (MDEA) or other superior amine or amine mixture, a temperature swing absorption (TSA) purification system, and filters. The Contractor is responsible for selecting the absorption materials (molecular sieves, etc.) to remove residual CO₂ and non-paraffinic hydrocarbons that may be detrimental to the liquefaction process and/or cause the performance of the TSA system to deteriorate.

■ Amine Storage

Provisions shall be provided for import, storage, injection of make-up, and initial filling of amine solution. Provisions shall be provided for holding inventory of the amine system if emptying is required for anticipated full overhaul of the amine absorption, regeneration, and filtration system.

■ Make-up Water

Provisions shall be provided for import, storage, and injection of de-mineralized water to maintain correct amine solution concentration to make up for water loss associated with CO₂ emissions.

5.3 LNG Production

The Owner is to provide information on higher heating value (HHV), lower heating value (LHV), and Wobbe requirements to the Contractor. The LNG quality should be such that when vaporized in Fairbanks, it is compatible with the range of gas quality currently distributed to customers' appliances in the FNSB.

Liquefiers and associated equipment shall be sufficient to produce LNG in the quantities defined in Section 5, above. The processes shall be designed so that they may be operated efficiently over the range of production variability indicated in Table 5.

- Refrigeration technology: Nitrogen cycle liquefaction technology is preferred.
- Refrigerant compressor drives: Electric motor drives are preferred.

5.4 Propane Production

The liquefaction system shall be designed to efficiently produce the HD-5 propane byproduct in the quantities defined in Section 5. It is expected that this will be accomplished by processing a condensate stream extracted from the liquefier coldbox. In so doing, the control of the condensate should be designed to not unduly reduce the heating value of the LNG product.

- Propane quality: HD-5 commercial grade propane.

5.5 Process Heating

Waste heat recovery should be used beneficially to minimize consumption of fuel gas. Process heating may be by heat exchange with an intermediate fluid such as hot oil, or exchange with process streams where appropriate.

5.6 Process Cooling

Process cooling will be by air fin-fan coolers, and may be by heat exchange with process streams where appropriate.

5.7 Industrial (Process) Waste Streams

The facility shall be designed to manage industrial (process) waste streams through venting and/or combustion in accordance with the permits for the project as there is currently no alternative disposal methods planned.

6.0 STORAGE AND LOADING

6.1 LNG Holding Tanks

Aggregate capacity for LNG holding tanks⁴ should be provisionally 280,000 gallons..

6.2 LNG Trailer Filling and Tractor Fueling

LNG tractor-trailer loading and refueling stations are to be provided as follows:

- Range of capacity of LNG trailers: 10,500 to 13,500 gallons
- Number of trailer loading stations: Not less than two (2)
- Combined capacity for LNG loading: Greater than 350,000 gallons LNG in 18 hours
- Trailer loading rate: 500 gallons per minute
- Tractor LNG fuel dispensing systems: One at each LNG loading station

6.3 Propane Tanker Filling

One propane truck loading station should be provided.

6.4 Propane Holding Tank

Holding tank for HD-5 propane should be provisionally 30,000 gallons.

7.0 UTILITY SYSTEMS

7.1 Control Systems

Control Room

A main control room (MCR) should be designed and located so that its vulnerability to dispersion of noxious or flammable vapors and/or thermal radiation following a release of LNG, natural gas, or amines is minimized. The MCR should be adjacent to the general amenities and other rooms or buildings normally occupied by plant personnel, such as the maintenance building and the computer (Distributed Control System [DCS]) room.

A minimum of five work stations should be provided in the MCR to ensure that all functions can be efficiently covered. For example: one may be dedicated to process operations; one to power generation; one for storage and truck loading; one for safety systems ([F&G and CCTV, etc.); and one for training, analytical purposes, and to act as a spare. Provisions shall be made for automatic plant data recording, and for supervisory control and data acquisition (SCADA) system.

⁴ See NFPA 59A (2001) Section 10.1

Safety provisions, including fire and gas detection and prevention, shall be included in the design of the DCS, communications room, and the MCR.

Internet service, telephone, and radio communications systems shall be provided.

Instrumentation

Instrumentation (including computers and ancillaries) shall be of sufficient quality and from established suppliers to meet the required high levels of availability and reliability.

Control Architecture

The architecture of the control systems will be designed around redundant fiber optic and/or electric field networks. Individual Programmable Logic Controller systems, or higher level control systems, such as for package power generation sets, process, and utility systems, will communicate with the main DCS via the field network. Operators should be able to interact with the DCS via human-machine interfaces (HMI) in the MCR and in the field. Provisions shall be made for SCADA.

Automation

With regard for safety, the facility should be designed such that all systems can be started up and safely shutdown remotely from the MCR and/or a field HMI. The DCS system should be designed to provide high reliability and ease of maintenance requiring minimal on-site specialist service with regard to the remote location. Provisions shall be made for automatic plant data recording.

7.2 Metering and Quality

Metering and quality (GC) equipment shall be sufficient for custody transfer of purchased gas and for sales of LNG. Metering equipment shall be in compliance with, and approved by, Alaska Oil and Gas Conservation Commission (AOGCC) and BPXA.

7.3 Plant and Instrument Air

The Contractor is to determine and provide equipment and distribution systems for instrument and plant air.

7.4 Gaseous and Liquid Nitrogen

The Contractor is to determine and provide equipment and distribution systems for generation of gaseous nitrogen to meet the needs of the facility and, if appropriate, the production and storage of back-up liquid nitrogen (LIN). LIN may be purchased within the Prudhoe Bay area.

7.5 Fire Protection Systems

The Contractor is to determine and provide systems for fire protection that comply with the requirements of NFPA 59A (2001) and the authorities with jurisdiction for the area. Additionally, the Contractor shall take into consideration best fire protection practices for an LNG facility located on the North Slope.

7.6 Potable and De-mineralized Water

The Contractor to determine and provide potable and de-mineralized water storage and distribution systems appropriate for use on the North Slope.

7.7 Hot Oil

A fuel gas-fired hot oil heating and distribution system shall be provided to meet the needs of the facility.

7.8 Sanitary Wastewater

The Contractor to determine and provide wastewater collection, storage, and disposal systems appropriate for use on the North Slope.

7.9 Waste Disposal

The Contractor shall minimize liquid and solid wastes and shall be responsible for the removal and disposal of all construction related materials and debris in accordance with applicable laws and standards.

8.0 ELECTRIC POWER

The facility is to be self sufficient, utilizing on-site gas combustion turbine generator sets to provide electric power. The number and size of the generator sets should be optimized to operate from the low end of the load range when production is halted for maintenance — to the upper end when all liquefiers are required to meet the demand for LNG, plus all power required for the balance of plant.

A back-up diesel generator, an emergency generator, and Uninterruptible Power Supply equipment are to be provided to maintain the facility safely and in compliance with applicable codes and regulations to safely support NGSP personnel, support emergency shutdown procedures for plant operations, and protect other utility systems and buildings that would be affected by a long-term power outage.

One or more motor control centers are to be provided, including, but not limited to, all transformers, breakers, and switchgear, distribution, and wiring systems.

The sources of power shall comply with 49 CFR Parts 193.2445 and 193.2915, and NFPA 59A Paragraph 4.4, amongst others. The power distribution and motor control centers shall be configured so that the main loads and low voltage distribution buses are partitioned to enhance the overall maintainability, operability, and reliability of the NGSP.

9.0 EMISSIONS

BAT should be used to minimize air emissions. In particular, provisions shall be made to treat, or utilize within the facility, all effluent streams in order to comply with regulations and permitted emissions. Permitting requirements are expected to include treatment of the CO₂ and hydrogen sulfide (H₂S) streams stripped from the raw field gas by combusting it in a thermal oxidizer to destroy H₂S (converting it to sulfur dioxide) and trace amines prior to discharge into the atmosphere.

For BAT purposes, the combustion turbines must include a limitation on nitrogen oxides (NO_x) emissions of no more than 15 parts per million (ppm) of NO_x (NO + NO₂), corrected to 15 percent oxygen on a dry basis, and must use dry-low-NO_x emissions controls (i.e., no steam or water injection) to achieve this level of NO_x control. The combustion turbine exhausts must be controlled using catalytic oxidizers designed to destroy at least 90 percent of the pre-control carbon monoxide (CO) emissions. This will help ensure that the facility total CO emissions potential is less than the 100 tons/year threshold that would otherwise trigger major source (PSD) construction permitting requirements for CO.

10.0 SAFETY AND SECURITY

The Contractor shall interact with the Owner and the BPXA to determine the type of security systems needed for plant and trucking operations, such as card readers and other security measures, including fencing, gates, or barriers for personnel safety (whether for construction or operations personnel, suppliers, or other visitors).

Safety systems shall be designed with consideration that the NGSP Facility is be self-sufficient. Safety system shall include, at a minimum:

- Safety Instrumented Systems (SIS) and Emergency Shutdown (ESD)

- Fire and Gas (F&G) Detection
- Fire Protection Systems
- Visual and audible alarm systems, and appropriate means for safe access and egress

The Contractor shall be responsible for safety and security of all employed or contracted personnel, and for security and control of procured materials throughout the duration of the project.

11.0 BALANCE OF PLANT

The Contractor is to provide all improvements to the Project Site including, but not limited to: maintenance and stores building, restrooms (separate male and female), and administrative buildings; all parking areas, roads and walkways; assigned snow storage areas; access stairs and catwalks; area, local, and emergency lighting; etc.

Adequate space and accommodations shall be provided for an employee break room, including microwave, refrigerator, plumbed sink, table with four chairs, storage space, first aid supplies, emergency bunking, and lockers for employees.

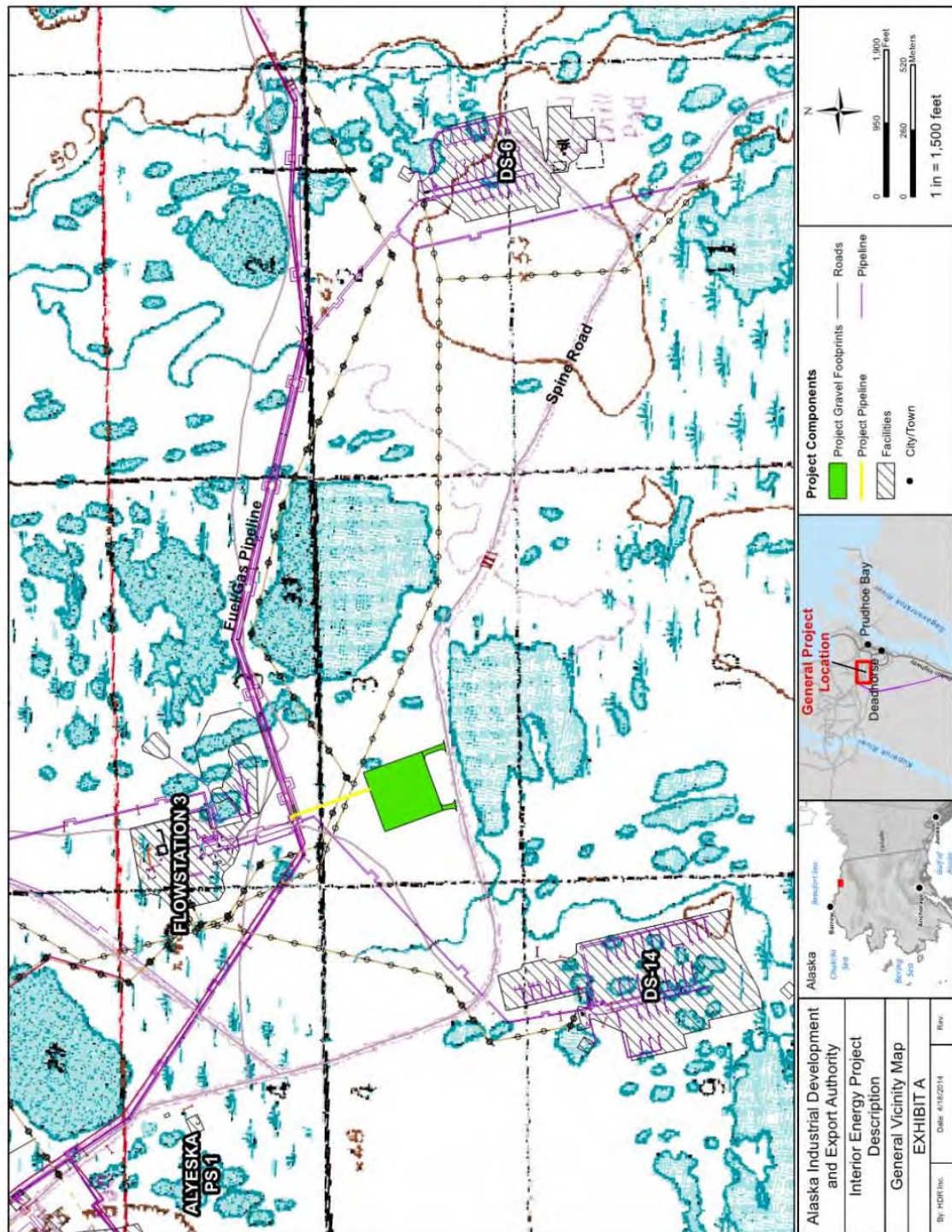
The maintenance building is to be provided with appropriate machines, cranes, and tools required for all preventative and non-specialist maintenance, required maneuvering and work area, and space for stored spare parts.

Each pair of truck loading stations is to be provided with an enclosed and heated shelter. Each shelter will house associated truck loading controls and an additional truck loading shutdown buttons.

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EXHIBIT A
GENERAL VICINITY MAP

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EXHIBIT B
SPECIFIC LOCATION MAP

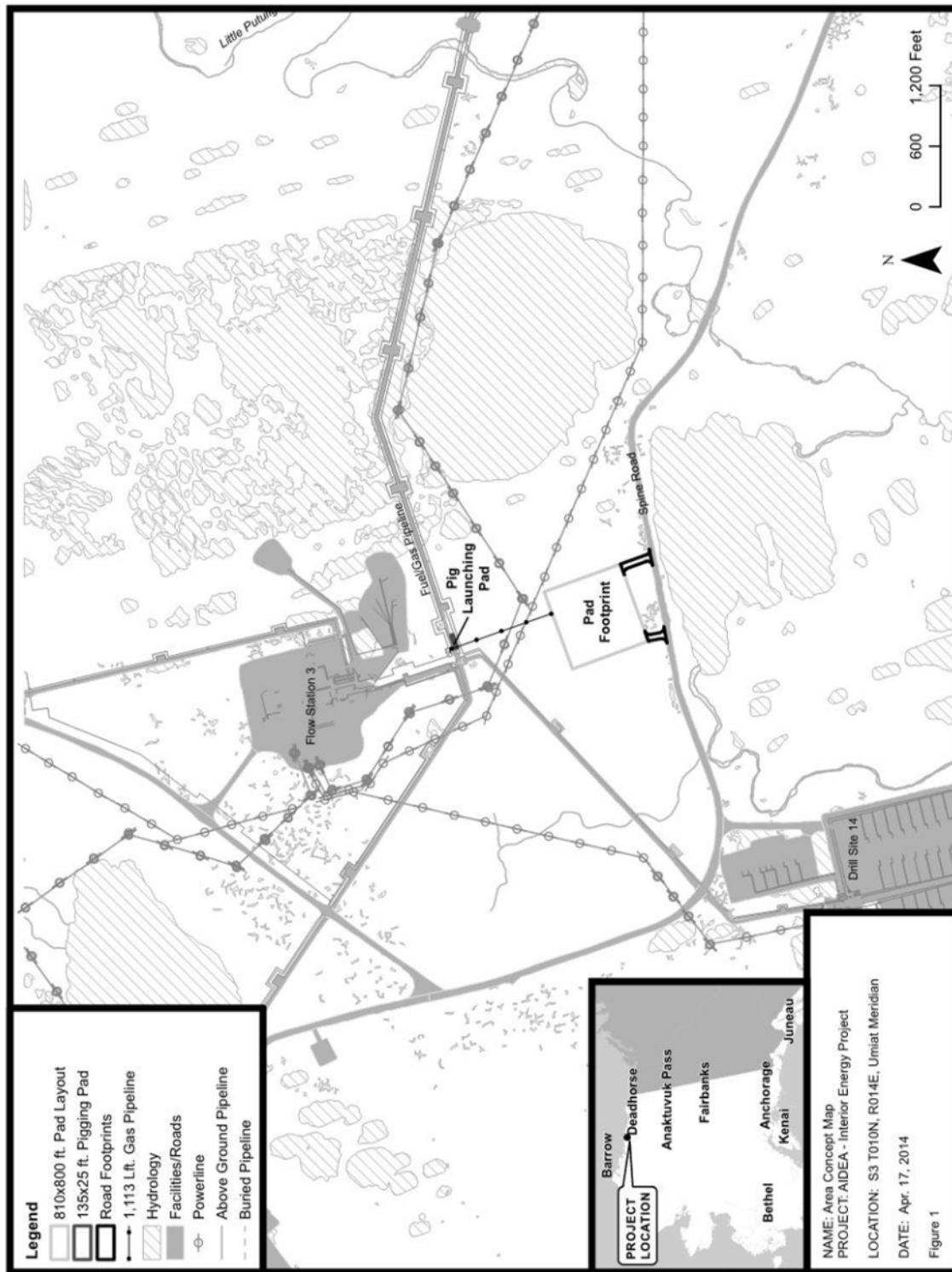
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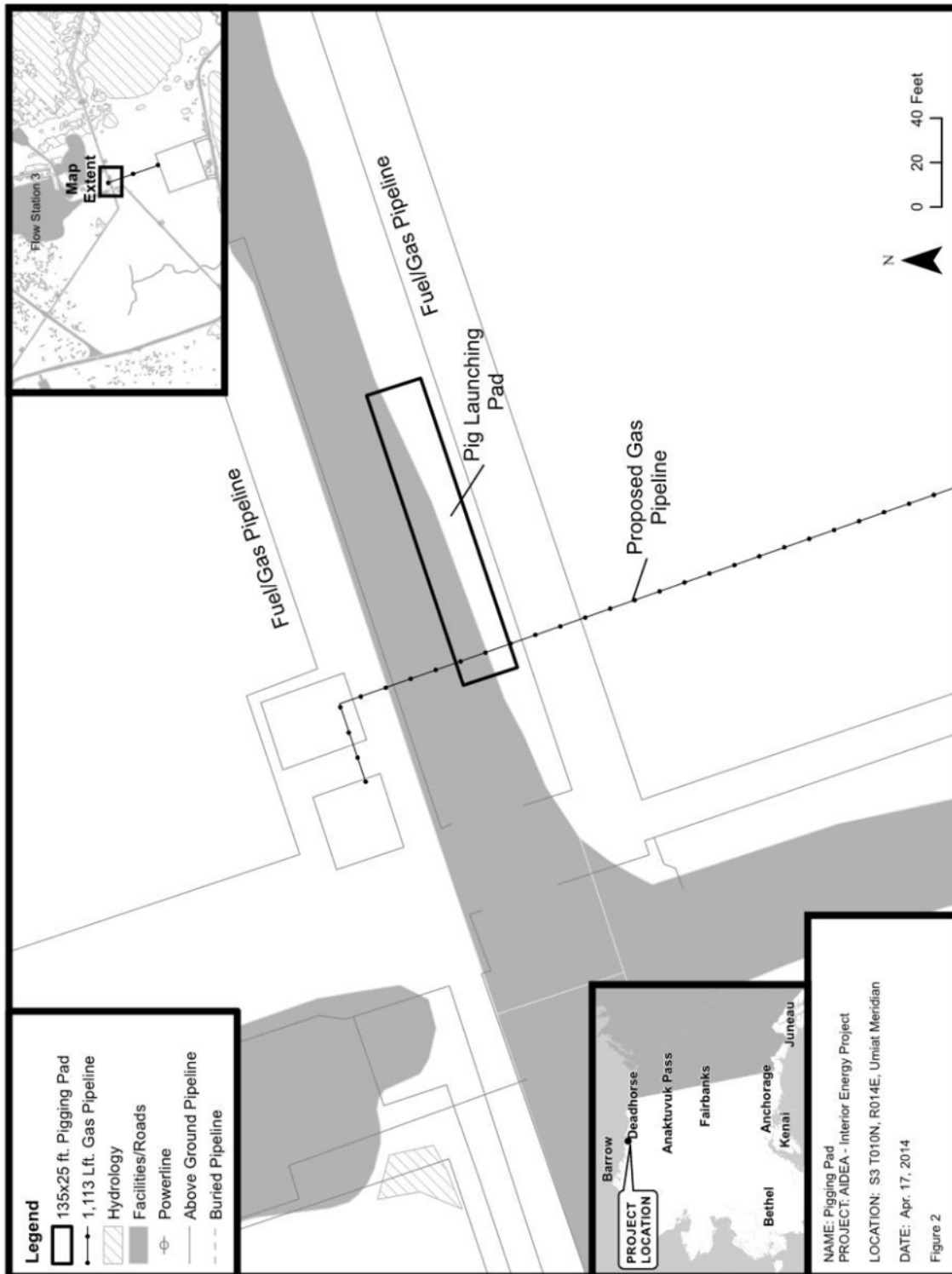


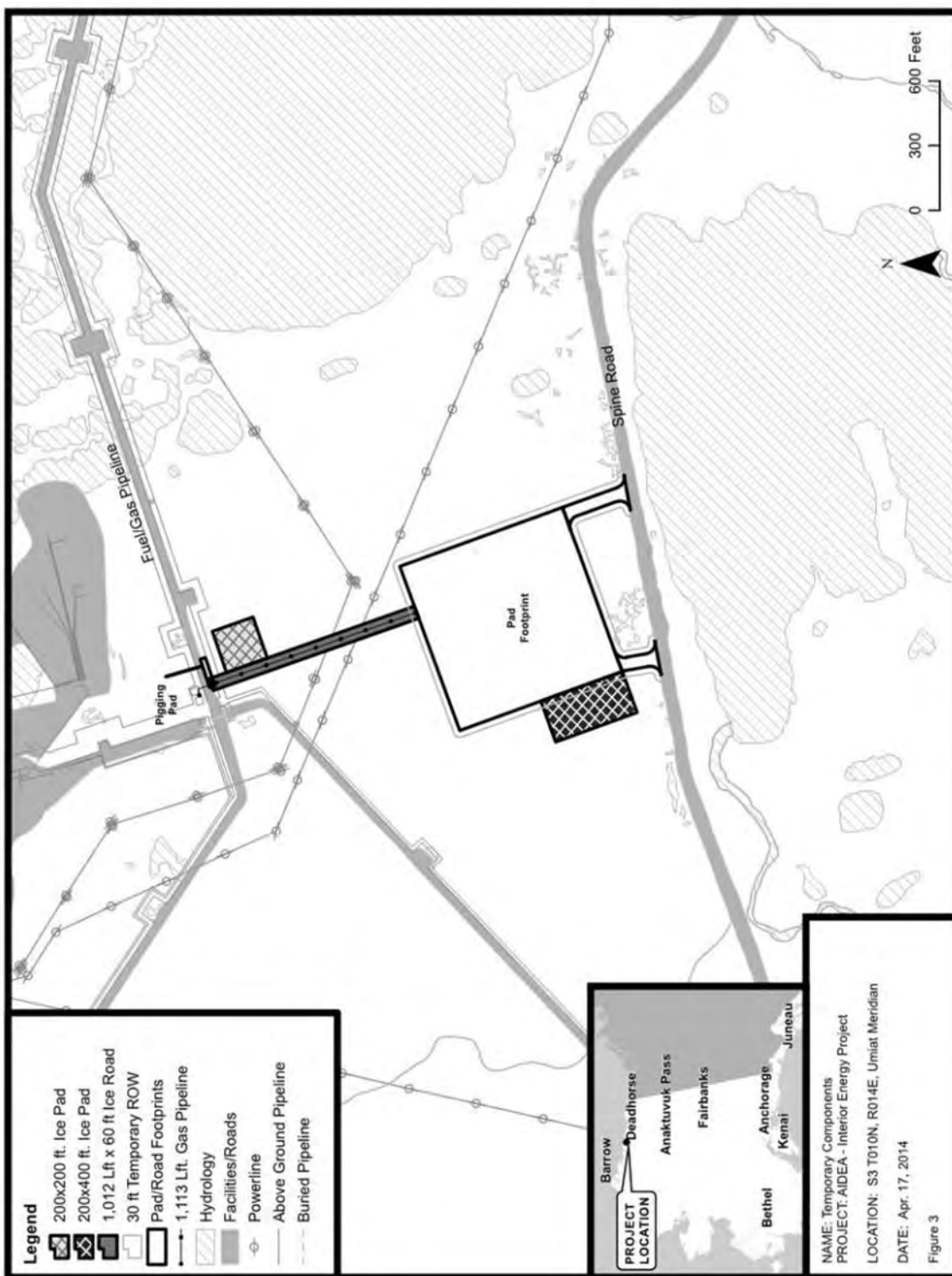
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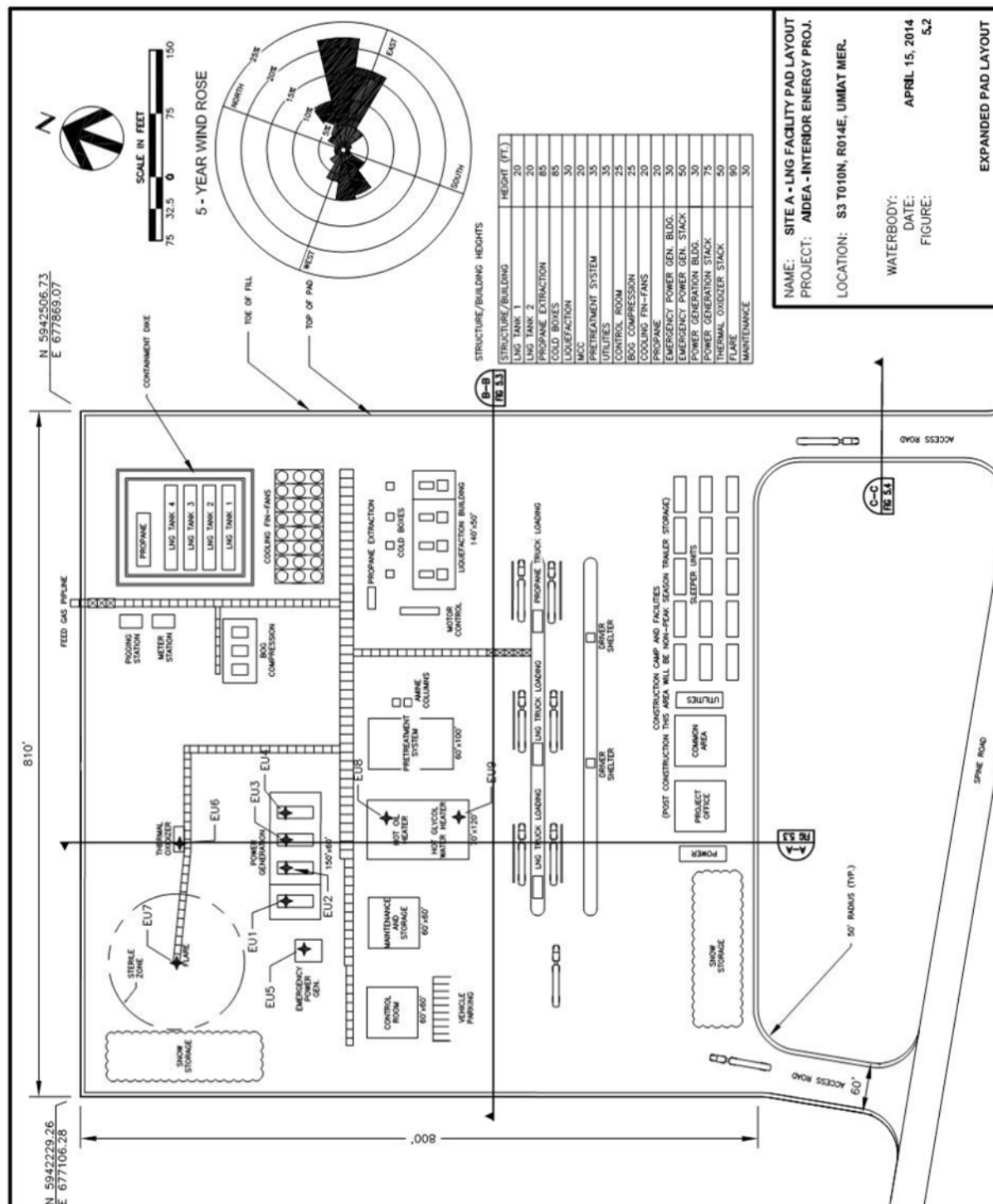
EXHIBIT C
SCHEMATIC FACILITY LAYOUT DRAWINGS

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NOTE to DRAFT: Layout above provided by ADIEA, Contractor to evaluate and provide either acceptance of layout as provided or develop alternative for review.

SCHEDULE B-1

PLANT SITE

The Plant Site is depicted in the drawing attached as Exhibit B to Schedule A of this Agreement.

SCHEDULE B-2

PROJECT ASSETS

1. The AIDEA Early Works Agreement.
2. The Permits listed on Schedule C, Part 1.

SCHEDULE C

PERMITS

Part 1

AIDEA Permits

The Authority will obtain the following federal, state, local, and Unit Operator authorizations for the Plant. As detailed in Schedule C, Part 2, other permits are required to be obtained by the Concessionaire. Examples include: Notice of Proposed Construction or Alteration from the Federal Aviation Administration; necessary review of facility and pipeline through the Pipeline and Hazardous Materials Safety Administration; and temporary land and water use permits through the Alaska Department of Natural Resources. The Authority will ensure compliance with the Authority-obtained permits.

Federal Permits

USACE	Clean Water Act Section 404 Permit: (POA-2012-875-M1)
USFWS	Marine Mammal Protection Act, Letter of Authorization (LOA)
USFWS	Endangered Species Act Section 7 Consultation
EPA	Spill Prevention Control and Countermeasure (SPCC) Plan

State Permits

ADNR	SPCO Pipeline ROW Lease: (ADL 419409)
ADEC	Air Quality Control Minor Permit (AQ1379MSS01)
ADEC	Section 401 Certification
ADNR	DMLW, Material Sales Contract (ADL 419991)
ADNR	SHPO, Section 106 Clearance
ADEC	Stormwater Pollution Prevention Plan (SWPPP)
RCA	Pipeline Tariff Filing and Certificate of Public Convenience and Necessity

Local Permits: North Slope Borough

NSB	Cultural Resource Clearance (Form 500)
NSB:	Conditional Development Permit/ Administrative Approval (NSB 14-726)
NSB:	Assembly "Resolution of Support (2014-01)"

Unit Operator, BP Exploration (Alaska) Inc. and Working Interest Owner Approvals

Unit Operator:	BPXA Letter of Non-Objection
Unit Operator:	BPXA Road Use Agreement

Part 2

Concessionaire Permits

The Concessionaire will obtain the following federal, state, local, and Unit Operator authorizations for the Plant. As detailed in Schedule C, Part 1, other permits are required to be obtained by the Authority. The Concessionaire will ensure compliance with the Concessionaire-obtained permits and communicate this compliance to the Authority.

Federal Approvals and Review Processes

FAA	Notice of Proposed Construction or Alteration
PHMSA	Review of facility and pipeline

State Permits

ADNR	Temporary Land Use Permit
ADNR	Temporary Water Use Permit
ADF&G	Title 16 Fish Habitat Permit
ADEC	APDES North Slope Oil and Gas General Permit
AOGCC	Custody Transfer Meter Application
Fire Marshal	Review of facility and safety plans

Local Permits: North Slope Borough

No permits identified.

Unit Operator, BP Exploration (Alaska) Inc. and Working Interest Owner Approvals

Unit Operator:	Approval to Connect
Unit Operator:	Road Use Agreement

SCHEDULE D

EASEMENT AREAS

1. Utility Easement: DNR easement for power supply if required by Plant design.
2. [BPXA Road Use Agreement for facility construction and operations.]

SCHEDULE E

EQUITY CONTRIBUTION AGREEMENT TERM SHEET¹³

All capitalized terms used but not defined in this term sheet shall have the meanings given to such terms in the Concession Agreement dated [●], 2014 (the *Concession Agreement*) between Alaska Industrial Development and Export Authority (the *Authority*) and Northern Lights Energy, LLC (the *Concessionaire*).

1. Investor Equity Contributions

Northleaf Mid-Market Infrastructure Partnership LP (the *Investor*) shall fund its Investor Investment Commitment (or portion thereof in one or more disbursements) by making, directly or through any of its Affiliates, cash equity contributions or shareholder loans, at the Investor's discretion, to the Concessionaire from time to time on or following the Closing Date and prior to the Commercial Operation Date (as defined in the Concession Agreement), which actual amount shall be definitively determined on the Closing Date in accordance with Section 12.2(e) of the Concession Agreement and utilized in accordance with Section 12.3 of the Concession Agreement. The Investor Equity Contribution shall be funded through an equity contribution in an amount not less than \$20,000,000 and not greater than \$[50,000,000]. The Investor Residual Commitment shall be funded through a loan or loans from a Third Party Lender or through additional equity contributions of the Investor, in accordanc with the terms of Article 12 of the Concession Agreement.

To the extent the Investor contributes less than the full amount of the Investor Equity Contribution (but in any event not less than \$20,000,000) on the Closing Date, the Investor shall post the Investor Equity Contribution Letter of Credit, of which the Authority shall be beneficiary, in the amount of the difference between the Investor Equity Contribution and the amount contributed on the Closing Date. Upon any request for contribution by the Concessionaire on or after the Closing Date, any undrawn portion of the Investor Equity Contribution as set forth in such request will be immediately due and payable, and any portion of the Investor Equity Contribution that shall be undrawn as of the Commercial Operation Date will be immediately due and payable as of such date.

To the extent that a loan or loans from a Third Party Lender in a principal amount at least equal to the Investor Residual Commitment have not been secured on the Closing Date, the Investor shall post the Additional Equity Commitment Letter of Credit, of which the Authority shall be beneficiary, in the amount of the Additional Equity Commitment. Upon any request for contribution by the Concessionaire on or after the Closing Date, any undrawn portion of the Additional Equity Commitment as set forth in such request will be immediately due and payable, provided that any undrawn portion of the Additional Equity Commitment shall immediately terminate upon earlier to occur of the Concessionaire's entry into one or more Third Party Loans satisfying the requirements of Section 12.9 of the Concession

¹³ A&O Note: Revisions subject to outcome of Sections 12.2 and 12.3 of the Concession Agreement.

Agreement and the Commercial Operation Date.

The Investor retains the option to contribute the equity or shareholder loans required to be contributed or funded, as applicable, at any time prior to the Commercial Operation Date and prior to the date on which such contribution or funding is required pursuant to the terms of the Equity Contribution Agreement.

The Investor has the right to contribute additional equity or make shareholder loans at any time (in addition to that contemplated in the Equity Contribution Agreement) and in any amount, provided such contributions have been approved in accordance with the Limited Liability Company Agreement of the Concessionaire, as applicable (as amended, restated or otherwise modified from time to time, the **LLC Agreement**).

In the event the issuer of the Investor Equity Contribution Letter of Credit or the Additional Equity Commitment Letter of Credit is downgraded below the ratings specified in the Concession Agreement, the applicable Letter of Credit must be replaced with a Letter of Credit meeting the requirements set forth in the Concession Agreement or the undrawn portion of the Investor Equity Contribution or the Additional Equity Commitment, as applicable, must be contributed in the form of equity or shareholder loans within forty-five (45) days of such downgrade or, if not so replaced, the applicable Letter of Credit will be drawn in its entirety and deposited into an account of the Concessionaire.

Within 30 days prior to the expiration date of the Investor Equity Contribution Letter of Credit or the Additional Equity Commitment Letter of Credit, the applicable Letter of Credit must be replaced with a Letter of Credit meeting the requirements of the Concession Agreement or the undrawn portion of the Investor Equity Contribution or the Additional Equity Commitment, as applicable, must be contributed in the form of equity or shareholder loans or, if not so replaced, the applicable Letter of Credit will be drawn in its entirety and deposited into an account of the Concessionaire.

- | | | |
|----|---|---|
| 2. | Transfers of Equity | The Investor shall have the right to transfer its direct or indirect ownership interests in the Concessionaire to any Person at any time, subject only to the terms and conditions of the LLC Agreement, the Concession Agreement and the Third Party Financing Documents. |
| 3. | Deposits into Concessionaire Account | All equity contributions made pursuant to the Equity Contribution Agreement shall be made in Dollars by deposit or wire transfer of immediately available funds into an account or sub-account of the Concessionaire established for such purpose. |
| 4. | [Investor Investment Commitment]
Free and Clear of | All equity contributions required to be made pursuant to the terms of the Equity Contribution Agreement or any other payment set forth therein shall be made free and clear of, and without deduction for, any and all present or future taxes, levies, imposts, duties, deductions, charges or |

Taxes withholding imposed by any governmental authority.

5. **Representations and Warranties** The Investor shall provide in the Equity Contribution Agreement customary representations and warranties to be agreed.

SCHEDULE F

[RESERVED]

SCHEDULE G
TECHNICAL STANDARDS

North Slope LNG Facility
Northern Gas Supply Project

Project Number: 131.MWHA.2191 Date: 04/25/14

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1. CODES AND STANDARDS

The project will be designed in accordance with the following design criteria and specifications, applicable codes, standards and accepted engineering practices, as follows.

1.1 MECHANICAL, PIPING AND HVAC

NATIONAL CODES AND STANDARDS

- ASME B31.4-2012, Pipeline Transportation Systems for Liquids and Slurries
- ASME B31.3-2010, Process Piping
- ASME B31.8-2010, Gas Transmission and Distribution Piping Systems
- ASME Boiler and Pressure Vessel Code 2010, Section VIII, Division 1
- API Standard 560, Fired Heaters for General Refinery Service, 4th Edition, 2007
- API Standard 650, Welded Steel Tanks for Oil Storage, 11th Edition, 2007
- API Standard 672, Packaged Centrifugal Air Compressors, 4th Edition 2004
- API Standard 675, Positive Displacement Pumps – Controlled Volume, 2nd Edition, 1994, Reaffirmed 2005
- API Standard 610, Centrifugal Pumps for Petroleum, Petrochemical and Natural Gas Industries, 11th Edition, 2010
- UL Standard 142, Steel Aboveground Tanks for Flammable and Combustible Liquids, 9th Edition, 2010
- American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE)
 - ASHRAE Standard 62.1-2010, Ventilation for Acceptable Indoor Air Quality
 - Reference Data on Air Conditioning, Heating, Ventilation and Refrigeration
- International Fire Code, 2009
- International Building Code (IBC), 2009
- International Mechanical Code (IMC), 2009
- 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards
- Occupational Safety and Health Administration (OSHA) Codes (as applicable)
- Uniform Plumbing Code, 2009
- Alaska Administrative Code, 13 AAC 50 Fire Prevention
- ANSI Z4.1, Sanitation in Places of Public Employment, 2005

1.2 CIVIL, STRUCTURAL AND ARCHITECTURAL

- IBC 2009 Edition
- International Fire Code (IFC), 2009 Edition
- 13 AAC 50, State of Alaska Fire And Life Safety Regulations
- AISC Manual of Steel Construction, 13th Edition
- ASCE 7 05, Minimum Design Loads for Building and Other Structures
- American Welding Society (AWS) Structural Welding Code D1.1
- American Society for Testing and Materials (ASTM)
- Occupational Safety and Health Administration (OSHA) Title 29, Parts 1910 and 1926

1.3 ELECTRICAL

- 2011 National Electrical Code (National Fire Protection Association [NFPA] 70)
- NFPA 70E, Standard for Electrical Safety in the Workplace
- OSHA Codes (as applicable)
- OSHA NRTL Standards (as applicable)
- American National Standards Institute (ANSI) Standards (as applicable)
- Alaska Statutes, State of Alaska, Title 8
- National Electrical Manufacturers Association (NEMA) Standards (as applicable)
- NFPA National Codes (as applicable)
- NFPA 497, Recommended Practice for the Classification of Flammable Liquids, Gases, or Vapors and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas
- 1997 API Recommended Practice 500, “Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1, Division 2”
- ANSI C84.1-2006, American National Standard for Electrical Power Systems and Equipment Voltage Ratings (60 Hertz) (current version)
- IEEE141, Recommended Practice for Electric Power Distribution for Industrial Plants - IEEE Red Book (Color Book Series) (current version)
- IEEE 142, Recommended Practice for Grounding of Industrial and Commercial Power Systems - IEEE Green Book (Color Book Series) (current version)
- IEEE 242, Recommended Practice for Protection and Coordination of Industrial and Commercial Power Systems - IEEE Buff Book (Color Book Series) (current version)
- IEEE 446, Recommended Practice for Emergency and Standby Power Systems for Industrial and Commercial Applications - IEEE Orange Book (Color Book Series) (current version)
- IEEE 451, Recommended Practice for Calculating Short- Circuit Currents in Industrial and Commercial Power Systems - IEEE Violet Book (Color Book Series) (current version)
- NFPA 70E, Standard for Electrical Safety in the Workplace (current version)
- IEEE 5184, Guide for Performing Arc-Flash Hazard Calculations (current version)
- IEEE 519, Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems (current version)
- Equipment Specifications (as applicable to each individual work package)

1.4 INSTRUMENTATION

- NFPA 70, 2011 National Electrical Code
- OSHA Codes (as applicable)
- OSHA NRTL Standards (as applicable)
- ANSI Standards (as applicable)
- Alaska Statutes, State of Alaska, Title 8
- NEMA Standards (as applicable)
- NFPA National Codes (as applicable)
- 1997 API Recommended Practice 500, “Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1, Division 2” (current version)
- NFPA-72, National Fire Alarm Code (current version)
- INSI-ISA, Instrumentation Standards (current versions, as applicable)
- ISA-S51, Instrumentation Symbols and Identification (current version)
- Equipment Specifications (as applicable to each individual work package)

1.5 FIRE PROTECTION

- IBC 2009 Edition
- IFC 2009 Edition
- 13 AAC 50, State of Alaska Fire and Life Safety Regulations
- 40 CFR 112, Oil Pollution Prevention
- 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards
- NFPA 59A, Standard for the Production, Storage, and Handling of LNG, 2013 Edition
- NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition
- NFPA 30, Flammable and Combustible Liquids Code, 2012 Edition
- NFPA 54, National Fuel Gas Code, 2012 Edition
- NFPA 58, Liquefied Petroleum Gas Code, 2011 Edition
- NFPA 70, National Electrical Code, 2011 Edition
- NFPA 72, National Fire Alarm and Signaling Code, 2013 Edition
- NFPA 85, Boiler and Combustion Systems Hazards Code (as applicable)
- NFPA 101, Life Safety Code, 2012 Edition
- API 620, Design and Construction of Large, Welded, Low-Pressure Storage Tanks, 2008
- API 625, Tank Systems for Refrigerated Liquefied Gas Storage, First Edition, 2010
- API 2510, Design and Construction of Liquefied Petroleum Gas (LPG) Installations, 2001
- ASME B 31.8, Gas Transmission and Distribution Piping Systems, 2007
- NACE SP 0169, Control of External Corrosion of Underground or Submerged Metallic Piping Systems, 2007

1.6 PROCESS DESIGN & PROCESS SAFETY

- API Standard 520, “Sizing, Selection, and Installation of Pressure Relieving Devices in Refineries – Part I”, 8th Edition, 2008
- API Standard 520, “Sizing, Selection, and Installation of Pressure Relieving Devices in Refineries – Part II”, 5th Edition, 2003, reaffirmed 2011
- API Standard 521, “Guide for Pressure Relieving Devices and Depressuring Systems”, 5th Edition, 2007 (including 2008 addendum)
- API Standard 2000, “Venting Atmospheric and Low-pressure Storage Tanks”, 6th Edition, 2009
- API RP 752, “Management of Hazards Associated with Location of Process Plant Buildings”, 3rd Edition, 2009
- Tubular Exchanger Manufacturers Association (TEMA) (latest standards)
- NACE MR-0175 Sulfide Stress Cracking Resistant Metallic Materials for Oil Field Equipment (current version)
- Criteria – General Site Conditions Design (North Slope Alaska)
- Criteria – Overpressure Protection Systems
- Criteria – Relief Systems
- Criteria – Permanent Building Siting
- Criteria – Temporary Building Siting
- Criteria – Depressurization
- Safety Criteria – Major Accident Risk (MAR)
- Safety Criteria – Project Health Safety and Security Review (PHSSER)
- Safety Criteria – Hazardous Operations Study (HAZOP)
- Safety Criteria – Layers of Protection Analysis (LOPA)
- Safety Criteria – Inherently Safer Design (ISD)
- Safety Criteria – Hazard Identification (HAZID)
- Specification – Relief Valves

SCHEDULE H
EARLY WORKS

SCHEDULE I
AUTHORITY-PROVIDED INFORMATION

SCHEDULE J

CONSTRUCTION CONTRACT TERM SHEET¹⁴

All capitalized terms used but not defined in this term sheet shall have the meanings given to such terms in the Concession Agreement dated [●], 2014 (the *Concession Agreement*) between Alaska Industrial Development and Export Authority (the *Authority*) and Northern Lights Energy, LLC (the *Project Company*).

Back-to-Back Obligations: The Construction Contractor shall carry out and complete the Work (including the Early Works) in accordance with the Concession Agreement so as to enable the Project Company to discharge its obligations to the Authority in respect of the Work (including the Early Works) and shall rectify all defects notified by the Project Company to the Construction Contractor during the Defect Correction Period (as defined below).

Defect Correction Period: The Construction Contractor shall warrant that the Work shall be:

- (i) new, complete, and of suitable grade for the intended function and use in accordance with this Agreement;
- (ii) in accordance with all of the requirements of the Concession Agreement and the Construction Contract and all Applicable Law;
- (iii) free from encumbrances to title;
- (iv) free from defects in design, material and workmanship; and
- (v) with respect to equipment or any component of equipment, unless otherwise specifically agreed in writing by the Project Company, composed and made of only proven technology, of a type in commercial operation at the effective date of the Construction Contract, with conditions substantially similar to those contained in the Construction Contract,

(collectively, the *Warranty*).

The Warranty shall extend for a period ending [two (2)] years after the Substantial Completion Date, which period shall be extended in respect of any corrective work performed for an additional [twelve (12)] months from the date of such corrective work, not to extend beyond [thirty-six (36)] months after Substantial Completion (the *Defect Correction Period*).

The benefit of all unexpired warranties, guarantees, obligations or other commitments given by the Construction Contractor shall be transferable

¹⁴ Subject to review and revision following further discussions with Kiewit.

to the Authority upon termination of the Concession Agreement.

Retainage (or Letter of Credit in lieu of Retainage):

The Project Company shall withhold from each invoice from the Construction Contractor an amount equal to [●]% of such invoice amount (*Retainage*). Retainage withheld from invoice payments shall be released by the Project Company as follows: (i) upon the first anniversary of Substantial Completion, the Project Company shall release a portion of the Retainage while continuing to withhold Retainage equal to the sum of (1) [●] percent ([●]%) of the Target EPC Price plus (2) the estimated cost of correcting any outstanding Defects then-existing at such time; and (ii) upon the expiration of the Defect Correction Period, the Project Company shall release all remaining Retainage.

The Construction Contractor may elect to substitute a Letter of Credit in lieu of Retainage (a *Retention Letter of Credit*) in exchange for the Project Company releasing previously held Retainage, or for the Project Company to forego the withholding of Retainage from the payment of any invoice, in the amount of such Retention Letter of Credit.

Construction Contractor Performance Guarantee:

The Construction Contract shall include performance guarantees in line with industry standards for a natural gas liquefaction facility of the type and size of the Plant.¹⁵

Performance Liquidated Damages:

If the Work has not achieved all of the performance guarantees to be set forth in the Construction Contract, the Project Company may accept the Facility as is and assess Contractor Performance Liquidated Damages, in an amount to be determined.

Construction Contractor Completion Security:

Prior to the Project Company's issuance of the notice to proceed, and as a condition precedent to the Construction Contractor's right to receive any payments under the Construction Contract, the Construction Contractor shall deliver to the Project Company an irrevocable standby letter of credit, naming the Project Company as beneficiary, in a Dollar amount equal to [●] percent ([●]%) of the Target EPC Price under the Construction Contract and issued by a commercial bank, with offices in the United States of America capable of accepting a drawing certificate under the letter of credit and issuing funds on such drawing certificate, with a long-term rating of at least investment grade (*Letter of Credit*). The Letter of Credit shall remain in full force and effect from the issuance of the Letter of Credit through the Substantial Completion of the Plant.

The parent company of the Construction Contractor will guarantee the full and faithful performance of all obligations of Contractor under the Construction Contract (the *Construction Contractor Parent Guaranty*).

The Letter of Credit and the Construction Contractor Parent Guaranty shall be assignable to the Authority upon termination of the Concession Agreement.

¹⁵ A&O NOTE: Details of performance guarantees under discussion.

[Requirements for performance bond TBD.]

Construction Permits:	The Construction Contractor shall be responsible for obtaining all Permits required for the performance of the Work, other than the AIDEA Permits.
Technical Standards:	The Construction Contractor shall comply with and shall ensure that each of its subcontractors complies with the requirements of Schedule G (Technical Standards).
Audit and Records:	The Construction Contractor shall comply with, and shall require each of its subcontractors to comply with, Section 10 (<i>Reporting; Audits; Inspections; Records</i>) of the Concession Agreement.
Cooperation with other Contractors and Access to the Plant Site:	The Construction Contractor shall not, and shall ensure that each of its subcontractors shall not, interfere with the work of any other contractor which may be carrying out work at or near the Plant Site for the Authority, any Project Party or any Governmental Authority, and will not preclude any such contractor reasonable access to the Plant and the Plant Site; provided that such persons shall at all times agree to comply with the Safety and Security requirements under Section 4.11 of the Concession Agreement, the safety and security requirements to be set out in the Construction Contract and the safety regulations and policies of the Construction Contractor and to not interfere with the Construction Contractor's or any of its subcontractor's performance of the Work.
Authority Suspension and Step-In Rights:	The Construction Contractor shall acknowledge and accept the rights of the Authority under Sections 5.7 (<i>Suspension of Work</i>) and 23.1 (<i>Collateral Assignment</i>) of the Concession Agreement. The Project Company shall immediately provide a copy of any notice received from the Authority under Sections 5.7 (<i>Suspension of Work</i>) and 23.1 (<i>Collateral Assignment</i>) of the Concession Agreement to the Construction Contractor.
Site Register:	The Construction Contractor shall create and maintain the Construction Phase site register.
Work:	The Construction Contractor shall commence the Work upon delivery by the Project Company of a full notice to proceed in accordance with the terms of the Construction Contract, which notice is to be issued on the Closing Date. The Construction Contractor shall ensure that the Work is carried out and completed in the timeframe prescribed by the Project Schedule and otherwise in accordance with the Concession Agreement.
Key Dates:	The [Substantial Completion Date, Final Acceptance Date, and the Commercial Operation Date shall be specified in the Construction Contract.] ¹⁶ The Construction Contractor shall ensure that all Work required for the issuance of each [Completion Date Certificate] shall be completed on or before the deadlines for such events as specified in the Construction Contract and, in the case of the Substantial Completion

¹⁶ Milestone dates to be discussed.

Date, before the Completion Deadline, in each case, subject to Delay Events and any other extensions of time due under the Construction Contract.

Delay Liquidated Damages:

Delay Liquidated Damages, in an amount to be determined, are payable by the Construction Contractor for each day after the deadline for key completion milestones.

Target EPC Price:

An amount not to exceed U.S.\$ [●] (which price shall be the “turn-key” cost through commissioning and start-up of the Plant and will include all of the Construction Contractor’s mark-ups, fees and profit).

Guaranteed EPC Price:

An amount not to exceed U.S.\$ [●].

Payment:

Payment provisions to reflect a progress payment basis.

If prior to the Final Acceptance Date the aggregate amount of the Project Costs incurred by the Construction Contractor exceed the Target EPC Price, then:

- (A) all Project Costs incurred by the Construction Contractor that exceed the Target EPC Price and up to an amount equal to the Guaranteed EPC Price (the *Additional Project Costs*) shall be invoiced at cost and shall exclude all mark-up, fees and profit of the Construction Contractor,
- (B) at such time that the Project Costs incurred by the Construction Contractor exceed the Guaranteed EPC Price, the Construction Contractor shall not be entitled to any further payment from the Concessionaire and the Construction Contractor shall complete the Work at the Construction Contractor's sole cost and expense.

[If the aggregate amount of the Project Costs paid to the Construction Contractor as of the Final Acceptance Date are less than the Target EPC Price, then the Concessionaire shall pay the Construction Contractor a bonus to be agreed in the Construction Contract.]¹⁷

Implementation of Changes:

To be specified in the Construction Contract and consistent with the requirements for Modifications set forth in Sections 6.3 through 6.5 of the Concession Agreement.

Force Majeure Events:

To be specified in the Construction Contract and consistent with the provisions for Force Majeure Events set forth in the Concession Agreement.

Indemnity:

The Construction Contractor shall indemnify the Project Company on a back-to-back basis with the Project Company’s indemnity under the Concession Agreement to the extent that the Project Company’s liability is incurred as a result of breach by the Construction Contractor of the

¹⁷ A&O Note: Gain-share mechanism under consideration.

Construction Contract.

- Insurance:** The Construction Contractor shall, and shall ensure that each subcontractor shall, maintain insurance coverages in accordance with Section 16.2(b) of the Concession Agreement.
- Limitation on Liability:** The Construction Contractor's aggregate limitation on liability under the Construction Contract shall not exceed [●].
- Subcontracting:** The Construction Contractor shall have the right to subcontract the performance of any part of the Work in accordance with the Construction Contract. The Construction Contractor shall be responsible for the acts, omissions, defaults and neglect of any of its subcontractors and shall not be relieved of its liability under the Construction Contract by virtue of subcontracting.
- Contracting:** The Construction Contract shall comply in all respects with the requirements set forth in Section 26.2(e) of the Concession Agreement.
- Dispute Resolution:** The Parties will first attempt to resolve disputes through negotiation by senior management and, if such dispute is technical in nature, referral to a technical expert. If such attempts are unsuccessful, disputes will be referred to and exclusively resolved in binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association with the seat of arbitration in [Anchorage, Alaska], unless such disputes also involve the Authority as a party, in which case they will be referred to and exclusively resolved in Alaskan courts in accordance with the terms of Article 24 of the Concession Agreement. Dispute resolution provisions shall include submission to jurisdiction of [the Superior Court for the State of Alaska, Third Judicial District, at Anchorage, Alaska] equivalent to Section 24.6 (*Venue; Jurisdiction; Attorneys' Fees*) of the Concession Agreement.
- Upon the request of either the Authority or the Project Company, the Construction Contractor shall, and shall ensure that its subcontractors shall, provide information and cooperate as requested in connection with any Dispute resolution procedure.
- If there is a Dispute being, or to be, determined by an Expert under the Concession Agreement, which relates to a Dispute under the Construction Contract, then the Construction Contractor shall agree to meet with the Parties and any other relevant parties in accordance with Section 24.4 (*Expert Determination*) of the Concession Agreement.
- Governing Law:** The law of the State of [Alaska].

SCHEDULE K-1

LNG SPA TERM SHEET¹⁸

All capitalized terms used but not defined in this term sheet shall have the meanings given to such terms in the Concession Agreement dated [●], 2014 (the **Concession Agreement**) between Alaska Industrial Development and Export Authority (the **Authority**) and Northern Lights Energy, LLC (the **Concessionaire**).

Seller	Northern Lights Energy, LLC
Buyer	[Name], and together with Seller, the Parties , each, a Party
Conditions precedent	<ul style="list-style-type: none"> (a) Seller has received and accepted all necessary permits, approvals and licenses; (b) Seller has entered into LNG SPAs with long-term buyers providing for sale of LNG quantities sufficient to satisfy the assumptions set forth in the Base Case Financial Model; and (c) the Closing Date has occurred under the Concession Agreement between the Seller and the Alaska Industrial Development and Export Authority for the funding of the development, construction, commissioning and operation of the Seller's Facilities (the NGSP LNG Project).
Contract Price	To be determined following finalization of the Gas Supply Agreement between [the Concessionaire and GVEA]. To include pass-through of price of natural gas under the Gas Supply Agreement, plus components designed to compensate Seller for its fixed costs, variable costs (which shall include any Concessionaire Damages for Unforeseen Events as provided in the Concession Agreement and any amounts paid on account of other events which the Concession Agreement provides can be passed-through to the Buyer) and a negotiated rate of return.
Facilities of the Seller and Buyer	Seller will provide and maintain the LNG liquefaction facilities on the North Slope of Alaska known as the Northern Gas Supply Plant (Seller's Facilities) necessary for tendering LNG for delivery. Buyer will provide and maintain (a) the tractor-trailers with LNG tanks meeting specifications agreed by the Parties (the Trailers) and (b) certain reception, storage and regasification facilities and utilities at the unloading point (Buyer's Facilities) necessary for taking delivery of LNG.
Club Rules	Seller will develop rules concerning allocation and priority arrangements in respect of its available LNG among several buyers (as set out in a schedule to the LNG SPA and LNG TSA, the Club Rules), which priority in the event of a shortfall shall generally be as follows:

¹⁸ To be further updated following review of the Gas Supply Agreement and further discussions with LNG Purchasers.

- (a) Interior Alaska Natural Gas Utility and Fairbanks Natural Gas, LLC for residential and commercial space heating, in the volumes specified in and pursuant to the terms of their respective LNG SPAs or LNG TSAs, as applicable;
- (b) Golden Valley Electric Association, Inc. for use as a fuel at its electric generating plants, in the volumes specified in and pursuant to the terms of its LNG SPA or LNG TSA, as applicable;
- (c) electric and local gas distribution utilities that are located in (A) the North Slope Borough or (B) Interior Alaska but outside of the Fairbanks North Star Borough, in the volumes specified in and pursuant to the terms of their respective LNG SPAs or LNG TSAs, as applicable;
- (d) industrial customers located in Interior Alaska, such as refineries and mines, in the volumes specified in and pursuant to the terms of their respective LNG SPA;
- (e) any parties that are not RCA-regulated electric and local gas distribution utilities and are consuming such LNG in the State of Alaska but outside of Interior Alaska;
- (f) any parties that use LNG pursuant to the terms of their respective LNG SPAs or LNG TSAs, as applicable, as a transportation fuel in the State of Alaska, other than such LNG used as fuel to transport LNG from the Plant to those customers identified in (a) through (d) above; and
- (g) any parties consuming such LNG outside the State of Alaska.

Delivery Point

The point at which the flange coupling of the loading lines at the Seller's Facilities connects with the flange coupling of the loading manifold of the Trailer provided by Buyer.

Delivery and Title Transfer

Seller will deliver LNG tendered for delivery to the Delivery Point and provide at the Seller's Facilities a safe loading station which each Trailer can safely reach and leave and at which it can load safely, and all required facilities. Buyer will be responsible for receiving LNG at the Delivery Point and the transportation, unloading, storage and re-gasification of such LNG and the end-use of the natural gas. The title and property in (and the risk of loss of or damage to) LNG delivered under the LNG SPA will pass to Buyer at the Delivery Point.

Loading and Transportation

At no cost to Seller, Buyer will be responsible for transporting LNG from Seller's Facilities using Trailers that meet the requirements set out below, and will provide Seller with a reasonable opportunity to inspect the Trailers. At no cost to Buyer, Seller will provide a safe loading station at Seller's Facilities for Trailers to safely reach, load and depart.

Each Trailer shall:

- (a) have gross LNG cargo tank capacity in the range of [●]-[●] m3 and be designed, equipped and manned so as to safely and reliably permit the loading of a cargo at an approximate rate of [●] cubic meters per hour using [●] liquid loading arms at a normal operating pressure of [●] or at such pressure and flowrates as may be agreed between Seller and Buyer from time to time;
- (b) have overall dimensions, draft and tonnage compatible with the loading dock and the Seller's Facilities;
- (c) comply with LNG industry standards;
- (d) comply with applicable law and shall have obtained all permissions and approvals required to dock and load LNG at the Seller's Facilities; and
- (e) have completed Seller's LNG tractor-trailer vetting procedure.

If a Trailer is delayed in docking, loading or departing due to reasons attributable to a Party or a third party, the Parties shall promptly consult with a view to minimizing such delay. If a material delay occurs in docking, loading or departing, the Parties will consult with respect to (x) causes for the delay, and (y) to the extent such causes are within the reasonable control of either Party, the resulting costs and expenses and any compensation to be paid by one Party to the other Party.

Gassing-up and Cooling Rights

Seller will provide without charge to Buyer LNG in such quantities as reasonably required for gassing-up and cooling Trailers to a temperature in the LNG tank sufficiently cold to permit continuous loading of LNG at the rate specified in clause (a) in "Loading and Transportation" above, upon a Trailer's entry into service and on its return to service after a scheduled maintenance period, provided that Buyer will be entitled to delivery of such LNG no more frequently than [●].

Buyer will use commercially reasonable efforts to minimize requests for gassing-up and cooling beyond its Gassing-up and Cooling Rights, and Seller will use commercially reasonable efforts to accommodate such requests, at a price equal to the contract price applicable to the relevant cargo, provided that gassing-up and cooling LNG required for reasons attributable to Seller will be provided to Buyer free of charge.

Quantity of LNG

Seller will tender the Adjusted Annual Contract Quantity (as set out below) each year for delivery to Buyer at the Delivery Point, and use commercially reasonable efforts to tender Make Up Aggregate, Make Good Aggregate and FMRQ Aggregate requested by Buyer but not scheduled in the Annual Delivery Program. The Adjusted Annual Contract Quantity will be calculated as follows and set out in the Annual Delivery Program:

Adjusted Annual Contract Quantity =
 (ACQ+Q1+Q2+Q3+Q4+Q5+Q6) less (Q7+Q8+Q9+Q10+Q11)

Where:

ACQ = quantity of [●] MMBtu per year, pro-rated as required for the first partial year (the **Annual Contract Quantity**)

- Q1 = such part of the Make Up Aggregate as is scheduled for delivery by the Seller in accordance with the Annual Delivery Program
- Q2 = such part of the Make Good Aggregate as is scheduled for delivery by the Seller in accordance with the Annual Delivery Program
- Q3 = such part of the FMRQ Aggregate as is scheduled for delivery by the Seller in accordance with the Annual Delivery Program
- Q4 = round up quantity in respect of such year in order to make the Adjusted Annual Contract Quantity of such year divisible into a whole number of cargoes
- Q5 = round down quantity in respect of the previous year in order to make the Adjusted Annual Contract Quantity of the previous year divisible into a whole number of cargoes
- Q6 = Negative Fractional Quantity ¹⁹ in respect of the previous year
- Q7 = BDQT in respect of such year
- Q8 = SDQT in respect of such year
- Q9 = round down quantity in respect of such year in order to make the Adjusted Annual Contract Quantity of such year divisible into a whole number of cargoes
- Q10 = round up quantity in respect of the previous year in order to make the Adjusted Annual Contract Quantity of the previous year divisible into a whole number of cargoes
- Q11 = if the quantity of delivered LNG exceeds the Take-or-Pay Quantity in the previous year by a fraction of a Nominal Cargo, such fraction of excess (and, if such excess includes a whole number of cargoes, such whole number of cargoes will be included in the Adjusted Annual Contract Quantity of the previous year).

The Adjusted Annual Contract Quantity will be tendered for delivery by Seller and taken by Buyer on a uniform and regular basis during each year in

¹⁹ A&O NOTE: Term to be defined.

accordance with the Annual Delivery Program. Seller may round up or down the Adjusted Annual Contract Quantity so that it is divisible into a whole number of Cargoes.

Make Up Aggregate

In each year where there is an aggregate unrecovered quantity of LNG for which Buyer has paid as Annual Quantity Deficiency in the [5] immediately preceding years (the **Make Up Aggregate**), Buyer may request via its comments on the Proposed Annual Delivery Program for such year to take a quantity of LNG in recovery of all or part of such Make Up Aggregate. Seller will use commercially reasonable efforts to deliver such quantity of Make Up Aggregate as requested by Buyer in accordance with the priority set out in the Club Rules at the Contract Price applicable at the time of delivery.

The excess of delivered LNG over the Adjusted Annual Contract Quantity will reduce the Make Up Aggregate on a “first in first out” basis, so that such excess will be first applied towards reducing Make Up Aggregate created earlier in time. Except as a result of force majeure, any quantity of LNG properly tendered by Seller in respect of the Make Up Aggregate but not taken by Buyer shall reduce the Make Up Aggregate to a corresponding extent. Seller will not be obliged to reserve any LNG to enable Buyer’s recovery of the Make Up Aggregate.

Make Good Aggregate

Buyer will use commercially reasonable efforts to minimize the unrecovered aggregate BDQT (the **Make Good Aggregate**) from all prior years by requesting to purchase LNG as recovery of the Make Good Aggregate (the **Make Good Recovery**) as soon as practicable. Seller will use commercially reasonable efforts to deliver such requested quantity to Buyer in accordance with the priority set out in the Club Rules at the Contract Price applicable at the time of delivery.

FMRQ Aggregate

Buyer will use commercially reasonable efforts to minimize the unrecovered aggregate quantity of LNG not tendered by Seller or not taken by Buyer by reason of force majeure (the **FMRQ Aggregate**) from all prior years by requesting to purchase LNG as recovery of the FMRQ Aggregate (the **FMRQ Recovery**) as soon as practicable. Seller will use commercially reasonable efforts to deliver such requested quantity to Buyer in accordance with the priority set out in the Club Rules at the Contract Price applicable at the time of delivery.

**Downward
Tolerance Quantity**

Each year Buyer may require a deduction from the Annual Contract Quantity a quantity of LNG (the **BDQT**) no greater than [●]% of the Annual Contract Quantity, provided that such deduction will not result in the Make Good Aggregate at the beginning of such year exceed a quantity of LNG equal to [●]% of the Annual Contract Quantity in such year.

Each year Seller may require a deduction from the Annual Contract Quantity a quantity of LNG (the **SDQT**) no greater than [●] % of the Annual Contract Quantity.

Take-or-Pay

The Take-or-Pay Quantity in each year will be calculated by Seller as:

Take-or-Pay Quantity = Adjusted Annual Contract Quantity - (Q12 + Q13)

Where:

Q12 = the aggregate quantity of LNG scheduled for delivery in respect of such year which Seller did not deliver for any reason but excluding any quantities of LNG properly tendered for delivery by Seller and not taken by Buyer

Q13 = the aggregate quantity of LNG scheduled for delivery in respect of such year which Buyer did not accept by reason of force majeure or an entitlement not to accept such LNG pursuant to the terms of the LNG SPA.

In respect of each year, to the extent that the delivered quantity falls short of the Take-or-Pay Quantity, Buyer will pay for the quantity of LNG by which the delivered quantity falls short of the Take-or-Pay Quantity (the **Annual Quantity Deficiency**) at the average of the Contract Price in effect in respect of each of the 12 months during the relevant year (the **Take-or-Pay Price**).

Make Up Recovery Price

If the Take-or-Pay Price exceeds the Contract Price as at the date of delivery of the relevant make up recovery quantity, then Buyer will be entitled to receive a credit equal to such excess. If the Contract Price exceeds the Take-or-Pay Price as at the date of delivery of such make up recovery quantity, then Buyer will pay to Seller such excess.

Cargo Underdelivery

If Seller fails to deliver any cargo required to be delivered under the LNG SPA and Seller (a) is not excused due to force majeure, priority rights under the Club Rules or otherwise, and (b) Buyer is able to take delivery (such event, a **Cargo Underdelivery**), Buyer will use commercially reasonable efforts to procure substitute LNG or an equivalent quantity of natural gas or other alternative fuel.

If Buyer is able to obtain substitute fuel, Seller will pay Buyer the lesser of (a) incremental costs and expenses reasonably and necessarily incurred in Buyer's purchase of such substitute fuel, and (b) the product of the Cargo Underdelivery and [●]% of the Contract Price in the month of the relevant Cargo Underdelivery.

If Buyer is unable to obtain substitute fuel despite use of commercially reasonable efforts, Seller will be liable for liquidated damages equal to the product of the Cargo Underdelivery and [●]% of the Contract Price in the month of the relevant Cargo Underdelivery.

Supply Period and Aggregate Balance

The term for delivery of LNG under the LNG SPA begins on the commercial operation date of Seller's Facilities and lasts through the next following [●] (the **Supply Period**). During the Supply Period, Seller has an obligation to tender LNG for delivery and Buyer has an obligation to take and pay for such LNG. If at the end of the Supply Period there is unrecovered balance of Make Up Aggregate, Make Good Aggregate and FMRQ Aggregate (the **Aggregate Balance**), Seller shall pay to Buyer an amount equal to the product of the remaining Aggregate Balance and the applicable Take or Pay

Price.

**Annual Delivery
Program and Ninety
Day Schedule**

Seller will prepare an annual delivery program for each year (**Annual Delivery Program**), taking into consideration Seller's commitments to other buyers. Seller will deliver to Buyer a proposed Annual Delivery Program, which will take into consideration factors including Seller's forecast of the quality of the LNG, maintenance periods of Seller's Facilities and Buyer's Facilities and loading patterns, and Buyer's requested adjustments to the Annual Contract Quantity. Buyer will have 14 days to respond with comments and the Parties will seek to agree on the Annual Delivery Program. Seller will establish and issue to Buyer the Annual Development Program prior to the year.

Each Party may request changes to the Annual Delivery Program by giving notice to the other. The Parties will discuss and use commercially reasonable efforts to accommodate such changes subject to the Club Rules. No changes will relieve Buyer from any liability with respect to an Annual Quantity Deficiency.

Within the first 5 days of each month during the Supply Period, Seller will issue to Buyer a program of operations and deliveries (the **Ninety Day Schedule**) based on the then current Annual Delivery Program (so far as reasonably practicable) providing updated details of deliveries of LNG for the 3 consecutive months starting from the following months.

Specifications

The specifications of the LNG to be delivered will be set out in the LNG SPA. Prior to delivery, Seller will test the LNG and notify Buyer of any non-conformity. Buyer will use commercially reasonable efforts to take delivery of such LNG unless it would be unsafe to do so. Upon 48 hours of becoming aware of such non-conformity, Buyer will inform Seller the excess cost of its taking delivery of such LNG. If the excess cost exceeds a threshold of [●]% of the Contract Price (the **Costs Threshold**), Buyer may choose to accept such LNG only after Seller has reimbursed Buyer the excess cost, *provided* that the Costs Threshold shall not apply if Seller failed to notify Buyer of any non-conformity in accordance with the LNG SPA. Otherwise, Buyer will take delivery of such non-conforming LNG and Seller will reimburse Buyer the excess costs after delivery.

[Credit Support

If at any time during the Supply Period Buyer does not (or Seller has reasonable grounds to consider that Buyer may not) maintain an Acceptable Rating, Seller may require Buyer to provide a parent company guarantee or an irrevocable standby letter of credit (**Credit Support**) to Seller within 5 business days after giving such notice. If at any time during the Supply Period Seller considers that a provider of Credit Support may no longer maintain an Acceptable Rating or may otherwise fail to fulfil the terms of its Credit Support, Seller may require Buyer to provide enhanced or replacement Credit Support within 5 business days after giving such notice. During the term of the LNG SPA Buyer will provide to Seller periodic updates of the financial standing and circumstances of Buyer and each provider of Credit Support and will provide such other related information as may be reasonably required by Seller. For purposes of this paragraph, **Acceptable Rating** means

an investment grade credit rating acceptable to the lenders of the NGSP LNG Project of at least [●] by Standard & Poor's or [●] by Moody's, or any equivalent rating by a successor of either such ratings agency.]²⁰

Termination

The LNG SPA may be terminated:

- (a) by one Party upon the non-payment by the other Party of an amount due under the LNG SPA in the sum of at least \$[●] and for a period in excess of 10 business days beyond the due date;
- (b) by Seller upon a Buyer insolvency event;
- (c) by Buyer if due to force majeure for a continuous period of 2 years the aggregate quantities of LNG delivered by Seller are less than [50]% of the Adjusted Annual Contract Quantity in respect of each such year;
- (d) by Seller if due to force majeure for a continuous period of 2 years the aggregate quantities of LNG taken by the Buyer are less than [50]% of the Adjusted Annual Contract Quantity in respect of each such year;
- (e) by Seller if the quantities of LNG taken by Buyer in each of 2 consecutive years are less than [●]% of the respective Adjusted Annual Contract Quantities in respect of each such year due to reasons other than force majeure;
- (f) [by Seller due to a Buyer credit support failure;]
- (g) by Buyer if the quantities of LNG delivered by Seller in each of 2 consecutive years are less than [●]% of the respective Adjusted Annual Contract Quantities in respect of each such year;
- (h) by either party upon the other party's breach of any other material obligation under the LNG SPA, which breach is not cured within [30 days] of notification thereof by the non-breaching party;
- (i) [by Seller for convenience upon [●] months' notice to Buyer];
- (j) by Seller upon termination of the Concession Agreement in accordance with the terms thereof; and
- (k) [termination at any time after the [tenth (10th)] anniversary of the Commercial Operation Date based on availability of Alternative Gas Supply to be discussed with the Authority and LNG purchasers.]

Dispute Resolution and Governing Law

The Parties will first attempt to resolve disputes through negotiation by senior management and, if such dispute is technical in nature, referral to a technical expert. If such attempts are unsuccessful, disputes will be referred

²⁰ Subject to Seller's credit assessment of Buyer.

to and exclusively resolved in binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association with the seat of arbitration in [Anchorage, Alaska], unless such disputes also involve the Authority as a party, in which case they will be referred to and exclusively resolved in Alaskan courts in accordance with the terms of Article 24 of the Concession Agreement.

The governing law of each LNG SPA will be the laws of the State of Alaska.

SCHEDULE K-2

LNG TSA TERM SHEET

All capitalized terms used but not defined in this term sheet shall have the meanings given to such terms in the Concession Agreement dated [●], 2014 (the **Concession Agreement**) between Alaska Industrial Development and Export Authority (the **Authority**) and Northern Lights Energy, LLC (the **Concessionaire**).

Operator	Northern Lights Energy 1, LLC
Customer	Northern Lights Energy, LLC, and together with Operator, the Parties , each, a Party
Conditions Precedent	Consistent with terms of LNG Sale and Purchase Agreements, to include: <ul style="list-style-type: none"> (a) Receipt of all necessary permits, approvals and licenses; (b) Customer having entered into LNG Sale and Purchase Agreements with LNG Purchasers contracting for LNG quantities sufficient to satisfy the assumptions set forth in the Base Case Financial Model, including the repayment of the Investor Equity Contributions, AIDEA SETS Funds and Third Party Loans (if any) by the end of the term of the Concession Agreement in accordance with such assumptions; and (c) Closing has occurred under the Concession Agreement.
Tolling Services Fee:	To include components designed to compensate Operator for its fixed costs, variable costs and a negotiated rate of return.
Facilities of Operator and Customer:	Operator will provide and maintain the LNG liquefaction facilities on the North Slope of Alaska known as the Northern Gas Supply Plant (Operator's Facilities) necessary for tendering LNG for delivery. Customer will provide and maintain (a) the tractor-trailers with LNG tanks meeting specifications agreed by the Parties (the Trailers) and (b) certain reception facilities and utilities at the unloading point (Customer's Facilities) necessary for taking delivery of LNG.
Club Rules:	Operator will develop rules concerning allocation and priority arrangements in respect of its available processing capacity for LNG among several LNG Purchasers (as set out in a schedule to each LNG SPA and LNG TSA, the Club Rules), which priority in the event of a shortfall shall generally be as follows: <ul style="list-style-type: none"> (a) Interior Alaska Natural Gas Utility and Fairbanks Natural Gas, LLC for residential and commercial space heating, in the volumes specified in and pursuant to the terms of their respective LNG SPAs or LNG TSAs, as applicable;

- (b) Golden Valley Electric Association, Inc. for use as a fuel at its electric generating plants, in the volumes specified in and pursuant to the terms of its LNG SPA or LNG TSA, as applicable;
- (c) electric and local gas distribution utilities that are located in (A) the North Slope Borough or (B) Interior Alaska but outside of the Fairbanks North Star Borough, in the volumes specified in and pursuant to the terms of their respective LNG SPAs or LNG TSAs, as applicable;
- (d) industrial customers located in Interior Alaska, such as refineries and mines;
- (e) any parties that are not RCA-regulated electric and local gas distribution utilities and are consuming LNG in the State of Alaska but outside of Interior Alaska;
- (f) any parties that use LNG pursuant to the terms of their respective LNG SPAs or LNG TSAs, as applicable, as a transportation fuel in the State of Alaska, other than such LNG used as fuel to transport LNG from the Plant to customers listed in clauses (a) through (d) above; and
- (g) any parties consuming LNG outside the State of Alaska.

Operator shall follow all instructions of Customer in implementing the Club Rules.

Gas Delivery Point: The interconnection point between the [*describe pipeline*] and the Plant.

LNG Delivery Point: The point at which the flange coupling of the loading lines at the Operator's Facilities connects with the flange coupling of the loading manifold of the Trailer provided by Customer.

Services to be Provided by Operator: Operator shall provide Customer with the following services (the "**Tolling Services**"):

- (a) the receipt of natural gas ("**Feed Gas**") at the Gas Delivery Point;
- (b) the pre-treatment of Feed Gas;
- (c) the liquefaction of Feed Gas;
- (d) the temporary storage of LNG;
- (e) access to a loading station for Trailers at the Plant;
- (f) the delivery of LNG to Trailers at the LNG Delivery Point;
- (g) [the sale of residual natural gas liquids as agent for Customer;]

- (h) the cool down of Trailers; and
- (i) inventory and performance reporting.

Delivery of Feed Gas and LNG; Transfer of Risk of Loss

Customer will schedule delivery of Feed Gas to the Gas Delivery Point in accordance with the scheduling procedure to be set forth in greater detail in the LNG TSAs. Operator will be responsible for receiving Feed Gas delivered to the Gas Delivery Point.

Operator will deliver LNG tendered for delivery to the LNG Delivery Point and provide at the Operator's Facilities a safe loading station which each Trailer can safely reach and leave and at which it can load safely, and all required facilities. Customer will be responsible for receiving LNG at the LNG Delivery Point and the transportation, unloading, storage and re-gasification of such LNG and the end-use of the natural gas.

Possession, risk of loss and control of Feed Gas will pass to Operator at the Gas Delivery Point, and possession, risk of loss and control of such Feed Gas (whether or not in the form of LNG [and including any residual natural gas liquids]) will pass to Customer at the LNG Delivery Point. Notwithstanding the foregoing, the title and property in all Feed Gas and LNG delivered by and processed on behalf of Customer will at all times remain with Customer.

Loading and Transportation

At no cost to Operator, Customer will be responsible for transporting LNG from Operator's Facilities using Trailers that meet the requirements set out below, and will provide Operator with a reasonable opportunity to inspect the Trailers. At no cost to Customer, Operator will provide a safe loading station at Operator's Facilities for Trailers to safely reach, load and depart.

Each Trailer shall:

- (a) have gross LNG cargo tank capacity in the range of [●]-[●] m3 and be designed, equipped and manned so as to safely and reliably permit the loading of a cargo at an approximate rate of [●] cubic meters per hour using [●] liquid loading arms at a normal operating pressure of [●] or at such pressure and flowrates as may be agreed between Operator and Customer from time to time;
- (b) have overall dimensions, draft and tonnage compatible with the loading dock and the Operator's Facilities;
- (c) comply with LNG industry standards;
- (d) comply with applicable law and shall have obtained all permissions and approvals required to dock and load LNG at the Operator's Facilities; and
- (e) have completed Operator's LNG tractor-trailer vetting procedure.

If a Trailer is delayed in docking, loading or departing due to reasons attributable to a Party or a third party, the Parties shall promptly consult with a view to minimizing such delay. If a material delay occurs in docking, loading or departing, the Parties will consult with respect to (x) causes for the delay, and (y) to the extent such causes are within the reasonable control of either Party, the resulting costs and expenses and any compensation to be paid by one Party to the other Party.

Gassing-up and Cooling Rights

Operator will provide without charge to Customer delivery of LNG in such quantities as reasonably required for gassing-up and cooling Trailers to a temperature in the LNG tank sufficiently cold to permit continuous loading of LNG at the rate specified in clause (a) in "Loading and Transportation" above, upon a Trailer's entry into service and on its return to service after a scheduled maintenance period, provided that Customer will be entitled to delivery of such LNG no more frequently than [●].

Customer will use commercially reasonable efforts to minimize requests for gassing-up and cooling beyond its Gassing-up and Cooling Rights, and Operator will use commercially reasonable efforts to accommodate such requests.

Tolling Services Period

The term for provision of the Tolling Services under the LNG TSA begins on the commercial operation date of the Operator's Facilities and lasts through the next following [●] (the "**Tolling Services Period**"). During the Tolling Services Period, Operator has an obligation to provide tolling services in respect of a specified quantity of LNG per annum (the "**Annual Contract Quantity**") (**provided** that Customer has delivered the requisite amount of Feed Gas) and Customer has an obligation to pay for services in respect of the Annual Contract Quantity whether or not used, in terms to be further developed in the LNG TSA

Annual Delivery Program and Ninety Day Schedule

Operator will prepare an annual delivery program for each year (**Annual Delivery Program**), taking into consideration Operator's commitments to other customers. Operator will deliver to Customer a proposed Annual Delivery Program, which will take into consideration factors including Operator's forecast of the quality of the LNG, maintenance periods of Operator's Facilities and Customer's Facilities and loading patterns, and Customer's requested adjustments to the Annual Contract Quantity. Customer will have 14 days to respond with comments and the Parties will seek to agree on the Annual Delivery Program. Operator will establish and issue to Customer the Annual Development Program prior to the beginning of each year.

Each Party may request changes to the Annual Delivery Program by giving notice to the other. The Parties will discuss and use commercially reasonable efforts to accommodate such changes subject to the Club Rules. No changes will relieve Customer from any liability with respect to its obligation to use or pay for the Annual Contract Quantity.

Within the first 5 days of each month during the Tolling Services Period, Operator will issue to Buyer a program of operations and deliveries (the

Ninety Day Schedule) based on the then current Annual Delivery Program (so far as reasonably practicable) providing updated details of deliveries of LNG for the 3 consecutive months starting from the following month, which Ninety Day Schedule shall include a forecast of the Feed Gas required to be delivered by or on behalf of Customer to the Gas Delivery Point for each day in the Ninety Day Schedule, and Customer shall be responsible for scheduling delivery of such quantities of Feed Gas in accordance with the Ninety Day Schedule, subject to certain adjustments to be agreed.

Specifications

The specifications of the Feed Gas and the LNG to be delivered will be set out in the LNG TSA.

Customer will notify Operator as soon as reasonably practicable after Customer receives any notice or other information that Feed Gas delivered to the Gas Delivery Point will be off specification, and Operator will monitor such Feed Gas for compliance with specifications. Operator will use commercially reasonable efforts to take delivery of such Feed Gas unless it would be unsafe to do so.

Prior to delivery, Operator will test the LNG and notify Customer of any non-conformity. Customer will use commercially reasonable efforts to take delivery of such LNG unless it would be unsafe to do so.

Credit Support:

If at any time during the Tolling Services Period Customer does not (or Operator has reasonable grounds to consider that Customer may not) maintain an Acceptable Rating, Operator may require Customer to provide a parent company guarantee or an irrevocable standby letter of credit (**Credit Support**) to Operator within 5 business days after giving such notice. If at any time during the Tolling Services Period Operator considers that a provider of Credit Support may no longer maintain an Acceptable Rating or may otherwise fail to fulfil the terms of its Credit Support, Operator may require Customer to provide enhanced or replacement Credit Support within 5 business days after giving such notice. During the term of the LNG TSA Customer will provide to Operator periodic updates of the financial standing and circumstances of Customer and each provider of Credit Support and will provide such other related information as may be reasonably required by Operator. For purposes of this paragraph, **Acceptable Rating** means an investment grade credit rating acceptable to the lenders of the NGSP LNG Project of at least [●] by Standard & Poor's or [●] by Moody's, or any equivalent rating by a successor of either such ratings agency.]²¹

Termination

The LNG TSA may be terminated:

- (a) by one party upon the non-payment by the other party of an amount due under the LNG TSA in the sum of at least \$[●] and for a period in excess of 10 business days beyond the due date;

²¹ Subject to Operator's credit assessment of Customer.

- (b) by Customer upon an Operator insolvency event;
- (c) by Buyer if due to force majeure for a continuous period of 2 years the aggregate quantities of LNG delivered by Operator are less than [50]% of the adjusted Annual Contract Quantity in respect of each such year;
- (d) by Operator if due to force majeure for a continuous period of 2 years the aggregate quantities of LNG taken by the Customer are less than [50]% of the adjusted Annual Contract Quantity in respect of each such year;
- (e) by Operator if the quantities of LNG taken by Customer in each of 2 consecutive years are less than [●]% of the respective adjusted Annual Contract Quantities in respect of each such year due to reasons other than force majeure;
- (f) [by Operator due to a Customer credit support failure;]
- (g) by Customer if the quantities of LNG delivered by Operator in each of 2 consecutive years are less than [●]% of the respective adjusted Annual Contract Quantities in respect of each such year;
- (h) by either party upon the other party's breach of any other material obligation under the LNG TSA, which breach is not cured within [30 days] of notification thereof by the non-breaching party;
- (i) [by Customer for convenience upon [●] months' notice to Operator];
- (j) by Customer upon termination of the Concession Agreement in accordance with the terms thereof; and
- (k) [termination based on availability of Alternative Gas Supply to be discussed with the Authority and LNG purchasers.]

**Dispute Resolution and
Governing Law:**

The Parties will first attempt to resolve disputes through negotiation by senior management and, if such dispute is technical in nature, referral to a technical expert. If such attempts are unsuccessful, disputes will be referred to and exclusively resolved in a binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association with the seat of arbitration in [Anchorage, Alaska], unless such disputes also involve the Authority as a party, in which case they will be referred to and exclusively resolved in Alaskan courts in accordance with the terms of Article 24 of the Concession Agreement.

The governing law of each LNG TSA will be the laws of the State of Alaska.

SCHEDULE L

FORM OF LEGAL OPINION OF THE AUTHORITY

The written opinions of the Authority's counsel to be delivered to the Concessionaire on the Closing Date will contain the following opinion paragraphs and will be subject to customary assumptions, qualifications and exceptions for opinions of counsel delivered in connection with concession agreements similar to the concession agreement contemplated by the North Slope LNG Concession Agreement (the ***Concession Agreement***) by and among Northern Lights Energy, LLC (the ***Concessionaire***) and Alaska Industrial Development and Export Authority (the ***Authority*** or ***AIDEA***).

1. The Authority is a public corporation validly existing under the law of the State of Alaska.
2. The Authority:
 - (a) has the power as a public corporation to execute, deliver and perform the Concession Agreement, the AIDEA Early Works Agreement, the Site Lease Agreement and the Consent and Agreement (collectively the ***Opinion Documents***);
 - (b) has taken all public corporation action necessary to authorize the execution, delivery and performance of the Opinion Documents; and
 - (c) has duly executed and delivered the Opinion Documents.
3. Each Opinion Document constitutes the valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms.
4. The execution and delivery by the Authority of the Opinion Documents do not, and the performance by the Authority of its obligations under the Opinion Documents will not, result in a violation of the powers granted to the Authority under Alaska Statutes § 44.88.560 or the by-laws of the Authority.
5. The execution and delivery by the Authority of the Opinion Documents do not, and the performance by the Authority of its obligations under the Opinion Documents will not, result in any violation of any federal law of the United States or any law of the State of Alaska.

SCHEDULE M

FORM OF LEGAL OPINION OF THE CONCESSIONAIRE

The written opinions of the Concessionaire's counsel to be delivered to the Authority on the Closing Date will contain the following opinion paragraphs and will be subject to customary assumptions, qualifications and exceptions for opinions of counsel delivered in connection with concession agreements similar to the concession agreement contemplated by the North Slope LNG Concession Agreement (the ***Concession Agreement***) by and among Northern Lights Energy, LLC (the ***Concessionaire***) and Alaska Industrial Development and Export Authority (the ***Authority*** or ***AIDEA***).

1. The Concessionaire is a limited liability company validly existing under the Delaware Limited Liability Company Act.
2. The Concessionaire:
 - (a) has the power as a limited liability company to execute, deliver and perform the Concession Agreement, the Construction Contract, the AIDEA Early Works Agreement together with the assignment agreement assigning the AIDEA Early Works Agreement to the Concessionaire, each LNG SPA, each LNG TSA, the Gas Supply Agreement, the O&M Agreement and the Third Party Financing Documents (collectively the ***Opinion Documents***);
 - (b) has taken all limited liability company action necessary to authorize the execution, delivery and performance of the Opinion Documents; and
 - (c) has duly executed and delivered the Opinion Documents.
3. Each Opinion Document constitutes the valid and binding obligation of the Concessionaire, enforceable against the Concessionaire in accordance with its terms.
4. The execution and delivery by the Concessionaire of the Opinion Documents do not, and the performance by the Concessionaire of its obligations under the Opinion Documents will not, result in a violation of the limited liability company agreement of the Concessionaire.
5. The execution and delivery by the Concessionaire of the Opinion Documents do not, and the performance by the Concessionaire of its obligations under the Opinion Documents will not, result in any violation of any federal law of the United States, or any law of the State of Alaska or the Delaware Limited Liability Company Act.

SCHEDULE N

FORM OF LEGAL OPINION OF THE EQUITY PARTICIPANTS

The written opinions of the Investor's counsel to be delivered to the Authority on the Closing Date will contain the following opinion paragraphs and will be subject to customary assumptions, qualifications and exceptions for opinions of counsel delivered in connection with concession agreements similar to the concession agreement contemplated by the North Slope LNG Concession Agreement (the **Concession Agreement**) by and among Northern Lights Energy, LLC (the **Concessionaire**) and Alaska Industrial Development and Export Authority (the **Authority** or **AIDEA**).

1. The Investor is a limited partnership validly existing under the [laws of Ontario].
2. The Investor:
 - (a) has the power as a limited partnership to execute, deliver and perform the Equity Contribution Agreement and the Limited Liability Company Operating Agreement of the Concessionaire (collectively the **Opinion Documents**);
 - (b) has taken all limited partnership action necessary to authorize the execution, delivery and performance of the Opinion Documents; and
 - (c) has duly executed and delivered the Opinion Documents.
3. Each Opinion Document constitutes the valid and binding obligation of the Investor, enforceable against the Investor in accordance with its terms.
4. The execution and delivery by the Investor of the Opinion Documents do not, and the performance by the Investor of its obligations under the Opinion Documents will not, result in a violation of the [certificate of limited partnership or the limited partnership agreement] of the Investor.
5. The execution and delivery by the Investor of the Opinion Documents do not, and the performance by the Investor of its obligations under the Opinion Documents will not, result in any violation of any federal law of the United States, or any law of the State of Alaska or [any laws of Ontario].

SCHEDULE O

FORM OF LEGAL OPINION OF THE PROJECT PARTIES

The written opinions of the [Construction Contractor] [Operator] [LNG Purchaser]'s counsel to be delivered to the Authority on the Closing Date will contain the following opinion paragraphs and will be subject to customary assumptions, qualifications and exceptions for opinions of counsel delivered in connection with concession agreements similar to the concession agreement contemplated by the North Slope LNG Concession Agreement (the **Concession Agreement**) by and among Northern Lights Energy, LLC (the **Concessionaire**) and Alaska Industrial Development and Export Authority (the **Authority** or **AIDEA**).

1. The [Construction Contractor] [Operator] [LNG Purchaser] is a [corporation] [limited liability company] [limited partnership] validly existing under the laws of [jurisdiction].
2. The [Construction Contractor] [Operator] [LNG Purchaser]:
 - (a) has the [corporate power] [power as a limited liability company] [power as a limited partnership] to execute, deliver and perform the [Construction Contract] [O&M Agreement] [LNG SPA] [LNG TSA] (collectively the **Opinion Documents**);
 - (b) has taken all [corporate] [limited liability company] [limited partnership] action necessary to authorize the execution, delivery and performance of the Opinion Documents; and
 - (c) has duly executed and delivered the Opinion Documents.
3. Each Opinion Document constitutes the valid and binding obligation of the [Construction Contractor] [Operator] [LNG Purchaser], enforceable against the [Construction Contractor] [Operator] [LNG Purchaser] in accordance with its terms.
4. The execution and delivery by the [Construction Contractor] [Operator] [LNG Purchaser] of the Opinion Documents do not, and the performance by the [Construction Contractor] [Operator] [LNG Purchaser] of its obligations under the Opinion Documents will not, result in a violation of the [list organizational documents of the Project Party] of the [Construction Contractor] [Operator] [LNG Purchaser].
5. The execution and delivery by the [Construction Contractor] [Operator] [LNG Purchaser] of the Opinion Documents do not, and the performance by the [Construction Contractor] [Operator] [LNG Purchaser] of its obligations under the Opinion Documents will not, result in any violation of any federal law of the United States, any law of the State of Alaska[,], or [list any other applicable laws].

SCHEDULE P MAP OF INTERIOR ALASKA



(State Economic Regions defined by the AK department of labor:<http://labor.alaska.gov/research/census/maps/EconRegions2013.pdf>)

SCHEDULE Q

FORM OF CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (this *Consent and Agreement*), dated as of [date], by and among Alaska Industrial Development and Export Authority (the *Authority*), a public corporation of the State of Alaska, Northern Lights Energy, LLC, a limited liability company organized and existing under the laws of Delaware (the *Concessionaire*) and [name], a [jurisdiction] [banking corporation], as collateral agent under the [Collateral Agency Agreement] defined below (together with its successors in such capacity, the *Collateral Agent*).

RECITALS

WHEREAS, the Authority and the Concessionaire have entered into the North Slope LNG Concession Agreement dated as of [●], 2014 (the *Concession Agreement*), pursuant to which the Authority has granted to the Concessionaire the right to, among other things, develop, construct, use, operate, manage and maintain the Plant (as defined in the Concession Agreement), to provide Plant Services (as defined in the Concession Agreement) in connection therewith and to receive revenues from the Project (as defined in the Concession Agreement) all as provided in the Concession Agreement; and

WHEREAS, the Concessionaire will, concurrently with the execution of this Consent and Agreement, enter into a [Credit Agreement] dated as of [date] (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the [*Credit Agreement*]) between the Concessionaire, as borrower, [name], as administrative agent and [a lender] thereunder, and each of the other lenders party thereto from time to time, pursuant to each of which the Concessionaire will incur certain “Secured Obligations” (the *Secured Obligations*) as defined in the Collateral Agency Agreement (defined below); and

WHEREAS, the Concessionaire, the Collateral Agent, and other parties thereto are or will be entering into the [Collateral Agency and Intercreditor Agreement] dated as of [date] (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the [*Collateral Agency Agreement*]), pursuant to which the Collateral Agent has agreed to act as collateral agent for the [Secured Parties] (as defined in the [Collateral Agency Agreement]); and

WHEREAS, the Concessionaire and the Collateral Agent have entered into the [Account Control and Security Agreement] dated as of [date] (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof and section [●] herein, the [*Security Agreement*], and together with the [Credit Agreement] and the [Collateral Agency Agreement], the “*Financing Documents*”), pursuant to which the Concessionaire has granted or will concurrently with the execution of this Consent and Agreement grant in favor of the Collateral Agent, for the benefit of the [Secured Parties], security interests encumbering all of the Concessionaire’s personal property and assets, including the Concessionaire Interest (as defined in the Concession Agreement), as collateral security for the Concessionaire’s payment of the Secured Obligations; and

WHEREAS, it is a condition precedent to the execution of the Financing Documents that the Authority shall have executed and delivered this Consent and Agreement, which is the consent referred to in Section 23.1(f) of the Concession Agreement, and the Authority is willing to give this Consent and Agreement in reliance upon the representations of the Concessionaire and of the Collateral Agent, respectively, contained herein;

NOW THEREFORE, in consideration of good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

1. Definitions

All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Concession Agreement.

2. Representations and Direction of Concessionaire

The Concessionaire hereby represents, warrants, directs and covenants as follows:

(a) The Security Agreement is a "Collateral Assignment" as defined and used in the Concession Agreement.

(b) The Security Agreement does not cover any portion of the Plant Site or Plant or any other property of, or secure any debt (A) issued or guaranteed by, any Person other than the Concessionaire (or a financial institution providing a financial guarantee or similar credit enhancement in respect of any debt of the Concessionaire), any special purpose company that directly or indirectly owns the Concessionaire and has no assets except as are directly related to the Project, or any special purpose subsidiary wholly owned by such company or (B) the proceeds of which are used in whole or in part for any purpose other than the development, construction, operation or maintenance of the Plant and the activities incidental thereto; **provided** that the foregoing does not apply to or restrict and no representation or warranty is given in respect of any security interests granted by the members of the Concessionaire in the membership interests of the Concessionaire or any cash reserves or deposits held in the name of the Concessionaire. For the avoidance of doubt, the property of the Concessionaire covered by the Security Agreement includes cash reserves or deposits held by the Collateral Agent for the benefit of the Concessionaire and the beneficiaries of the Security Agreement.

(c) To the knowledge of the Concessionaire, no event has occurred that constitutes, or with notice or the passage of time could reasonably be expected to constitute, a Concessionaire Default.

(d) The Concessionaire, for itself and its successors and permitted assigns, hereby irrevocably directs the Authority to make any payments owed by the Authority pursuant to the terms of the Concession Agreement to the Concessionaire as provided in Section 13 herein.

3. Representations, Warranties and Agreement of Collateral Agent

(a) The Collateral Agent hereby represents and warrants as follows:

(i) attached hereto as Exhibit A is a copy of the Security Agreement;

(ii) the Collateral Agent is an Institutional Lender as defined in the Concession Agreement on the date hereof; and

(iii) for the purposes of providing any notice to the Collateral Agent as required pursuant to the terms of the Consent and Agreement, the address of the Collateral Agent is as follows:

[bank name]

[address]

Attention: [●]

Facsimile: [(____) ____-____]

(b) The Collateral Agent hereby agrees as follows:

(i) Subject to the terms of the Concession Agreement, all rights acquired by the Collateral Agent under the Security Agreement shall be subject and subordinate to all of the provisions of the Concession Agreement and to all of the rights of the Authority thereunder;

(ii) The Security Agreement does not extend to or affect the fee simple or leasehold title or other good and valid real property interest in the Plant, the Plant Site, the Authority's interest under the Concession Agreement or the Authority's reversionary interest and estate in and to the Plant or any part thereof (other than a Permitted Concessionaire Encumbrance);

(iii) The Authority shall have no liability whatsoever for payment of the principal sum secured by the Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and the Collateral Agent shall not be entitled to seek any damages or other amounts against the Authority except to the extent the Concessionaire is entitled to seek such damages or other amounts from the Authority under the Concession Agreement and the Collateral Agent has exercised its remedies under the Security Agreement and taken possession or control of the Concessionaire Interest;

(iv) The Authority shall have no obligation to the Collateral Agent in the enforcement of the Authority's rights and remedies under the Concession Agreement and as provided by Applicable Law, except as expressly set forth in Section 9(a) herein. In the event of an assignment of this Consent and Agreement by the Collateral Agent, such assignment will not be binding upon the Authority unless and until the Authority has received a certified copy thereof, together with notice of the assignee thereof to which notices may be sent;

(v) The Collateral Agent acknowledges and agrees that it shall not, by virtue of the Security Agreement or this Consent and Agreement acquire any greater rights or interests in the Plant, the Project or the Revenues than the Concessionaire has at any applicable time under the Concession Agreement;

(vi) The Collateral Agent shall provide notice to the Authority of any default or "Event of Default" under any Financing Document promptly following the occurrence thereof at its address specified in Section 14(i); and

(vii) The Collateral Agent agrees to be bound by the applicable terms of Section 23 of the Concession Agreement in all material respects.

4. Collateral Agent's Right to Cure

The Authority will provide the Collateral Agent with a copy of any notice of a Concessionaire Default simultaneously with providing such notice to the Concessionaire and no such notice shall be effective against the Collateral Agent until a copy thereof is provided to the Collateral Agent at its address specified in Section 3(a) herein. The Authority agrees that the Collateral Agent shall have a period of thirty (30) days (in the case of a payment default) and forty-five (45) days (in the case of any other Concessionaire Default) from the last day of the applicable cure period expressly provided to the Concessionaire under the Concession Agreement, in which to cure or cause to be cured any such

Concessionaire Default before the Authority may exercise its rights to terminate the Concession Agreement; **provided, however**, that upon the occurrence of a Concessionaire Default that cannot be cured with the payment of money by the Collateral Agent but can only be cured with possession of the Concessionaire Interest through foreclosure, then the Authority agrees not to terminate the Concession Agreement and agrees to grant the Collateral Agent a reasonable period of time, but in no event more than one hundred and eighty (180) days from the last day of the applicable cure period expressly provided to the Concessionaire under the Concession Agreement, to complete such cure and foreclose on the Concessionaire's Interest if, and only for so long as: (i) the Collateral Agent, within such forty five (45) day period set forth above, files the appropriate legal action to commence foreclosure on the liens of the Security Agreement or takes other appropriate action to commence a transfer of title to the relevant property; and (ii) the Collateral Agent is continuing with all due diligence to cure such Concessionaire Default (including by proceeding with all due diligence to effect such foreclosure and during such foreclosure action (to the extent practicable) and thereafter to effect such a cure). If the Collateral Agent is acting to cure a Concessionaire Default in accordance with this Section 4, then the Authority shall not exercise its right to terminate the Concession Agreement by reason of such Concessionaire Default; **provided, however**, that the Authority may exercise any of its other rights and remedies provided for under the Concession Agreement and at law or in equity so long as the exercise of such rights does not interfere with the Collateral Agent's rights to cure such Concessionaire Default under this Section 4. In furtherance of the foregoing, the Authority shall permit the Collateral Agent and its Representatives the same access to the Plant as is permitted to the Concessionaire under the Concession Agreement; **provided** that any actions taken by the Collateral Agent or its Representatives pursuant to this Section 4 shall be undertaken in accordance with the provisions of the Concession Agreement that would be applicable to the Concessionaire were it taking such actions. The Authority shall accept any such performance by a Collateral Agent or its nominee as though the same had been done or performed by the Concessionaire. Any payment to be made or action to be taken by the Collateral Agent hereunder or under the Concession Agreement as a prerequisite to keeping the Concession Agreement in effect shall be deemed properly to have been made or taken by the Collateral Agent if such payment is made or action is taken by a nominee, agent or assignee of the rights of such Collateral Agent. Any exercise of the Collateral Agent's rights to cure hereunder shall not result in the assumption by such Collateral Agent of the Concessionaire's obligations under the Concession Agreement.

5. Rights of the Collateral Agent

(a) Subject to the provisions of the Concession Agreement, the Collateral Agent may (i) enforce its rights under this Consent and Agreement in any lawful way, (ii) acquire the Concessionaire Interest in any lawful way or (iii) take possession of in any lawful way and manage the Plant. Upon foreclosure of the Security Agreement (or without foreclosure upon exercise of any contractual or statutory power of sale under such Security Agreement or an assignment in lieu) and subject to the provisions of Section 22 of the Concession Agreement (applied to the Collateral Agent as if it were the Concessionaire), the Collateral Agent may Transfer the Concessionaire Interest; **provided, however**, that no Transfer by a Collateral Agent shall be effective unless: (A) the Transfer is made in accordance with Section 22.1 of the Concession Agreement; and (B) any Person to whom the Collateral Agent Transfers the Concessionaire Interest (including such Collateral Agent) shall take the Concessionaire Interest subject to all of the Concessionaire's obligations under the Concession Agreement, including all of the Concessionaire's obligations arising prior to such Transfer; and such transferee shall cure all defaults of the Concessionaire under the Concession Agreement as of the date of such Transfer except for any defaults that are, by their nature, personal to the Concessionaire and are not capable of being cured by any other Person. The Collateral Agent is not permitted in connection with its enforcement of its lien to do anything that would materially and adversely affect the Plant or the Plant Operations.

(b) Except as provided in Section 4, unless and until the Collateral Agent (i) forecloses or has otherwise taken ownership of the Concessionaire Interest or (ii) has taken possession or control of the Concessionaire Interest, whether directly or by an agent as a mortgagee in possession or a receiver or receiver and manager has taken possession or control of the Concessionaire Interest by reference to the Security Agreement, the Collateral Agent shall not be responsible for any of the Concessionaire's obligations under the Concession Agreement or be entitled to any of the Concessionaire's rights and benefits contained in the Concession Agreement, except by way of security. During any period in which the Collateral Agent itself or by an agent or a receiver or a receiver and manager is the owner, or is in control or possession of, the Concessionaire Interest, it shall be bound by all liabilities and obligations of the Concessionaire accruing under the Concession Agreement during such period. Once the Collateral Agent goes out of possession or control of the Concessionaire Interest or Transfers the Concessionaire Interest to another Person in accordance with the provisions of the Concession Agreement, the Collateral Agent shall cease to be responsible for any of the Concessionaire's obligations under the Concession Agreement accruing thereafter, and to the extent assumed by any Transferee or any other Person acceptable to the Authority, for any of the Concessionaire's obligations under the Concession Agreement accrued during the period in which the Collateral Agent itself or by an agent or a receiver and manager was the owner, or was in control or possession of, the Concessionaire Interest, and shall cease to be entitled to any of the Concessionaire's rights and benefits contained in the Concession Agreement, except, if this Consent and Agreement remains outstanding, by way of security.

6. Acknowledgement by the Concessionaire; Conflicting Notices

(a) The Concessionaire acknowledges and agrees that the Authority is authorized to act in accordance with the Collateral Agent's exercise of the Concessionaire's rights in accordance with the terms and conditions set forth in this Consent and Agreement.

(b) The Authority shall be entitled to rely on and act in accordance with any notice, instruction or other communication received by the Authority from the Collateral Agent as contemplated in this Consent and Agreement and the Authority shall have no liability to the Concessionaire in connection therewith.

(c) In the event that the Authority believes in good faith that there is a conflict between any notice, instruction or other communication received from the Concessionaire under the Concession Agreement on the one hand, and any notice, instruction or communication received from the Collateral Agent under this Consent and Agreement, on the other hand, then the Authority (i) shall notify the Collateral Agent and the Concessionaire and (ii) unless otherwise directed by the Concessionaire within five (5) Business Days of the date such notice is delivered, shall give effect to the notice, instruction or other communication received from the Collateral Agent.

7. Representations and Warranties of the Authority

The Authority hereby represents and warrants that the Authority has no notice of any prior assignment by the Concessionaire of all or any part of the Concessionaire Interest.

8. Consent to Security Agreement

Pursuant to the Security Agreement and subject to the terms and conditions of the Concession Agreement, the Authority hereby consents to the pledge and assignment of, and the granting of the lien and security interest in, the Concessionaire Interest by the Concessionaire to the Collateral Agent, for the benefit of the Secured Parties.

9. Additional Consents and Agreements

(a) The Authority hereby acknowledges and confirms that (i) the Security Agreement is a “Collateral Assignment” as defined and used in the Concession Agreement; and (ii) the Collateral Agent constitutes a “Collateral Assignee” as defined and used in the Concession Agreement.

(b) The Authority hereby agrees that while the Security Agreement is outstanding, it will not agree to any amendment or modification of the Concession Agreement that could reasonably be expected to have a material adverse effect on the rights or interests of the Collateral Agent or agree to a voluntary surrender or termination of the Concession Agreement by the Concessionaire without the consent of the Collateral Agent.

(c) The Authority hereby acknowledges and confirms that the Collateral Agent shall have all the rights, privileges, benefits and protections expressly granted to a Collateral Agent pursuant to the Concession Agreement and this Consent and Agreement until such time as the Collateral Agent gives written notice to the Authority that the Secured Obligations of the Concessionaire under the Security Agreement have been paid in full and the Security Agreement has been discharged, including, without limitation, the right to enforce directly against the Authority all obligations of the Authority under the Concession Agreement as in effect on the date hereof (including without limitation Sections 4 and 5) and otherwise to exercise all remedies available to a Collateral Assignee under the Concession Agreement and to the Collateral Agent hereunder.

(d) In connection with any Restoration of the Plant, the Authority acknowledges that the Financing Documents may impose upon the Concessionaire requirements and procedures that are in addition to the requirements and procedures set forth in the Concession Agreement so long as such additional requirements and procedures do not cause the Concessionaire to contravene the procedures set forth in the Concession Agreement.

(e) The Concessionaire and the Collateral Agent (on behalf and at the written instruction of each of the [Secured Parties]) hereby each assert that (i) any Financing Documents provided to the Authority in connection with this Consent and Agreement contain confidential and proprietary information, including commercial or financial information of the Concessionaire and/or the Secured Parties, and (ii) the disclosure of such information is likely to cause competitive harm to the Concessionaire and/or the [Secured Parties]. The Authority agrees that it will, in accordance with and to the extent required by Section 10.2 of the Concession Agreement, keep and maintain copies of any executed Financing Documents and this Consent and Agreement received by it from the Concessionaire confidential. The Authority agrees that if any request is filed with the Authority seeking disclosure of any Financing Documents received by it in connection with this Consent and Agreement, the Authority will promptly notify the Concessionaire and the Collateral Agent of such request and will consult with the Concessionaire prior to disclosure of the requested information.

10. The Authority’s Termination of the Concession Agreement; New Agreement

(a) Without prejudice to the rights of the Collateral Agent under Section 4, if the Concession Agreement is terminated prior to the expiration of the Term due to a Concessionaire Default (in which case the Authority shall notify the Collateral Agent of such termination and deliver to the Collateral Agent, together with such notice, a Statement of Estimated Liabilities) or if the Concession Agreement is rejected or disaffirmed pursuant to any bankruptcy law or proceeding or other similar Applicable Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to the Concessionaire or otherwise, the Authority agrees, if there are outstanding obligations to the Collateral Agent, to enter into a new concession agreement for the use of the Plant with the Collateral Agent (or its

designee or nominee; **provided** that such designee or nominee either is controlled by the Collateral Agent or is approved by the Authority as Transferee under Section 22.1 of the Concession Agreement) for the remainder of the Term upon all of the covenants, agreements, terms, provisions and limitations of the Concession Agreement (the **New Agreement**), effective as of the date of such termination; **provided further** that the Collateral Agent shall exercise its rights to enter into a New Agreement within [sixty (60) days] of the date, as applicable, that (x) the Authority provides its termination notice to the Concessionaire or (y) the Concession Agreement is rejected or disaffirmed pursuant to any bankruptcy law or proceeding or other similar Applicable Law or proceedings. The Authority's obligation to enter into a New Agreement pursuant to the preceding sentence is subject to the satisfaction of all of the following requirements and conditions: (i) the Collateral Agent commits in writing to the Authority, in a notice delivered to the Authority, within 30 days after the Authority delivers the termination notice and the Statement of Estimated Liabilities to the Collateral Agent (or, if later, upon the termination of any cure period granted to the Collateral Agent pursuant to Section 4) or within 10 days after the effective date of such rejection or disaffirmance, as the case may be, that the Collateral Agent (or its designee or nominee) will enter into the New Agreement, which notice is accompanied by a copy of such New Agreement, duly executed and acknowledged by the Collateral Agent (or its designee or nominee); (ii) reasonably in advance of the execution of the New Agreement, the Collateral Agent (or its designee or nominee) pays or causes to be paid to the Authority, at the time of the execution and delivery of such New Agreement, (A) all amounts set forth in the Statement of Estimated Liabilities which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of the Concession Agreement but for such termination and (B) all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements set forth in the Statement of Estimated Liabilities paid or incurred by the Authority in connection with such defaults and termination, the recovery of possession from the Concessionaire, and the preparation, execution and delivery of the New Agreement and related agreements; and (iii) such Collateral Agent (or its designee or nominee), at the time of such written request, cures all Concessionaire Defaults under the Concession Agreement (curable by the payment of money) that are existing immediately prior to the termination of the Concession Agreement set forth in the Statement of Estimated Liabilities, or, if such defaults cannot be cured by the payment of money, such Collateral Agent (or its designee or nominee) commits to the Authority in the New Agreement to proceed both promptly and diligently, upon the execution of the New Agreement, to cure all such other Concessionaire Defaults (to the extent curable) set forth in the Statement of Estimated Liabilities and, if possession is necessary in order to cure such other Concessionaire Defaults, to proceed both promptly and diligently to obtain the possession required to cure any such other defaults to the extent curable (and such cure shall be a covenant in the New Agreement). The omission from a Statement of Estimated Liabilities of (A) any amounts payable to the Authority under the Concession Agreement, (B) any unperformed obligations of the Concessionaire under the Concession Agreement or (C) any other costs of the Authority shall not excuse the payment of such amounts or costs or the performance of such unperformed obligations. For purposes of this Consent and Agreement, **Statement of Estimated Liabilities** means a statement by the Authority setting forth: (i) the relevant Concessionaire Default or other circumstances giving rise to its right to terminate the Concession Agreement; (ii) all amounts that (A) are estimated to be due and payable by the Concessionaire to the Authority under the Concession Agreement as of the date of such statement or (B) to the best of the Authority's knowledge after diligent inquiry, are expected to become due and payable by the Concessionaire under the Concession Agreement on or prior to the date that is thirty (30) days after the date of such statement; (iii) to the extent not included in clause (ii) above, all other obligations of the Concessionaire under the Concession Agreement known to the Authority that should have been, but have not been, performed as of the date of such statement; and (iv) to the extent not included in clauses (ii) or (iii) above, all costs and expenses (including legal fees), Taxes, fees, charges and disbursements estimated to be paid or incurred by the Authority in connection with any Concessionaire Default, the termination of the Concession Agreement, the recovery of possession from the Concessionaire, and the preparation, execution and delivery of the New Agreement and related agreements and the Statement of Estimated

Liabilities that (A) are estimated to have been paid or incurred by the Authority as of the date of such statement or (B) to the best of the Authority's knowledge after diligent inquiry, are expected to be paid or incurred by the Authority on or prior to the date that is thirty (30) days after the date of such statement.

(b) Nothing contained in this Section 10 shall be deemed to limit or affect the Authority's interest in and to the Plant upon the expiration of the Term of the New Agreement. The provisions of this Section 10 shall survive the termination of the Concession Agreement for a period of sixty (60) days following the termination of the Concession Agreement and shall continue in full force and effect thereafter and, if the Collateral Agent satisfies the conditions to a New Agreement from the effective date of such termination of the Concession Agreement to the date of execution and delivery of the New Agreement, the Collateral Agent may use and enjoy the exclusive concession created by the Concession Agreement (and all other rights and benefits provided to the Concessionaire under the Concession Agreement) without hindrance by the Authority, but only on and subject to the terms and provisions of the Concession Agreement.

(c) The Collateral Agent shall be entitled to request that the Authority pre-qualify pursuant to Section 22.1 of the Concession Agreement one or more potential Transferees of the Concessionaire Interest in connection with any prospective exercise of the Collateral Agent's rights hereunder; **provided** that the Collateral Agent reimburses the Authority for the reasonable cost and expense of such pre-qualification. Any such approval by the Authority of such a potential Transferee shall be valid for one year after approval; **provided** that the Collateral Agent shall be obligated to notify the Authority if the Collateral Agent becomes aware during such one-year period of a reasonable basis for the Authority to withhold its approval under Section 22.1(b) of the Concession Agreement; and provided further that the Authority may rescind such approval if the Authority becomes aware during such one-year period (through the Collateral Agent or otherwise) of a reasonable basis for the Authority to withhold its approval under Section 22.1(b) of the Concession Agreement.

11. Right to Dispute Resolution

In each case specified in the Concession Agreement in which resort to Dispute resolution in accordance with the procedures set forth in Section 24 of the Concession Agreement is authorized, the Collateral Agent shall have the right and privilege if an event of default under the Security Agreement then exists and notice of such event of default has been given to the Authority in the Concessionaire's name, place and stead, to obtain and participate in such Dispute resolution upon notice to the Authority in accordance with Section 24 of the Concession Agreement; **provided** that the Collateral Agent agrees to be bound by the outcome of the Dispute resolution process.

12. The Authority's Right to Purchase Security Agreement

(a) If (i) any event of default by the Concessionaire has occurred under the [Credit Agreement] and is continuing and (ii) the relevant [Secured Parties] are entitled, pursuant to any intercreditor arrangements then in force and effect, to declare all or part of the indebtedness under such [Credit Agreement] to be immediately due and payable, then, subject to the prior rights of any party (including the Affiliates of the Concessionaire), the Authority shall have sixty (60) days commencing on the date that is ten (10) days after the date on which the Collateral Agent shall serve notice upon the Authority in writing (the ***Collateral Agent's Notice***) that the Collateral Agent intends and is entitled, pursuant to the intercreditor arrangements then in force and effect, to commence proceedings to foreclose the Security Agreement (stating the calculation of the purchase price pursuant to Section 12(c), during which sixty (60)-day period the Authority shall have the right and option (the ***Authority's Option***) to purchase from the Collateral Agent the Security Agreement, upon the terms and subject to the conditions contained in this Section 12.

(b) The Authority's Option shall be exercised by notice served upon the Concessionaire and the Collateral Agent within a forty-five (45)-day period following delivery of the Collateral Agent's Notice to the Authority. Time shall be of the essence as to the exercise of the Authority's Option. If the Authority's Option is duly and timely exercised, the Authority shall purchase the Security Agreement and the Collateral Agent shall assign the Security Agreement to the Authority (or its designee) on the date which is sixty (60) days after the date on which the Collateral Agent's Notice is served upon the Authority or such other time as mutually agreed by the Collateral Agent and the Authority. The closing shall take place at a mutually convenient time and place.

(c) The purchase price payable by the Authority shall be one hundred percent (100%) of the aggregate amounts secured by or due under such Security Agreement (including principal, interest, fees, Breakage Costs, termination value or similar obligations and other costs, expenses (including attorneys' fees) and any other amounts secured thereby or due thereunder) as of the closing date of the purchase. The purchase price shall be paid in full in cash at closing by wire transfer or other immediately available funds. The purchase price shall be paid by the Authority to the Collateral Agent, to be applied by the Collateral Agent to the amounts secured by the Security Agreement owed to the Collateral Agent and the [Secured Parties], subject to the terms of the intercreditor arrangements then in force and effect.

(d) At the closing and upon payment in full of the purchase price, the Collateral Agent shall assign the Security Agreement to the Authority, together with any security interest held by it in the Concessionaire's Interest, without recourse, representations, covenants or warranties of any kind; provided that the Security Agreement and security interests shall be deemed modified to secure the amount of the aggregate purchase price paid by the Authority to the Collateral Agent (rather than the indebtedness theretofore secured thereby) payable on written demand, with interest and upon the other items referred to in this Section 12(d). The Authority shall be responsible for paying any Taxes payable to any Governmental Authority upon such assignment.

(e) The Authority shall have the right to receive all notices of default under the Security Agreement contemporaneously with the delivery of such notices to the Concessionaire, but the Authority shall not have the right to cure any default under the Security Agreement, except to the extent provided in this Section 12.

13. Payments by Authority under the Concession Agreement.

The Collateral Agent hereby directs the Authority, and the Authority agrees to the following:

(a) Prior to receipt by the Authority of a written notice of an [Event of Default (as defined in the Collateral Agency Agreement)] from the Collateral Agent, the Authority agrees to pay all amounts payable by the Authority to the Concessionaire under the Concession Agreement, including but not limited to Disbursements, Concessionaire Damages, Termination Damages or any purchase price payable pursuant to Section 12 hereof, on the date when due directly to the following account or any other account designated by both the Collateral Agent and the Concessionaire in writing:

Bank Name:	[•]
Swift:	[•]
ABA #:	[•]
Account #:	[•]
For the Account of:	[•]
Ref:	[•]
FFC: A/C #:	[•]

(b) Upon receipt by the Authority of a written notice of an [Event of Default (as defined in the Collateral Agency Agreement)] from the Collateral Agent, the Authority agrees to pay all amounts payable by the Authority to the Concessionaire under the Concession Agreement, including but not limited to Disbursements, Concessionaire Damages, Termination Damages or any purchase price payable pursuant to Section 12 hereof, on the date when due directly to an account designated by the Collateral Agent in writing.

(c) The Authority agrees to make all payments set forth in clauses (a) and (b) above without deduction for any counterclaim, defense, or setoff except as expressly permitted by the Concession Agreement.

14. Miscellaneous.

(a) All notices, other communications and approvals required or permitted by this Consent and Agreement shall be in writing in English and may be delivered, sent by U.S. mail, facsimile, email transmission in PDF format, or by courier addressed as follows:

(i) in the case of the Authority:

[name],
[title]
[address]

with a copy to:

[name],
[title]
[address]

and

[name],
[title]
[address]

(ii) in the case of the Concessionaire:

Northern Lights Energy, LLC
[Concessionaire Address Line 1]
[Concessionaire Address Line 2]
Attn: [General Manager?]
Fax: [Fax #]
Email: [●]

with a copy to:

[●]

in the case of the Collateral Agent:

[name],
[title]
[address]

or such other persons or addresses as any party hereto may from time to time designate by notice to the other parties hereto. A notice, other communication or approval shall be deemed to have been sent and received (A) on the day it is delivered (if by email in PDF format or facsimile, with return email or facsimile confirmation of receipt), or if such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice, other communication or approval shall be deemed to have been sent and received on the next Business Day, (B) if by U.S. mail, on the fourth Business Day after mailing, or (C) if by courier, when receipt is acknowledged.

(b) This Consent and Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the State of Alaska (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction).

(c) The headings of the several sections and subsections of this Consent and Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent and Agreement.

(d) In case any provision in or obligation under this Consent and Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(e) This Consent and Agreement shall be irrevocable in all respects, except in the event that the representations set forth in Section 2 or Section 2 hereof are determined to be false in a material respect; **provided, however**, that this Consent and Agreement shall not be effective with respect to any amendment or other modification to the Security Agreement unless the Authority gives its written approval to such amendment or modification.

(f) This Consent and Agreement shall be binding upon the parties hereto and their respective successors and assigns (**provided** that any such successor or assign to the Collateral Agent is an Institutional Lender) and, in connection with execution and delivery of a new concession agreement for the Plant pursuant to, and subject to the conditions of, Section 10, its designee or nominee (**provided** that such designee or nominee either is controlled by the Collateral Agent or is approved by the Authority as Transferee under Section 22.1 of the Concession Agreement).

(g) This Consent and Agreement and the obligations of the Authority hereunder shall terminate and be of no further force and effect on the earlier to occur of: (i) the date on which the Authority shall have received notice in writing from the Collateral Agent that all of the Secured Obligations have been paid in full or performed in full and that the security interests, pledges and other liens of the Security Documents shall have been extinguished; and (ii) the termination or expiration of the Concession Agreement in accordance with the terms thereof and the terms of this Consent and Agreement.

(h) Notwithstanding any term herein to the contrary, it is hereby expressly agreed and acknowledged that the representations, warranties, undertakings and agreements set forth herein by the Collateral Agent are made solely in its capacity as Collateral Agent under the Financing Documents and the directions of the [Secured Parties] as stated therein, and not in its individual capacity. The Collateral Agent shall not have any duties, obligations, or responsibilities under this Consent and Agreement except as expressly set forth herein, and shall have the benefit of all exculpatory provisions, presumptions, indemnities, protections, benefits, immunities or reliance rights contained in the Collateral Agency Agreement in the acceptance, execution, delivery and performance of this Consent and Agreement as though fully set forth herein.

(i) Notwithstanding anything herein to the contrary, whenever reference is made in this Consent and Agreement to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Collateral Agent (which direction, action or omission is not expressly instructed under or pursuant to this Consent) or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction, reasonable satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Collateral Agent, it is understood that in all cases the Collateral Agent shall be fully justified in failing or refusing to take any such action under this Consent and Agreement if it shall not have received such written instruction, advice or concurrence of the [Required Secured Parties], as it deems appropriate. This provision is intended solely for the benefit of the Collateral Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

(j) This Consent and Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Consent and Agreement (or any amendment or waiver hereto) by telecopier, or e-mail (including "pdf" format) or other electronic means shall be effective as delivery of an original executed counterpart of this Consent and Agreement (or such amendment or waiver, as the case may be).

(k) No failure or delay on the part of the Authority, the Concessionaire, the Collateral Agent, any [Secured Party] (as defined in the [Collateral Agency Agreement]) or any of their respective agents or designees to exercise, and no course of dealing with respect to, any right, power or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise of any other right, power or privilege.

(l) This Consent and Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings between the parties hereto in respect of the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and Agreement and any such agreement, document or instrument (including, without limitation, the Concession Agreement), the terms, conditions and provisions of this Consent and Agreement shall prevail.

(m) The Authority and the Concessionaire hereby agree to execute and deliver to the Collateral Agent such documents and to take all such action as may be reasonably necessary to fully effectuate the purposes of this Consent and Agreement.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Authority, the Concessionaire and the Collateral Agent have caused this Consent and Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

NORTHERN LIGHTS ENERGY, LLC

By: _____

Name: _____

Title: _____

ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

By: _____

Name: _____

Title: _____

Federal
Employer
ID #: _____

**[●],
as Collateral Agent**

By: _____

Name: _____

Title: _____

EXHIBIT A
SECURITY AGREEMENT

SCHEDULE R

REQUIRED COVERAGES

1) REQUIRED COVERAGE TO BE PROCURED DIRECTLY BY THE CONCESSIONAIRE

- a. WORKERS COMPENSATION AND EMPLOYERS LIABILITY.** (If Concessionaire has employees) As required by any applicable law or regulation. Employers Liability limit shall be provided in amounts not less than:

 - \$1,000,000 each accident for bodily injury by accident
 - \$1,000,000 policy limit for bodily injury by Disease
 - \$1,000,000 each employee for bodily injury by disease
- b. COMMERCIAL GENERAL LIABILITY.** Covering operations of the Concessionaire for third party bodily injury liability and property damage liability with limits as follows:

 - \$1,000,000 each occurrence bodily Injury and property damage
 - \$1,000,000 personal and advertising Injury
 - [\$5,000,000] general aggregate
 - \$2,000,000 products and completed operations aggregate
- c. COMMERCIAL AUTOMOBILE LIABILITY INSURANCE** (If Concessionaire owns or rents any automobiles) Covering all owned, hired, and non-owned automobiles.

 - \$2,000,000 combined single limit each accident for bodily injury and property damage
- d. BUILDERS RISK COVERAGE** (To be procured and maintained at the time of and during construction) Covering the interests of the Concessionaire and Contractors /Subcontractors of every tier, who have an insurable interest in the project, for materials and permanent equipment to be incorporated into the project. Insurance shall be provided on an “All-Risk” bases for property during course of construction, including while in transit and in Off-site storage. Limits to be insured at full replacement cost of the project with Delay in Start-up Coverage and soft cost expense included. Coverage to also include flood and earth movement at a minimum sublimit of \$25,000,000.
- e. POLLUTION LIABILITY COVERAGE** (To include both Pollution Legal Liability (PLL) as well as Contractors Pollution Liability (CPL)) Covering the interests of the Concessionaire, AIDEA, Construction Contractor and all Subcontractors for defined pollution conditions that arise from the site as well as result from operations of the parties. Coverage extends through the construction period for both PLL and CPL and coverage extends through the O&M period for PLL.

 - \$25,000,000 – combined limit for PLL & CPL during the construction term
 - \$10,000,000 – limit for PLL during the O&M Agreement term
- f. PROPERTY AND BUSINESS INCOME** (To be procured and maintained during O&M Agreement term) Covering Concessionaire, Operator, Subcontractors who have an insurable interest. Limits will be procured at full replacement value on the property with an all-risk policy form and both flood and earthquake coverage.

2) **COVERAGE THAT THE CONCESSIONAIRE REQUIRES OF THE CONSTRUCTION CONTRACTOR DURING CONSTRUCTION**

- a. **WORKERS COMPENSATION AND EMPLOYERS LIABILITY.** (For the Construction Contractors Employee) As required by any applicable law or regulation. Employers Liability limit shall be provided in amounts not less than:
- \$1,000,000 each accident for bodily injury by accident
 - \$1,000,000 policy limit for bodily injury by Disease
 - \$1,000,000 each employee for bodily injury by disease
- Requirement that the Construction Contractor include a flow down clause that requires all lower tier subcontractors/subconsultants and suppliers to maintain this coverage.
- b. **COMMERCIAL GENERAL LIABILITY** Covering the full contractual scope of operations for the Construction Contractor for bodily injury liability and property damage liability through the statute of repose. Policy shall include a requirement to provide additional insured status to the Concessionaire, Authority, the State and other parties as required. Annual Limits of:
- \$2,000,000 each occurrence bodily injury and property damage
 - \$2,000,000 personal and advertising Injury
 - [\$5,000,000] general aggregate (per project basis required)
 - \$4,000,000 products and completed operations aggregate
- Requirement that the Construction Contractor include a flow down clause that requires all lower tier subcontractors/subconsultants and suppliers to maintain this coverage.
- c. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE** Covering all Construction Contractor owned, hired, and non-owned automobiles.
- \$2,000,000 annual combined single limit each accident for bodily injury and property damage
- Requirement that the Construction Contractor include a flow down clause that requires all lower tier subcontractors/subconsultants and suppliers to maintain this coverage at a minimum of \$1,000,000 combined single limit.
- d. **EXCESS LIABILITY / UMBRELLA POLICY** Provides annual excess limits on a follow form bases over the Construction Contractor's underlying General Liability, Employers Liability and Auto Liability.
- \$100,000,000 per occurrence and in the aggregate
 - \$100,000,000 products/completed operations in the aggregate
- e. **CONTRACTOR'S PRACTICE PROFESSIONAL COVERAGE** Provides coverage for the Construction Contractor's design responsibility within the contract. Coverage provided on a claims made bases with full retroactive coverage for damages arising out of negligent acts, errors or omissions of the professional design and engineering service providers. Construction Contractor shall flow-down/require sufficient limits from all subconsultants/subcontractors that perform any professional services. Coverage shall include Contractors Protective Coverage, Rectification at full policy limits and Professional Coverage. Minimum limits of:

\$15,000,000 per claim and in the aggregate

- f. AIRCRAFT LIABILITY INSURANCE (Required if the Construction Contractor or Subcontractors use any owned, leased, chartered or hired aircraft on the project) Coverage shall include Aircraft Damage and Slung Cargo.

\$15,000,000 per occurrence including passenger liability

- g. CONTRACTORS EQUIPMENT (Coverage required of Construction Contractor and flowdown to all tier subcontractors) Coverage for equipment and tools used by the Construction Contractor and Subcontractors that is nor a permanent part of the project. Limits to align with value of equipment/tools.

- h. MARINE/CARGO COVERAGE (This coverage may be provided by the Construction Contractor or the Concessionaire). Provides all risk coverage for equipment that is being shipped while in ocean transit prior to the Builders Risk providing coverage. Coverage is to be extended to provide delay in startup, expediting coverage and soft costs. Limits as follows:

\$15,000,000 or maximum value of equipment at a single point in transit

12 months Delay in Startup / \$150,000 per day

- i. RAILROAD LIABILITY COVERAGE (If required)

3) **COVERAGE THAT THE CONCESSIONAIRE REQUIRES OF THE OPERATOR DURING OPERATIONS**

- a. WORKERS COMPENSATION AND EMPLOYERS LIABILITY. (For the Operator's Employee's) As required by any applicable law or regulation. Employers Liability limit shall be provided in amounts not less than:

\$1,000,000 each accident for bodily injury by accident

\$1,000,000 policy limit for bodily injury by Disease

\$1,000,000 each employee for bodily injury by disease

Requirement that the Operator include a flow down clause that requires all lower tier subcontractors/subconsultants and suppliers to maintain this coverage.

- b. COMMERCIAL GENERAL LIABILITY Covering the full contractual scope of operations for the Operator for bodily injury liability and property damage liability through the statute of repose. Policy shall include a requirement to provide additional insured status to the Concessionaire, Authority, The State and other parties as required. Minimum Annual Limits of:

\$2,000,000 each occurrence bodily injury and property damage

\$2,000,000 personal and advertising Injury

[\$5,000,000] general aggregate (per project basis required)

\$4,000,000 products and completed operations aggregate

Requirement that the Operator include a flow down clause that requires all lower tier subcontractors/subconsultants and suppliers to maintain this coverage.

- c. COMMERCIAL AUTOMOBILE LIABILITY INSURANCE Covering all Operator owned, hired, and non-owned automobiles.

\$2,000,000 annual combined single limit each accident for bodily injury and property damage

Requirement that the Operator include a flow down clause that requires all lower tier subcontractors/subconsultants and suppliers to maintain this coverage at a minimum of \$1,000,000 combined single limit.

- d.** EXCESS LIABILITY / UMBRELLA POLICY Provides annual excess limits on a follow form bases over the Operator's underlying General Liability, Employers Liability and Auto Liability.

\$25,000,000 per occurrence and in the aggregate

\$25,000,000 products/completed operations in the aggregate

- e.** PROFESSIONAL LIABILITY COVERAGE Provides coverage for the Operator's professional duties within the contract. Coverage provided on a claims made bases with full retroactive coverage for damages arising out of negligent acts, errors or omissions of the professional service providers. Operator shall flow-down/require sufficient limits from all subconsultants/subcontractors that perform professional services. Minimum limits of:

\$10,000,000 per claim and in the aggregate

- f.** AIRCRAFT LIABILITY INSURANCE (Required if the Construction Contractor or Subcontractors use any owned, leased, chartered or hired aircraft on the project) Coverage shall include Aircraft Damage and Slung Cargo.

\$15,000,000 per occurrence including passenger liability

- g.** CONTRACTORS EQUIPMENT (Coverage required of Operator and flowdown to all tier subcontractors) Coverage for equipment and tools used by the Operator and Subcontractors that is nor a permanent part of the project. Limits to align with value of equipment/tools.

SCHEDULE S

[RESERVED]

SCHEDULE T

DISBURSEMENT REQUEST CERTIFICATE

DISBURSEMENT REQUEST CERTIFICATE

To: Alaska Industrial Development and Export Authority (the *Authority*)
[*Authority Address*]

To: [Depository] (the **Depository**)
[*Depository Address*]

Dated: [●], 20[●]

Ladies and Gentlemen:

This certificate (the *Disbursement Request Certificate*) is delivered to you pursuant to the North Slope LNG Concession Agreement (the *Concession Agreement*), dated as of [●], 2014 by and between the Authority and Northern Lights Energy, LLC, a limited liability company organized and existing under the law of Delaware (the *Concessionaire*) as a request for payment or reimbursement of certain Project Costs (as defined in the Concession Agreement). All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Concession Agreement.

1. Disbursement

The aggregate amount to be transferred to or to the order of the Concessionaire from the Disbursement Account in accordance with this Disbursement Request Certificate on the monthly transfer date is US [●]. Attached hereto as Schedule 1 is the following information: (a) the name and account number of each account into which any transfers or payments are to be made as described in this Disbursement Request Certificate, (b) the name of each Person to whom any payment is to be made from the amounts described above, (c) the amount of sub payment or transfer, (d) the dates on which amounts withdrawn are to be paid or transferred and (e) the wire transfer instructions required for such payments.

2. Disbursement Conditions Precedent

The Concessionaire certifies as of the date hereof that the following information is true, correct and complete:

- (a) The representations and warranties in Section 11.2 of the Concession Agreement are true and correct as to the date of this Disbursement Request Certificate except (A) that representations and warranties that by their terms are applicable only as of the Effective Date of the Concession Agreement or some other date need be true and correct only as of such date and (B) for failures of representations and warranties to be true or correct that, individually or in the aggregate, have not had and are not reasonably likely to have (1) a material adverse effect on the ability of the Concessionaire to consummate the transactions contemplated under the Concession Agreement or perform its obligations under the Concession Agreement or (2) an AIDEA Material Adverse Effect;
- (b) There is no outstanding Concessionaire Default and there is no default by the Concessionaire under any Third Party Loan Agreement or by the Investor under the Equity Contribution Agreement;

- (c) All Transaction Documents to which the Concessionaire is a party are in full force and effect and there is no default thereunder by the Concessionaire or any Project Party that is a party thereto, except for any such defaults that have not had and are not reasonably likely to have (1) a material adverse effect on the ability of the Concessionaire to consummate the transactions contemplated under the Concession Agreement or perform its obligations under the Concession Agreement or (2) an AIDEA Material Adverse Effect;
- (d) All Permits with respect to the construction and operation of the Project required to be obtained as of the date of the Disbursement from any Governmental Authority have been issued and will be in full force and effect as of the date of the Disbursement and are not subject to appeal. The Concessionaire is in material compliance with all such Permits, except to the extent any non-compliance has not had and is not reasonably likely to have (1) a material adverse effect on the ability of the Concessionaire to consummate the transactions contemplated under the Concession Agreement or perform its obligations under the Concession Agreement or (2) an AIDEA Material Adverse Effect;
- (e) [No Significant Force Majeure Event has occurred] / [The Parties have resolved the adverse impacts of the Significant Force Majeure Event in respect of *[describe the Significant Force Majeure Event]* to their mutual satisfaction [and the Concessionaire has diligently commenced to Restore the Plant]]²²; and
- (f) All fees and expenses due and payable from the Concessionaire to the Authority have been paid in full.

3. Monthly Progress Report

Attached hereto as Exhibit A is the Monthly Progress Report for the month of [●].

4. Project Costs

Attached hereto as Schedule 2 is a detailed list of Project Costs that have been incurred and that will be paid with the amount requested in this Disbursement Request Certificate and the amounts paid to the Construction Contractor or any other contractor, including copies of the invoices and other documentation supporting such costs.

5. Funding Certification

The Concessionaire certifies as of the date hereof that:

- (a) The AIDEA Funds disbursed pursuant to prior Disbursement Requests have been applied as set forth in the applicable Disbursement Request Certificates; and
- (b) Sufficient amounts remain from the Actual AIDEA Appropriation Funds Amount, Actual AIDEA SETS Funds Amount, Actual Investor Equity Contribution, Actual Investor Investment Commitment Amount, Completion Reserve and any additional amounts funded pursuant to Section 12.6 of the Concession Agreement to complete the Project and achieve the Commercial Operation Date on or before the Completion Deadline.

²² Include bracketed text as relevant.

6. Project and Plant Site Certification

The Concessionaire certifies that the Project and the Plant Site, and any and all interests and estates therein, and all improvements and materials placed on the Plant Site, are, to the extent of the most recent payment received by the Concessionaire, free and clear of any and all Encumbrances arising out of or in connection with the performance of the Work by the Concessionaire or any of the Contractors.

7. Release and Waiver of Encumbrances

Attached hereto as Exhibit B are copies of all releases and waivers of Encumbrances from the Concessionaire and each Contractor with a contract of [Five Hundred Thousand Dollars (\$500,000)] or more in value, individually or in the aggregate, as necessary to support the Concessionaire's Project and Plant Site Certification in section 6 above, or if the Concessionaire was unable to obtain all such waivers, a letter of credit or bond to an amount equal to the amount that otherwise would have been covered by such unobtained waivers.

IN WITNESS WHEREOF, the undersigned has executed this Disbursement Request Certificate as of the date hereof.

NORTHERN LIGHTS ENERGY, LLC,
as Concessionaire

By: _____

Name:
Title:

Acknowledged and agreed:

ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY,
as Authority

By: _____

Name:
Title:

Acknowledged and agreed:

[*Depository*],
as Depository

By: _____

Name:
Title:

EXHIBIT A
MONTHLY PROGRESS REPORT

EXHIBIT B
LIEN WAIVERS

SCHEDULE 1
APPLICATION OF FUNDS²³

²³ A&O Note: Form of Schedule 1 will be completed at Closing.

SCHEDULE 2
PROJECT COSTS