

**LLC MEMBERSHIP  
PURCHASE AND SALE AGREEMENT**

**between the**

**ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY**

**as Seller**

**and the**

**INTERIOR ALASKA NATURAL GAS UTILITY  
a/k/a INTERIOR GAS UTILITY**

**as Buyer**

\_\_\_\_\_, 2017

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## **PURCHASE AND SALE AGREEMENT**

This **LLC MEMBERSHIP PURCHASE AND SALE AGREEMENT** (“Agreement”) is entered into effective as of \_\_\_\_\_, 2017 (the “Effective Date”), by and between:

(1) The **ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY** (“AIDEA”), a public corporation of the State of Alaska with a primary place of business in Anchorage, Alaska; and

(2) The **INTERIOR ALASKA NATURAL GAS UTILITY**, which is also known as the **INTERIOR GAS UTILITY** (“IGU”), a public corporation of the Fairbanks North Star Borough with a primary place of business in Fairbanks, Alaska.

AIDEA and IGU are sometimes hereinafter referred to collectively as the “Parties” and each individually as a “Party.”

### **RECITALS**

AIDEA and IGU entered into a non-binding Utility Integration Memorandum of Understanding, dated January 25, 2017 (the “MOU”), wherein among other things the Parties set forth their mutual understandings with respect to AIDEA’s proposed sale of Pentex to IGU, the transfer of the North Slope Pad from AIDEA to IGU, the AIDEA financing of IGU, and the establishment of the process and timelines to accomplish the foregoing. This Agreement arises out of the understandings as stated in the MOU.

In consideration of the mutual covenants of this Agreement, the Parties agree as follows:

### **Article 1** **DEFINITIONS**

As used in this Agreement, the following terms have the meanings set forth in this Article 1. All Article, Section, Exhibit, and Schedule numbers refer to Articles and Sections of this Agreement and to the attached Exhibits and Schedules.

**1.1 “Acquired Companies”** means Pentex Alaska Natural Gas Company, LLC, a Delaware limited liability company, and all of the Subsidiaries.

**1.2 “AIDEA”** means the Alaska Industrial Development and Export Authority, a public corporation of the State of Alaska.

**1.3 “AIDEA Ownership Period”** means the time period from September 30, 2015 to the Closing Date.

**1.4 “AIDEA’s Fundamental Representations”** means the representations and warranties AIDEA is making in Sections 3.1, 3.2, 3.3, 3.4, 3.5, and 3.18.

**1.5 “Bond Credit Facility”** means the conduit revenue bond or bonds that AIDEA is authorized by the Alaska State Legislature to make available to IGU as described in the Financing Agreement.

**1.6 “Calculated Return”** means AIDEA’s return on its investment of \$54,000,000 in Pentex, which return shall be calculated as simple interest on \$54,000,000 at the rate of 5.06 % per annum from September 30, 2015, to the Closing Date.

**1.7 “Closing”** means the consummation of the purchase and sale of the LLC Membership Interests as contemplated by this Agreement.

**1.8 “Closing Date”** means the date on which the Closing occurs.

**1.9 “Contemplated Transactions”** means all of the transactions contemplated by this Agreement, including: (a) AIDEA’s sale of the LLC Membership Interests to IGU; (b) IGU’s and AIDEA’s performance of their respective obligations under this Agreement; (c) IGU’s acquisition and ownership of the LLC Membership Interests so as to be able to exercise control over the Acquired Companies; and (d) performance of the obligations and occurrence of conditions with regard to the North Slope Pad as set forth in Sections 5.9 and 6.11.

**1.10 “Damages”** means any and all compensatory awards, losses, liabilities, expenses or costs of every kind and description that are recoverable under governing law, including, without limitation, Litigation Expenses, but excluding any recovery for those matters waived in Section 9.6.

**1.11 “Disclosure Schedules”** means the schedules to be delivered by AIDEA pursuant to Article 3 of this Agreement.

**1.12 “Due Diligence”** means the efforts that IGU elects to make between the Effective Date and the Closing Date to inform itself regarding the Acquired Companies, their assets, businesses and Operations in connection with determining the suitability of the Acquired Companies for IGU’s purposes. The Due Diligence includes, but is not limited to, the Environmental Assessments.

**1.13 “Effective Date”** means the date upon which both Parties have signed this Agreement.

**1.14 “Employee Benefit Plans”** means those plans described in Section 3.17.

**1.15 “Encumbrance”** means any mortgage; lien; pledge; charge; option; contract interest; security interest; community property interest; equitable interest; restriction of any kind on use, voting, transfer, rights to income or other ownership rights; or any other encumbrance of any type or description.

**1.16 “Environmental Assessments”** means any Phase I and Phase II environmental assessments that IGU, at its expense, elects to have conducted prior to the Closing with respect to the real properties on which the Acquired Companies conduct any of the Operations.

**1.17 “Environmental, Health, and Safety Laws”** means Title 46 of the Alaska Statutes, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the Resource Conservation and Recovery Act of 1976 (RCRA), the Toxic Substances Control Act (TSCA), the Clean Water Act, the Clean Air Act, and the Occupational Safety and Health Act of 1970 (OSHA), each as amended, together with all other laws (including rules, regulations, codes, applicable injunctions, judgments, orders, decrees, and rulings thereunder) of federal, state and local governments (and all agencies thereof) concerning pollution or protection of the environment, natural resources, public health and safety, or employee or third-party employee health and safety, including laws relating to emissions, discharges, releases, spills, or threatened releases of pollutants, contaminants, chemical, industrial, hazardous, radioactive or toxic materials or wastes, or fuels, into air, surface water, ground water, land, or subsurface or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants or contaminants, fuels, insecticides, solvents, ground cover control substances, or chemical, industrial, hazardous, or toxic materials or wastes so classified under any federal, state or local laws, regulations, codes, permits, orders and ordinances.

**1.18 “Financials”** means the financial statements of the Acquired Companies as described in Section 3.6.

**1.19 “Financing Agreement”** means the agreement between IGU, as borrower, and AIDEA, as lender, that establishes the SETS Credit Facility and that is expected to be executed contemporaneously with the execution of this Agreement. The Financing Agreement also describes the Bond Credit Facility that AIDEA is to make available to IGU.

**1.20 “GAAP”** means United States generally accepted accounting principles as established by the Government Accounting Standards Board (GASB), as in effect from time to time, consistently applied.

**1.21 “IGU”** means the Interior Alaska Natural Gas Utility, which is also known as the Interior Gas Utility, a public corporation and an instrumentality of the Fairbanks North Star Borough.

**1.22 “Intellectual Property”** means:

(a) all of the Acquired Companies’ trademarks, service marks, trade dress, logos, trade names, and corporate names (including but not limited to the name “Fairbanks Natural Gas”) together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith;

(b) all of the Acquired Companies’ copyrightable works, copyrights, and applications, registrations, and renewals in connection therewith;

(c) all of the Acquired Companies’ trade secrets and confidential business information, including ideas, research and development, know-how, formulas, compositions, processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals;

(d) all of the Acquired Companies’ computer software, software licenses and software use agreements (including data and related documentations);

(e) all other proprietary rights of the Acquired Companies, and all of the Acquired Companies’ contracts, licenses, and permits to make use of the Intellectual Property of others; and

(f) all copies and tangible embodiments of any of the foregoing (in whatever form or medium).

**1.23 “Inventory”** means physically all of the Acquired Companies’ goods and products for sale to clients and customers, work in process to create goods or products for sale to clients and customers, and raw materials used or consumed in the production of goods or products for sale to clients and customers.

**1.24 “Knowledge”** means:

(a) in the case of an individual, the individual is actually aware of or should be actually aware of a fact or matter, after reasonable investigation; and

(b) in the case of an entity, any individual who is serving as of the Effective Date or as of the Closing Date as a director, officer, general partner, member, or manager of the entity (or in any similar capacity) has, or at any time had, Knowledge within the meaning of subsection (a) of this definition of a fact or matter.

**1.25 “Liability”** means any liability no matter how such liability may have arisen or the legal basis for such liability, and regardless of whether the liability is known

or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due.

**1.26 “Litigation Expenses”** means actual reasonable attorneys’ fees and other costs and expenses incident to proceedings or investigations respecting, or the prosecution or defense of, any claim.

**1.27 “LLC Membership Interests”** means 100% of the member interests in Pentex, as a limited liability company, inclusive of all rights in voting, management, profits and losses, capital accounts, and all other rights inherent or appurtenant to the ownership of Pentex.

**1.28 “Material Adverse Effect”** means any of the following: (a) any matter that has, or any matters that collectively have, a negative effect upon the business, financial condition, or results of Operations, when taken as a whole, of the Acquired Companies, or when considered separately for Pentex, Fairbanks Natural Gas, LLC, or Titan Alaska LNG, LLC, or solely with respect to Arctic Energy Transportation, LLC, any negative effect where the dollar value of the negative effect exceeds \$100,000; or (b) any matter or matters collectively, that may reasonably be expected to cause or result in the loss of or substantial damage to the Acquired Companies, when taken as a whole, or when considered separately for Pentex, Fairbanks Natural Gas, LLC, or Titan Alaska LNG, LLC, or solely with respect to Arctic Energy Transportation, LLC, a negative effect where the dollar value of the negative effect exceeds \$100,000; or (c) any substantial increase in cost or obligation of, or substantial decrease in revenue of, the Acquired Companies, when taken as a whole, or when considered separately for Pentex, Fairbanks Natural Gas, LLC, or Titan Alaska LNG, LLC, or solely with respect to Arctic Energy Transportation, LLC, a negative effect where the dollar value of the adverse effect exceeds \$100,000; but excluding matters disclosed by AIDEA in the Disclosure Schedules.

**1.29 “Material Contracts”** means any contract of any of the Acquired Companies that has a value of \$50,000 or more or that obligates any of the Acquired Companies to make expenditures of \$50,000 or more over the entire term of the contract.

**1.30 “MOU”** means the non-binding Utility Integration Memorandum of Understanding, dated January 25, 2017, between AIDEA and IGU.

**1.31 “North Slope Pad”** means: (a) the leasehold estate in ADL 419409, Right-Of-Way Lease for North Slope Natural Gas Pipeline and LNG Facility, by and between the State of Alaska, Department of Natural Resources, and AIDEA, dated July 31, 2014; (b) the gravel pad and other improvements constructed on the leasehold estate; (c) the engineering reports, plans, and analyses that AIDEA had prepared regarding the potential development of the gravel pad; and (d) AIDEA’s interest in the

Material Sale Contract designated ADL 419991, by and between State of Alaska, Department of Natural Resources, and AIDEA, dated May 2, 2014. The leasehold estate concerns real property described on Exhibit B to ADL 419409, which real property is located in Section 3 of Township 10 North, Range 14 West, Umiat Meridian, Barrow Recording District, Second Judicial District, State of Alaska.

**1.32 “Operations”** means the businesses the Acquired Companies are conducting on the Effective Date, including without limitation Fairbanks Natural Gas, LLC’s natural gas utility business, Titan Alaska LNG, LLC’s natural gas liquefaction plant, and Arctic Energy Transportation, LLC’s fueling facilities business.

**1.33 “Organizational Documents”** means (a) the articles of organization or charters of each of the Acquired Companies; (b) the certificates of organization of each of the Acquired Companies; (c) the operating agreements of each of the Acquired Companies; (d) membership certificates and membership registers for each of the Acquired Companies; (e) any manager contracts governing the management of any of the Acquired Companies; (f) any bylaws, resolutions, policies or procedures adopted by any of the Acquired Companies with respect to organizational matters, or member or manager decision-making; and (g) any amendment to any of the foregoing.

**1.34 “Pentex”** means Pentex Alaska Natural Gas Company, LLC, a Delaware limited liability company.

**1.35 “Permits and Licenses”** means any approval, consent, license, permit, waiver, exception, variance or other authorization issued, granted, given, or otherwise made available by or under the authority of a government or governmental agency or under any applicable law, regulation, rule or order.

**1.36 “Permitted Encumbrances”** means with respect to each parcel of real property: (a) real estate taxes, assessments and other governmental levies, fees, or charges imposed with respect to such real property that are (i) not due and payable as of the Closing Date or (ii) being contested in good faith and for which appropriate reserves have been established in accordance with GAAP; (b) mechanics’ liens and similar liens for labor, materials, or supplies provided prior to the Closing Date with respect to such real property, incurred in the ordinary course of business for amounts that are included in the accounting records of the affected entity as current liabilities as of the Closing Date, or for amounts that are payable from or eligible to be paid from the loan proceeds under the loan agreement between AIDEA and Fairbanks Natural Gas, LLC, dated May 19, 2014; (c) zoning, building codes, and other land use laws regulating the use or occupancy of such real property or the activities conducted thereon that are imposed by any federal, state or local governmental authority having jurisdiction over such real property and are not violated by the current use or occupancy of such real property or the operation of the business of Pentex and the Subsidiaries as currently conducted thereon; and (d) easements, covenants, conditions, restrictions, and other

similar matters of record affecting title to such real property that do not or would not materially impair the use or occupancy of such real property in the operation of the business of Pentex and the Subsidiaries as currently conducted thereon.

**1.37** **“Purchase Price”** means the amount stated or described in Section 2.2.

**1.38** **“Quarterly Reports”** means the financial reports of the Acquired Companies for the third calendar quarter of 2017, the fourth calendar quarter of 2017, and all quarterly financial reports for the calendar quarters in 2018 up to the Closing Date, as described in Section 3.6.

**1.39** **“Related Person”** means:

(a) with respect to an individual, (1) each other member of such individual's family, (2) any person or entity that is directly or indirectly controlled by such individual or by a member of such individual's family, and (3) any entity with respect to which such individual or a member of such individual's family serves as a member, manager, director, officer, partner, executor or trustee (or in a similar capacity); and

(b) with respect to an entity, (1) any person or entity that directly or indirectly controls, is directly or indirectly controlled by, or is directly or indirectly under common control with such entity, and (2) each person that serves as a member, manager, director, officer, partner, executor or trustee (or in a similar capacity) of or for the entity.

**1.40** **“SETS Credit Facility”** means the loans that AIDEA is extending to IGU, or the loans that AIDEA is committing to extend to IGU, under AIDEA's sustainable energy transmission and supply development program and fund (“SETS”). The terms and conditions of the SETS Credit Facility are as set out in the Financing Agreement.

**1.41** **“Subsidiaries”** means (a) Fairbanks Natural Gas, LLC, an Alaska limited liability company; (b) Polar LNG, LLC, a Delaware limited liability company; (c) Arctic Energy Transportation, LLC, a Delaware limited liability company; (d) Titan Alaska LNG, LLC, a Delaware limited liability company; and (e) Cassini LNG Storage, LLC, a Delaware limited liability company.

**1.42** **“Tax”** means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

**1.43** “Tax Return” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**1.44** “Third Party Claims” means any and all claims, demands, suits, actions, or proceedings by any person, entity, government, or governmental agency, other than AIDEA, the Acquired Companies, or IGU.

## **Article 2** **PURCHASE AND SALE**

**2.1** Purchase and Sale. Upon the terms and subject to the conditions of this Agreement, at the Closing, AIDEA shall sell and transfer to IGU all of AIDEA’s right, title and interest in and to the LLC Membership Interests, and IGU shall purchase and acquire from AIDEA the LLC Membership Interests.

**2.2** Consideration. In consideration for the sale and purchase of the LLC Membership Interests, IGU shall pay to AIDEA the sum of \$54,000,000, plus the amount of the Calculated Return as of the Closing Date. The consideration described in this Section 2.2 is the “Purchase Price.”

**2.3** Payment.

(a) The Purchase Price shall be paid in cash at the Closing from the following sources: (1) the remaining unexpended and unobligated amount of the appropriation the Alaska State Legislature made to AIDEA in section 26(b) of the State of Alaska capital budget for FY2014, as set out in HCS CSSB 18 (FIN) (chapter 16, Session Laws of Alaska 2013), shall be applied by AIDEA for IGU’s benefit towards the Purchase Price; and (2) the balance of the Purchase Price shall be paid through the SETS Credit Facility by IGU executing a promissory note for the balance, or a promissory note that includes the balance along with other indebtedness, as described in the Financing Agreement.

(b) The Parties acknowledge that disbursement of the appropriation the Alaska State Legislature made to AIDEA in section 26(b) of the State of Alaska capital budget for FY2014 to pay for a portion of the Purchase Price will serve to advance an Alaska liquefied natural gas production plant and distributions systems to serve Interior Alaska as a primary market.

(c) IGU agrees that AIDEA’s disbursement of the funds necessary to pay for the balance of the Purchase Price from the SETS Credit Facility will be a draw on the SETS Credit Facility and will result in a debt by IGU to AIDEA under the terms of the SETS Credit Facility as provided for in the Financing Agreement.



**Article 3**  
**AIDEA'S REPRESENTATIONS AND WARRANTIES**

AIDEA represents and warrants to IGU that the statements contained in this Article 3 are correct and complete as of the Effective Date and will be correct and complete as of the Closing Date (as though made then):

**3.1 LLC Membership Interests.**

(a) AIDEA has good title to the LLC Membership Interests, free and clear of all Encumbrances. AIDEA owns 100% of the LLC Membership Interests.

(b) The LLC Membership Interests have been duly authorized and validly issued and are fully paid and non-assessable. The LLC Membership Interests are duly noted and recorded in the books and records of Pentex as being owned 100% by AIDEA. Pentex has no record or information that any of the LLC Membership Interests is subject to any Encumbrance. Pentex has not issued any certificates to evidence the LLC Membership Interests, and no lost or destroyed certificates for the LLC Membership Interests exist or have ever existed. Other than this Agreement, no unperformed contract exists relating to transferring or issuing any additional membership interests in Pentex.

**3.2 Organization.**

(a) Each of the Acquired Companies is a limited liability company duly organized, validly existing, and in good standing under the laws of the states in which it was organized with full power to carry on its business as currently conducted and to own, lease, and operate all property and assets now owned, leased, or operated by it. Each of the Acquired Companies is a member-managed limited liability company and has never been a manager-managed limited liability company. AIDEA is the managing member and sole member of Pentex.

(b) Pentex is the sole member of, and owns 100% of the membership interests in, Fairbanks Natural Gas, LLC, Polar LNG, LLC, Arctic Energy Transportation, LLC, and Titan Alaska LNG, LLC. Fairbanks Natural Gas, LLC is the sole member of, and owns 100% of the membership interests in, Cassini LNG Storage, LLC. None of the Subsidiaries has any record or information that any of membership interests in them is subject to any Encumbrance. None of the Subsidiaries has issued any certificates to evidence the membership interests in them, and no lost or destroyed certificates for the membership interests in any of the Subsidiaries exist or have ever existed. No contract exists relating to transferring or issuing any additional membership interests in any of the Subsidiaries.

(c) AIDEA has delivered to IGU copies of the Organizational Documents of each of the Acquired Companies, as currently in effect and as formerly in effect.

**3.3 Authorization.** AIDEA's execution and delivery of this Agreement, and AIDEA's performance of the Contemplated Transactions, have been duly and validly authorized by all necessary corporate or organizational action required on AIDEA's part. This Agreement has been duly executed and validly delivered by AIDEA and is legally binding on AIDEA, enforceable against AIDEA in accordance with its terms, except as may be limited by bankruptcy, insolvency, or other laws affecting the enforcement of creditors' rights generally, by general principles of equity (regardless of whether considered in a proceeding in equity or one at law), and by public policy. Each of the agreements or other instruments to be executed by AIDEA at the Closing, when executed, will be duly executed and delivered by AIDEA and will be legally binding on AIDEA, enforceable against AIDEA in accordance with its terms, except as may be limited by bankruptcy, insolvency, or other laws affecting the enforcement of creditors' rights generally, by general principles of equity (regardless of whether considered in a proceeding in equity or one at law), and by public policy. No actions or proceedings to dissolve, declare bankrupt, or create a receivership for any of the Acquired Companies or AIDEA are pending or, to the Knowledge of AIDEA and the Acquired Companies, threatened.

**3.4 No Conflict.** The execution and delivery of this Agreement by AIDEA, and the consummation or performance of the Contemplated Transactions, will not:

(a) result in any breach of any of the provisions of, or constitute a default under, in each case with or without the giving of notice or the passage of time or both, any judgment, order, decree, writ, or agreement to which AIDEA or the Acquired Companies, or any of them, are or is a party, or by which AIDEA or the Acquired Companies, or any of them, are or is bound, which breach or default would (1) materially adversely affect the ability of AIDEA to execute, deliver, or perform its obligations under this Agreement, or (2) give rise to or result in a Material Adverse Effect; or

(b) cause IGU or any of the Acquired Companies to become subject to, or to become liable for the payment of, any Tax; or

(c) result in the imposition or creation of any Encumbrance upon or with respect to any of the assets owned or used by any of the Acquired Companies.

**3.5 No Consents.** Except as disclosed in Disclosure Schedule 3.5, neither AIDEA nor any of the Acquired Companies is or will be required to give any notice to or obtain the consent from any person, entity, government, or governmental agency in

connection with the execution and delivery of this Agreement, or the consummation or performance of any of the Contemplated Transactions.

**3.6 Financial Statements.** As of the execution of this Agreement, Disclosure Schedule 3.6 consists of true and complete copies of the Acquired Companies' audited consolidating financial statements for the period ending June 30, 2017 (the "Financials"), and true and complete copies of the Acquired Companies' internally generated quarterly financial reports for the third calendar quarter of 2017 (a Quarterly Report). At or prior to the Closing, AIDEA will supplement Disclosure Schedule 3.6 to also include the quarterly financial reports for the fourth calendar quarter of 2017 and all completed quarterly financial reports for the calendar quarters in 2018 up to the Closing Date (which are part of the Quarterly Reports). If the Closing does not occur before the Acquired Companies' audited consolidating financial statements for the fiscal year ending June 30, 2018 are completed, AIDEA shall supplement Disclosure Schedule 3.6 with those financial statements, which shall also constitute part of the "Financials." The Financials have been prepared from the Acquired Companies' books and records in accordance with GAAP, applied on a consistent basis throughout the periods involved, and fairly present the Acquired Companies' financial position as of their respective dates and the results of Operations and cash flows for the periods shown. The Quarterly Report for the third calendar quarter of 2017, and the Quarterly Reports to be prepared for all subsequent calendar quarters, have been prepared or will be prepared by the Acquired Companies' personnel from the Acquired Companies' books and records, and fairly present the Acquired Companies' financial position as of the end of the period and the results of Operations and cash flows for the period. After June 30, 2017, there has been no change in the financial condition or business of any of the Acquired Companies that would constitute a Material Adverse Effect. No financial statements of any person or entity other than the Acquired Companies are required by GAAP to be included in the Financials or the Quarterly Reports.

**3.7 Books and Records.** The books of account, LLC membership ownership record and transfer books, membership meeting minutes, members resolutions, manager meeting minutes, manager resolutions, policies, procedures, and any other records of the Acquired Companies, all of which have been made available to IGU, are complete and correct and have been maintained in accordance with sound business practices. The records of the Acquired Companies with respect to any meetings held or actions taken or approved by the members or the managers, or any committees appointed by the members or the managers, are accurate and complete. On the Closing Date, all of the foregoing books and records will be in the possession of the Acquired Companies.

**3.8 Acquired Companies' Assets.**

(a) Disclosure Schedule 3.8(a) lists all real property, leaseholds, and other interests in real estate that the Acquired Companies have. To the Knowledge of

AIDEA and the Acquired Companies, AIDEA has provided to IGU correct and complete copies of all deeds, conveyance documents, purchase contracts, written leases, subleases, title reports, title records or other documents pertaining to the real property interests listed on Disclosure Schedule 3.8(a), as well all documents amending or modifying the terms thereof.

(b) Disclosure Schedule 3.8(b) lists all items of equipment, materials, supplies, fixtures, tools, motor vehicles, and other personal property the Acquired Companies own or lease that separately cost \$50,000 or more. To the Knowledge of AIDEA and the Acquired Companies, AIDEA has provided, or made available, to IGU correct and complete copies of any bills of sale, leases, purchase agreements or other documents under which the personal property listed on Disclosure Schedule 3.8(b) were acquired. Prior to the Effective Date, the Acquired Companies took no action with respect to any item of personal property included on Disclosure Schedule 3.8(b) that would void any manufacturer's or dealer's warranty with respect to that item.

(c) Except as disclosed in Disclosure Schedule 3.8(c), the Acquired Companies have, or will have at the Closing, good title, free and clear of all Encumbrances (other than Permitted Encumbrances), to all the properties and assets (whether real, personal, or mixed, or whether tangible or intangible) that they purport to own, or that are listed on Disclosure Schedules 3.8(a) or 3.8(b), or that are reflected in the Financials.

**3.9 Condition of Acquired Companies' Assets.** Except as disclosed in Disclosure Schedule 3.9:

(a) the equipment, materials, supplies, fixtures, tools, motor vehicles, and other items of personal property owned or leased by the Acquired Companies are in good condition and repair, ordinary wear and tear excepted, and are sufficient in quantity and quality for conducting the Operations and for continuing the Operations after the Closing Date; and

(b) the real property the Acquired Companies own, lease, or in which they have an interest, and all buildings, structures, and improvements on the same, are in good condition and repair, ordinary wear and tear excepted, and adequate for conducting the Operations and for continuing the Operations after the Closing Date, and all such real property, buildings, structures, and improvements are, to the Knowledge of AIDEA and the Acquired Companies, in compliance in all material respects, with all federal, state, and local laws, regulations, codes, permits, orders, and ordinances.

**3.10 Inventory.** All items of the Inventory consist of a quality and quantity usable and saleable in the ordinary course of the Operations, except for obsolete items and items of below-standard quality, all of which have been written off or written down on the Financials and the Acquired Companies accounting records. The Acquired

Companies are not in possession of any item of Inventory the Acquired Companies do not own, including goods already sold. Inventory is valued at the lower of cost or market value on a first in, first out basis. Inventory on hand was purchased or produced in the ordinary course of the Operations.

**3.11 Accounts Receivable.** All accounts receivable of the Acquired Companies reflected on the Financials or the Quarterly Reports, or on the accounting records of the Acquired Companies as of the Closing Date, represent or will represent valid obligations arising from sales actually made or services actually performed in the ordinary course of business. Unless paid prior to the Closing, all such accounts receivable are or will be as of the Closing Date current and collectible net of the respective reserves shown in the Financials, the Quarterly Reports, or on the accounting records of the Acquired Companies as of the Closing Date (which reserves are adequate and calculated consistent with past practice and, in the case of the reserves as of the Closing Date, will not represent a greater percentage of such accounts receivable as of the Closing Date than the reserve regularly utilized by the Acquired Companies). To the Knowledge of AIDEA and the Acquired Companies, except as set forth on Disclosure Schedule 3.11, no obligor on any such accounts receivable is contesting the obligation to pay or the amount owed, or asserting any claim with respect to such accounts receivable, or asserting a right of set-off, which amounts individually or in the aggregate would exceed the reserves as of the Closing Date.

**3.12 Material Contracts.** Disclosure Schedule 3.12 lists all Material Contracts to which any of the Acquired Companies is a party. AIDEA has already delivered to IGU copies of all written Material Contracts and written amendments to the Material Contracts which any of the Acquired Companies is a party. The written Material Contracts and any written amendments contain the complete terms of the agreements between the parties. There are no material oral modifications or amendments to any of Material Contracts. No material breach or default exists with respect to any of the Material Contracts and, to the Knowledge of AIDEA and the Acquired Companies, no event has occurred that, after notice or lapse of time or both, will or may result in any such breach or default. None of the Acquired Companies is in arrears in respect to the performance or satisfaction of the terms or conditions to be performed or satisfied by it under any of the Material Contracts, and none of the Acquired Companies has been notified of any claim that it is in arrears with respect to any of the Material Contracts. No waiver or indulgence has been granted by any party to any of the Material Contracts, including by any of the Acquired Companies. AIDEA and the Acquired Companies know of no laws, regulations, or decrees that adversely affect or could reasonably be expected to adversely affect the rights of any of the Acquired Companies under the Material Contracts. Except as disclosed in Disclosure Schedule 3.12, AIDEA and the Acquired Companies have received no notice or threat of termination, non-renewal, or re-bid from any party to any of the Material Contracts, nor is any material dispute

pending with respect to any of the Material Contracts, nor, to the Knowledge of AIDEA and the Acquired Companies, is there any basis for any such dispute. None of the Acquired Companies has received any prepayments under any of the Material Contracts that are applicable to goods or services to be provided after the Closing Date, except for deposits accurately shown on the Financials or the Quarterly Reports. No customer or client has asserted any claim for a credit with respect to goods or services provided under any of the Material Contracts.

### **3.13 Legal Requirements; Permits and Licenses.**

(a) To the Knowledge of AIDEA and the Acquired Companies, and except as disclosed in Disclosure Schedule 3.13(b) or in Disclosure Schedules 3.16(b), (d), and (e), the Operations and all of the Acquired Companies' activities have been conducted in compliance, in all material respects, with all applicable statutes, regulations, codes, rules, injunctions, orders, judgments, and other legal requirements of any federal, state, local, or foreign government or governmental agency. Except as disclosed in Disclosure Schedule 3.13(b) or in Disclosure Schedules 3.16(b), (d), and (e), no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against any of the Acquired Companies or against AIDEA with respect to the Acquired Companies, alleging any failure so to comply.

(b) Disclosure Schedule 3.13(b) lists all Permits and Licenses granted or afforded to the Acquired Companies by any government or governmental agency, all of which are valid and remain in effect. AIDEA has already delivered to IGU copies of all Permits and Licenses of any of the Acquired Companies. AIDEA and the Acquired Companies have received no notice that any of the Permits and Licenses is being or may potentially be revoked, suspended, or modified. The Permits and Licenses listed on Disclosure Schedule 3.13(b) are all of the governmental authorizations necessary for the Acquired Companies to carry on the Operations prior to the Closing Date, or for the Acquired Companies to continue the Operations after the Closing Date as they were previously conducted.

**3.14 Legal Proceedings.** Except as disclosed on Disclosure Schedule 3.14, there are no pending or, to the Knowledge of AIDEA and the Acquired Companies, threatened, claims, actions, suits, proceedings, or investigations involving AIDEA (as relates to the Acquired Companies or to AIDEA's ability to perform its obligations under this Agreement) or any of the Acquired Companies or any other properties or assets of the any of the Acquired Companies.

**3.15 Undisclosed Liabilities.** The Acquired Companies and AIDEA with respect to the Acquired Companies, have no Liability arising out of events or circumstances occurring prior to the Closing (and, to the Knowledge of AIDEA and the Acquired Companies, there is no basis for any present or future action, suit, proceeding,

hearing, investigation, charge, complaint, claim, or demand against any of the Acquired Companies or AIDEA with respect to the Acquired Companies, that would or might give rise to any Liability arising out of events or circumstances prior to Closing); except for (a) Liabilities set forth in the Financials or the Quarterly Reports, and (b) Liabilities which have arisen in the ordinary course of business after the date of the most recent of the Financials or Quarterly Reports (none of which results from, relates to, or was caused by any breach of contract, breach of warranty, tort, strict liability, infringement, or violation of law).

### **3.16 Environment, Health, and Safety.**

(a) To the Knowledge of AIDEA and the Acquired Companies, except as disclosed in Disclosure Schedules 3.16(b), (d), and (e), the Acquired Companies have complied with all Environmental, Health, and Safety Laws. No action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against any of the Acquired Companies alleging any failure to so comply. Without limiting the generality of the preceding sentence, the Acquired Companies, to the Knowledge of AIDEA and the Acquired Companies, have obtained and been in compliance with all of the terms and conditions of all permits, licenses, and other authorizations that are required under, and have complied with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables that are contained in, all Environmental, Health, and Safety Laws.

(b) Except as disclosed in Disclosure Schedule 3.16(b), neither the Acquired Companies nor AIDEA with respect to the Acquired Companies, to the Knowledge of AIDEA and the Acquired Companies, has any Liability arising out of events or circumstances occurring under any Environmental, Health, and Safety Laws for contamination of, damage to, or polluting any site, location, property, natural resources, the air, or any body of water (surface or subsurface), or for any illness of, or personal injury to, or death of, any employee or other individual related to the foregoing.

(c) To the Knowledge of AIDEA and the Acquired Companies, all equipment and personal property owned, leased, or used in the Operations are and have been free of hydrocarbon contamination, asbestos, PCBs, dioxins, and any other hazardous, toxic, radioactive, or dangerous substances, except for the liquefied natural gas and compressed natural gas the Acquired Companies produce, store, and handle, and except for the fuel, lubricants, refrigerants, and solvents that are used in the ordinary course of business in conducting the Operations. The liquefied natural gas and compressed natural gas of the Acquired Companies, and the fuel, lubricants, refrigerants, and solvents used in its Operations, have all been stored, handled, transported, used, and disposed of in accordance with all Environmental, Health, and Safety Laws and consistent with all standard industry practices.

(d) Except as disclosed on Disclosure Schedule 3.16(d), all real property the Acquired Companies owns is, to the Knowledge of AIDEA and the Acquired Companies, free from contamination by any substance regulated under, or defined as or considered “hazardous” or “toxic” or “radioactive” or “contamination” or “pollution” under, any Environmental, Health, and Safety Laws, including but not limited to hydrocarbons, asbestos, PCBs, and dioxins. AIDEA has provided IGU with true and complete copies of all environmental assessments, studies, and reports (1) of which AIDEA and the Acquired Companies have Knowledge and (2) that reference the real property any of the Acquired Companies owns, leases, or uses. Although neither AIDEA nor the Acquired Companies has conducted any environmental assessments regarding the leased real property used by the Acquired Companies, neither AIDEA nor the Acquired Companies has Knowledge of any environmental contamination on or under the portions of any leased or used real property where any of the Operations have been conducted.

(e) Except as disclosed on Disclosure Schedule 3.16(e), neither the Acquired Companies nor AIDEA has Knowledge of any leak, spill, release, discharge, or disposal of any substance regulated under, or defined as or considered “hazardous” or “toxic” or “radioactive” or “contamination” or “pollution” under any Environmental, Health, and Safety Laws that has occurred on, in, or under the real property any of the Acquired Companies owns, leases, or uses, or has ever owned, leased, or used, in conducting the Operations, that was reportable or should have been reported to any government or governmental agency, or that was or could have been subject to clean up or remediation, under any Environmental, Health, and Safety Laws.

(f) Except as disclosed on Disclosure Schedule 3.16(f), to the Knowledge of AIDEA and the Acquired Companies, there is no underground storage tank present on any real property any of the Acquired Companies owns, leases, or uses or has owned, leased or used, in conducting the Operations.

### **3.17 Employee Benefits and Compensation; Labor Relations.**

(a) Disclosure Schedule 3.17(a) lists all of the retirement, pension, profit-sharing, insurance, health, medical, or other form of employee welfare or benefit plans (“Employee Benefit Plans”) contributed to, maintained, or administered by any of the Acquired Companies or under which any of the Acquired Companies, or AIDEA with respect to the Acquired Companies, could have a Liability. The Acquired Companies have paid all amounts due under any Employee Benefit Plans and have otherwise fulfilled all obligations they have under any Employee Benefit Plans. Except for regular payroll for the pay period during which the Closing occurs, the Acquired Companies have paid all compensation of every kind due any of their employees.

(b) Except as disclosed in Disclosure Schedule 3.17(b), with respect to the Acquired Companies, there has not been, there is not presently pending or existing,



and there is not threatened, (1) any strike, slowdown, picketing, work stoppage, or employee grievance process, (2) any proceeding against or affecting any of the Acquired Companies or AIDEA with respect to the Acquired Companies, relating to an alleged violation of any legal requirement pertaining to labor relations or employment matters, including any charge or complaint filed with any court, the National Labor Relations Board, the Equal Employment Opportunity Commission, the Alaska Human Rights Commission, or any comparable federal, state, or local governmental agency, (3) any organizational activity, or other labor or employment dispute against or affecting any of the Acquired Companies or their premises, or AIDEA with respect to the Acquired Companies. No event has occurred and no circumstance exists that could provide the basis for any work stoppage or other labor dispute. There is no lockout of any of the Acquired Companies' employees and no such action is contemplated by any of the Acquired Companies.

### **3.18 Tax Matters.**

(a) The Acquired Companies have filed all Tax Returns that they are required to file. All of the Acquired Companies' Tax Returns were correct and complete in all respects. All Taxes owed by the Acquired Companies, or any of them, (whether or not shown on any Tax Return) have been paid. No claim has been made by any authority in a jurisdiction where the Acquired Companies do not file Tax Returns that the Acquired Companies, or any of them, is or may be subject to taxation by that jurisdiction.

(b) The Acquired Companies have withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any member, employee, officer, independent contractor, creditor or other third party.

(c) There are no Encumbrances on any of the assets of the Acquired Companies or AIDEA that arose in connection with any failure (or alleged failure) to pay any Tax. None of the Acquired Companies will have any Liability for any Taxes as a result of the Contemplated Transactions.

**3.19 Interested Party Contracts.** Except as disclosed on Disclosure Schedule 3.19, neither AIDEA, nor any AIDEA Related Person, nor any of the members, managers, officers, or employees of any of the Acquired Companies, has any interest in (a) any of the Material Contracts, either directly or indirectly or by reason of an interest in any entity that is a party to any of the Material Contracts, or (b) any other contract, undertaking or obligation that any of the Acquired Companies will be bound by after the Closing Date.

**3.20 Intellectual Property.** The Acquired Companies own or hold licenses for any items of Intellectual Property used in or necessary for the Operations. Neither AIDEA nor the Acquired Companies has received any notice of infringement or notice of

conflict with the asserted rights of others in any item of Intellectual Property; nor does AIDEA, or any of the Acquired Companies, have Knowledge of any such infringement or conflict, or of any infringement by, or conflict on the part of, others with respect to the Intellectual Property used in or necessary for the Operations.

### **3.21 Insurance.**

(a) Disclosure Schedule 3.21(a) lists all of the insurance coverages the Acquired Companies have as of the Effective Date or had during the prior three years, with the effective coverage periods correctly noted. AIDEA has already delivered to IGU copies of all insurance policies of any of the Acquired Companies currently in effect. Except as otherwise noted on Disclosure Schedule 3.21(a), all the policies listed on Disclosure Schedule 3.21(a) as currently in effect remain valid and enforceable and all premiums have been fully paid. Taken together, the insurance policies listed on Disclosure Schedule 3.21(a) as currently in effect provide adequate insurance for the Operations, including the continuation of the Operations after the Closing Date, and are sufficient to fulfill any legal or contractual obligations any of the Acquired Companies to have or provide insurance. Except as indicated on Disclosure Schedule 3.21(a), none of the insurance policies listed on Disclosure Schedule 3.21(a) is subject to any retrospective premium adjustment. None of the insurance policies listed on Disclosure Schedule 3.21(a) is subject to cancellation, exceptions, or re-rating upon a change in the control of any of the Acquired Companies.

(b) Disclosure Schedule 3.21(b) lists all insurance claims of the Acquired Companies since January 1, 2010, summarizes the nature of each claim, and states the outcome of the claim, including disclosing any deductible or self-insured retention paid by any of the Acquired Companies.

**3.22 Absence of Changes.** Except as disclosed on Disclosure Schedule 3.22, since the date of the most recent Financials (June 30, 2017), the Acquired Companies have conducted the Operations only in the ordinary course of business and there has not been: (a) any change in the membership interests of any of the Acquired Companies or in any of the rights afforded by reason of the membership interests in any of the Acquired Companies; (b) any repurchase, redemption, retirement, or transfer of any membership interest in any of the Acquired Companies; (c) the declaration of, or payment of, any dividend, distribution, or other payment related to the membership interests in any of the Acquired Companies; (d) any amendment to any of the Organizational Documents; (e) any payment or increase by any of the Acquired Companies of any bonuses, salaries, or other compensation to any member, manager, officer, or employee, or any entry by any of the Acquired Companies into any employment, severance, bonus, or similar contract with any member, manager, officer, or employee; (f) the adoption of, or increase in the payments to or benefits under, any Employee Benefit Plans by any of the Acquired Companies; (g) damage to or destruction of or loss of any asset or property of any of the Acquired Companies; (h) the

sale, lease, or other disposition of any asset or property of any of the Acquired Companies (or than the sale of Inventory in the ordinary course of business), or the imposition of any Encumbrance on or against any asset or property of any of the Acquired Companies; (i) any material change in the accounting methods used by any of the Acquired Companies; or (j) any agreement, whether oral or written, by any of the Acquired Companies to do any of the foregoing.

**3.23 Complete and Accurate Statements.** AIDEA's representations and warranties in Article 3 of this Agreement, AIDEA's disclosures in the Disclosure Schedules to this Agreement or in any supplement to the Disclosure Schedules, and any certificate or document delivered to IGU at the Closing by or on behalf of AIDEA, do not and will not contain any untrue statement of material fact or omit to state a material fact necessary in order to make any of them misleading. AIDEA does not have Knowledge of any fact that has specific application to any of the Acquired Companies (other than general economic or industry conditions) that may have a Material Adverse Effect on the assets, businesses, or financial conditions of Pentex, Fairbanks Natural Gas, LLC, Titan Alaska LNG, LLC, or Arctic Energy Transportation, LLC that has not been set forth in this Agreement or in the Disclosure Schedules to this Agreement, or that will not be set forth in a supplement to the Disclosure Schedules.

#### **Article 4**

### **IGU'S REPRESENTATIONS AND WARRANTIES**

IGU represents and warrants to AIDEA that the statements contained in this Article 4 are correct and complete as of the Effective Date and will be correct and complete as of the Closing Date (as though made then):

**4.1 Existence.** IGU is a public corporation of the Fairbanks North Star Borough established by ordinance. IGU is duly organized and validly existing under the laws of the State of Alaska with full power: (a) to carry on its business as currently conducted and to own, lease, and operate all property and assets now owned, leased or operated by it, and (b) to enter into this Agreement and to perform its obligations under this Agreement.

**4.2 Authorization.** The execution and delivery by IGU of this Agreement, and the performance by IGU of its obligations under this Agreement, have been duly and validly authorized by all necessary organizational action of IGU and are within the authority of FNSB Ordinance Number 2012-52, under which IGU was established. This Agreement has been duly executed and validly delivered by IGU and is legally binding on IGU, enforceable against IGU in accordance with its terms, except as may be limited by bankruptcy, insolvency, or other laws affecting the enforcement of creditors' rights generally, by general principles of equity (regardless of whether considered in a proceeding in equity or one at law), and by public policy.

**4.3 No Conflict.** The execution and delivery of this Agreement by IGU, and the performance by IGU of its obligations under this Agreement, do not and will not (a) conflict with IGU's governing ordinances or bylaws or (b) result in the breach of any of the provisions of, or constitute a default under, any judgment, writ, order, decree, or agreement to which IGU is a party or by which IGU is bound, which breach or default would reasonably be expected to materially adversely affect the Contemplated Transactions.

## **Article 5** **COVENANTS OF THE PARTIES**

### **5.1 Due Diligence Access and Investigation.**

(a) Between the Effective Date and the Closing Date, AIDEA will cause the Acquired Companies to cooperate with IGU with respect to the Due Diligence and AIDEA shall direct the Acquired Companies to: (1) afford IGU and its representatives reasonable access to the Acquired Companies' personnel, properties, facilities, contracts, books and records, and other documents and data; (2) furnish IGU and its representatives with copies of all contracts, books and records, and other existing documents required by this Agreement or that IGU may reasonably request; and (3) furnish IGU and its representatives any additional financial, operating, and other data and information as IGU may reasonably request. In conducting its Due Diligence, IGU will coordinate with AIDEA's designated agent prior to making direct contact with any of the personnel, vendors, or customers of the Acquired Companies regarding the Contemplated Transactions.

(b) In entering onto any properties where the Operations are conducted, IGU, and any contractors or agents assisting or advising IGU, shall be doing so at their own risk. Neither AIDEA nor the Acquired Companies shall be responsible to IGU or any of its employees, contractors, or agents for any personal injury, death, property damage, or pecuniary loss suffered as a result of entering onto the properties where the Operations are conducted. IGU shall indemnify and defend AIDEA and the Acquired Companies, and their respective officers, employees, and agents, from and against any claim, loss, or Liability related to or arising out any personal injury, death, property damage, or pecuniary loss suffered as a result of IGU, or its employees, contractors, or agents, entering onto the properties where the Operations are conducted.

(c) If IGU elects to conduct any testing or invasive inspections of any of the Acquired Companies' property or equipment, IGU shall restore the property or equipment to its pre-existing condition immediately upon completion of the testing or invasive inspections. IGU shall pay when due all contractors or agents that perform any work on the properties of the Acquired Companies as a part of the Due Diligence. IGU

shall not allow any mechanics' or other lien to be asserted against any property of the Acquired Companies for any work performed as a part of the Due Diligence.

**5.2 Notices and Approvals.** AIDEA and IGU shall use their best efforts and cooperate in making all filings, giving all notices, and seeking the approvals of all government authorities and third parties that may reasonably be required to consummate the Contemplated Transactions, including without limitation the approval of the Regulatory Commission of Alaska.

**5.3 Conduct of Business Prior to Closing.** Except as IGU may otherwise consent, from the Effective Date until the Closing:

(a) Except as otherwise provided in Sections 5.3(b), (c), and (d), AIDEA shall cause the Acquired Companies to: (1) conduct the Operations in the ordinary course of business and consistent with prior practice, and subject to their existing contractual obligations, so long as such action does not result in a Material Adverse Effect; (2) not alter Inventory levels in any material way from their usual and customary amounts; (3) not sell, lease (as lessor), transfer, license (as licensor), or voluntarily dispose of, any assets material to the Operations, other than Inventory sold in the ordinary course; and (4) not amend or voluntarily terminate any Material Contract.

(b) AIDEA shall not allow any Encumbrance to be placed against any of the assets of any of the Acquired Companies after the Effective Date.

(c) AIDEA shall not allow the Acquired Companies to enter into any agreement having a term of more than six months or any agreement reasonably expected to require expenses or expenditures of more than \$50,000.

(d) AIDEA shall cause the Acquired Companies to use reasonable efforts to preserve their business organizations and relations with their customers, suppliers, and employees.

(e) AIDEA shall not allow the Acquired Companies to increase salaries, wages, or benefits for any of the Acquired Companies' employees or to pay or promise any bonuses to employees, except in the ordinary course of business and consistent with past practices and so long as the cumulative effect of such increases or bonuses is not greater than \$50,000 per year.

(f) AIDEA shall cause the Acquired Companies to use reasonable efforts to cause there to be no less than Four Million Dollars (\$4,000,000) in cash among the consolidated assets of Pentex and the Subsidiaries at the time of Closing.

(g) AIDEA shall cause the Acquired Companies to notify IGU in writing within five days after AIDEA or any of the Acquired Companies has Knowledge of any

matter or event which will have a Material Adverse Effect and to report quarterly to IGU, not later than the 15th day after the end of any quarter, concerning the status of the businesses and finances of the Acquired Companies.

**5.4 Negative Covenant.** Between the Effective Date and the Closing Date, AIDEA will not, and will cause each of the Acquired Companies not to, take any action or fail to take any action reasonably within their control as a result of which any of the changes or events listed in Section 3.22 is likely to occur, except to fulfill existing contractual obligations of the Acquired Companies.

**5.5 Notification; Updates to Disclosure Schedules.**

(a) Between the Effective Date and the Closing Date, AIDEA will notify IGU in writing within five days after AIDEA or any of the Acquired Companies has Knowledge of: (1) a fact or condition that causes or constitutes a breach of any of AIDEA's representations and warranties in Article 3, or would have constituted a breach of such representations and warranties if the fact or condition had existed at the time this Agreement was made; or (2) the occurrence of any event that may make the satisfaction of the conditions to Closing impossible or unlikely.

(b) Prior to the Closing Date, AIDEA shall supplement or amend the Disclosure Schedules required by this Agreement with respect to any matter hereafter arising which, if existing or occurring at the Effective Date, would have been required to be set forth or described in such Disclosure Schedule.

(c) As soon as reasonably possible after the close of each calendar quarter of 2017 and 2018 until the Closing Date, AIDEA shall cause the Acquired Companies to prepare Quarterly Reports for each calendar quarter to present the Acquired Companies' financial position as of the end of the period and the results of Operations and cash flows for the period. AIDEA shall provide the same to IGU as soon as they are available. The Quarterly Reports for each calendar quarter of 2017 and 2018 shall constitute a supplement to Disclosure Schedule 3.6.

**5.6 Environmental Assessment.** If IGU elects to do so, IGU may engage one or more environmental consulting or engineering firms to conduct Environmental Assessments of the real properties on which the Operations are conducted. The Environmental Assessments shall be at IGU's sole cost. AIDEA and the Acquired Companies will cooperate with IGU and the environmental consulting or engineering firms, provide any requested information on the real properties where the Operations are conducted, and allow full access to those real properties for purposes of completing the Environmental Assessments. Whether or not the Closing occurs, IGU shall provide to AIDEA complete copies of the reports on the Environmental Assessments once they have been completed.

## **5.7 Tax Matters.**

(a) AIDEA shall be responsible for filing all Tax Returns of or with respect to the Acquired Companies for all taxable periods during the AIDEA Ownership Period. IGU will have no Liability for Taxes relating to the income derived from the Operations and business of the Acquired Companies during the AIDEA Ownership Period. IGU shall be responsible for filing all Tax Returns of or with respect to the Acquired Companies for all taxable periods ending after the Closing Date (each such period an "IGU Tax Period"), if any such Tax Returns are legally required. If any Taxes are due for an IGU Tax Period, IGU shall cause the Acquired Companies to pay the same when due. AIDEA or IGU, as the case may be, shall be entitled to any refund or credit relating to any such Taxes based upon or related to income or receipts for any taxable period (or portion thereof) during which AIDEA or IGU, as the case may be, owned the Acquired Companies.

(b) Any Tax Return prepared pursuant to the provisions of Section 5.7 shall be prepared in a manner consistent with practices followed in prior years with respect to similar Tax Returns, except as otherwise required by law.

(c) AIDEA and IGU shall provide each other with any records as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to Liability for Taxes, and each shall retain and provide the requesting Party with any records or information which may be relevant to such return, audit, examination, or proceedings.

**5.8 Regulatory Matters.** Subject to the terms and conditions of this Agreement, each Party will use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper, or advisable under this Agreement and applicable laws to consummate the Contemplated Transactions as soon as practicable after the Effective Date, including (a) preparing and filing, in consultation with the other parties and as promptly as practicable and advisable after the date hereof, all documentation to effect all necessary applications, notices, petitions, filings, and other documents and to obtain as promptly as practicable all consents, clearances, waivers, licenses, orders, registrations, approvals, permits, and authorizations necessary to be obtained from any third party and/or any governmental authority to consummate the Contemplated Transactions, and (b) taking all reasonable steps as may be necessary to obtain all such material consents, clearances, waivers, licenses, registrations, permits, authorizations, orders, and approvals, including the unconditional approval by the Regulatory Commission of Alaska to the change in ownership of Fairbanks Natural Gas, LLC. IGU and AIDEA shall submit a joint application for the unconditional approval by the Regulatory Commission of Alaska to the change in ownership of Fairbanks Natural Gas, LLC within fifteen working days after the Effective Date. AIDEA and IGU shall cooperate with one another in making the

necessary filings with the Regulatory Commission of Alaska and in seeking the unconditional approval of the joint application by the Regulatory Commission of Alaska.

**5.9 North Slope Pad.** Within fifteen working days after the Effective Date, AIDEA shall apply to the Alaska Department of Natural Resources for approval of: (1) the transfer of the North Slope Pad Right-of-Way Lease from AIDEA to IGU; (2) the transfer of AIDEA's interest in the Material Sales Contract referenced in Section 1.31, from AIDEA to IGU; (3) amendments to the North Slope Pad Right-of-Way Lease expanding the purposes for which the subject property may be used to include general industrial, commercial, business, and oil & gas related uses consistent with those permitted under Alaska Department of Natural Resources leases in the Deadhorse area; and (4) any subleases of the North Slope Pad Right-of-Way Lease, or any portion thereof, the negotiation of which was commenced prior to the Closing. IGU shall cooperate with AIDEA in its efforts to seek such approvals from the Alaska Department of Natural Resources.

## **Article 6** **IGU'S CONDITIONS PRECEDENT**

IGU's obligation to consummate the Contemplated Transactions is subject to the satisfaction to the reasonable satisfaction of IGU, on or before the Closing Date, of the following conditions (subject to IGU's right to waive satisfaction of any of these conditions):

**6.1 Accuracy of Representations and Warranties.** Each and every representation and warranty of AIDEA made in this Agreement must be true and accurate as of the date when made and as of the Closing.

**6.2 Performance of Covenants and Agreements.** AIDEA must have performed or complied with in all material respects all of the covenants and agreements required to be performed by or complied with by AIDEA at or prior to the Closing in accordance with this Agreement.

**6.3 Permits, Consents, Agreements, Etc.**

(a) All consents, approvals, or authorizations of, or filings with, any person, entity, government, or governmental agency that are required in connection with the Contemplated Transactions must have been accomplished or obtained. The authorization of the Regulatory Commission of Alaska to a change in the ownership and control of Fairbanks Natural Gas, LLC, must have been obtained and the authorization must be unconditional or must not impose any conditions on IGU that IGU, in its sole discretion, finds unacceptable.



(b) To the extent that the approval of the other parties to any of the Material Contracts is needed, those approvals must have been obtained.

(c) The board of directors of IGU must have approved of the Agreement and the Contemplated Transactions.

**6.4 Due Diligence.** IGU must have completed its Due Diligence, including any Environmental Assessments that IGU has elected to have performed, and IGU must be reasonably satisfied with the results.

**6.5 Litigation.** No action, suit, proceeding, or investigation, by any third person (including but not limited to any government or governmental agency) must be instituted or threatened against AIDEA or IGU that challenges, or reasonably may be expected to lead to subsequent challenging of, the validity or legality of this Agreement or the Contemplated Transactions.

**6.6 Change in Law.** The consummation of the Contemplated Transactions must not be prohibited by any statute, regulation, order, or directive of any government or governmental agency that is binding upon IGU and enacted, issued, or made after the Effective Date. The source of funds expected to be used for payment of the Purchase Price, as described in Section 2.3, must remain legally available for use in paying the Purchase Price.

**6.7 No Material Adverse Effect.** No Material Adverse Effect must have occurred that, after notice of such Material Adverse Effect by IGU to AIDEA, has not been remedied to IGU's satisfaction prior to the Closing.

**6.8 Approval of Revised Disclosure Schedules.** IGU must have approved all supplements or amendments AIDEA has made to the Disclosure Schedules after the Effective Date; provided, however, that such approval shall be withheld only with respect to supplements or amendments to the Disclosure Schedules having a Material Adverse Effect.

**6.9 AIDEA's Deliveries at the Closing.** AIDEA must have delivered to IGU at the Closing, duly executed and in the proper form, all instruments, assignments, agreements, certificates and other documents required under Section 8.2.

**6.10 Financing Agreement.** The Financing Agreement must be executed and delivered on or before the Closing Date. The terms and conditions under which funds may be drawn under the Financing Agreement to pay the Purchase Price must be satisfied.

**6.11 Transfer of North Slope Pad.** The approval of the Alaska Department of Natural Resources to the applications of AIDEA as described in Section 5.9 shall have been obtained on or before the Closing Date.

**6.12 Plan of Development.** AIDEA and IGU must have agreed upon and adopted a plan of development for the existing Titan Alaska LNG, LLC, LNG Plant designed to expand and improve that facility.

**6.13 Capital Program.** AIDEA and IGU must have agreed upon and adopted the integrated utility capital program attached as Appendix B to the Financing Agreement.

**6.14 Natural Gas Demand Forecast.** AIDEA and IGU must have agreed upon and adopted an integrated utility natural gas demand forecast attached as Appendix A to the Financing Agreement.

**6.15 Integrated Natural Gas Utility Plan.** IGU, with support and input from AIDEA, must have adopted a comprehensive plan for the establishment of an integrated natural gas utility in FNSB, consistent with Appendix B to the Financing Agreement.

## **Article 7** **AIDEA'S CONDITIONS PRECEDENT**

All obligations of AIDEA to consummate the Contemplated Transactions are subject to the satisfaction to the reasonable satisfaction of AIDEA on or before the Closing Date, of the following conditions (subject to the rights of AIDEA to waive satisfaction of any of these conditions):

**7.1 Accuracy of Representations and Warranties.** Each and every representation and warranty of IGU made in this Agreement must be true and accurate in all material respects as of the date when made and as of the Closing.

**7.2 Performance of Covenants and Agreements.** IGU must have performed or complied with in all material respects all of the covenants and agreements required to be performed by or complied with by IGU at or prior to the Closing in accordance with this Agreement.

**7.3 Permits, Consents, Agreements, Etc.**

(a) All consents, approvals or authorizations of, or filings with, any person, entity, government or governmental agency that are required in connection with the Contemplated Transactions must have been accomplished or obtained. The authorization of the Regulatory Commission of Alaska to a change in the ownership and control of Fairbanks Natural Gas, LLC must have been obtained and the authorization

must be unconditional or must not impose any conditions on IGU that IGU, in its sole discretion, finds unacceptable.

(b) To the extent that the approval of the other parties to any of the Material Contracts is needed, those approvals must have been obtained.

(c) The board of AIDEA must have approved of this Agreement and the Contemplated Transactions.

**7.4 Change in Law.** The consummation of the Contemplated Transactions must not be prohibited by any statute, regulation, order, or directive of any government or governmental agency that is binding upon AIDEA and enacted, issued, or made after the Effective Date. The source of funds expected to be used for payment of the Purchase Price, as described in Section 2.3, must remain legally available for use in paying the Purchase Price.

**7.5 IGU's Actions at the Closing.** IGU must have paid, or caused to be paid, to AIDEA at the Closing all amounts required under Section 8.3, and IGU must have delivered to AIDEA at the Closing, duly executed and in the proper form, all instruments, assignments, agreements, certificates and other documents required under Section 8.3.

**7.6 Financing Agreement.** The Financing Agreement must be executed and delivered on or before the Closing Date. The terms and conditions under which funds may be drawn under the Financing Agreement to pay the Purchase Price must be satisfied.

**7.7 Transfer of North Slope Pad.** The approval of the Alaska Department of Natural Resources to the applications of AIDEA as described in Section 5.9 shall have been obtained on or before the Closing Date.

**7.8 Approval of Revised Disclosure Schedules.** IGU must have approved all supplements or amendments AIDEA has made to the Disclosure Schedules after the Effective Date; provided, however, that such approval shall be withheld only with respect to supplements or amendments to the Disclosure Schedules having a Material Adverse Effect.

**7.9 Plan of Development.** AIDEA and IGU must have agreed upon and adopted a plan of development for the existing Titan Alaska LNG, LLC, LNG Plant designed to expand and improve that facility.

**7.10 Capital Program.** AIDEA and IGU must have agreed upon and adopted the integrated utility capital program attached as Appendix B to the Financing Agreement.

**7.11 Natural Gas Demand Forecast.** AIDEA and IGU must have agreed upon and adopted an integrated utility natural gas demand forecast attached as Appendix A to the Financing Agreement.

**7.12 Integrated Natural Gas Utility Plan.** IGU, with support and input from AIDEA, must have adopted a comprehensive plan for the establishment of an integrated natural gas utility in the FNSB, consistent with Appendix B to the Financing Agreement.

## **Article 8** **THE CLOSING**

**8.1 Closing Date.** The Closing shall take place as soon as reasonably possible after the satisfaction or waiver of all of the conditions precedent, but in no event later than May 31, 2018, time being of the essence. The Closing will be held at AIDEA's offices in Anchorage, Alaska, or at such other place as the parties shall agree in writing. The Parties shall use reasonable efforts to satisfy the conditions precedent to Closing on or before April 30, 2018.

**8.2 AIDEA's Actions at the Closing.** At the Closing:

(a) AIDEA shall deliver to IGU assignments of the LLC Membership Interests and AIDEA's interest in the North Slope Pad, and any other instruments of sale, conveyance, transfer and assignment as IGU may reasonably request in order to vest in IGU all of AIDEA's right, title and interest in and to the LLC Membership Interests and the North Slope Pad.

(b) AIDEA shall deliver to IGU copies of the resolutions of the AIDEA board approving of this Agreement and the performance of this Agreement. The AIDEA board resolutions shall be accompanied by a certificate of the AIDEA Executive Director verifying the authenticity of the resolutions and confirming that the resolutions remain in full force and effect.

(c) AIDEA shall deliver to IGU at the Closing certificates, signed by the duly authorized representative of AIDEA, certifying that: (1) each and every representation and warranty of AIDEA under this Agreement was true and accurate in all material respects as of the date when made and is true and accurate in all material respects as of the Closing; and (2) AIDEA has performed, in all material respects at or prior to the Closing, all of the covenants and agreements required to be performed by AIDEA at or prior to the Closing in accordance with this Agreement.

(d) AIDEA shall deliver to IGU at the Closing the legal opinion of its counsel substantially in the form of Exhibit 8.2(d).

**8.3 IGU's Actions at the Closing.** At the Closing:

(a) IGU shall take all actions necessary to cause the Purchase Price to be released and delivered to AIDEA.

(b) IGU shall deliver to AIDEA copies of the resolutions of the IGU board approving of this Agreement and the performance of this Agreement. The IGU board resolutions shall be accompanied by a certificate of the IGU's general manager verifying the authenticity of the resolutions and confirming that the resolutions remain in full force and effect.

(c) IGU shall deliver to AIDEA a certificate signed by IGU's general manager certifying that (1) each and every representation and warranty of IGU under this Agreement was true and accurate in all material respects as of the date when made and is true in all material respects as of the Closing, and (2) IGU has performed in all material respects at or prior to the Closing all of the covenants and agreements required to be performed by IGU at or prior to the Closing in accordance with this Agreement.

(d) IGU shall deliver to AIDEA at the Closing the legal opinion of its counsel substantially in the form of Exhibit 8.3(c).

**8.4 Effectiveness of Closing.** No action to be taken, and no delivery to be made, at the Closing shall be effective until all of the actions to be taken and all of the deliveries to be made at the Closing have been completed.

## **Article 9** **INDEMNIFICATION**

**9.1 Indemnification by AIDEA.** Subject to the limitations of Section 9.2, after the Closing AIDEA shall indemnify, defend and hold harmless IGU and its directors, officers, and employees, and the Acquired Companies, from and against any Damages, sustained by any of them during the three-year period after the Closing Date and that are caused by or arise out of: (1) the failure of AIDEA to perform and fulfill any agreement or covenant to be performed and fulfilled by AIDEA under this Agreement; or (2) the breach of any AIDEA representation or warranty set forth in Article 3.

### **9.2 Limitations on AIDEA's Obligations.**

(a) Notwithstanding any other provision of this Agreement, the aggregate maximum amount AIDEA shall be obligated to pay or expend in meeting its obligations under Section 9.1 shall not exceed \$5,800,000, except in the event of fraud or willful misconduct or the breach of one of AIDEA's Fundamental Representations.

(b) Notwithstanding any other provision of this Agreement, AIDEA's obligation to indemnify or defend under Section 9.1 shall be subject to appropriation by the Alaska State Legislature to the extent that AIDEA does not have sufficient funds

legally available to pay of these obligations, or to the extent that AIDEA does not have the legal authority to pay without legislative authorization. IGU acknowledges that enactment of an appropriation in the future to fund a payment under Section 9.1 remains in the sole discretion of the Alaska State Legislature and its failure to make such an appropriation creates no further Liability of AIDEA. Nevertheless, if IGU and AIDEA agree on the amount of any payment obligation AIDEA owes under Section 9.1, or if IGU obtains a final and non-appealable judgment against AIDEA that establishes AIDEA's Liability under Section 9.1, then AIDEA's Executive Director shall request the State of Alaska's Office of Management and Budget to seek, and AIDEA shall use reasonable efforts to obtain, a legislative appropriation to pay the same.

**9.3 Indemnification by IGU.** Subject to the dollar limitation of Section 9.4, from and after the Closing, IGU will indemnify and defend AIDEA and its members, officers, directors, and employees from and against any Damages sustained by any of them during the three-year period after the Closing Date that are caused by or arise out of IGU's breach of any representation, warranty, or covenant in this Agreement or that arise from IGU's ownership of the Acquired Companies, but not including any matter against which AIDEA is obligated to indemnify and defend IGU.

**9.4 Limitation on IGU's Obligations.**

(a) Notwithstanding any other provision of this Agreement, the aggregate maximum amount IGU shall be obligated to pay or expend in meeting its obligations under Section 9.3 shall not exceed \$5,800,000, except in the event of fraud or willful misconduct. For the avoidance of doubt, the dollar limitation of this Section 9.4 does not apply with respect to IGU's obligations under the Financing Agreement or any contract, instrument or undertaking other than this Agreement.

(b) Notwithstanding any other provision of this Agreement, IGU's obligation to indemnify or defend under Section 9.3 shall be subject to appropriation by the FNSB Assembly to the extent that IGU does not have sufficient funds legally available to pay of these obligations, or to the extent that IGU does not have the legal authority to pay without Assembly authorization. AIDEA acknowledges that enactment of an appropriation in the future to fund a payment under Section 9.3 remains in the sole discretion of the FNSB Assembly and its failure to make such an appropriation creates no further Liability of IGU. Nevertheless, if IGU and AIDEA agree on the amount of any payment obligation IGU owes under Section 9.3, or if AIDEA obtains a final and non-appealable judgment against IGU that establishes IGU's Liability under Section 9.3, then IGU shall request the FNSB Mayor to seek, and IGU shall use reasonable efforts to obtain, an appropriation from the FNSB Assembly to pay the same.

**9.5 Exclusivity.** From and after the Effective Date, and except in the case of fraud or willful misconduct, the provisions set forth in this Article 9 shall be the exclusive remedies of the parties for any misrepresentation or breach of warranty, covenant, or

other agreement hereunder with respect to the Contemplated Transactions, and, in any event, the parties shall not be entitled to a rescission of this Agreement or to any further indemnification rights or claims of any nature whatsoever in respect thereof, all of which the Parties hereby waive, except in the event of fraud or willful misconduct.

**9.6 Consequential and Punitive Damages Waived.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, AIDEA SHALL NOT BE LIABLE TO IGU, AND IGU SHALL NOT BE LIABLE TO AIDEA, FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT. THE EXCLUSION OF DAMAGES AS SET FORTH IN THE PRECEDING SENTENCE SHALL NOT APPLY TO ANY SUCH DAMAGES SOUGHT BY A THIRD PARTY AGAINST AN INDEMNIFIED PARTY IN CONNECTION WITH LOSSES FOR WHICH INDEMNIFICATION IS OWED TO SUCH PARTY UNDER THIS AGREEMENT.

**9.7 Indemnity Procedure.**

(a) As soon as reasonably possible after a Party entitled to indemnity or a defense (“Indemnified Party”) is notified of any Damages within the scope of the indemnity, defense and hold harmless obligations of the other party (“Payer Party”), the Indemnified Party shall notify the Payer Party of the same. However, the failure to timely notify the Payer Party of the Damages will not relieve the Payer Party from its indemnity, defense and hold harmless obligations, except to the extent the Payer Party can demonstrate that the defense of the Damages obligation was prejudiced by the failure to give timely notice.

(b) The Payer Party shall engage counsel at the Payer Party’s expense to defend the Indemnified Party against any Damages within the scope of the indemnity, defense and hold harmless obligations. The Payer Party may exclusively control the defense and settlement of the Damages, except that the Payer Party must obtain the Indemnified Party’s consent to any settlement if the settlement involves any relief other than the payment of money. In any case, the Indemnified Party may engage, at its own expense, its own separate counsel to participate in defending against the Damages and assist the defense counsel the Payer Party engages.

(c) In addition to any other limitations contained in this Article 9, the obligations of the Parties to indemnify each other, as applicable, are subject to, and limited by, the following:

The amount of any Damages sustained by an Indemnified Party and owed by a Payer Party shall be reduced by any amount received by such Indemnified Party with respect thereto under any insurance or reinsurance coverage, or any recovery from any judgment or settlement, or from any other Party alleged to be responsible therefor, less any costs associated with such efforts. The Indemnified Party shall use

commercially reasonable efforts to collect any amounts available under such insurance or reinsurance coverage and from such other Party alleged to have responsibility. If the Indemnified Party receives an amount under insurance or reinsurance coverage or from such other Party with respect to Damages sustained at any time subsequent to any indemnification actually paid pursuant to this Article 9, then, subject to the immediately preceding sentence, such Indemnified Party shall promptly reimburse the applicable Payer Party for any such indemnification payment made by such Paying Party up to the actual amount so received by the Indemnified Party.

## **Article 10** **NOTICES**

**10.1 Procedure and Addresses.** All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given upon actual receipt if given in writing and delivered personally, by facsimile transmission, overnight courier service or email to the following addresses:

If to IGU:

Interior Gas Utility  
P.O. Box 70200  
Fairbanks, AK 99707  
Attn: General Manager  
Fax: (907) 374-4473  
Email: [jstewart@interiorgas.com](mailto:jstewart@interiorgas.com)

With a copy to:

Zane D. Wilson, Esq.  
Rene A. Broker, Esq.  
714 4<sup>th</sup> Ave., Suite 200  
Fairbanks, AK 99707  
Fax: (907)452-8154  
Email: [zane@alasklaw.com](mailto:zane@alasklaw.com)  
[reneb@alaskalaw.com](mailto:reneb@alaskalaw.com)



If to AIDEA:

Executive Director  
Alaska Industrial Development and Export Authority  
813 West Northern Lights Boulevard  
Anchorage, Alaska 99503  
Fax: (907) 771-3044  
Email: jspringsteen@aidea.org

With a copy to:

Jerome H. Juday  
Senior Assistant Attorney General  
1031 West 4th Avenue, Suite 200  
Anchorage, Alaska 99501  
Fax: (907) 375-8282  
Email: jerry.juday@alaska.gov

**10.2 Change of Notice Address.** Any Party may change the address to which communications are to be directed by giving written notice of the new address to the other Party in the manner provided in Section 10.1.

**Article 11**  
**TERMINATION**

**11.1 Termination.** This Agreement may be terminated at any time prior to the Closing in the following manner:

- (a) by written agreement of the Parties;
- (b) by IGU, if the conditions set forth in Article 6 have not been satisfied or waived on or before the Closing Date, and the termination shall be effective upon notice served on AIDEA in accordance with Article 10;
- (c) by AIDEA, if the conditions set forth in Article 7 have not all been satisfied or waived on or before the Closing Date, and the termination shall be effective upon notice served on IGU in accordance with Article 10;
- (d) by either IGU or AIDEA, if the Closing shall not have been consummated on or before May 31, 2018, or any extension of that date the Parties mutually agree upon, and the termination shall be effective upon receipt of notice served on the other Party in accordance with Article 10; or

(e) by IGU, if prior to the Closing there is a Material Adverse Effect that, after notice of such Material Adverse Effect by IGU to AIDEA, has not been remedied to IGU's satisfaction prior to the Closing, and the termination shall be effective upon notice served on AIDEA in accordance with Article 10;

(f) by IGU, if prior to the Closing AIDEA supplements or amends any of the Disclosure Schedules in accordance with Section 5.5(b), (c), or (d) and IGU does not accept the supplement or amendment (which acceptance by IGU will not be unreasonably withheld), and the termination shall be effective upon notice served on AIDEA in accordance with Article 10; and

(g) by IGU, if IGU is not reasonably satisfied with the Due Diligence or Environmental Assessments it elects to have performed, and the termination shall be effective upon notice served on AIDEA in accordance with Article 10.

**11.2 Effect of Termination.** Notwithstanding anything to the contrary, any termination under Sections 11.1(b), (c), (d), or (e) shall not relieve any Party of any Liability for a breach of this Agreement or for any misrepresentation prior to the Closing, and any such termination shall not be deemed to be a waiver of any available remedy for any breach or misrepresentation.

## **Article 12** **MISCELLANEOUS**

**12.1 Expenses.** Each Party to this Agreement shall pay all expenses incurred by that Party, or on that Party's behalf, in connection with the preparation, authorization, execution and performance of this Agreement or the completion of the Closing, including, but not limited to, all fees and expenses of agents, representatives, counsel and accountants engaged by it.

**12.2 Further Assurances of AIDEA.** At any time and from time to time from and after the Closing, AIDEA shall take all action IGU shall reasonably request in order to (a) fully and effectively vest in IGU all of AIDEA's right, title and interest in and to the LLC Membership Interests, and (b) permit IGU full and effective control over the Acquired Companies and the Operations.

**12.3 Dispute Resolution; Governing Law; Forum Selection.** In the event of a dispute arising out of or relating to this Agreement, the parties shall engage in good faith discussions in an effort to resolve the dispute. If such discussions are not successful in resolving the dispute to the satisfaction of the parties, the parties shall attempt to settle the dispute by mediation, administered by the American Arbitration Association ("AAA") under its Mediation Rules, or by such other method as may be agreed to in writing between the parties. If settlement is not reached within one hundred twenty (120) days after service of a written demand for mediation, either Party

may commence a lawsuit to resolve such dispute. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska. Any lawsuit regarding this Agreement, or the Contemplated Transactions, shall only be brought in the Superior Court for the State of Alaska, Third Judicial District at Anchorage, and not elsewhere.

**12.4 Waiver of Trial by Jury.** TO THE EXTENT EACH MAY LEGALLY DO SO, EACH PARTY HEREBY EXPRESSLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING BROUGHT BY OR AGAINST ANY PARTY HERETO (INCLUDING ANY OF ITS AFFILIATES) RELATING IN ANY WAY TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY INVOLVE COMPLEX TRANSACTIONS AND THAT DISPUTES HEREUNDER WILL BE MORE QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT DECISION MAKER. ACCORDINGLY, THE PARTIES AGREE THAT ANY DISPUTE HEREUNDER BE RESOLVED BY A STATE OF ALASKA JUDGE APPLYING APPLICABLE LAW.

**12.5 Litigation Expenses.** In the event of any litigation between the parties with respect to this Agreement or any of the Contemplated Transactions, the prevailing Party shall be entitled to recover its full actual reasonable Litigation Expenses incurred in connection with the litigation in addition to any other relief the court grants.

**12.6 No Other Representations, Etc.** No representation, warranty, promise, inducement or statement of intention relating to the Contemplated Transactions has been made by or on behalf of any Party that is not set forth in this Agreement or the Disclosure Schedules or Exhibits to this Agreement or the documents delivered at Closing in furtherance of this Agreement.

**12.7 Counterparts; Electronic Signatures.** This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute a single agreement. The exchange of signature pages by email shall constitute effective execution and delivery of this Agreement.

**12.8 Binding Agreement; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns, but this Agreement shall not be assignable by either Party without the prior written consent of the other Party.

**12.9 Amendment.** This Agreement may be amended only in a writing that is signed by the authorized representatives of the parties and that specifically states it amends this Agreement.

**12.10 No Waiver.** Failure of any Party to insist upon strict observance of or compliance with any term of this Agreement in one or more instances shall not be deemed to be a waiver of the Party's rights to insist upon such observances or compliance with the other terms hereof, or in the future.

**12.11 No Third Party Benefit.** Nothing in this Agreement is intended to or shall be construed as to create any third party beneficiary to this Agreement or otherwise confer any right in or upon any persons except the parties and the respective permitted assigns.

**12.12 Survival.** All promises, covenants, representations and warranties made in this Agreement shall survive the Closing, except only to the extent that they are fulfilled or fully performed in the Closing.

**12.13 Time of the Essence.** Time is of the essence under this Agreement.

**12.14 Entire Agreement.** This Agreement, the Disclosure Schedules and Exhibits hereto, and the other agreements, documents, and instruments to be delivered at the Closing set forth the entire agreement and understanding of the parties with respect to the Contemplated Transactions and supersede all prior agreements, arrangements and understandings relating to the subject matter hereof, whether written or oral.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement effective as of the date stated above.

[Signature Page Follows]

**IGU:**

**INTERIOR ALASKA NATURAL GAS UTILITY  
a/k/a INTERIOR GAS UTILITY**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AIDEA:**

**ALASKA INDUSTRIAL DEVELOPMENT AND  
EXPORT AUTHORITY**

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

John Springsteen  
Executive Director

**LIST OF DISCLOSURE SCHEDULES AND EXHIBITS TO LLC MEMBERSHIP  
PURCHASE AND SALE AGREEMENT**

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