

DEVELOPMENT AGREEMENT

BETWEEN

**LOUISIANA INTERNATIONAL DEEP WATER GULF TRANSFER TERMINAL
AUTHORITY
(THE AUTHORITY)**

AND

**[NEW DEVELOPER]
(DEVELOPER)**

**FOR
THE PLANNING, PERMITTING, ENGINEERING, DESIGN, FINANCING,
CONSTRUCTION, OPERATION AND MAINTENANCE OF
THE LOUISIANA INTERNATIONAL DEEP WATER GULF TRANSFER TERMINAL
(THE LIGTT PROJECT)**

Effective _____, 2022

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DEVELOPMENT AGREEMENT

BE IT KNOWN THAT ON THE DATES SHOWN BELOW, THERE CAME AND APPEARED THE FOLLOWING PERSONS TO ENTER THIS DEVELOPMENT AGREEMENT WHICH SHALL BE EFFECTIVE _____, 2022.

APPEARERS (ALSO REFERRED TO HEREIN AS PARTIES):

1. **The LOUISIANA INTERNATIONAL DEEP WATER GULF TRANSFER TERMINAL AUTHORITY**, a political subdivision of the State of Louisiana created pursuant to and by Act No. 699 of the 2008 Regular Session of the Louisiana State Legislature enacting Chapter 49 of Title 34 of the Louisiana Revised Statutes of 1950 (La. R.S. 34:3491, *et seq.*), hereinafter referred to as “**the Authority**” (which expression shall include its successors and permitted assigns);

AND

2. **[NEW DEVELOPER]**,

WHEREAS:

- (A) The Authority is authorized by statutory law to implement and does hereby implement the LIGTT Project pursuant to its authority on property of the State of Louisiana as described in the recent amendment to La. R.S. 34:3491, *et seq.*, in Act No. 699 of 2008, and Act No. 471 of 2014, and further described in the Lease, Sub-Lease of the subject property and this Development Agreement;
- (B) The Authority has undertaken extensive discussions with and reviewed numerous submissions from Developer, establishing Developer’s expertise and ability to provide services for the LIGTT Project, implementing the engineering, design, finance, construction, operation, and maintenance of import and export terminal facilities to be constructed in deepwater with private financing for approximately fifty (50) years and then turned over to the Authority as shown more particularly in the Sub-Lease;
- (C) The Authority has determined that this undertaking with the Developer of the LIGTT Project at Developer’s sole risk is the most fiscally viable and expeditious manner for the Authority to achieve success of the operable port import and export operations, consistent with the identified interests of the citizens of the State of Louisiana in Act No. 699 of 2008 and Act No. 471 of 2014;
- (D) The Authority has granted to Developer and its affiliated entities the exclusive right to (a) plan, permit, engineer, design, finance, construct, operate, and maintain terminal facilities to be constructed in deepwater with private financing, and (b) subject to Sub-Lease payments the right to receive all revenue derived from the LIGTT Project during the term of the Sub-Lease, the details of which the parties anticipated being set forth in this Agreement; and
- (E) This Development Agreement provides the good faith objectives and the rights and obligations of Authority and the Developer with respect to the engineering, design, construction, operation, and maintenance of import and export terminal facilities to be constructed in deepwater with private financing and ultimate transfer to the State of Louisiana of the LIGTT Project.

NOW, THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, unless the context otherwise requires the following terms shall have the following meanings assigned/ascribed thereto:

“**Affiliate**” means, with respect to any Party, any other Person directly or indirectly controlling, controlled by or under common control with such Party. For the purposes of this definition, the term “control” (including with correlative meaning, the terms “controlled by” and “under common control with”) as applied to any Party, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Party whether through ownership of fifty (50%) percent or more of the voting securities, by contract, or otherwise.

“**Agreement**” means this Development Agreement as may be amended, supplemented or modified in accordance with the provisions hereof.

“**Applicable Laws**” means all federal, Louisiana, local, municipal and parish laws in full force and effect as of the Effective Date.

“Applicable Permits” means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals and exemptions under or pursuant to any of the Applicable Laws or from any Government Authority required in connection with the LIGTT Project and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other transaction document.

“Auditor” means the person or entity engaged by Developer, reasonably acceptable to the Authority, to perform an independent audit of the Developer’s financial documents and evidence in support thereof in connection with the LIGTT Project;

“Authority” means the **Louisiana International Deep Water Gulf Transfer Terminal Authority**, a political subdivision of the State of Louisiana created pursuant to and by Act No. 699 of the 2008 Regular Session of the Louisiana State Legislature enacting Chapter 49 of Title 34 of the Louisiana Revised Statutes of 1950 (La. R.S. 34:3491 *et seq.*), which expression shall include its successors and permitted assigns);

“Authority Event of Default” shall have the meaning as provided in Section 11.1(b);

“Book Value” means the aggregate value as of the date of issue of the Termination Notice in the books of Developer of (1) the tangible assets (including capital works in progress) forming part of, fixed or attached to the ground, created, installed or provided by Developer and comprised in the LIGTT Project, which in the reasonable judgment of an Expert are capable of being put to use/utilized by the Authority, and (2) the moveable assets including cargo handling equipment belonging to Developer, which the Authority agrees to take over, in accordance with Generally Accepted Accounting Principles. The third party contractual rights created by the Developer as part of the LIGTT Project shall be maintained by the third parties in contract with the Developer and/or the LIGTT Project, and said rights shall not be turned over to the Authority, instead such contracts shall be assumed by the Authority, with full substitution and subrogation in and to all rights and interests of the operator of the Facilities;

“Change in Law” shall have the meaning provided in Section 9.1 of this Agreement.

“Concession and/or License” means the license, Lease, Sub-Lease, Agreement and assignment herein of the totality of rights and related obligations granted by law to the Authority which are assigned herein to the Developer for implementing the LIGTT Project, including, but not limited to, those rights emanating from the Lease and as shown in La. R.S. 34:3491, *et seq.*;

“Construction Phase” means the period from the Effective Date hereof to the Date of Commercial Operation;

“Construction Works” means all works, equipment and things necessary to construct, and implement the LIGTT Project;

“Construction Standards” means the construction standards set out in Plans and Specifications of the Engineers and Architects engaged by the Developer as required for the sound development of the Facilities;

“Consultation Notice” has the meaning provided in Section 11.3;

“Contractor” means any Person with whom the Developer may enter into a contract during the Construction Phase;

“Date of Commercial Operation” means, the date on which the LIGTT Project begins operating as a deepwater terminal Facility;

“Day” means the period of twenty-four (24) hours beginning and ending at 12:00 midnight Central Standard Time;

“Debt Due” means the amount expended by the Developer on the LIGTT Project, which is outstanding and payable (in United States Dollars) on the Transfer Date;

“Designs and Drawings” means the designs, drawings, and other technical information provided by Developer to the Authority;

“Developer Event of Default” shall have the meaning as provided in Section 11.1 (a);

“Effective Date” of this Agreement is _____, 2022;

“Encumbrance” means any mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind;

“EPC Contracts” refers collectively to the contract(s) entered into by Developer with one or more Contractors *inter alia* for the purpose of designing, engineering, procuring equipment and/or materials for construction of the LIGTT Project in accordance with this Agreement;

“Event of Default” shall have the meaning as provided in Section 11.1;

“Expert” means any person, body or organization of repute with recognized technical/ professional expertise in respect of any field, matter or subject relevant for the purposes of this Agreement;

“Facilities” means “Transfer Terminal facilities” or “facilities” as defined in La. R.S. 34:3492(14);

“Financial Assistance” means all funded and non-funded credit assistance including but not limited to loans, advances, lease assistance and guarantees required for the LIGTT Project;

“Financial Year” means a calendar year;

“Force Majeure Event” shall have the meaning as provided in Section 10.1;

“Good Industry Practice” shall mean those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, commonly used by professional organizations performing management, engineering, construction, operation and maintenance services in connection with facilities of the type and size similar to the LIGTT Project, which in the exercise of their reasonable judgment in light of the facts known at the time the decision was made, are considered good, safe and prudent practices in connection with the design, construction and use of equipment and facilities substantially similar to those required for the LIGTT Project with commensurate standards of safety, performance dependability, efficiency and economy. Good Industry Practice is not intended to be limited to the optimum practice or method to the exclusion of all others, but, rather, to include reasonable and prudent practices and methods;

“Government Authority” means the governments of: the United States of America, the State of Louisiana, any Louisiana political subdivision, department, commission, board, body, bureau, agency, authority, instrumentality, administrative body with jurisdiction over Developer and/or the LIGTT Project, but shall not include the Authority;

“Generally Accepted Accounting Principles” means the accounting standards promulgated by the Financial Accounting Standards Board in the United States of America;

“Lease” means the lease of the LIGTT Project site by the State of Louisiana to the Authority.

“LIGTT Project” means promoting, planning, financing, developing, engineering, designing, constructing, operating, supervising, maintaining and modifying the Facilities to be constructed in deepwater on the LIGTT Project Site for import and export of cargo (e.g., dry goods and products, machinery, liquids, manufactured and/or refined products, chemicals, and goods as cargo, bulk cargo and containerized products as cargo; and the export of crude oil and refined oil and gas products as permitted by FERC or other permitting authority);

“LIGTT Project Requirements” means the minimum requirements for the construction, operation and maintenance of the Facilities and the services as will be provided by the engineers and contractors in plans and specifications as the project is developed;

“LIGTT Project Site” means the area described in Act No. 471 of 2014 of the Louisiana Legislature and Act 699 of 2008, which Developer is authorized to develop and operate as the LIGTT Project; and which is the object of the Lease from the State of Louisiana to the Authority and the Sub-Lease from the Authority to the Developer;

“Management Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of voting securities, by contract or otherwise or the power to elect or appoint more than 50% (fifty percent) of the directors, managers, partners or other individuals exercising similar authority with respect to Developer;

“Material Adverse Effect” means material adverse effect on (a) the ability of either Party to exercise any of their rights or perform/discharge any of their duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement;

“MOU” shall have the meaning as provided in the recitals to this Agreement;

“Net Revenue” means the revenues received by Developer from the LIGTT Project after the deduction of operating costs (including, but not limited to all fees, royalties, rents or other payments to the Authority);

“O&M Contract” means one or more contracts, if any, entered into by Developer for the operation and maintenance of the LIGTT Project in accordance with the provisions of this Agreement and shall include the Management Contract;

“Operational Costs” means the total of the expenses, fees, royalties, rents or other payments incurred by the Developer in the operation and maintenance of the LIGTT Project from the Date of Commercial Operations until the Transfer Date;

“Operations Phase” means the period from the Date of Commercial Operation to the end of the Term;

“Operations and Maintenance Standards” means the minimum standards of operations and maintenance as will be provided by the engineers, consultants and contractors in plans and specifications as the project is developed;

“Party” means either the Authority or Developer as the context may require or admit, and **“Parties”** means both the Authority and Developer;

“Performance Standards” means the minimum standards of performance as will be provided by the engineers, consultants, and consultant in plans and specifications as the project is developed;

“Person” means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or governmental authority or agency or any other legal entity;

“Program Management Contract” means the contract between Developer and the Program Manager, in respect of obligations of the Program Manager with respect of the LIGTT Project in accordance with the Request for Proposal;

“Program Manager” means the entity selected by Developer, with the advice and consent of the Authority, to assist with the development of the LIGTT Project;

“Project Contracts” means collectively this Agreement, any EPC Contracts, O&M Contract(s) and any other material contract entered into or may hereafter be entered into by Developer in connection with the LIGTT Project;

“Requisition” shall have the meaning as provided in Section 12.3;

“Royalty” shall have the meaning as provided in Section 6.2;

“Safety Standards” means the minimum standards of safety applicable to the LIGTT Project;

“Sub-Lease” means the subletting of the LIGTT Project Site by the Authority to the Developer;

“Sub-Lease Payment” means the rental payable to the Authority pursuant to the Sub-Lease and Section 6.1 below;

“Tariff” means the applicable rate(s) as set by an authorized regulatory agency and/or permitted by law to be charged by the Developer;

“Term” shall have the meaning provided in Section 2.2 hereof;

“Termination Notice” means the termination notice issued pursuant to Section 12.1 hereof;

“Termination Period” shall have the meaning as provided in Section 12.1 hereof; and,

“Transfer Date” means the date of the end of the Term in accordance with the terms of this Agreement.

1.2. “Interpretation of references to and provisions in” this Agreement shall, unless the context otherwise requires, mean:

- (a) Any reference to a statutory provision in this Agreement shall include such provision as is from time to time modified or re-enacted or consolidated in so far as such modification or re-enactment or consolidation applies or is capable of applying to this Agreement;
- (b) The words importing singular tense shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
- (c) The table of contents and any headings in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) The words “include” and “including” are to be construed without limitation;
- (e) References to “construction” include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- (f) Any reference to any period of time shall mean a reference to that according to Central Standard Time;
- (g) Any reference to day shall mean a reference to a calendar day;
- (h) Any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (j) Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or novated at the time of such reference;

- (k) Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing and transmitted by a duly authorized representative of such Party;
- (l) Unless otherwise stated, any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; and,
- (m) Unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement.

1.3. Ambiguities and Discrepancies

In case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) Between two Sections of this Agreement, the provisions of specific Sections relevant to the issue under consideration shall prevail over those in other Sections;
- (b) Between the dimension scaled from the Design and Drawings and its specific written dimension, the latter shall prevail;
- (c) Between any value written in numerals and that in words, the latter shall prevail; and
- (d) Between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

ARTICLE 2

GRANT OF RIGHTS OF THE AUTHORITY TO DEVELOPER IN THE LIGTT PROJECT

2.1. Grant of Rights to the LIGTT Project

The Authority is authorized by statutory law to implement and does hereby implement the LIGTT Project pursuant to its authority on property of the State of Louisiana as described in La. R.S. 34:3491, *et seq.*, in Act No. 699 of 2008, and Act No. 471 of 2014, and further described in the Lease and Sub-Lease of the subject property, and this Development Agreement.

In accordance with La. R.S. 34:3492(14):

“Transfer Terminal facilities” or “facilities” means a structure, a series of structures, or a facility constructed after July 1, 2008, developed pursuant to the Authority development program on the lower end of the east bank (of the Mississippi River, as described in Act No. 471 of 2014) designed to accommodate deep draft container vessels and their cargoes, including all intermodal structures, property, and equipment used for transportation, and facilities directly related thereto and necessary or useful to the operation thereof, whether landward, onshore, or seaward of the main structures or facilities themselves, including any facility which is part of a gulf transfer container terminal, as defined herein.”

And La. R.S. 34:3491 shows the object of the terminal Authority as:

“...to promote, plan, finance, develop, construct, control, license, regulate, supervise, operate, manage, maintain, and modify deepwater terminal facilities to be constructed within the jurisdiction of said Authority after July 1, 2008, in order to position Louisiana as an international hub for cargo ships, including super-sized cargo ships.”

In accordance with La. R.S. 34:3499(F):

“The Authority may lease or sub-lease lands leased from the State of Louisiana and is authorized to negotiate and enter into leases, sub-leases, contracts, or agreements with any person in order to facilitate the acquisition, construction, or operation of terminal facilities constructed or acquired after July 1, 2008, for unloading, temporarily storing, and transporting after unloading, containerized cargo in accordance with a license or licenses. However, the provisions of R.S. 33:4715.1, Chapter 10 of Title 41 of the Louisiana Revised Statutes of 1950, and R.S. 38:2211, *et seq.*, shall not apply to this Subsection.

The Authority shall have exclusive and plenary power to issue licenses, certificates, and permits, and otherwise regulate all phases of the construction and operation by any person of terminal facilities within the jurisdiction of the Authority. Nothing in this Chapter shall be construed to relieve, exempt, or immunize any person, including the Authority, from any environmental or safety requirement or regulation of a local governmental subdivision.”

In accordance with the pertinent provisions La. R.S. 34:3499(C):

“In addition to all other powers granted to the Authority, the Authority is hereby granted the following powers and duties:

- (1) To own, construct, operate, maintain, and lease docks, wharves, slip docking facilities, storage facilities, housing and food facilities, heliports, slips, basins, connecting lines of railroads and vessels and other transportation devices and equipment, and works of public improvement necessary or useful for the Authority development program.
- (2) To dredge and maintain shipways, channels, slips, basins and turning basins.
- (3) To establish, operate, and maintain navigable waterway systems in cooperation with the federal government, the State of Louisiana, and its various agencies, subdivisions, and public bodies.
- (4) To collect tolls and fees for the use of the terminal facilities.
- (5) To borrow funds for the business of the Authority and to use the proceeds of any lease or rental as collateral or as a pledge to secure any indebtedness, all subject to the specific approval of the State Bond Commission.
- (6) To mortgage properties constructed or acquired by the Authority and to mortgage, pledge, and assign any or all right, title and interest of the Authority in any lease, sale, loan, or financing agreement, and the revenues and other advantages arising therefrom.
- (7) To exercise all powers afforded port commissions and political subdivisions by the laws of the state;
- (8) To enter into lease, sale, loan, and financing agreements, including binding letters of intent therefore, with licensees pursuant to which licensees agree to acquire, construct, operate, and maintain terminal facilities or evidence their binding intent to do so; to use the proceeds of revenue bonds to pay or reimburse licensees for the project costs, including those for which licensees have spent their own funds; and to make payments through fiduciaries to third parties for obligations which licensees have incurred for project costs.
- (9) In addition to existing constitutional and statutory authority to enter into cooperative endeavor agreements, the Authority is hereby authorized to enter into cooperative endeavor agreements with the state and its political subdivisions with respect to receipt, pledge, dedication and use of public funds with respect to the exercise of any object, purpose, or function of the Authority.”

NOW THEREFORE, PURSUANT TO ALL LAWFUL RIGHTS AND AUTHORITIES GRANTED TO THE AUTHORITY, THE AUTHORITY DOES HEREBY:

Grant, bargain, set over and assign from the foregoing powers and duties of the Authority, the “Concession and/or License” to the Developer, generally subject to the supervision of the Authority in its sole discretion, (for and in the consideration of the financing, development and construction of the LIGTT Project, at its risk and expense, including, but not limited to, the payments under the Sub-Lease and the Development Agreement, and the eventual transfer of the Facilities to the Authority) to fully and unconditionally develop all of the LIGTT Project, including, but not limited to, the financing, engineering, designing, constructing, operating, and maintaining the LIGTT Project to be constructed in deepwater on property as described in La. R.S. 34:3491 *et seq.*, to allow the import and export of cargo (e.g., dry goods and products, machinery, liquids, manufactured and/or refined products, chemicals, and goods as cargo, bulk cargo and containerized products as cargo; and the export of crude oil and refined oil and gas products as permitted by FERC or other permitting authority). The Developer is further granted access over or through water, water bottoms, or State land which is necessary to completely develop the LIGTT Project and/or as necessary to exercise the rights and duties are assigned for the development of the LIGTT Project; provided any and all necessary permits or approvals are obtained from any State or federal authority for exercise of the right of access.

The exclusive rights granted herein include the rights necessary to accomplish the purposes of the LIGTT Project with oversight by the Authority, including, by way of example, the rights and duties:

- (1) To own, construct, operate, maintain, and lease docks, wharves, slip docking facilities, storage facilities, housing and food facilities, heliports, slips, basins, connecting lines of railroads and vessels and other transportation devices and equipment, and works of public improvement necessary or useful for the Authority development program.
- (2) To dredge and maintain shipways, channels, slips, basins and turning basins.
- (3) To establish, operate, and maintain navigable waterway systems in cooperation with the federal government, the State of Louisiana, and its various agencies, subdivisions, and public bodies.
- (4) To collect tolls and fees for the use of the terminal Facilities.
- (5) To borrow funds for the LIGTT Project secured by a mortgage, pledge or other encumbrance of the rights of the Developer created by this Agreement and the Sub-Lease. However, neither the Authority nor the State of Louisiana may be obligated by the Developer to repay the borrowed funds.
- (6) To mortgage properties constructed or acquired by the Authority and to mortgage, pledge, and assign any or all right, title and interest of the Authority in any lease, sale, loan, or financing agreement, and the revenues and other advantages arising therefrom.

- (7) To enter into lease, sale, loan, and financing agreements, including binding letters of intent therefore, with licensees pursuant to which licensees agree to acquire, construct, operate, and maintain terminal facilities or evidence their binding intent to do so; and to make payments through fiduciaries to third parties for obligations which licensees have incurred for project costs.

2.2. Term

Commencing upon the date of approval of the Sub-Lease between the Authority and Developer by the House and Senate Committees on Transportation, Highways and Public Works, this Agreement shall remain in full force and effect for a period of fifty (50) years (the "Term").

The Term may be shortened as follows:

- (a) The Parties may shorten the Term by written agreement; and
- (b) In the event that the Sub-Lease is terminated prior to expiration of this Term, then this Term shall terminate as of the date the Sub-Lease was terminated, subject to the time periods provided for Articles 12 and 14 of this Agreement.

The Term may be extended as follows:

- (a) The Parties may extend the Term by written agreement, provided that any such extension will not be effective until approved by the House and Senate Committees on Transportation, Highways and Public Works; and
- (b) In the event that of a Force Majeure Event or Change in Law requires an extension of the Term (pursuant to Sections 9.2(a) and 10.7(b) herein), then the Term shall be extended. Any such extension to the Term, however, shall not be extended longer than the term of the Lease from the State of Louisiana to the Authority, unless the term of the Lease is first extended by the State to accommodate such extension.

2.3. Acceptance of the Concession

Developer hereby accepts the Concession and/or License and agrees to implement the LIGTT Project. Subject to and in accordance with the provisions of this Agreement and Applicable Laws and Applicable Permits, Developer shall, construct the LIGTT Project at its sole risk and expense, without any required financial support of the Authority or the State, but with full support of the Authority, for the unfettered exercise of the rights and duties granted to the Developer.

2.4. Exclusive Right to Occupy LIGTT Project Site

- (a) In consideration of Developer agreeing to perform and discharge its obligations as set forth in this Agreement, the Authority hereby grants to Developer, the exclusive rights as shown in the Lease and Sub-Lease and for the term to enter upon, occupy and use the LIGTT Project Site, plus access over or through water, water bottoms, or State land which is necessary to completely develop the LIGTT Project and/or as necessary to exercise the rights and duties are assigned for the development of the LIGTT Project; provided any and all necessary permits or approvals are obtained from any State or federal authority for exercise of the right of access.
- (b) In addition to the provisions herein, the rights and obligations of the Parties with respect to the LIGTT Project Site shall also be evidenced in the Sub-Lease from the Authority to the Developer.
- (c) Developer shall have the sole and exclusive right to make such improvements to the LIGTT Project Site as may be necessary or appropriate for implementing the LIGTT Project, all in accordance with the Agreement, Applicable Laws and Applicable Permits. For the term of the Concession and/or License, the construction and/or improvements by the Developer, including, but not limited to the Transfer Terminal facilities or Facilities, shall be owned and operated by the Developer during the term of the Concession and/or License. Upon expiration of the term or termination of the rights of the Developer to the Concession and/or License, the Facilities shall be owned by the Authority, subject to rights of lenders with security interests in the Facilities.

2.5. Consideration for License, Concession, Lease and Sub-Lease, together with all development and operation rights included

The consideration for the rights granted herein by the Authority to the Developer shall be the financing, development, and construction of the LIGTT Project, at its risk and expense, including, but not limited to, the payments under the Lease, Sub-Lease and the Development Agreement, and the eventual transfer of the Facilities to the Authority.

2.6. Information about LIGTT Project Site

The information about the LIGTT Project Site will be provided by the Authority in good faith and with due regard to the matters for which such information is required by Developer. The Authority agrees to provide to Developer, upon a reasonable request, any further information relating to the LIGTT Project Site, which the Authority may now possess or may hereafter come to possess, as may be relevant to the implementation

of the LIGTT Project. Subject to this, the Authority makes no representation and gives no warranty to Developer in respect of the condition of the LIGTT Project Site.

2.7. Acceptance of the LIGTT Project Site

Developer shall be given access to the LIGTT Project Site to inspect and survey the property, perform soil and water samples, bathymetry, and any other tests or samplings necessary to obtain permits and develop the LIGTT Project. The Authority will cooperate and provide assistance to the Developer in its development of the LIGTT Project Site.

ARTICLE 3
PROJECT IMPLEMENTATION

3.1. Developer Right of Autonomy and Peaceful Occupation

The Authority warrants to the Developer peaceful occupation and control of the LIGTT Project Site in its exercise of the rights and duties it accepts herein. Subject to the oversight of the Authority, the Developer shall have the right to develop, implement, and operate the LIGTT Project in its sole discretion, at its sole risk and expense, without undue interference by the Authority. In connection therewith, the Developer shall design and build the LIGTT Project as it deems fit and without interference by the Authority, provided that Developer complies with all Applicable Laws and Applicable Permits.

3.2. Preparation of Designs and Drawings

Developer shall prepare the Designs and Drawings in conformity with the LIGTT Project Requirements.

3.3. Submission of the Designs and Drawings

- (a) Developer shall keep the Authority informed with detailed monthly reports on the progress of the LIGTT Project. The Developer, as owner of the Facilities during the Term of this Development Agreement will share with the Authority the progress in the development, subject to confidential information or trade secrets or other confidentialities of contracts between the Developer and third parties.
- (b) Notwithstanding Developer's providing of the Designs and Drawings to the Authority, Developer shall be solely responsible for the construction and any defect and/or deficiency in the Designs and Drawings relating to the LIGTT Project or any part thereof.
- (c) Any review of the Designs and Drawings conducted by the Authority is solely for the Authority's own information and the Authority does not accept any responsibility for the same, except with respect to any obligations the Authority may have pursuant to Applicable Law.
- (d) Developer shall in no way represent to any Person that, as a result of any review it may conduct, the Authority has accepted responsibility for the engineering or soundness of any work relating to the LIGTT Project or part thereof carried out by Developer and Developer shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the LIGTT Project or any part thereof.

3.4. Construction Phase

After permitting by the US Corps of Engineers, FERC, and other governmental agencies, the Developer shall promptly commence and complete the works, including installation of equipment in accordance with the LIGTT Project Requirements, as may be amended from time to time.

3.5. Obligations of Developer

Without prejudice to the generality of Section 3.2 and in addition to any of its other obligations under this Agreement, during the Construction Phase, Developer shall:

- (a) Have full authority and responsibility to develop financial support and other resources required for construction and installation of the LIGTT Project;
- (b) Exercise full authority to engage professionally competent Persons for program/project management and construction and ensure that all works are carried out in compliance with the Construction Standards adopted for the construction;
- (c) Obtain Applicable Permits, comply with Applicable Laws and Applicable Permits and give priority to safety in its construction and planning activities in order to protect life, health, property and environment;
- (d) Provide security for the LIGTT Project by coordinating with the applicable maritime agencies of the United States and State of Louisiana Government, including, but not limited to, the United States Coast Guard and other agencies of the United States Homeland Security.
- (e) Provide, upon notice to and with the required express consent of contractors and subcontractors, the Authority or its representatives, access to the LIGTT Project Site as deemed necessary to review progress in construction.

- (f) Provide quarterly reports to the Authority showing: (a) the major objectives for the coming quarter; (b) the objectives completed during the preceding quarter; (c) major contracts to be let during the next two quarters; and (d) projected dates of the commencement of revenue generating operations and turnover of operations and maintenance to the Authority;
- (g) Promptly carry out at its risk and cost such further works as may be necessary to remove any defects or deficiencies in the LIGTT Project and ensure timely completion of construction of the LIGTT Project in all respects in accordance with the provisions of this Agreement; and

3.6. Obligations of the Authority

In addition to any of its other obligations under this Agreement, during the Construction Phase, the Authority shall:

- (a) Enforce its grant of powers, rights and authority to the Developer;
- (b) Support the application(s) of the Developer for Applicable Permits on a best efforts basis, and assist Developer in obtaining all other approvals and consents as may be required to develop the LIGTT Project;
- (c) Provide available records of the Authority to surveys, land title, land office records, sampling of sediment and soil or sub-soil investigations carried out regarding the LIGTT Project Site;
- (d) Provide access to rights of way and/or servitudes to the LIGTT Project Site to the Developer and its agents and Contractors as required and as allowed by law;
- (e) Not impede the Developer in any way during Developer's execution of the LIGTT Project;
- (f) Not cause unreasonable delay when the approval of the Authority is required by the Developer or otherwise in furtherance of the execution of the LIGTT Project;
- (g) Assist in securing any required permits from related state entities or assist in providing same that are to be issued by the state or federal governmental regulators, time being of the essence;
- (h) Cooperate in the transfer and accept and assume ownership and operation of the LIGTT Project at the end of the Term.

ARTICLE 4 OPERATIONS & MAINTENANCE

4.1. Obligations of Developer

In addition to any of its other obligations under this Agreement, Developer shall manage, operate, maintain and repair the LIGTT Project, entirely at its cost in accordance with the provisions of this Agreement. Developer's obligations under this Section 4.1 shall include, but shall not be limited to, the following:

(i) Berth and Terminal Operations:

Developer shall:

- (a) Promptly commence operations upon the LIGTT Project being declared by the Developer as ready for operations;
- (b) Make efforts to maximize cargo handled so as to achieve optimal utilization of the LIGTT Project;
- (c) Ensure compliance of the LIGTT Project at least with the LIGTT Project Requirements;
- (d) Ensure that the LIGTT Project shall adhere to the Operations and Maintenance Standards and Safety Standards and there is safe, smooth and uninterrupted flow of traffic normal operating conditions;
- (e) Minimize disruption to traffic in the event of accidents or other incidents affecting the safety and use of the LIGTT Project by providing a rapid and effective response and by maintaining liaison with emergency services of the Authority or other agencies;
- (f) Make available all necessary financial, technical, technological, managerial and other resources for the operation, maintenance, repair and replacement of the LIGTT Project in a timely manner, to the extent commercially feasible;
- (g) Except for the priority and preferential berthing that may be authorized in terms of guidelines issued by the United States Government from time to time, manage and operate the LIGTT Project as a commercial, for-profit business in accordance with all Applicable Laws;
- (h) Ensure maintenance of proper and accurate record/data/accounts relating to operations of the LIGTT Project and the revenue earned therefrom;
- (i) Obtain, maintain and comply with Applicable Permits (i.e., such permits and clearances under Applicable Laws as will be procured by the Authority before the commencement of the LIGTT Project, to be specified by the Authority and by the Developer pursuant to this Agreement and Applicable Law) and comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labor;

- (j) Subject to the provisions of this Agreement, perform, undertake or provide, in connection with the LIGTT Project, all services which the Authority is authorized to perform; and
- (k) Prevent, with the assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the LIGTT Project.

(ii) Repairs, Maintenance and Replacement of Equipment

Developer shall maintain the LIGTT Project in accordance with the provisions of this Agreement and Good Industry Practice with the objective of providing adequate service standards and ensuring that the LIGTT Project shall be transferred to the Authority upon expiration of the Term are in good condition, normal wear and tear excepted. Moreover, Developer shall make any and all repairs required relating to condition survey as shown in Article 12.4 of this Development Agreement.

(iii) Repairs, Replacement or Restoration

Developer shall diligently repair, replace or restore any of the LIGTT Project or part thereof which may be lost, damaged, or destroyed that Developer deems necessary for the profitable commercial operation thereof.

(iv) Payments to the Authority

Developer shall make payments to the Authority in accordance with the requirements of Section 6.

(v) Reports

Developer shall provide to the Authority, quarterly reports on cargo traffic and such other information as the Authority shall reasonably request from time to time.

(vi) Employment of Personnel

The Developer shall employ all necessary personnel for the efficient operation and management of the LIGTT Project. The Developer shall adopt a practice for employing and training Louisiana residents subject to availability, commensurate knowledge and experience for the relevant position. The terms of employment may be as deemed fit by Developer and Developer shall comply with all Applicable Laws and bear all costs in this regard.

(vii) Indemnity against Claims for Loss of Goods

Notwithstanding anything contrary to Applicable Laws, Developer shall be responsible for defending any claim, action, suit or proceeding (the “**Action**”) by any third party alleging the loss, destruction or deterioration of goods of which charge has been taken by Developer and indemnify, save and hold harmless the Authority, its officers, employees, agents and representatives (the “**Indemnitees**”) against all claims which may be asserted against or suffered and legal fees and costs incurred and which relate to any such goods, provided that notice of the Action received by the Indemnitee(s) shall be forwarded to Developer expeditiously and in any case within thirty (30) Days of the receipt thereof by any of the Indemnitees. Provided further that the Indemnitees shall have the right but not the obligation, to contest, defend and litigate any Action by any third party alleged or asserted against any of such Indemnitees in respect of, resulting from, related to or arising out of any matter for which it is to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by Developer. If Developer acknowledges in writing its obligation to indemnify the Indemnitees in respect of loss to the full extent, Developer shall be entitled, at its option, to assume and control the defense of such Action at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnitees and reimburses to them for the reasonable cost and expenses incurred by them prior to the assumption of such defense by Developer. In such case the Indemnitees shall not be entitled to settle or compromise any Action without the prior written consent of Developer, which consent shall not be unreasonably withheld or delayed. This indemnity shall survive termination of this Agreement.

4.2. Utilities and Services

Developer shall, at its cost, make arrangements for power, water, and telecommunication facilities necessary for the implementation, operations and maintenance of the LIGTT Project subject to obtaining Applicable Permits, if any. The Authority shall provide positive support and assistance, without delay, to Developer as may reasonably be requested, in writing, in connection with the establishment of the aforementioned arrangements and with obtaining any Applicable Permits.

ARTICLE 5
TARIFF

5.1. Levy and Recovery of the Tariff

Developer shall be responsible for the negotiation of the tariff rates with customers in its sole discretion, provided that the Developer complies with any Applicable Laws in effect with respect to the LIGTT Project, having regard to Developer's overall obligation to operate the LIGTT Project on a profitable basis.

ARTICLE 6
PAYMENTS TO THE AUTHORITY

6.1. Sub-Lease Payments

Upon execution of the Sub-Lease for the LIGTT Project Site by and between the Authority and the Developer, and the issuance by any regulatory authority of required permits to begin construction, the Developer shall make any and all sub-lease payments to the Authority based upon the terms and conditions of the Sub-Lease.

In the interim, an interim payment of thirty thousand dollars (\$30,000) shall be payable within thirty (30) Days after execution of this Development Agreement and each month thereafter until the Sub-Lease is fully effective by the issuance of all required permits for the construction of the LIGTT Project, as provided for in the Sub-Lease.

6.2. Payments of Royalty

When the LIGTT Project is operational and generating money from operations, Developer shall establish a reasonable Royalty which does not impinge on debt obligations from the construction of the Facilities. When funds from routine operations are available:

- (a) Developer shall negotiate and pay the Authority a Royalty each Month as a percentage of Net Revenue received by Developer in an amount consistent with Good Industry Practices and as is customary with other ports and deep water terminal facilities ("the **Royalty**").
- (b) Net Revenue shall be computed on the basis of the actual Tariffs received by the LIGTT Project provided during the relevant period of computation less Developer's operating expenses and repayment of Developer's debt service, including the amortized share of principal. In computing the Net Revenue, income from interest, sale of assets, amounts received by Developer by way of damages from third parties (excepting damages received from the users on account of demurrage or such other related charges in respect of the LIGTT Project), and taxes in respect to the LIGTT Project, if any collected and paid to any Government Authority shall be ignored.
- (c) Royalty for each Month shall be paid monthly.
- (d) The payment of Royalties shall commence in the Month immediately succeeding the occurrence of the Date of Commercial Operation.

6.3. Certified Accounts

During the Term of this Agreement, Developer shall maintain all documents and supporting evidences for its financial statements including agreements and documents with respect to all capital and debt raised by Developer, capital and revenue expenses towards the LIGTT Project, ship, vessel and user information, and, as relevant, the details of cargo handled by category, tariffs charged and the amount of rates received. Developer shall submit to the Authority a financial statement of the Net Revenue for every 6 (six) month period ending September 30th and March 31st of every year, duly certified by its Auditor. The certificate shall be furnished within 30 (thirty) Days of the end of each such period.

ARTICLE 7
ASSETS: OWNERSHIP AND PERMITTED CHARGE

7.1. Ownership of Assets

(a) Land and Water Area

Title and ownership of the Sub-Leased Property shall always remain vested with the State of Louisiana, subject to the Lease by it to Sub-Lessor with the statutory reservation of subsurface mineral rights. If permitted by Applicable Law, Sub-Lessee may mortgage, lien, assign, transfer, sublet, create any charge or encumbrance, or create and permit creation of any third party rights affecting the whole or any part of the assets developed as Facilities.

In accordance with the provisions of Article IX, Section 4 of the Louisiana Constitution of 1974 and as provided for in Section VIII of the Lease, the State of Louisiana reserved all rights with respect to minerals in, under and which may be produced from the LIGTT Project Site; however,

the State agreed that, in the event it exercises these rights, it shall do so only after obtaining the prior express consent of the Authority which shall not be unreasonably withheld. The State agreed that it shall exercise these rights in a manner that will not unreasonably interfere with or disrupt the Authority's usage of the Sub-Leased Property. Further, the State must provide prior written notice to the Authority of any transfer, sale, lease, or other conveyance of the mineral rights of the State associated with this LIGTT Project Site to any third parties. The State agrees to ensure that any such third party must comply with the provisions of the Lease and the Sub-Lease to ensure that the exercise of transferee's rights could materially impede the Authority's usage of the LIGTT Project Site. Accordingly, the Authority hereby agrees to the same covenants in respect to this Agreement and shall provide Developer with all such notices required by the State of Louisiana in the Lease.

(b) Assets created or provided by Developer

Subject to the rights and interests of the Developer in Section 2.4, to develop as owner and mortgage, pledge, secure and assign the assets developed as Facilities, the assets developed by Developer shall be owned and operated by the Developer during the term of the Concession and/or License. Upon expiration of the Term or termination of the rights of the Developer to the Concession and/or License, the Facilities shall be owned by the Authority, subject to rights of lenders with security interests in the Facilities.

(c) Permitted Charge on Assets

If permitted by Applicable Law, Developer shall be entitled to create a charge, mortgage, lien or encumbrance on its rights, title and interests in the assets referred to in Section 7.1(b) to secure the financing for the LIGTT Project for the entire term of the Development Agreement as shown in Section 2.2, wherein this Development Agreement remains in full force and effect for a period of fifty (50) years, subject to the Parties agreeing to a shorter period mutually in writing, commencing on the date hereof (the "Term"); provided that:

- (1) In the event of the extension of the Concession in accordance with the terms of this Agreement, the Term shall be so extended, and
- (2) In the event of an early termination of this Agreement by either Party in accordance with the provisions hereof, the Term shall mean and be limited to the period commencing on the date hereof and ending on the date determined in accordance with this Agreement.

ARTICLE 8
GENERAL RIGHTS, DUTIES AND OBLIGATIONS

8.1. Developer's Responsibilities

(a) Applicable Permits

Developer shall at all times during the Term apply for, obtain, maintain and comply with the Applicable Permits.

(b) Applicable Laws

Developer shall at all times during the Term comply with all Applicable Laws.

(c) Taxes & Duties

Developer shall during the Term pay in a timely manner all taxes, duties, levies, and charges including but not limited to income tax, sales tax, excise duty and customs duty that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the LIGTT Project.

(d) Insurance

(i) Insurance Requirement

Developer shall insure all insurable assets and improvements comprised in the LIGTT Project and all insurable risks associated with the LIGTT Project to the extent advisable in accordance with good industry practice. At its sole cost and expense, Developer shall carry and maintain insurance, including, but not limited to:

- (a) Builder's risk insurance;
- (b) Architect and Engineer's Professional Liability Insurance;
- (c) Maritime Liability Insurance;
- (d) Loss, damage or destruction of the LIGTT Project, at replacement value;

- (e) Comprehensive third party liability insurance including injury or death to personnel of the Authority and others who may enter the LIGTT Project Site;
- (f) Worker's compensation insurance;
- (g) All other insurance coverages as required by the Office of Risk Management; and
- (h) Any other insurance that may be necessary to protect Developer, its employees and its assets and the Authority, its employees and agents engaged in or connected to the LIGTT Project and the LIGTT Project Site (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (g).

Developer shall require that the Authority and the State of Louisiana are listed as an additional insured(s) on all such insurance policies listed herein. Minimum coverage and costs shall be reviewed annually to ensure adequate coverage.

(ii) Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all money received under insurance policies shall be promptly applied by Developer towards repair or renovation or restoration or substitution of the LIGTT Project or any part thereof which may have been damaged or destroyed and in respect of which the claim is lodged. Developer may designate creditors as the loss payees under the insurance policies/assign the insurance policies in their favor as security for the Financial Assistance. Developer shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the LIGTT Project or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

(iii) Payment of Insurance Premiums

Developer shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Term and furnish copies of the same to the Authority. Developer shall also reimburse the Office of Risk Management (ORM) for all premiums paid to maintain similar insurance for the Authority.

(iv) Waiver of Subrogation

All insurance policies procured in accordance with the provisions hereof shall include a waiver of any right of subrogation of the insurers there under against, *inter alia*, the Authority and its assigns and successors and their respective subsidiaries, affiliates, employees and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

(e) Engagement of Contractors

- (i) Developer may engage a Port Manager and execute a Port Management Contract or its equivalent, which shall obligate the Port Manager to operate and manage the LIGTT Project. A copy of the Port Management Contract and all amendments thereto shall be provided to the Authority.
- (ii) Developer may engage any Person possessing the requisite skill, expertise and capability required to perform the tasks and/or services Developer determines to be necessary for the successful execution of the LIGTT Project provided, however;
 - (a) Developer shall at all times be solely responsible for all its obligations under this Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse Developer from its obligations or liability hereunder and Developer shall at all times be solely responsible for non-performance or for any defect, deficiency or delay in the construction and erection and/or installation of the structures/equipment or any part thereof and for the operation and maintenance of the LIGTT Project in accordance with the provisions of this Agreement;
 - (b) Developer shall obtain requisite security clearance for any Contractor that Developer intends to engage;

(f) Condition Survey

- (i) Developer agrees that at least six (6) months prior to the end of the Term, it shall, cause to be conducted at its cost by an Expert appointed by the Parties by mutual consent, a

condition survey and an inventory of the entire LIGTT Project. If, as a result of such survey, the Expert shall observe/notice that the LIGTT Project or any part thereof has not been operated and maintained in accordance this Agreement (normal wear and tear excepted) Developer shall, at its cost and expense, take all necessary steps to put the same in good working condition well before the Transfer Date.

(g) Sub-Lease

The Parties agree and acknowledge that they are bound by the terms and conditions of a Sub-Lease regarding the use of the LIGTT Project Site, which includes, but is not limited to, the following provisions:

(i) Drainage, Public Navigation and Marine Life

Developer understands that it must comply with all regulatory provisions protecting drainage, public navigation and marine life of the surrounding area. The Authority and Developer agree that the construction of the LIGTT Project in compliance with all applicable laws and permits shall not be considered to be an interference with the drainage, navigation and marine life surrounding the LIGTT Project.

(ii) Good and Careful Administrator

Developer agrees to use the LIGTT Project Site as a good and careful administrator. This includes maintaining the property in a neat, clean and orderly manner at all times. It is expressly acknowledged that Developer or its contractors, representatives, sub-lessees, or assignees may store, ship, use, or transfer Hazardous Materials from the LIGTT Project Site during the construction and operation of the LIGTT Project. The storage and handling of any such Hazardous Materials shall comply with all State, Federal, and local laws, rules, regulations, and permits. Nothing herein shall permit the disposal of Hazardous Materials on or under the LIGTT Project Site in violation of any applicable law or permit.

For purposes of this section, "Hazardous Materials" means any substance or material (i) the presence or suspected presence of which requires or may require investigation, response, clean-up, remediation or monitoring, or may result in liability, under any Governmental Requirement; (ii) that is or contains a hazardous substance, waste, extremely hazardous substance, hazardous material, hazardous waste, hazardous constituent, solid waste, special waste, toxic substance, pollutant, contaminant, petroleum or petroleum derived substance or waste, and related materials, including, without limitation, any such materials defined, listed, identified under or described in any Environmental Law; (iii) that is flammable, explosive, radioactive, reactive, toxic, corrosive, infectious, carcinogenic, mutagenic or otherwise hazardous, or is or becomes regulated under any Environmental Law; (iv) that is or contains asbestos (whether friable or non-friable), any polychlorinated biphenyls or compounds or equipment containing polychlorinated biphenyls, or medical waste; (v) that is or contains or once contained gasoline, diesel fuel, oil, diesel and gasoline range organics (TPH-DRO / GRO), or any other petroleum products or petroleum hydrocarbons, or additives to petroleum products, or any breakdown products or compounds of any of the foregoing; (vi) crude oil, natural gas, or any other oil, gas or minerals as defined by the mineral code; or (vii) radon gas.

(iii) Criminal Activity

Developer, its contractual sub-lessee(s), or assign(s) shall take immediate action to prevent, halt and correct any intentional conduct under its control that is punishable as a felony under applicable law. If after notice, and an opportunity to be heard in a temporary restraining order or preliminary injunction hearing, it is determined by a court of competent jurisdiction that the conduct is ongoing, cannot be cured, is intentional and malicious, and is under the control of Developer, its sub-lessee(s), or assign(s), a restraining order and/or preliminary injunction shall issue and be immediately enforceable without a showing of irreparable injury to the State of Louisiana, the Authority, its assignor, to enjoin the operations of the Facilities until the conduct that is otherwise punishable as felony under applicable law has been halted.

(iv) Audit

The audit provisions of La. R.S. 34:3499.1 shall apply to this Agreement.

8.2. Authority's Responsibilities

(a) Assistance in obtaining Approvals, Permits and Licenses

The Authority shall, at the written request of Developer, but without guarantees and/or without assuming any responsibility in that behalf, issue letters of recommendation and make best efforts to assist Developer in obtaining all the Applicable Permits including renewals thereof.

(b) Competing Facilities

The Authority shall not authorize any additional off-shore transfer terminal facilities either on its own or through any other means during the Term that might compete with the LIGTT Project.

8.3. Joint Responsibilities

(a) Compliance with Laws and Regulations

The Parties shall perform their respective obligations under this Agreement in accordance with the Applicable Laws and Applicable Permits.

(b) Defense, Indemnification, and Hold Harmless

To the extent allowed by law, Developer shall fully indemnify, defend, and hold harmless the Authority, State of Louisiana, and their officers, agents, employees, invitees, contractors, and subcontractors against all losses, claims, damages, liabilities, penalties, obligations, expenses, costs for counsel when incurred, and costs incurred by or through the State Risk Management Program, which are incidental to, caused by, connected with, relating to, arising out of, or based upon, directly or indirectly, the use of, and/or activities on, the LIGTT Project Site by Developer, its officers, agents, employees, invitees, contractors, subcontractors, sub-lessees, or assigns. This indemnification provision shall apply to permitted uses, as well as uses that are not permitted under this Agreement and the Sub-Lease. In the event that any damage is caused partly due to the negligence or default or omission on the part of the Authority and partly due to the negligence or default or omission on the part of Developer, each Party shall be liable to the other Party only in the proportion to its respective degree of negligence or default or omission, as the case may be.

In the event that Developer enters into any sub-lease, assignment, or other contract with any third parties with regard to the use of the LIGTT Project Site, Developer shall require any such third parties to fully defend, indemnify, and hold harmless the State, the Authority, and their officers, agents, employees and volunteers, against all losses, claims, damages, liabilities, penalties, obligations, expenses, costs for counsel when incurred, and costs incurred by or through the State Risk Management Program, which are incidental to, caused by, connected with, relating to, arising out of, or based upon, directly or indirectly, the use of, and/or activities on, the LIGTT Project Site by any such third party, its officers, agents, employees, invitees, contractors, subcontractors, sub-lessees, or assigns.

Developer further agrees to indemnify, defend and hold harmless the Authority, State of Louisiana, and their employees, contractors, and agents harmless from and against all Environmental liabilities and costs, liabilities and obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including attorneys' and experts' fees and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by or asserted or awarded against the Authority or State of Louisiana or any of them in connection with or arising from or out of:

- (1) Any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referenced to in this Section; or
- (2) Any violation by Sub-Lessor of any Environmental Law.

All the foregoing indemnification provisions shall apply to permitted uses, as well as uses that are not permitted under this Agreement and the Sub-Lease. The provisions of this Section will be in addition to any and all obligations and liabilities Developer may have to the Authority and will survive expiration or earlier termination of this Agreement.

(c) Assignability

This Agreement is assignable by the Authority in whole or in part to another political subdivision or Agency of the State, but not to a privately-owned entity. Developer shall have the right at any time to contract with third parties to perform any and all rights and obligations, or any part thereof, in and to this Agreement. In the event the Developer wishes to assign to any third party the entirety of its obligations in whole or in part and to be relieved of certain obligations as Developer of the LIGTT Project, the Developer shall provide the Authority at least thirty (30) Days advance written notice of its intention to assign this Agreement. The Authority shall receive a copy of the

proposed written agreement of the third party with the Developer, and shall have the right to approve or disapprove of the assignment.

(d) Rights to Documents

(i) Authority's Documents

Documents and computer programs or copies thereof, if any, provided by the Authority to Developer, shall always remain the property of the Authority. Such documents, computer programs and/or copies shall not be used by Developer for the purposes other than for the LIGTT Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Authority, be returned by Developer to the Authority on the Transfer Date.

(ii) Developer's Documents

Subject to trade secrets, third party contract rights, all intellectual property rights then existing with respect to such materials, and the law pertinent thereto, all documents and computer programs of the Developer which are necessary for the operation and/or maintenance of the LIGTT Project shall be provided by the Developer to the Authority free of cost on the Transfer Date.

(iii) Confidentiality

All confidential information and documents (whether financial, technical or otherwise) provided by either Party to the other shall be governed by a Confidentiality Agreement agreed to by and among the Parties. Nothing in this Agreement shall alter Developer's status as a private entity, and as such Developer is not subject to public records requests pursuant to Louisiana law.

(iv) Obligation to Cooperate

The Parties shall mutually cooperate with each other in order to achieve the objectives of this Agreement.

**ARTICLE 9
CHANGE IN LAW**

9.1. Change in Law

"Change in Law" means any of the following events which has a Material Adverse Effect:

- (a) Adoption, promulgation, modification, reinterpretation or repeal after the date of this Agreement by any Government Authority of any statute, rule, ordinance, regulation or order, treaty, convention, directive, guideline, policy having force of law; or
- (b) The imposition by any Government Authority of any material condition (other than a condition which has been imposed as a consequence of a violation by Developer of any Applicable Permit) in connection with the issuance, renewal or modification of any Applicable Permits after the date of this Agreement which renders the performance by Developer of any of the terms of this Agreement impossible or unviable; or
- (c) Any Applicable Permit previously granted, ceasing to remain in full force and effect for reasons other than breach/violation by or the negligence of Developer or if granted for a limited period, being renewed on terms different from those previously stipulated.
- (d) However, any of the following shall not constitute a change in law:
 - (i) Imposition of taxes, duties and the like and/or the increase in taxes, duties and the like effected from time to time by any Government Authority, and/or
 - (ii) Imposition of standards and condition of operations, maintenance and safety arising out of Applicable Laws; and/or
 - (iii) Imposition of standards and terms of employment and working conditions of laborers and workmen; and/or
 - (iv) Any rules or regulations stipulated any regulatory authority having jurisdiction over the LIGTT Project in respect of the standards of service.

9.2. Developer's Remedy

- (a) In the event of Change in Law, Developer may propose to the Authority modifications to the relevant terms of this Agreement which are reasonable and intended to mitigate the effect of the Change in Law. Thereupon, the Parties shall, in good faith, negotiate and agree upon suitable changes in the terms of this Agreement including extension of the Term, so as to place Developer in substantially the same legal and financial position as it were prior to such Change in Law;

provided however, that if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Force Majeure Event, whereupon the provisions with respect thereto contained in Section 10 shall apply.

- (b) Upon occurrence of a Change in Law, Developer shall notify the Authority, of the following:
 - (i) The particulars, nature and the impact of Change in Law on the LIGTT Project;
 - (ii) In sufficient detail, the estimate of all additional costs likely to be incurred by Developer on account of the Change in Law; and
 - (iii) The measures, which Developer has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimizing the Additional Cost.
- (c) Upon receipt of the notice of Change in Law issued by Developer pursuant to the preceding sub-Section (b), the Authority and Developer shall hold discussions and take all such steps as may be necessary including determination/certification by an Expert, appointed by the Parties by mutual consent, of the additional costs and to determine the amount of the additional costs to be incurred.

ARTICLE 10

FORCE MAJEURE

10.1. Force Majeure Event Definition

As used in this Agreement, Force Majeure Event means the occurrence of any of the events or occurrences set out in Section 10.2 below, including the impact/consequence thereof which:

- (a) Is beyond the control of, or not reasonably foreseeable by, the Party claiming to be affected thereby (the “**Affected Party**”);
- (b) Prevents the Affected Party from performing or discharging its obligations under this Agreement; and
- (c) The Affected Party has been unable to overcome or prevent despite exercise of commercially reasonable care and diligence.

10.2. Force Majeure Events

Any of the following events which prevent the Affected Party from performing any of its obligations for a continuous period of not less than ten (10) consecutive Days from the date of its occurrence, shall constitute a Force Majeure Event:

- (a) Act of God, epidemic, pandemic, extremely adverse weather conditions, hurricanes, lightning, earthquake, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion, an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) Strikes or boycotts (other than those involving Developer, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them), including industry wide or State wide strikes or industrial action, labor disruptions or any other industrial disturbances not arising on account of the acts or omissions of Developer or any Contractor;
- (c) The discovery of geological conditions, toxic contamination or archeological remains on the LIGTT Project Site that could not reasonably have been expected to be discovered through a site inspection; or
- (d) Action of a Government Authority having Material Adverse Effect including but not limited to (i) acts of expropriation, compulsory acquisition or takeover by any Government Authority of the LIGTT Project or any part thereof or of Developer’s or a Contractor’s rights under any of the LIGTT Project Contracts, and (ii) any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Developer’s or a Contractor’s breach or failure in complying with the LIGTT Project Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which Developer or a Contractor as the case may be is bound;
- (e) Any civil commotion, boycott or political agitation which prevents the arrival of ships at the port and/or collection of tariffs or fees by Developer;
- (f) Any event or circumstance of a nature analogous to any of the foregoing.

10.3. Notice of Force Majeure Event

- (a) The Affected Party shall give written notice to the other Party in writing of the occurrence of any of the Force Majeure Event (the “**Notice**”) as soon as the same arises or as soon as reasonably practicable and in any event within ten (10) Days after the Affected Party knew, or ought

reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.

- (b) The Notice shall *inter alia* include full particulars of:
 - (i) The nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
 - (ii) The duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;
 - (iii) The measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and
 - (iv) Any other relevant information.
- (c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic written reports containing the information called for by Section 10.3(b) and such other information as the other Party may reasonably request.

10.4. Period of Force Majeure

Period of Force Majeure shall mean the period from the time of occurrence specified in the Notice given by the Affected Party in respect of the Force Majeure Event until the earlier of:

- (a) The end of the period during which the Affected Party is excused from performance of its obligations in accordance with Section 10.5; or
- (b) Termination of this Agreement.

10.5. Resumption of Performance

During the period of Force Majeure, the Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption shall notify the other Party of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

10.6. Performance Excused

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Agreement as a consequence of the Force Majeure Event shall be excused from performance of the obligations, provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event. Provided further, that nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

10.7. Costs, Revised Timetable

(a) Costs

Each Party shall bear its costs and attorney's fees, if any, incurred as a consequence of the Force Majeure Event.

(b) Extension of Term

The Affected Party shall be granted by the other Party, extension of time specified in this Agreement for the performance of any obligation by the amount of time that performance is excused in Section 10.6, and any additional time required to recover insurance proceeds, reconstruct and restore the LIGTT Project to the same condition and operational capacity that existed before the Force Majeure Event. Such extension shall automatically extend the Term by the same time required to reconstruct and/or restore the LIGTT Project to the same condition and operational capacity before the Force Majeure Event, but not longer than the term of the Lease from the State of Louisiana to the Authority, unless the term of the Lease is extended by the State to accommodate the required additional Term.

ARTICLE 11 **EVENTS OF DEFAULT**

11.1. Events of Default

Event of Default means Developer Event of Default or the Authority Event of Default or both as the context may admit or require.

(a) Developer Event of Default

Developer Event of Default means any of the following events unless such an event has occurred as a consequence of the Authority Event of Default or a Force Majeure Event:

- (i) Developer's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement, which failure has not been corrected or cured within ninety (90) Days of being notified of such failure in writing and only if Developer is not diligently attempting to correct or cure such failure;
- (ii) Construction at the LIGTT Project Site is abandoned for a more than ninety (90) Days during the Construction Phase and only if Developer is not diligently attempting to correct or cure such failure;
- (iii) Delay in payment of any Sub-Lease or Royalty due and owing for three (3) consecutive Months;

(b) Authority Event of Default

Authority Event of Default means any of the following events unless such an event has occurred as a consequence of the Developer Event of Default or a Force Majeure Event:

- (i) The Authority's failure to perform or discharge its obligations in accordance with the provisions of this Agreement including, but not limited to:
 - a. Breach of Section 8.2(b) of this Agreement; and
 - b. Failing to provide Developer with timely access to the LIGTT Project Site;
- (ii) Unless such failure has occurred as a consequence of any Developer Event of Default or a Force Majeure Event, which failure has not been corrected or cured within ninety (90) Days of being notified of such failure and only if Authority is not diligently attempting to correct or cure such failure.

11.2. Parties Rights

- (a) Upon the occurrence of a Developer Event of Default, the Authority shall, without prejudice to any other rights and remedies available to it under this Agreement or Applicable Law, be entitled to give notice to the other party and offer a reasonable time to cure, at least ninety (90) Days if the default is monetary, in advance of taking any action to terminate this Agreement.
- (b) Upon the occurrence of an Authority Event of Default, Developer shall without prejudice to any other rights and remedies available to it under this Agreement or Applicable Law be entitled to terminate this Agreement in accordance with the provisions below.

11.3. Consultation Notice

Either Party exercising its right under Section 11.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties to consider possible measures of curing or otherwise dealing with the underlying Event of Default ("**Consultation Notice**").

11.4. Revocation of Consultation Notice

If, following the delivery of a Consultation Notice, the underlying Event of Default is corrected or cured or waived or the Parties agree upon any of the measures contemplated in Section 11.3, the Consultation Notice shall be withdrawn in writing by the Party who has issued the same.

11.5. Termination due to Events of Default

If, within ninety (90) Days following the delivery of a Consultation Notice, the underlying Event of Default is neither corrected, cured nor waived, despite the good-faith mediation and consultation efforts of the Parties, the Party who has issued such Consultation Notice shall have the right to terminate this Agreement, unless extended by a Forced Majeure Event as described in Section 10, and/or the Provisions of Sections 12, 13 and 15 hereof.

ARTICLE 12
TERMINATION OF THE AGREEMENT

12.1. Termination Procedure

The Party entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing ("**Termination Notice**") to the other Party. The Termination Notice shall specify the reasons for such termination and specify the date on which this

Agreement shall terminate, which shall be one hundred and eighty (180) Days, (“**Termination Period**”) from the date of the Termination Notice.

12.2. Obligations during Termination Period

During the Termination Period, the Parties shall continue to perform their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the LIGTT Project to the users. Should the Termination occur before the Date of Commercial Operation, the Developer shall secure and close the LIGTT Project Site during the Termination Period.

12.3. Requisition

Upon issue or receipt as the case may be of a Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, or otherwise six (6) months prior to the expiry of the Term, the Authority shall by a notice in writing (“**Requisition**”) call upon Developer to furnish the following information to enable the Authority to estimate the likely compensation payable by the Authority to Developer and/or to finalize the items of Developer’s assets included and made part of in the LIGTT Project to be handed over to/taken over by the Authority.

- (a) Data or records (to be specified by Authority) regarding the operation and maintenance of the LIGTT Project;
- (b) Specifications regarding Developer’s assets included and made part of in the LIGTT Project; and
- (c) Capital costs and commitments made by Developer; and
- (d) Any other information or records to be specified by Authority at its discretion regarding Developer, its business, the LIGTT Project, assets and liabilities.

Developer shall within a period of sixty (60) Days from receipt of Requisition furnish the particulars called for by the Authority.

12.4. Condition Survey

- (a) Developer agrees that on the service of a Termination Notice or at least six (6) months prior to the expiry of the Term, as the case may be, it shall conduct or cause to be conducted under the Authority’s supervision, a condition survey of the LIGTT Project including the LIGTT Project Site to ascertain the condition thereof, verifying compliance with Developer’s obligations under this Agreement and to prepare an inventory of the assets comprised in the LIGTT Project. During this period, the designated key personnel of the Authority shall be associated with the operations of the LIGTT Project (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth takeover of the same by the Authority on the Transfer Date.
- (b) If, as a result of the condition survey, the Authority shall notify the Developer that the LIGTT Project Site and/or the LIGTT Project or any part thereof have not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) Developer shall, at its cost and expenses, take all necessary steps to put the same in good working conditions prior to the Transfer Date.

12.5. Consequences of Termination

Without prejudice to any other consequences or requirements under this Agreement or under any law:

- (a) Developer shall transfer all the assets and rights upon expiration of the Term or upon termination of the Agreement due to a Force Majeure Event or on account of an Event of Default in accordance with Section 11 to the Authority;
- (b) Except in the case of a Termination due to Authority Default:

Notwithstanding anything contained in this Agreement, except for ensuring the payment of the compensation payable to Developer in accordance with Section 13, the Authority shall not, as a consequence of termination or otherwise, have any obligation whatsoever to any third person, party or entity including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or reemployment on any ground, in relation to any person in the employment of or engaged by Developer in connection with the LIGTT Project, and the turnover of the LIGTT Project Site by Developer to the Authority shall be free from any such obligation. In the event that any such claims are filed against the Authority, Developer expressly agrees to defend, indemnify and hold harmless the Authority.

ARTICLE 13
COMPENSATION

13.1. Amount of Compensation Owed

Subject to the rights of secured creditors in documents securing the payment of debt and/or rights of stock or other securities issued to owners whose rights are created to finance the project, the following shall control the rights of the parties in the event of default:

(a) Termination due to Force Majeure Event

If the Termination is due to a Force Majeure Event, whether during the Pre-Operations Phase or the Operations Phase, then the compensation payable by the Authority to Developer shall be equal to the aggregate of:

- (i) Either the fair market value of the LIGTT Project at the time of termination as determined by a qualified appraiser chosen by the parties, or the proceeds of a good faith sale for a price paid by a third party and as accepted by the appraiser chosen by the LIGTT Authority (whichever option is elected by the Authority); plus
- (ii) Operational Expenses minus any Operational Revenue derived from the subject Operational Expenses; minus
- (iii) All insurance, bond or guaranty proceeds received or rights to proceeds available to the Authority which are received by the Authority to Developer and the insurance proceeds received or rights to proceeds available to the Developer for the exact same event, claim and coverage.

(b) Termination due to Developer Event of Default

Pre-Operations Phase. If the Termination is due to a Developer Event of Default during the Pre-Operations Phase, then the compensation payable by the Authority to Developer shall be zero.

Operations Phase. If the Termination is due to a Developer Event of Default during the Operations Phase, then the compensation payable by the Authority to Developer shall be equal to the Fair Market Value of the LIGTT Project at the Time of Termination, provided that the Authority is able to secure a replacement Developer to fulfill the obligations of the Developer being terminated.

(c) Termination due to Authority Event of Default

If the Termination is due to an Authority Event of Default, whether during the Pre-Operations Phase or the Operations Phase, then the compensation payable by the Authority shall be equal to the Fair Market Value of the LIGTT Project at the Time of Termination.

13.2. Schedule of Payment of Compensation

Regardless of when termination occurs and whether the termination is due to a Force Majeure Event, Developer Event of Default, or Authority Event of Default, the compensation payable by the Authority to Developer, shall become due only upon the successful commercial operation of the LIGTT Project and shall be based upon the operational capacity of the LIGTT Project and shall be paid based upon percentage, to be determined by the Parties, of the monthly operational revenues of the LIGTT Project.

13.3. Transfer Fee and Charges

Transfer costs, notary fees and taxes, if applicable, for the transfer of the LIGTT Project consequent to the expiration or termination of this Agreement shall be borne by:

- (a) Developer in the event of expiration of the Term or Termination due to a Developer Event of Default;
- (b) The Authority in the event of Termination due to an Authority Event of Default; and
- (c) Both Parties equally in case of Termination due to a Force Majeure Event.

13.4. Delayed Transfer of Assets

If for any reason the Developer is unable to transfer assets, rights and contracts on the Transfer Date to the Authority, there shall be no suspension of the operation and maintenance of the LIGTT Project and Developer shall, as a trustee of the Authority, (a) continue to operate and maintain the LIGTT Project, as directed by Authority, until completion of the relative transfer formalities, and (b) account for and pay to the Authority the Gross Revenue minus operating costs, including all operator fees, and statutory dues, from such operations; provided nothing contained in this Section shall be deemed or construed to authorize

delay in completion of formalities of transfer of assets, rights and contracts by Developer to the Authority in accordance with the requirements thereof under this Agreement.

13.5. Bond or other guaranty of Authority obligations

To secure the obligations of the Authority to pay in event of default and early termination of this Agreement, the Developer will purchase a bond or other guaranty naming the Developer as the secured party to satisfy the Authority obligations arising from this Agreement. The premium or purchase price for the bond or other guaranty shall be paid as by the Developer under this Agreement. However, the premium or purchase price paid shall not reduce the obligations of the Developer to pay rentals or royalty owed under the Sub-Lease.

13.6. Remedies Cumulative

The exercise of any right by either Party to terminate this Agreement, as provided herein, shall not preclude such Party from availing itself of any other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

ARTICLE 14

TRANSFER ON EXPIRATION OF THE TERM

14.1. General Scope of Transfer/Payment

The Parties shall perform and discharge their respective obligations to be performed or discharged under the provisions of this Agreement until the Transfer Date. Without prejudice to the generality of this provision and the provisions of Section 13, the transactions to be consummated and the formalities to be followed by the Parties on and after the Transfer Date shall be as set out in Section 14.2.

14.2. Developer's Obligations

Subject to trade secrets, third party contract rights, all intellectual property rights then existing with respect to such materials, and the law pertinent thereto, Developer shall at the expiration of the Term;

- (a) Hand over peaceful possession of the LIGTT Project Site and the LIGTT Project free of Encumbrance;
- (b) Transfer all its rights, titles and interests in the assets comprised in the LIGTT Project which are required to be transferred to the Authority in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;
- (c) Hand over to the Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the LIGTT Project;
- (d) Transfer all technology and up-to-date know-how relating to operation and maintenance of the LIGTT Project;
- (e) Transfer or cause to be transferred to the Authority any Project Contracts which are (i) valid and subsisting; (ii) capable of being transferred to the Authority; and (iii) those the Authority has chosen to take over, and cancel or cause to be cancelled such Project Contracts that are not to be transferred to the Authority. For this purpose, Developer shall ensure that all Project Contracts are assignable in favor of the Authority without any further action on part of the respective counterparties. Developer shall entirely at its cost, terminate all such Project Contracts which are not transferred or assigned and/or are not required to be transferred or assigned to the Authority;
- (f) Ensure that at the expiration of the Term, it has discharged all of its obligations to its employees up to that date, including payment of any accrued benefits. The Parties shall take all reasonable steps as may be necessary to effect transfer to or re-employment by the Authority of such Developer employees as the Authority may wish to retain.
- (g) At its cost, transfer to the Authority all such Applicable Permits which the Authority may require and which can be legally transferred, unless the termination is on account of Authority Event of Default in which case the cost of such transfer shall be borne by the Authority;
- (h) At its cost, remove within ninety (90) Days from the expiration of the Term, from the LIGTT Project Site, any moveable assets that are not be transferred to the Authority in accordance with the provisions of this Agreement.

14.3. Title and Risk of Loss

- (a) Title to the entire LIGTT Project including, but not limited to, the leasehold over the LIGTT Project Site and all facilities constructed thereon, shall be held solely by Developer until transfer of the LIGTT Project, whether due to termination or expiration of the Term, at which time title shall transfer to the Authority as provided in this Agreement.

- (b) Except as provided below in Section 14.4, risk of loss of the entire LIGTT Project including, but not limited to the leasehold over the LIGTT Project Site and all Facilities constructed thereon, shall be held solely by Developer until transfer of the LIGTT Project, whether due to termination or expiration of the Term, at which time risk of loss shall transfer to the Authority as provided in this Agreement.

14.4. Risk

Until Transfer Date in accordance with this Section 14, the LIGTT Project shall remain at the sole risk of Developer except for any loss or damage caused to or suffered by Developer due to any act or omission or negligence on the part of the Authority under this Agreement.

ARTICLE 15 DISPUTE RESOLUTION

15.1. Choice of Law and Venue

- (a) This Agreement shall be governed by the laws of the State of Louisiana. Venue for any action arising in any way out of this Agreement shall be in the 19th Judicial District Court, East Baton Rouge Parish.

- (b) **Performance During Litigation**

Pending the decision on a dispute, difference or claim or until judicial resolution is obtained; the Parties shall continue to perform all of their obligations under this Agreement without prejudice until a final adjustment in accordance with such judicial resolution.

- (c) **Commercial Acts**

The Parties each agree that the execution, delivery and performance of this Agreement constitute private and commercial acts rather than public or governmental acts.

ARTICLE 16 REPRESENTATIONS AND WARRANTIES

16.1. Representations and Warranties of Developer

Developer represents and warrants to the Authority that:

- (a) It is duly organized, validly existing and in good standing under the laws of Louisiana and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (b) All members are citizens of the United States;
- (c) No members, employees, or representatives have been convicted of any felonious acts;
- (d) No known or reasonably discernible conflicts of interest with the Authority or the State of Louisiana;
- (e) No known or reasonably discernible violations of the Louisiana Code of Ethics;
- (f) It has full ability, power and authority to execute, deliver and perform its obligations under this Agreement;
- (g) It has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- (h) This Agreement constitutes the legal, valid and binding obligation of Developer, enforceable against it in accordance with the terms hereof;
- (i) There are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement;
- (j) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (k) It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (l) It has complied with all Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate

have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement; and

- (m) No representation or warranty by it contained herein or in any other document furnished by it to any Government Authority in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

16.2. Representations and Warranties of the Authority

The Authority represents and warrants to Developer that:

- (a) It is duly organized, validly existing political subdivision of the State of Louisiana;
- (b) It has the authority to execute, deliver and perform its obligations under this Agreement including the grant of the Concession and land rights in the LIGTT Project Site to Developer;
- (c) It has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- (d) This Agreement constitutes the legal, valid and binding obligation of the Authority, enforceable against it in accordance with the terms hereof; and
- (e) There are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement.

16.3. Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

ARTICLE 17 **MISCELLANEOUS PROVISIONS**

17.1. Survival of Obligations

Any cause of action which may have occurred in favor of either Party or any right which is vested in either Party under any of the provisions of this Agreement during the Term as the case may be as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiration of the Term in accordance with the provisions of this Agreement shall survive the expiration of the Term and/or the termination of this Agreement.

17.2. Sections to Survive Termination

The provisions of Sections 12 to 17 shall, to the fullest extent necessary to give effect thereto, survive the termination of this Agreement and the obligations of Parties to be performed following the termination of this Agreement shall accordingly be performed by the Parties.

17.3. Several Obligations

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and the Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the provisions of this Agreement.

17.4. Severability

In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In the event any such provision is held to be invalid, illegal or unenforceable, the Parties hereto shall make their best efforts to agree on a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

17.5. Notices

All communications and notices expressly provided for herein shall be sent, by registered first class mail, postage prepaid, by a nationally recognized overnight courier for delivery on the following business day or by e-mail (with such e-mail to be confirmed promptly in writing sent by mail or overnight courier as aforesaid), as follows:

AUTHORITY:

A.G. Crowe, President
Louisiana International Deep Water Gulf Transfer
Terminal Authority
P.O. Box 94183
Baton Rouge, Louisiana 70804

WITH A COPY TO:

Roedel Parsons Koch Blache
Balhoff & McCollister
8440 Jefferson Highway
Suite 301
Baton Rouge, LA 70809
Telephone: (225) 929-7033
Telefax: (225) 928-4925
Attention: Larry M. Roedel and Bradley C. Guin

DEVELOPER: _____

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section 17.6.

17.6. Press Releases

The Parties agree to cooperate fully with each other in connection with all press releases and publications concerning the LIGTT Project.

17.7. Construction

This Agreement shall not be construed more strictly against one Party than against any other Party merely by virtue of the fact that the Agreement may have been prepared by counsel for one of the Parties, it being recognized that all Parties have contributed substantially and materially to the preparation of this Agreement.

17.8. Waiver

No waiver of any term or condition or of the breach thereof by any Party shall be valid unless expressed in writing and signed by such Party and communicated by such Party to the other Party in accordance with the provisions of Section 17.6 of this Agreement. A waiver by any Party of any term or condition or breach thereof in a given case shall not be deemed or construed as a general waiver of such term or condition or the breach in the future or waiver of any other terms or conditions or breach of this Agreement.

17.9. Amendments, Modifications or Alterations

This Agreement may be amended only by a written modification duly executed by the Parties' authorized representatives. Good faith is to be exercised in any interpretation regarding needed amendments.

17.10. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana.

17.11. No Third Party Beneficiary

This Agreement is for the sole and exclusive benefit of the Authority and Developer and, if applicable, any permitted successors, transferees or assigns thereof. No other persons or entities are intended third party beneficiaries of this Agreement, including, without limitation, any third parties that may, from time to time, have ownership, security or other interests in any real or personal property associated with the LIGTT Project, nor shall such third parties have any rights to enforce any of the provisions of this Agreement.

17.12. Contractual Relationship

None of the commitments or other obligations, agreements or provisions contained in this Agreement shall or shall be deemed to give the Authority the right or power to exercise control over the affairs or management of Developer or any of its Affiliates, the LIGTT Project or any part thereof, except as otherwise provided for herein. The relationship between the Authority and Developer is, and at all times shall remain, contractual. No commitment or other obligation, agreement or provision of this Agreement, nor any agreement executed pursuant hereto, is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest between or among the Authority and Developer or to create any equity interest in the LIGTT Project for the Authority. Notwithstanding any other provision of this Agreement or agreement executed pursuant hereto, the Authority is not a contractual partner, joint venture partner, alter ego, manager, controlling person or other business associate or participant of any kind of Developer, its stockholders, members, or partners or the LIGTT Project.

17.13. Further Assurances

The Authority and Developer agree to do all things and take all actions required, necessary or appropriate to carry out the terms of this Agreement and the implementation of the Parties' intent as reflected by the terms of this Agreement. Such things and actions include, but are not limited to, the obtaining, negotiation, execution and delivery of all necessary or desirable agreements, filings, consents, authorizations, approvals, permits, concessions, licenses or deeds. Without limiting the generality of the foregoing, the Parties agree that they shall:

- (a) Take all actions, without exception, which are necessary and appropriate at any time to assure the binding effect, legality, enforceability, financial structuring, construction and operation of the LIGTT Project as reflected in the objectives and respective obligations and commitments of the Parties herein;
- (b) Supplement or revise this Agreement as is reasonably and necessary for purposes of facilitating private financing of the LIGTT Project by the Developer the good faith undertakings, and to ensure the purposes and objectives in this Agreement;
- (c) Complete the final development plans and specifications, to execute additional documents, supplemental and amended Development Agreement, to the extent necessary to meet the objectives and the respective obligations and commitments of the Parties herein; and
- (d) Refrain from any action which would adversely impact in any way whatsoever the LIGTT Project, the objectives and undertakings herein, and the binding effect, legality and enforceability of their respective obligations and commitments hereunder.

17.14. Binding Effect

This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the Authority and the Developer and their respective successors and assigns, provided any such assignment is effectuated in accordance with this Agreement.

17.15. Entire Agreement

This Agreement constitutes a complete and exclusive statement of the terms of the agreement between the Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement unless specifically retained in this Agreement, by reference or otherwise, are abrogated and withdrawn. Nothing herein negates the effect of the terms and conditions of the Sub-Lease which are binding upon the Parties.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

The Parties hereto have executed this Agreement as of the date shown next to each signature before witnesses as shown.

THE LOUISIANA INTERNATIONAL DEEP
WATER GULF TRANSFER TERMINAL
AUTHORITY

Date: _____

By: _____

WITNESS:

Name: _____

WITNESS:

Title: _____

Date: _____

WITNESS:

By: _____

WITNESS:

Name: _____

Title: _____