

VOLUME I
DEVELOPMENT AGREEMENT
for
GREAT HALL PROJECT

Between

**City and County of Denver,
through and on behalf of its Department of Aviation**

and

Denver Great Hall LLC

Contract Control Number: 201735867

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**DEVELOPMENT AGREEMENT
GREAT HALL PROJECT**

This Development Agreement (this “**Agreement**”) is entered into as of the Effective Date between:

- (a) CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, through and on behalf of its Department of Aviation (the “**Owner**”); and
- (b) DENVER GREAT HALL LLC, a limited liability company organized under the laws of the State of Delaware (“**Developer**”).

RECITALS:

WHEREAS:

A. The Owner owns, operates and maintains Denver International Airport and desires to undertake a revitalization of the Jeppesen Terminal at the Airport. The Project includes the design, construction, financing, operation and maintenance of specified areas within the Terminal and the development, operation and management of concessions therein, as provided in the Contract Documents;

B. The Owner issued a Request for Qualifications on January 28, 2015 (the “**Request for Qualifications**”) and shortlisted four proposers on May 21, 2015;

C. The Owner issued a Request for Proposals to the shortlisted proposers on February 24, 2016 (the “**Request for Proposals**”), in response to which each shortlisted bidder submitted a proposal by the submission deadline of May 18, 2016 (the “**Proposal Due Date**”);

D. Based on an evaluation of the proposals received and interviews conducted in accordance with the evaluation criteria and processes set forth in the Instructions to Proposers, the Owner selected Developer’s Proposal on September 6, 2016;

E. The Owner and Developer entered into a predevelopment agreement dated as of September 6, 2016 (the “**PDA**”) to further develop the details of the Project and refine and advance Developer’s Proposal;

F. The PDA is hereby terminated as of the Effective Date, Developer is not entitled to any termination payment thereunder, and all rights and obligations of the Parties with respect to the Project from and after the Effective Date shall be governed by this Agreement;

NOW, THEREFORE, in consideration of the sums to be paid by the Owner to Developer, the Work to be financed and performed by Developer, and the foregoing covenants and agreements set forth herein, the Parties agree as follows:

ARTICLE 1. DEFINITIONS AND INTERPRETATION; CONTRACT DOCUMENTS; STANDARDS

1.1 Abbreviations and Definitions

Abbreviations used in this Agreement and other Contract Documents have the meanings set forth in Section 1 of Appendix 1.

1.2 Headings

The captions of the articles, sections and subsections of this Agreement are for convenience only and shall not be deemed part of this Agreement or considered in construing this Agreement.

1.3 Construction and Interpretation of Contract Documents

1.3.1 The language in all parts of the Contract Documents shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties acknowledge and agree that the Contract Documents have been prepared jointly by the Parties and have been the subject of arm's length and careful negotiation over a considerable period of time, that each Party has been given the opportunity to independently review the Contract Documents with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be interpreted or construed against the Party preparing it, and instead other rules of interpretation and construction (as set forth herein) shall be utilized.

1.3.2 Any references to any covenant, condition, obligation and/or undertaking "herein," "hereunder" or "pursuant hereto" (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this Agreement and any Appendices, riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this Agreement. All terms defined in this Agreement shall be deemed to have the same meanings in all Appendices, riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this Agreement unless the context thereof clearly requires the contrary. Unless expressly provided otherwise, all references to Articles, Sections and Appendices refer to the Articles, Sections and Appendices of this Agreement. Unless otherwise stated or defined in this Agreement or the other Contract Documents, words which have well-known technical or construction industry meanings are used in this Agreement or the other Contract Documents in accordance with such recognized meaning. All references to a subsection or clause "above" or "below" refer to the denoted subsection or clause within the Section in which the reference appears. Wherever the word "including," "includes" or "include" is used in the Contract Documents, it shall be deemed to be followed by the words "without limitation."

1.3.3 As used in any Contract Document and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

1.3.4 Any reference to any Contract Document, or any appendix, section or table therein, means such Contract Document, appendix, section or table as amended, supplemented or replaced from time to time in accordance with the Contract Documents.

1.3.5 Any reference to systems or technology specified in the Contract Documents to be used for the Project means such systems or technology or their equivalent based on

advances in technology: (a) with respect to D&C Work, as of the Developer Execution Date; and (b) with respect to the O&M Services, over time, provided that Developer is not required under this Section 1.3.5 to perform Renewal Work in advance of when such Renewal Work is scheduled to be performed in the Renewal Work Plan, except pursuant to an Owner Change.

1.3.6 Where a deliverable is due under the Contract Documents on a non-Business Day, such deliverable shall be deemed to be due on the first Business Day following such non-Business Day.

1.4 Contract Documents; Order of Precedence

Each of the Contract Documents is an essential part of the agreement between the Parties and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to be read together as a complete agreement.

1.4.1 In the event of any conflict, ambiguity or inconsistency among the Contract Documents, the Bond Ordinance, the General Junior Lien Bond Ordinance and the Supplemental Junior Lien Bond Ordinance, the order of precedence shall be as follows:

1. Amendments with respect to Federal Provisions;
2. Federal Provisions;
3. Amendments with respect to Bond Ordinance, General Junior Lien Bond Ordinance and Supplemental Junior Lien Bond Ordinance;
4. Bond Ordinance, General Junior Lien Bond Ordinance and Supplemental Junior Lien Bond Ordinance;
5. Amendments with respect to Volume I (this Agreement, including all Appendices except Appendices 3 and 22);
6. Volume I (this Agreement, including all Appendices, except Appendices 3 and 22);
7. Amendments to Scope Documents;
8. Scope Documents;
9. Amendments with respect to Volume II (Technical Requirements, including all appendices thereto excluding the Scope Documents), except the Manuals and Guidelines;
10. Volume II (Technical Requirements, including all appendices thereto excluding the Scope Documents), except the Manuals and Guidelines;
11. Amendments with respect to Manuals and Guidelines (Type 1);
12. Manuals and Guidelines (Type 1);
13. Revisions to the Issued for Construction Documents;
14. Issued for Construction Documents;
15. Physical Project Plan;
16. Appendix 3 (Developer Commitments);
17. Amendments with respect to Manuals and Guidelines (Type 2); and
18. Manuals and Guidelines (Type 2).

For the purposes of this Section 1.4.1: (a) amendments include supplements to, and replacements of, the relevant document or provision; and (b) amendments to the Technical Requirements include any changes, additions and replacements to the provisions contained therein pursuant to an Owner Change and written amendments pursuant to Section 27.1, as applicable. Computed dimensions govern over scaled dimensions.

1.4.2 If Developer Commitments include statements, terms, concepts or designs that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the other Contract Documents or to perform services or meet standards in addition to or better than those otherwise required, then Developer's obligations hereunder shall include compliance with all such statements, terms, concepts and designs. Additional details in a lower priority Contract Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority Contract Document.

1.4.3 If either Party becomes aware of any conflict, ambiguity or inconsistency described in Section 1.4.1 or Section 1.4.2, it shall promptly notify the other Party in writing of such conflict, ambiguity or inconsistency and the Party's good faith assessment of which provision(s) should prevail, based on the application of the rules set forth in the relevant section. If: (a) such conflict, ambiguity or inconsistency cannot be reconciled applying the applicable rules; or (b) the Parties disagree about (i) which rule applies and/or (ii) the results of the application of such applicable rule(s), then the Owner will promptly issue a written determination, in its good faith discretion, respecting which of the conflicting provisions shall prevail.

1.4.4 In the event of a conflict among the Manuals and Guidelines, the Owner shall have the right to determine, in its sole discretion, which provision applies; provided that no such determination shall be inconsistent with the order of precedence set forth in this Section 1.4. The Owner shall promptly notify the Developer in writing of any such determination in order to allow the Developer to comply with or implement the same. Developer shall request in writing the Owner's determination respecting the order of precedence involving the Manuals and Guidelines promptly upon becoming aware of any such conflict.

1.4.5 To the extent of any conflict, ambiguity or inconsistency between a Submittal requirement under the Technical Requirements and a corresponding submittal requirement under the Denver Building Code, the Denver Building Code requirement shall govern.

1.4.6 Notwithstanding the order of precedence set forth in Section 1.4.1, the provisions in Step 6 of the Executive Design Review regarding the inapplicability of Section 1.8(c) of Appendix 12 and Section 11.2 to deemed Change Directives under Section 1.8.3.2 of the Agreement shall prevail over such sections.

1.4.7 Developer shall have available on the Project Site, at all times, one current, complete copy of the Contract Documents.

1.4.8 The Scope Documents (including the narrative, table, figures and drawings included therein) represent the scope of the D&C Work, including any deviations from the other Technical Requirements permitted therefor, as agreed to by the Parties.

1.4.9 The Physical Project Plan is a depiction of the Systems required to serve the Terminal as proposed by Developer as of the Developer Execution Date, and will serve as the basis of initial design of such Systems, provided that the final design shall comply and be developed in accordance with the Contract Documents.

1.5 Principal Developer Documents

Except with the Owner's prior written approval in its good faith discretion, Developer shall not: (a) terminate or permit the termination of a Principal Developer Document except in the case of material uncured default; or (b) agree to any amendment of any provision of a Principal Developer Document required by the Owner as specified in Section 9.3.3 or elsewhere in this Agreement, or agree to any amendment thereof inconsistent with the terms of the Contract Documents. The foregoing does not, however, affect Developer's rights with respect to any Refinancing set forth in Section 17.3.

1.6 Reference Documents

1.6.1 The Owner has provided the Reference Documents to Developer. The Reference Documents are for information only, and are not mandatory or binding on Developer, except to the extent information in the Reference Documents is expressly made a contractual requirement as part of the Technical Requirements. Developer is not entitled to rely on the Reference Documents as accurately describing existing conditions, presenting design, engineering, operating or maintenance solutions or directions, or defining means or methods for complying with the requirements of the Contract Documents, Governmental Approvals or applicable Laws.

1.6.2 The Owner shall not be responsible or liable in any respect for any causes of action, claims or Losses whatsoever suffered by Developer or any Developer-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Reference Documents.

1.6.3 The Owner does not represent or warrant that the information contained in the Reference Documents is complete or accurate or that such information is in conformity with the requirements of the Contract Documents, Governmental Approvals or Laws. Developer shall not be entitled to any additional monetary compensation, time extension or other relief on account of any incompleteness or inaccuracy in the Reference Documents, including any incompleteness or inaccuracies regarding the location, size, character and extent of Utilities and subsurface conditions.

1.7 Design and Construction Standards

1.7.1 Developer shall use reasonable care to identify any provisions in the Technical Requirements that are erroneous, create a potentially unsafe condition, or are or become inconsistent with Good Industry Practice or applicable Law. Whenever Developer knows, or in the exercise of reasonable care should have known, that a provision of the Technical Requirements is erroneous, creates a potentially unsafe condition or is or becomes inconsistent with Good Industry Practice or applicable Law, Developer shall have the duty to notify the Owner in writing of such fact and of the changes to the provision that Developer believes are the minimum necessary to render it correct, safe and consistent with Good Industry Practice and applicable Law. If Developer commences or continues any D&C Work affected by the change after the need for the change was discovered or suspected, or should have been discovered through the exercise of reasonable care, Developer shall bear any additional costs and time associated with redoing the Work already performed.

1.7.2 References in the Technical Requirements to the Manuals and Guidelines or other publications governing the D&C Work shall mean the most recent editions in effect as of the Developer Execution Date, unless expressly provided otherwise. References in the Technical Requirements to the Manuals and Guidelines or other publications governing the

O&M Services, including Renewal Work, shall mean the current edition in effect at the time the work is performed, unless expressly provided otherwise.

1.7.3 The Parties anticipate that from time to time after the Developer Execution Date, the Owner will adopt, through revisions to the Manuals and Guidelines or through new manuals and publications, changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions relating to the Work of general application to comparable Owner projects. Notwithstanding any other provision of this Agreement, Developer shall not be entitled to any additional compensation, time extension or any other relief for any such change, addition or replacement, except to the extent that such change, addition or replacement is: (a) made to Manuals and Guidelines governing the D&C Work after the Developer Execution Date; (b) a Discriminatory O&M Change, subject to Section 7.2.2.4 and the requirements and limitations generally applicable to any Compensation Event (Type 1); or (c) a Non-Discriminatory O&M Change, subject to Section 7.2.2 and the requirements and limitations generally applicable to any Delay Event.

ARTICLE 2. TERM; FINANCIAL CLOSE; EARLY DESIGN WORK

2.1 Term

Subject to the satisfaction (or waiver by the Party to whose benefit the relevant condition inures) of the Commercial Close Conditions, the Commercial Close Provisions shall take effect on the Effective Date and shall remain in effect until the Termination Date. The Financial Close Provisions shall take effect on the Financial Close Date and shall remain in effect until the Termination Date.

2.2 Financial Close

2.2.1 Financial Close Security

2.2.1.1 Developer shall have delivered to the Owner the Financial Close Security as a condition precedent to the effectiveness of this Agreement.

2.2.1.2 Within five (5) Business Days following (a) the achievement of Financial Close, or (b) termination of this Agreement under Section 21.1.1, as applicable, the Owner will return the Financial Close Security to Developer.

2.2.2 Financial Close Deadline

2.2.2.1 Except to the extent excused under Section 2.2.2.2, Developer shall achieve Financial Close on or prior to the Financial Close Deadline.

2.2.2.2 Developer's obligation under Section 2.2.2.1 shall be excused (a) to the extent such failure is directly attributable to: an Excused FC Delay, in which case the provisions of Section 21.1.1 shall apply, or (b) if the Agreement is terminated pursuant to Section 21.5.2.

2.2.2.3 If Financial Close does not occur by the Financial Close Deadline, such failure is not directly attributable to an Excused FC Delay and the Agreement is not terminated pursuant to Section 21.5.2, the provisions of Section 21.1.2 shall apply.

2.2.3 Conditions to Financial Close

Financial Close will occur upon satisfaction of (or waiver by the Party to whose benefit the relevant condition inures) the following conditions:

2.2.3.1 (a) Not less than 30 days prior to the scheduled Financial Close Date, Developer has delivered to the Owner drafts of the Initial Financing Documents and Initial Key Contracts for the Owner's review and confirmation that they meet the applicable requirements under this Agreement and the Direct Agreement, (b) not less than 10 days prior to the scheduled Financial Close Date, Developer has delivered to the Owner substantially final drafts of the Initial Financing Documents and Initial Key Contracts for the Owner's review and confirmation that any non-compliances identified by the Owner pursuant to clause (a) have been addressed, and (c) not less than 3 days prior to the scheduled Financial Close Date, Developer has delivered the execution versions of the Initial Financing Documents and the Initial Key Contracts that each complies with the applicable requirements under this Agreement and the Direct Agreement;

2.2.3.2 Without limiting Section 2.2.3.3, the Initial Financing Documents and the Initial Key Contracts have been executed and delivered by the respective parties thereto, and Developer has delivered to the Owner (a) an originally executed copy of the Direct Agreement (other than the signature of the Chief Executive Officer of the Owner, on behalf of the Owner), and (b) copies of all other Initial Financing Documents and all Initial Key Contracts, certified by an authorized officer of Developer as being true, complete and accurate copies of the originals;

2.2.3.3 All conditions precedent to closing the Project Debt under the Financing Documents and funding the Bonds Sub-Account (as defined in the Financing Documents) are satisfied or waived, and Developer has provided the Owner with a certificate signed by an authorized officer of the Collateral Agent confirming the same;

2.2.3.4 Developer has delivered to the Owner within 1 Business Day following the Bond Pricing Date, and the Owner has approved: (a) a proposed Initial Financial Model (Financial Close) in macro-enabled excel format substantially in the same form as the Initial Financial Model (Developer Execution), incorporating only those amendments agreed to by the Parties following the Developer Execution Date (including pursuant to Section 2.2.4 or Section 2.2.5 to address the impact of any Benchmark Interest Rate Fluctuation, Rating Agency Adjustment or Credit Spread Fluctuation, as applicable); (b) the books and documents setting forth all assumptions, calculations and methodology used in preparing the Financial Model, any other information or documentation necessary or reasonably requested by the Owner to operate the Financial Model, and any other information, assumptions and data to which the Owner is entitled under Section 16.2; and (c) an updated audit and opinion in accordance with Section 16.3.1.2.

2.2.3.5 All representations and warranties of Developer set forth in Section 19.1 remain true and correct in all material respects as of the Financial Close Date and Developer has performed and complied with all covenants and obligations of Developer under the Contract Documents required to be performed or complied with as of the Financial Close Date, and Developer has delivered to the Owner a certificate of an authorized officer of Developer certifying to the same;

2.2.3.6 Developer has delivered to the Owner one or more legal opinion(s) of Developer's (in-house or external) counsel substantially in the form attached hereto as Appendix 2-B-1;

2.2.3.7 The Owner has delivered to Developer the Owner Financial Close Documents; and

2.2.3.8 Developer has obtained from the Building Official the Formal DBC Administrative Modification; and

2.2.3.9 Developer has retained a Quality Manager, a Design Quality Manager and a Construction Quality Manager in accordance with Section 9.7.1.

2.2.4 Interest Rate Fluctuations

2.2.4.1 The Owner will assume 100% of the impact of any Benchmark Interest Rate Fluctuation.

2.2.4.2 The Parties will share the risk of any Credit Spread Fluctuation, with the Owner assuming 75% of the impact of the Credit Spread Fluctuation, and Developer assuming 25% of the impact of the Credit Spread Fluctuation.

2.2.4.3 Upon the occurrence of any Benchmark Interest Rate Fluctuation or Credit Spread Fluctuation, as applicable, the Parties shall follow the protocol set forth in Appendix 2-C of the Agreement.

2.2.5 Rating Agency Adjustments

The Parties will assume the impact of any Rating Agency Adjustment in accordance with Appendix 2-D. Upon the occurrence of any Rating Agency Adjustment, the Parties shall follow the protocol set forth in Appendix 2-D.

2.3 Early Design Work

2.3.1 General

2.3.1.1 Developer shall perform the Early Design Work from the Effective Date until the Financial Close Date or, if this Agreement is terminated prior to achievement of Financial Close, the Early Termination Date, in accordance with the applicable Technical Requirements.

2.3.1.2 As a condition precedent to commencement of the Early Design Work, Developer shall have retained a Lead Project Architect of Record, a Lead Project Structural Engineer of Record, a Lead Project Mechanical Engineer of Record and a Department of Building Liaison in accordance with Section 9.7.1.

2.3.2 Payment for Early Design Work

2.3.2.1 During the Interim Period, the Owner will pay to Developer progress payments on a monthly basis (the "**Early Design Work Payments**") in arrears in accordance with this Section 2.3.2.

2.3.2.2 The amount of each Early Design Work Payment shall equal the progress of the Early Design Work completed in accordance with the applicable Technical Requirements

in the relevant month, as measured against the schedule set forth in Appendix 2-F, provided that the aggregate amount of Early Design Work Payments shall not exceed the Maximum Early Design Work Value.

2.3.2.3 With respect to each Early Design Work Payment, Developer shall submit to the Owner an application, in the form attached hereto as Appendix 25-A (each, an “**Early Design Work Payment Application**”), together with the supporting documentation and information described therein.

2.3.2.4 The Owner will have five (5) Business Days to review the Early Design Work Payment Application (or any amended version thereof if previously rejected in accordance with the terms of this Section 2.3.2.4) and to communicate its approval or disapproval to Developer. The Owner shall only be entitled to disapprove an Early Design Work Payment Application if such application does not reflect the progress of the Early Design Work performed as compared to Appendix 2-F or comply with Section 2.3.2.3; provided, that the Owner shall provide to Developer concurrently with any disapproval, the reasons for the disapproval. Following an approval thereof, the Owner shall make payment to Developer within thirty (30) days thereof. If the Owner fails to communicate its disapproval to Developer within the applicable five (5) Business Days of receiving an Early Design Work Payment Application (or amendment thereof), such Early Design Work Payment Application shall be deemed approved.

2.4 Formal DBC Administrative Modification

2.4.1 Developer shall use its reasonable best efforts to obtain the Formal DBC Administrative Modification as soon as practicable following the Effective Date. Such efforts shall include submission of the request for the Formal DBC Administrative Modification to the Building Official within 15 days following the Effective Date and the use of the services of a DBC compliance specialist (as distinct from the Department of Building Liaison) to assist in obtaining such modification.

2.4.2 Provided that Developer has complied with and continues to comply with Section 2.4.1:

2.4.2.1 If Developer is unable to achieve Financial Close by November 1, 2017 due to its inability to obtain the Formal DBC Administrative Modification on or prior to such date (and not for any other concurrent reason except to the extent directly attributable to such inability), the Owner will reimburse Developer for the costs reasonably incurred by Developer following such date until the Financial Close Date or the Termination Date, as applicable, subject to a maximum amount of \$600,000 per month and a maximum aggregate amount of \$1,200,000, and without duplication of any amounts payable by the Owner under Section 21.1.1.2.4. Developer shall submit to the Owner an invoice for any such amounts on a monthly basis in arrears, which invoice shall include an affirmative statement that the requested reimbursement amount is not included in the Supplemental Payment as an O&M cost.

2.4.2.2 If Developer is unable to achieve Financial Close by the Financial Close Deadline due to its inability to obtain the Formal DBC Administrative Modification on or prior to such date (and not for any other concurrent reason except to the extent directly attributable to such inability), such failure to achieve Financial Close shall be deemed an Excused FC Delay and the provisions of Section 21.1.1 shall apply.

ARTICLE 3. PROJECT; PROJECT RIGHT OF ENTRY; PROJECT OFFICES; OTHER AIRPORT PROJECTS

3.1 Project

Subject to the terms and conditions of the Contract Documents and applicable Laws, the Owner grants to Developer the exclusive right, and Developer accepts the obligation and agrees, to develop, design, construct, finance, operate and maintain the Project.

3.2 Project Right of Entry

3.2.1 The Owner hereby grants to Developer and the Contractors a non-exclusive right of entry (the "**Project Right of Entry**") onto the Work Site, including a non-exclusive right of ingress to and egress from the Work Site, for purposes of carrying out Developer's obligations and exercising its rights under the Contract Documents, subject to and in accordance with the terms and conditions of the Contract Documents, Airport Rules and Regulations and applicable Laws, and in compliance with the provisions of all agreements, easements, rights of entry, Governmental Approvals and other instruments under which the Owner has received title, rights of entry or rights of access on or to lands or facilities within the Work Site.

3.2.2 The non-exclusive right of ingress and egress granted as part of the Project Right of Entry will be subject to applicable Laws, and the Airport Rules and Regulations. Nothing in this Agreement shall be construed to prevent the Owner from charging the operators of vehicles or carrying passengers and property a fee for the privilege of entering upon the Airport, using the Airport's roadways, soliciting passengers upon the Airport, or otherwise operating vehicles at the Airport. The Owner reserves the right to make such charges provided they do not discriminate unreasonably against the operators of vehicles used for carrying officers, employees, passengers, or property of Developer and the Contractors or used in respect of the Work. Notwithstanding the foregoing, the Owner shall not charge Developer or its Contractors (including any of their respective Suppliers) any fees for exercising their Project Right of Entry, using the Airport's roadways or otherwise operating vehicles at the Airport (other than the cost of any associated badge requirements), for purposes of performing the Work, provided that Developer shall be responsible for the cost of parking outside of the Ancillary Site.

3.2.3 Developer acknowledges and agrees that, except as otherwise expressly provided in the Contract Documents, the Project Right of Entry is provided on an "as is" basis, and, except as otherwise provided in clauses (n), (o), (p), (q), (r), (s) and (t) of the definition of Compensation Event (Type 1), Developer assumes responsibility for all other risks, costs, expenses and liabilities caused by, arising out of or in connection with the condition of the Work Site and the Terminal, regardless of whether any aspect of such condition existed prior to, or exists on or after, the Effective Date.

3.2.4 The Owner will turn over each Construction Work Area to Developer on the applicable Turnover Date in the condition specified in Section 1.2.2 of the Technical Requirements. Developer shall provide the Owner with 60 days' prior written notice, specifying the date on which it reasonably believes it will commence Construction Work within the Construction Work Area.

3.2.5 The Owner retains the right to access the Work Site at reasonable times and with reasonable advance written notice in order to perform the Owner O&M Obligations and for any other purpose permitted or required by this Agreement or required by applicable Law. The Owner may enter any part of the Work Site in the case of an emergency or for public safety purposes without any prior notice to Developer. The Owner shall, in connection with any of the

actions or its rights contemplated in this Section 3.2.5, mitigate interference with the activities and operations of Developer.

3.2.6 It is the express intent and agreement of the Parties that this Agreement shall in no way be deemed to constitute a lease to Developer (whether an operating lease or a financing lease), or a grant (regardless of the characterization of such grant, including by way of easement, purchase option, conveyance, lien or mortgage) in each case, of any right, title, interest or estate in the Project, the Work Site or the Terminal Improvements, or of any other assets incorporated into, appurtenant to, or in any way connected with the Project. It is the express agreement and intent of the Parties that Developer shall not be treated as or deemed to be the legal, tax or equitable owner of the Work Site, the Terminal Improvements or any other Project improvements for any purpose. The Parties acknowledge and agree that the rights of Developer under Section 3.2.1 are not independent, durable or, without prejudice to the rights of Developer under this Agreement, exclusive of the rights held by others and that such rights do not provide a private benefit to Developer. Developer's rights hereunder are derived solely from its status as a Developer and independent contractor as described in this Agreement, and not as a tenant, lessee, easement holder, optionee, lienor, mortgagee, purchaser or owner of any other interest in real property. The payments to be received by Developer from the Owner under this Agreement are for services to be performed by Developer, and are not payments in the nature of rent, fees with respect to real property, or purchase price of real property.

3.2.7 The Parties acknowledge and agree that responsibility for, and control over, the management of passenger flow and emergency response within the Public Circulation Spaces within the Project Site (O&M) will remain with the Owner and that, notwithstanding Developer's obligation to maintain certain Public Circulation Spaces in accordance with Section III.4.9 of the Technical Requirements, Developer shall in no way be deemed to be carrying on business in such Public Circulation Spaces for any purpose.

3.3 Developer Offices

3.3.1 Interim Office Lease Agreement – World Port

3.3.1.1 From the Effective Date until the effective date of the Project Office Lease Agreement, the Owner will provide to Developer the Combined Office Space at the World Port (or other areas designated in the Interim Office Lease Agreement) for use by Developer and its design-build contractor (and any Contractor of either of them) as their Project offices at nominal rent, subject to terms and conditions set forth in the Interim Office Lease Agreement.

3.3.1.2 From the effective date of the Project Office Lease Agreement until a date following Project Final Acceptance agreed to by the Parties in writing, the Owner will provide to Developer the Reduced Office Space for the design-builder's use as its Project office, on terms and conditions set forth in the Interim Office Lease Agreement.

3.3.2 Project Office Lease Agreement

Upon completion by Developer of construction of the Project Office Space, the Parties will enter into the Project Office Lease Agreement.

3.3.3 Concessionaires Office Lease Agreement

Developer may, in its sole discretion, elect to enter into the Concessionaires Office Lease Agreement by delivering a written notice to the Owner of such election not later than sixty (60) days prior to the contemplated use of any such space during the Term. Upon receipt by the Owner of such written notice, the Parties shall negotiate in good faith to finalize the terms of the Concessionaires Office Lease Agreement and enter into the same.

3.4 Adjacent Projects

3.4.1 Developer shall perform and coordinate its Work with the Adjacent Projects and contractors engaged on such projects so as to mitigate interference with such projects and contractors and with Airport operations. Without limiting the foregoing, Developer shall sequence the Work and dispose of materials so as to mitigate interference with the operations of contractors engaged on the Adjacent Projects, and shall join the Work to that of others on Adjacent Projects in a proper manner, in accordance with the Contract Documents. Except as otherwise expressly provided in this Agreement, each contractor is responsible for any damage done by it or its subcontractors to the work performed by another contractor. The Owner shall ensure that its contractors (including its consultants) engaged on the Adjacent Projects are required to perform and coordinate their work in respect of the Adjacent Projects with Developer and the Project and shall sequence such work and cause disposal of materials so as to mitigate interference with the Work.

3.4.2 On a quarterly basis throughout the Project Construction Period and on an annual basis throughout the Project Operating Period, or more frequently in the Owner's discretion, the Owner will provide written notice to Developer of any changes to the list of Adjacent Projects identified on Appendix 6-A, provided that the Owner shall provide not less than sixty (60) days' prior written notice to Developer of any Adjacent Projects not identified in Appendix 6-A as of the Effective Date prior to the commencement of any on-site work related thereto.

3.5 Sales Tax Exemptions

The Owner will cooperate with Developer in connection with Developer seeking any available exemptions from sales and use taxes related to materials incorporated into or that are part of (or used in) the D&C Work, provided that the Owner shall not be obligated to incur any out-of-pocket costs and expenses in connection therewith.

ARTICLE 4. DEVELOPER RESPONSIBILITY FOR WORK; OWNER REVIEW AND OVERSIGHT

4.1 Developer's Responsibility for Work

4.1.1 General

Developer shall:

4.1.1.1 Take charge and custody of the Work, and take all reasonable precautions, in accordance with Good Industry Practice, the Contract Documents and applicable Laws, against injury or damage to the Work by the action of the elements or from any other cause whatsoever, arising either from the execution or from the non-execution of the Work. Developer shall rebuild, repair, restore, and make good, without additional expense to the Owner, all injury or damage to any portion of the Work occasioned by any of the above causes, except as otherwise expressly provided in this Agreement;

4.1.1.2 Comply with, and require that all Contractors comply with, all requirements of all applicable Laws; and

4.1.1.3 Cooperate with the Owner and Governmental Entities with jurisdiction in all matters relating to the Work, including their review, inspection and Oversight of the Work.

4.1.2 Airport Rules, Regulations and Activities

Developer shall, and shall cause the Contractors, to perform the Work (a) in compliance with the Airport Rules and Regulations, and (b) in such manner and in such sequence as to minimize interference with the Airport Activities. Developer shall operate all vehicles and other equipment safely and without undue interference to the Users.

4.2 Preliminary Planning and Engineering Activities

4.2.1 Unless expressly provided otherwise in this Agreement for specific elements of the D&C Work, Developer shall perform or cause to be performed all preliminary planning and engineering activities necessary for the D&C Work.

4.2.2 Except as expressly provided in this Agreement, Developer shall bear the risk of any incorrect or incomplete review, examination and investigation by it of the Work, the Work Site and surrounding locations and of any incorrect or incomplete information resulting from preliminary planning and engineering activities conducted by Developer, the Owner or any other Person. Except as otherwise expressly provided in this Agreement, the Owner makes no warranties or representations as to any surveys, data, reports or other information provided by the Owner or other Persons in connection with the Work Site.

4.3 Governmental Approvals

4.3.1 Except as otherwise contemplated in Section 4.3.2 below, Developer shall be solely responsible for securing all Governmental Approvals, and for securing any revision, modification, amendment, supplement, renewal or extension of any Governmental Approval, required in connection with the Project or the Work, including the Concessions Program.

4.3.2 If the subject Governmental Approval is a Governmental Approval that must be obtained in the Owner's name, Developer shall remain responsible for securing such Governmental Approval, and for securing any such revision, modification, amendment, supplement, renewal or extension thereof, provided that: (a) upon receipt by the Owner of a complete application therefor from Developer, including all supporting documentation and information required by the relevant Governmental Entity, the Owner shall submit the relevant application in its name within seven (7) days; (b) the Owner will promptly facilitate any additional communications required by Developer or the Governmental Entity for Developer to obtain such Governmental Approval (or revision, modification, amendment, supplement, renewal or extension), including attendance at meetings between the relevant Governmental Entity (including the FAA and TSA) and Developer and/or the Owner as required by such Governmental Entity or as reasonably requested by Developer, and provide such additional information as such Governmental Entity may require from the Owner in order to grant such Governmental Approval (or revision, modification, amendment, supplement, renewal or extension); and (c) Developer shall obtain the Owner's prior written approval of the terms and conditions of any such Governmental Approval or revision, modification, amendment, supplement, renewal or extension, which approval shall not be unreasonably withheld, delayed or conditioned.

4.3.3 Developer shall not be entitled to submit any claim for additional monetary compensation, time extension or any other relief associated with securing Governmental Approvals except to the extent expressly provided in this Agreement.

4.3.4 Developer shall comply with, and maintain in full force and effect, all Governmental Approvals, including performance of all measures required by the Contract Documents or Governmental Approvals, except to the extent that responsibility for performance of such measures is expressly assumed by the Owner in the Contract Documents. In case of a

discrepancy between any Governmental Approval condition and the Contract Documents, the more stringent condition shall prevail. Developer shall promptly notify the Owner in writing of any material breach of any Governmental Approval by Developer or any Developer-Related Entity.

4.4 Submittals

4.4.1 General

This Section 4.4 sets forth uniform terms and procedures that shall govern all Submittals to the Owner pursuant to the Contract Documents. Specific Submittal requirements related to the D&C Work and the O&M Services are set forth in the Technical Requirements. Specific Submittal Requirements related to the Concessions Program are set forth in Appendix 5-A. To the extent of any inconsistency between the terms of this Section 4.4, on the one hand, and such specific requirements in the Technical Requirements or Appendix 5-A, on the other hand, the latter shall prevail.

4.4.2 Owner Discretionary Approvals

If a Submittal is one where the Contract Documents expressly provide that approval is required from the Owner in its sole discretion, then the Owner's lack of approval, determination or decision within any applicable time period under the Contract Documents shall be deemed a disapproval (which shall be deemed the Owner's response).

4.4.3 Other Owner Approvals

Whenever the Contract Documents expressly indicate that Developer must obtain the Owner's approval prior to proceeding with the Work that is the subject matter of the Submittal, no failure or delay by the Owner in delivering such approvals or disapprovals shall constitute a basis for any claim for any additional monetary compensation, time extension or any other relief, except to the extent such failure or delay is an Owner-Caused Delay described in clause (c) of the definition of the Owner-Caused Delays. In respect of all other Work, the Developer shall be entitled to proceed in accordance with Section 4.4.4.

4.4.4 Owner Review and Comment

Except in relation to Submittals referred to in Section 4.4.3 (with respect to which Section 4.4.3 shall govern), whenever the Contract Documents indicate that a Submittal or other matter is subject to the Owner's review and comment or approval (other than a discretionary approval as contemplated in Section 4.4.2 or a Submittal Type 1) and the Owner delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under the Contract Documents, then, except as otherwise expressly provided in the Contract Documents, Developer may proceed thereafter at its election and risk, without prejudice to the Owner's rights to later object to, reject or disapprove the Work on the basis that the Work is not in accordance with the requirements of the Contract Documents. No failure or delay by the Owner in delivering such comments, exceptions, rejections or disapprovals within the applicable time period under the Contract Documents shall constitute a basis for any claim for any additional monetary compensation, time extension or any other relief.

4.4.5 Submittals Not Subject to Prior Review, Comment or Approval

Whenever the Contract Documents indicate that Developer is to deliver a Submittal to the Owner but express no requirement for Owner review, comment, disapproval, prior approval or other Owner action, then: (a) Developer is under no obligation to obtain Owner approval of the Submittal before proceeding with further Work, and the Owner shall have the right, but is not obligated, to at any time review, comment on, take exception to, object to, reject or disapprove

the Submittal on the basis that such Submittal is not in accordance with the requirements of the Contract Documents; and(b) no failure or delay by the Owner in delivering comments, exceptions, objections, rejections or disapprovals with respect to the Submittal shall constitute a basis for any claim for additional monetary compensation, time extension or other relief in respect of Work that is not in accordance with the requirements of the Contract Documents.

4.4.6 Owner Objection, Rejection Binding

If the Submittal is one not governed by Section 4.4.2 concerning discretionary approvals, the Owner's exception, objection, rejection or disapproval shall be deemed reasonable, valid and binding if based on any of the following grounds:

4.4.6.1 The Submittal or subject provision thereof fails to comply with any applicable covenant, condition, requirement, term or provision of the Contract Documents;

4.4.6.2 The Submittal or subject provision thereof is not to a standard that is equal to or exceeds Good Industry Practice;

4.4.6.3 Developer has not provided all content or information required in respect of the Submittal or subject provisions thereof, provided that Developer shall have the subsequent opportunity to resubmit the Submittal with the required content or information; or

4.4.6.4 Adoption of the Submittal or subject provision thereof, or of any proposed course of action thereunder, would result in a conflict with or violation of any Law or Governmental Approval.

4.4.7 Limitations on Developer's Right to Rely

4.4.7.1 Except for the Owner's acceptance of a Developer Change Proposal pursuant to Section 12.2, no review, comment, objection, rejection, approval, disapproval, acceptance, concurrence, certification (including any Certificate of Functional Area Readiness, Certificate of Project Substantial Completion, or Certificate of Project Final Acceptance), or Oversight by or on behalf of the Owner, and no lack thereof by the Owner, shall constitute acceptance by the Owner of Work that does not comply with the Contract Documents or waiver of any legal or equitable right held by the Owner with respect to such Work under the Contract Documents or Law, provided that Developer may rely on: (a) a Certificate of Functional Area Readiness for the commencement of the O&M Services and Concessions operations, if any, for the relevant Functional Area; and (b) a Certificate of Project Substantial Completion for the commencement of the applicable O&M Services and Concessions operations and the commencement of Supplemental Payments. The Owner shall be entitled to exercise all rights and remedies under the Contract Documents or Law to bring the Work and the Project into compliance with requirements of the Contract Documents, regardless of whether previous review, comment, objection, rejection, approval, disapproval, acceptance, concurrence, certification, or Oversight were conducted or given by the Owner. Developer at all times shall have an independent duty and obligation to fulfill the requirements of the Contract Documents. Developer agrees and acknowledges that any such activity or failure to conduct any such activity by the Owner:

1. Is solely for the benefit and protection of the Owner;
2. Does not relieve Developer of its responsibility for the selection of all Developer-Related Entities and the performance of Developer and all Developer-Related Entities in accordance with the terms and conditions of the Contract Documents;

3. Does not create or impose upon the Owner any duty or obligation toward Developer to cause Developer to fulfill the requirements of the Contract Documents;
4. Shall not be deemed or construed as any kind of warranty, express or implied, by the Owner;
5. May not be relied upon by Developer or used as evidence in determining whether Developer has fulfilled the requirements of the Contract Documents, except that the issuance of the Certificate of Project Substantial Completion may be relied upon and used as evidence to establish Developer's entitlement to start receiving the Supplemental Payments, nevertheless without waiving the Owner's rights and remedies against Developer for failing to meet the requirements of the Contract Documents; and
6. May not be asserted by Developer against the Owner as a legal or equitable defense to, or as a waiver of or relief from, Developer's obligation to fulfill the requirements of the Contract Documents.

4.4.7.2 To the maximum extent permitted by Law, Developer releases and discharges the Owner from any and all duty and obligation to cause Developer's Work or the Project to satisfy the standards and requirements of the Contract Documents.

4.4.8 Time Periods

4.4.8.1 Except as otherwise provided in Section 4.4.4, Section 4.4.5 or this Section 4.4.8, whenever the Owner is entitled to review and comment on, or to affirmatively approve, a Submittal, the Owner shall have a period of 15 days after the date the Owner receives an accurate and complete Submittal in conformance with the Contract Documents to review, comment, or approve, as the case may be, the Submittal. The Owner's review period for Developer's re-submission of a previously submitted Submittal shall be 15 days, unless provided otherwise in the Contract Documents. The Parties shall agree in good faith in writing upon any necessary extensions of the review-comment-and-approval period to accommodate particularly complex or comprehensive Submittals.

4.4.8.2 If any provision of the Contract Documents expressly provides a longer or shorter period for the Owner to act, such period shall control over the time period set forth in Section 4.4.8.1.

4.4.8.3 Developer shall schedule, prioritize and coordinate all Submittals to allow an efficient and orderly Submittal review process. All time periods for the Owner to act shall be extended by the period of any delay caused by the negligence, willful misconduct, or breach of applicable Law or contract by Developer or any Developer-Related Entity. In no event shall Developer be entitled to any additional monetary compensation, time extension or other relief for such extension of the review period.

4.4.8.4 During any time that the Owner is entitled under Section 8.5.1 to increase the level of its Oversight of Developer's compliance with its obligations under this Agreement, the applicable period for the Owner to act on any Submittals received during such time shall automatically be extended by 10 days.

4.5 Damage and Disruption

4.5.1 Developer shall be responsible for: (a) any loss of, or damage caused to, the property or assets of the Owner, its contractors or other Indemnified Parties; and (b) any disruption to the Airport Activities in each case arising from any act or omission of Developer or

any Developer-Related Entity to the extent not in accordance with the terms and conditions of the Contract Documents, except to the extent caused by the negligence or breach of this Agreement by the Owner or any Person for whom the Owner is responsible at law.

4.5.2 Developer shall repair, rebuild, or otherwise restore any such lost or damaged property or remedy any such disruption, as applicable, within a reasonable period of time, having regard to: (a) the nature of the property lost or damaged or disruption caused; (b) the restoration work required; (c) the health and safety of Users; and (d) the nature and extent of the impact on the Terminal and Airport Activities, if applicable. If Developer fails to do so, the Owner may, upon 48 hours' notice (or immediately upon notice in the case of any Emergency, including any material disruption to the supply of any Utilities to any portion of the Terminal), proceed to repair, rebuild, or otherwise restore such property or remedy such disruption as the Owner deems necessary in its good faith discretion, including taking any temporary measures to prevent continued disruption to the Terminal and Airport Activities until a permanent cure can be effected.

4.5.3 Subject to Section 18.4.3, Developer shall indemnify the Owner, within 30 days of written demand by the Owner, for any Losses incurred by the Owner, its contractors or other Indemnified Parties, as applicable, in connection with any lost or damaged property or disruption for which Developer is responsible under Section 4.5.1, including any costs reasonably incurred by the Owner in taking steps to remedy such loss, damage or disruption in accordance with Section 4.5.2.

4.6 Policing, Security and Incident Response Police Services

4.6.1 Developer acknowledges that any Governmental Entity empowered to enforce any applicable Law is free to enter the Project at any and all times to carry out its law enforcement duties. No provision of this Agreement is intended to surrender, waive or limit any police powers of any Governmental Entity or the Owner, and all such police powers are expressly reserved.

4.6.2 The Owner shall have no liability or obligation to Developer or any Developer-Related Entity resulting from, arising out of or relating to, the failure of a public law enforcement agency to provide services, or its negligence or misconduct in providing services, provided that nothing herein shall be construed as a waiver of any rights that Developer may have against any such other agencies.

4.7 Security and Incident Response

4.7.1 The Owner shall be responsible for Incident response throughout the Terminal.

4.7.2 Developer shall comply with all rules, directives and guidance of the U.S. Department of Homeland Security and comparable State agency and shall coordinate and cooperate with the Owner and all Governmental Entities providing security, first responder and other public emergency response services in accordance with the Contract Documents.

4.7.3 Developer shall perform and comply with the provisions of the Technical Requirements concerning Emergencies, Incident Response, safety and security, including implementing all procedures, plans, protocols and requirements set forth in the Airport Rules and Regulations, Section 1.10.15 of the Technical Requirements and the Emergency Management and Disaster Recovery Plan.

4.7.4 Developer shall perform and comply with, and shall be subject to, the Airport security requirements set forth in Section 1.5.1 of the Technical Requirements.

4.8 Project Utility Services

4.8.1 Subject to Section 4.8.2, the Owner will provide the Project Utility Services to the applicable Utility Demarcation Points in sufficient supply for Developer to perform the O&M Services and for Concessions operations in accordance with (or as contemplated in) the Contract Documents and the CDMP.

4.8.2 If at any time during the Term, Developer determines a need for capacity of any Project Utility Services in excess of the Baseline Project Utilities Services Capacity to perform the O&M Services or Concessions operations in accordance with (or as contemplated in) the Contract Documents or the CDMP, Developer shall submit to the Owner a written request for the same, supported by an engineer's analysis demonstrating such additional capacity need. The Owner will review such request in a timely manner and Developer shall respond to and address any Owner comments in a timely manner. The Owner will then develop an implementation plan to achieve, and implement, the increased capacity for which the need has been demonstrated within a reasonable time period, taking into account the nature and size of the increase. No Noncompliance Points shall be assessed and no Noncompliance Instance shall accrue with respect to any Noncompliance that occurs while the Owner is implementing the requested increased capacity for which the need has been demonstrated in accordance with this Section 4.8.2, provided that such Noncompliance is directly attributable to the lack of such increased capacity or the performance by the Owner of work to implement such increased capacity and provided that Developer submitted a written request for the increased capacity in accordance with this Section 4.8.2 in a timely manner.

4.8.3 Developer shall perform all Work necessary to distribute the Project Utility Services from the applicable Utility Demarcation Points for purposes of the Project.

4.8.4 Developer shall be responsible for communicating and coordinating with the Owner to ensure timely completion of any work described in Section 4.8.2. In addition, Developer shall provide such information and support as may be reasonably requested by the Owner in connection with any Utility Adjustment Work.

4.8.5 The Owner will pay for: (a) the Project Utility Services Costs incurred in respect of the Construction Work; and (b) any new Project Utility tap fee required by the City or State.

4.8.6 Developer shall pay for: (a) all of the Project Utility Services Costs incurred in respect of the operation of the Concessions, each of which shall be individually metered within the Concessions Space in accordance with Section III.4.3 of the Technical Requirements, and (b) except as provided in Section 4.8.4(b), all fees and costs associated with obtaining and maintaining applicable Governmental Approvals in accordance with Section 4.3.

4.9 Financial Reporting

4.9.1 Developer shall deliver to the Owner:

4.9.1.1 On an annual basis throughout the Term, certified copies of Developer's most recent annual audited financial statements within 30 days of completion thereof; and

4.9.1.2 On a quarterly basis throughout the Term, certified copies of (i) Developer's unaudited financial statements for the previous quarter, not later than 30 days following completion thereof, and (ii) any other reports and notifications provided to Lenders regarding material events (including any draws on Developer's debt service reserve account) under the Financing Documents.

4.9.2 Developer shall comply with all financial reporting obligations of Developer set forth in Appendix 5-A in connection with the Concessions Program.

4.10 Public Art

Developer acknowledges that the Project is subject to the City's public art program. Developer shall reasonably cooperate and coordinate with any artist, contractor or subcontractor designing, relocating and installing public art at or in conjunction with the Project (including related meetings) and otherwise comply with its obligations as set forth in Section I.1.3.4 of Appendix 1 of the Technical Requirements (it being understood and agreed by the Parties that the Owner shall take primary responsibility for directly liaising with such artists, contractors or sub-contractors); provided, however, that Developer shall not be obligated to expend any additional Direct Costs for such reasonable cooperation and coordination efforts or to alter, change or modify the D&C Work to accommodate new art pursuant to the art program. The new art or the relocation of existing art under the art program shall not have an adverse impact on the revenues of any Concession. Developer's design and construction for the Project shall accommodate the existing art in the Terminal and Developer shall not be entitled to any additional compensation, time extension or other relief in connection therewith.

ARTICLE 5. DESIGN AND CONSTRUCTION

5.1 Obligations of Developer

5.1.1 General Duties

Developer shall perform the D&C Work in accordance with (a) Good Industry Practice, as it evolves from time to time; (b) the requirements, terms and conditions set forth in the Contract Documents; (c) all applicable Laws; (d) the requirements, terms and conditions set forth in all Governmental Approvals applicable to the D&C Work; and (e) the Project Management Plan and all component parts, plans and documentation prepared thereunder, and all approved updates and amendments thereof made in accordance with the Technical Requirements. In addition to performing all other requirements of the Contract Documents, Developer shall:

5.1.1.1 Furnish, and assume all associated direct and indirect costs for, all Quality Management, planning, design, engineering and other services, all FF&E, and all associated materials, equipment, supervision, tools, transportation, Utility services, supplies and labor, and undertake all efforts, necessary or appropriate (excluding only those materials, services (including Utility services) and efforts which the Contract Documents expressly specify will be undertaken by the Owner or other Persons) to perform and complete the D&C Work in accordance with the requirements of the Contract Documents, including achieving Project Substantial Completion no later than the Project Substantial Completion Long Stop Date;

5.1.1.2 Ensure that the Project Manager or the Construction Manager for the Lead Contractor, or one of their Owner-approved designees, is present at the Project Site at all times during the performance of Construction Work to perform the obligations required under Section 9.7.2; and

5.1.1.3 Use commercially reasonable efforts to mitigate delay to the D&C Work and damages due to any such delay regardless of the cause of the delay, including by re-sequencing, reallocating, or redeploying Developer's and Contractors' forces to other work, as appropriate; and

5.1.1.4 Be solely responsible for, and bear the full risk of unforeseeable work and conditions in connection with the D&C Work, except to the extent such responsibility and risk are expressly assumed by the Owner under the Contract Documents.

5.1.2 Performance and Project Schedule

Developer shall schedule and manage the D&C Work in accordance with the Transition and Phasing Plan so as to not unduly interfere with adjacent businesses or operations identified therein and in accordance with any constraints or work restrictions identified in the Contract Documents.

5.1.3 Management of Construction Work Areas

Developer shall be responsible for maintaining custody and control over each Construction Work Area from the Turnover Date until the earlier of the applicable Functional Area Readiness Date or the Project Substantial Completion Date in a condition that poses no threat to the health or safety of any Person in accordance with the Project Management Plan or physical damage to the Terminal or the Work and minimizes interference with Airport Activities.

5.2 Design Implementation and Submittals

5.2.1 General

Developer, through the appropriately qualified and licensed design professionals identified in the Project Management Plan, shall prepare designs, plans and specifications in accordance with all applicable requirements of the Contract Documents. All Submittals shall be in English and all measurements shall be provided in United States customary system of measurement.

5.2.2 Errors or Omissions in Plans or Design Documents

Developer shall be solely responsible for errors and omissions discovered in the Issued for Construction Documents. Developer shall resolve the errors or omissions at no additional cost to the Owner. All such modifications are subject to the Owner's approval in accordance with the Contract Documents.

5.3 Work Site

5.3.1 The Project shall be situated entirely within the Project Site. The Terminal Improvements shall be situated entirely within the Final Build-Out Limits.

5.3.2 All Concession Premises and Concession operations (including materials storage for Concessions) shall be situated entirely within the Concessions Space.

5.3.3 The Ancillary Site is provided for use by Developer and its Contractors solely for purposes of construction staging and storage and parking between the date of issuance of NTP 2 and the Project Final Acceptance Date. Developer shall be responsible for providing all other parking necessary in connection with the performance of the D&C Work. Within 30 days following the Project Final Acceptance Date, Developer shall relinquish and surrender full control and possession of the Ancillary Site to the Owner in the condition required under Section I.2.2 of the Technical Requirements.

5.4 Infrastructure D&C Work

5.4.1 General

Developer shall perform the Infrastructure D&C Work in accordance with the applicable provisions of the Contract Documents.

5.4.2 Utility Adjustments

5.4.2.1 Developer shall perform all Utility Adjustments necessary for the performance of the D&C Work in accordance with the Contract Documents and the Project Schedule. Except with respect to Developer's rights to claim for any applicable Relief Event, Developer shall not be entitled to any additional monetary compensation, time extension or any other relief related to the Utility Adjustment Work or Utilities located within or outside the Project Site or otherwise impacted by, or having an impact on, the Project or the Work.

5.4.2.2 Developer shall make all reasonable efforts to design and construct around existing Utilities, minimizing impacts, including shutoffs and downtime. Developer shall submit to the Owner plans showing existing and proposed Utility locations and their relationship to the proposed construction.

5.4.2.3 Developer shall not commence or permit commencement of construction of a Utility Adjustment included in the Construction Work until the Owner issues NTP 2.

5.4.2.4 Developer shall communicate and coordinate with the Owner in performing the Utility Adjustment Work.

5.5 FF&E

Developer shall procure, install and commission the FF&E in accordance with the applicable provisions of the Technical Requirements.

5.6 Conditions to Commencement of Design Work

Except for the Design Work completed by Developer pursuant to the PDA and the Early Design Work completed by Developer pursuant to Section 2.3, Developer shall not commence or permit commencement of any further Design Work under this Agreement until the Owner has issued NTP 1 authorizing commencement of the Design Work. The Owner shall promptly issue NTP 1 when all of the conditions in this Section 5.6 have been satisfied (or waived by the Owner, in its sole discretion), provided that NTP 1 may only be issued following achievement of Financial Close:

5.6.1 The Performance Bond and Payment Bond required under Sections 18.2.1.1 and 18.2.2.1, respectively, have been obtained and are in full force and effect, and Developer has delivered to the Owner, as applicable, certified and conformed copies of the bonds and the original multiple obligee rider. If Developer procures the surety bonds directly, Developer shall deliver to the Owner the originals of the bonds;

5.6.2 Developer-Provided Insurance Policies required under Section 18.1 and Appendix 18 for the D&C Work have been obtained and are in full force and effect, and Developer has delivered to the Owner written binders of insurance verifying coverage from the relevant Insurers of such Developer-Provided Insurance Policies;

5.6.3 Developer has delivered to the Owner, and the Owner has accepted or approved, as applicable, in accordance with the terms of the Contract Documents all other Submittals required by the Contract Documents to be delivered prior to commencement of the Design Work, in the form and content required by the Contract Documents;

5.6.4 All representations and warranties of Developer set forth in this Agreement shall be and remain true and correct in all material respects, and Developer has delivered a certificate to the Owner certifying same;

5.6.5 Developer is not then in receipt of any notice of event of default delivered pursuant to the Financing Documents unless any such noticed event of default has been cured, and no Lender has otherwise indicated that it is unwilling or unable to presently fund Developer's costs of the Design Work in accordance with the Financing Documents, and Developer has delivered a certificate to the Owner certifying same;

5.6.6 Developer has made all deposits to the Financial Escrow required pursuant to Section 16.4; and

5.6.7 Developer has developed and submitted, and the Owner has approved, the Cost-Loaded Project Schedule.

5.7 Conditions to Commencement of Construction Work

Except for any Advance Construction Activities authorized under Section 5.8.2, and notwithstanding any turnover of Construction Work Area(s) to Developer in accordance with Section 3.2.4, Developer shall not commence or permit commencement of any further Construction Work until the Owner's issuance of NTP 2 for the Construction Work. The Owner shall promptly issue NTP 2 when all of the conditions in this Section 5.7 have been satisfied (or waived by the Owner, in its sole discretion):

5.7.1 All Governmental Approvals necessary to begin the applicable portions of the Construction Work have been obtained and Developer has furnished to the Owner fully executed copies of such Governmental Approvals;

5.7.2 All applicable pre-construction requirements contained in the Governmental Approvals for the applicable portion of the Construction Work have been satisfied;

5.7.3 Developer has caused to be developed and delivered to the Owner, and the Owner has accepted or approved, the Project Schedule with a detailed design schedule and preliminary construction schedule for the Project in accordance with the Contract Documents;

5.7.4 Developer has delivered to the Owner, and the Owner has accepted or approved, as applicable, pursuant to the terms of the Contract Documents all other Submittals relating to the applicable portion of the Construction Work required by the Project Management Plan and the Contract Documents for the commencement of such Construction Work, in the form and content required by the Project Management Plan or Contract Documents;

5.7.5 All representations and warranties of Developer set forth in this Agreement shall be and remain true and correct in all material respects, and Developer has delivered a certificate to the Owner certifying same;

5.7.6 Developer is not then in receipt of any notice of Developer Default from the Owner unless any such default has been cured or waived in writing by the Owner; and

5.7.7 Developer is not then in receipt of any notice of event of default delivered pursuant to the Financing Documents unless any such noticed event of default has been cured, and no Lender has otherwise indicated that it is unwilling or unable to presently fund Developer's costs of the D&C Work and O&M Services in accordance with the Financing Documents.

5.8 Construction Commencement Deadline; Advance Construction Activities

5.8.1 Developer shall commence the Construction Work no later than the Construction Commencement Deadline.

5.8.2 The Owner may, in its sole discretion, authorize Developer to perform Advance Construction Activities prior to the issuance of NTP 2. In the event the Owner authorizes Developer to perform Advance Construction Activities, Developer shall satisfy and comply with the conditions and requirements imposed by the Owner, which may include certain conditions and requirements identified in Section 5.7 and/or the provision of performance and payment security in such amounts and forms as may be specified by the Owner, prior to commencing such activities.

5.9 Functional Area Readiness

5.9.1 Functional Area Readiness

Developer shall exercise its reasonable best efforts to achieve Functional Area Readiness of each of the Functional Areas on or before the applicable Scheduled Functional Area Readiness Date. A failure by Developer to achieve Functional Area Readiness of a Functional Area by the applicable Scheduled Functional Area Readiness Date shall not, in and of itself, constitute a Developer Default.

5.9.2 Conditions to Functional Area Readiness

5.9.2.1 The Owner will issue a certificate of Functional Area Readiness (each, a “**Certificate of Functional Area Readiness**”) with respect to each Functional Area upon satisfaction (or waiver by the Owner, in its sole discretion) of all the following conditions for the Functional Area:

1. Developer has completed the D&C Work applicable to the Functional Area in accordance with the Contract Documents, including any FF&E required to be installed by Developer for the Functional Area and has obtained all related warranties in accordance with Section 5.16.4, except for Functional Area Punch List items;
2. The Building Official has issued a Temporary Certificate of Occupancy for the Functional Area, and Developer has delivered to the Owner a letter signed by the Architect of Record and the Engineer of Record, certifying that the applicable D&C Work has been completed in accordance with the applicable Issued for Construction Documents;
3. The Functional Area and any applicable FF&E are ready for use for the purposes of performing the applicable Airport Activities, taking into account: (i) the requirements of the Contract Documents, including the requirements set forth in Section I.4 of the Technical Requirements; (ii) the ability of Users to access the Functional Area and conduct the applicable Airport Activities without risk of injury, hazard or nuisance; and (iii) the proper installation and functionality of any applicable FF&E;
4. Without limiting the other provisions of this Section 5.9.2.1, the applicable Systems comply, in all material respects, with applicable Laws, are operational and functional and have passed all inspections and tests required under the Contract Documents and the Commissioning Plan and Developer has delivered to the Owner all reports, data and documentation relating to such tests;
5. All work related to the D&C Work for the Functional Area that Developer is obligated to perform for or on behalf of third parties as required by the Contract Documents has been performed and complies with the requirements

of any applicable agreements with such third parties, except for Functional Area Punch List items;

6. With respect to any Functional Area within the O&M Limits:
 - (a) The Concessions Development and Management Plan, and all other plans, manuals and reports required for the operation of Concessions within the Functional Area, have been submitted and approved or accepted, as applicable, pursuant to the terms of the Contract Documents, by the Owner as required under the Contract Documents;
 - (b) With respect to the first Functional Area within the O&M Limits to achieve Functional Area Readiness, the O&M Services Plan and all other plans, manuals and reports required for the O&M Services have been submitted and approved or accepted, as applicable, pursuant to the terms of the Contract Documents, by the Owner as required under the Contract Documents;
 - (c) With respect to any Functional Area within the O&M Limits other than the first Functional Area within the O&M Limits to achieve Functional Area Readiness, an updated O&M Services Plan has been submitted and approved or accepted, as applicable, pursuant to the terms of the Contract Documents, by the Owner as required under the Contract Documents;
 - (d) Developer has delivered to the Owner a certificate, signed by Developer's Authorized Representative, that Developer has completed training of operations and maintenance personnel sufficient to perform the applicable O&M Services and operate the applicable Concessions in accordance with the Contract Documents, the Operations and Maintenance Plan, the Health and Safety Plan and the Environmental Management Plan;
 - (e) (i) All Governmental Approvals necessary to begin the applicable O&M Services and operation of applicable Concessions have been obtained, (ii) Developer has furnished to the Owner fully executed copies of such Governmental Approvals, and (iii) Developer has received, and paid all associated fees due and owing for, all such Governmental Approvals and other third-party approvals required for use and operation of the Functional Area, and (iv) there exists no uncured violation of the terms and conditions of any such Governmental Approval or other third-party approvals;
 - (f) With respect to the first Functional Area within the O&M Limits to achieve Functional Area Readiness, Developer has retained a Project Manager (Project Operating Period) in accordance with Section 9.7.1.
7. Developer has delivered: (a) to the Owner all IP Materials, work product, documents, results and related materials for Subject Intellectual Property; and (b) to the Owner, or deposited to the Intellectual Property Escrow(s) pursuant to Section 23.5, the IP Materials for all Project Intellectual Property other than Subject Intellectual Property, in each case incorporated into the Functional Area prior to Functional Area Readiness;

8. Developer has addressed all applicable Design Review comments in accordance with Section I.8.3 of the Technical Requirements;
9. Developer has completed all applicable Quality Assurance and Quality Control requirements in accordance with Section I.10.8 of the Technical Requirements; the Owner's applicable oversight audits and inspections, including special inspections under Section I.10.8.4 of the Technical Requirements, have been completed, and Developer has received acceptance or approval, as required under the Contract Documents, from the Owner to close all Nonconformance Reports related to the Functional Area;
10. There exist no uncured Developer Defaults, except any Developer Default which will be cured by achieving Functional Area Readiness;
11. Developer has prepared and submitted the Functional Area Punch List in accordance with Section 5.11 and the procedures and schedules set forth in the Quality Management Plan;
12. All other Submittals required by the Project Management Plan or Contract Documents to be submitted to the Owner prior to Functional Area Readiness of the Functional Area has been submitted and, to the extent the Owner approval or acceptance is required under the Contract Documents, approved or accepted by the Owner, as applicable, in the form and content required by the Project Management Plan or Contract Documents;
13. All Construction Work Areas that were used for the Functional Area and which will not be used for other Functional Areas meet the handback requirements described in Section I.2.3 of the Technical Requirements; and
14. Developer has completed all training required for the commencement of the applicable O&M Services or Excluded O&M Services, as applicable, in accordance with the Activation and Training Plan.

5.9.2.2 Developer shall provide not less than 60 days' prior written notice to the Owner of the date on which Developer will achieve Functional Area Readiness with respect to a Functional Area so as to allow the Owner to promptly commence its review of those conditions to Functional Area Readiness amenable to being reviewed at the time of the notice. As part of the written notice, Developer shall provide a list of building inspections required prior to the issuance of the Temporary Certificate of Occupancy by the Building Official and a plan outlining all activities that Developer will manage prior to the issuance of the Temporary Certificate of Occupancy. Developer shall thereafter provide the Owner with written notification of the date Developer determines it has achieved Functional Area Readiness. During the 21-day period following receipt of such notice, Developer and the Owner shall meet and confer to facilitate the Owner's determination of whether Developer has met the criteria for Functional Area Readiness.

5.9.2.3 During such 21-day period, the Owner shall conduct an inspection of the Functional Area and applicable D&C Work, and their respective components, a review of the Issued for Construction Documents, Construction Documents, other Submittals and such other investigation as may be necessary to evaluate whether Functional Area Readiness is achieved.

5.9.2.4 Within this 21-day period, the Owner shall either: (a) issue a Certificate of Functional Area Readiness for the Functional Area, effective as of the date that the

conditions to Functional Area Readiness were actually satisfied; or (b) notify Developer in writing of the reasons why Functional Area Readiness has not been achieved.

5.9.2.5 The Certificate of Functional Area Readiness will indicate the actual date on which Developer achieved Functional Area Readiness with respect to the Functional Area.

5.9.2.6 Not later than 180 days following the applicable Functional Area Readiness Date, Developer shall deliver to the Owner, for each Contractor who has performed work on the Functional Area, originally executed: (a) unconditional waivers and releases of liens and payment bond rights, in the form attached as Appendix 25-B, for payments received by such Contractor; and (b) conditional waivers and releases of liens and payment bond rights, in the form attached as Appendix 25-C, conditioned upon receipt by such Contractor of a specified payment for work completed up to Functional Area Readiness.

5.10 Project Substantial Completion and Project Final Acceptance

5.10.1 Project Substantial Completion

Developer shall exercise its reasonable best efforts to achieve Project Substantial Completion on or before the Scheduled Project Substantial Completion Date. A failure by Developer to achieve Project Substantial Completion by the Scheduled Project Substantial Completion Date shall not, in and of itself, constitute a Developer Default, but a failure by Developer to achieve Project Substantial Completion by the Project Substantial Completion Long Stop Date is a Developer Default under Section 20.1.1.15.

5.10.2 Conditions to Project Substantial Completion

5.10.2.1 The Owner will issue a written certificate of Project Substantial Completion ("**Certificate of Project Substantial Completion**") upon satisfaction (or waiver by the Owner, in its sole discretion) of all the following conditions for the entire Project:

1. Certificates of Functional Area Readiness have been issued for all Functional Areas;
2. The Systems for all Terminal Improvements assessed as a whole comply, in all respects, with applicable Laws, are operational and functional and have passed all inspections and tests required under the Contract Documents and the Commissioning Plan, and Developer has delivered to the Owner all reports, data and documentation relating to such tests;
3. Developer has completed all other D&C Work in accordance with the Contract Documents, including the requirements set forth in Appendix 1 of the Technical Requirements, including all FF&E required to be installed by Developer, and has obtained all related warranties in accordance with Section 5.16, except for the Project Punch List items;
4. All work related to the D&C Work that Developer is obligated to perform for or on behalf of third parties as required by the Contract Documents has been performed and complies with the requirements of any applicable agreements with such third parties, except for the Project Punch List items;
5. Developer has delivered: (a) to the Owner all IP Materials, work product, documents, results and related materials for Subject Intellectual Property, and (b) to the Owner, or deposited to the Intellectual Property Escrow(s); pursuant to Section 23.5, the IP Materials for all Project Intellectual Property

other than Subject Intellectual Property, in each case incorporated into the Project prior to Project Substantial Completion;

6. There exist no uncured Developer Defaults, except any Developer Default which will be cured by achieving Project Substantial Completion;
7. Developer-Provided Insurance Policies required under Section 18.1 and Appendix 18 for the O&M Services have been obtained and are in full force and effect, and Developer has delivered to the Owner written binders of insurance verifying coverage from the relevant Insurers of such Developer-Provided Insurance Policies;
8. (a) All Governmental Approvals necessary to begin or continue the applicable portions of the O&M Services and the operation of the Concessions following Project Substantial Completion have been obtained and remain in full force and effect, (b) Developer has furnished to the Owner fully executed copies of such Governmental Approvals, and (c) Developer has received, and paid all associated fees due and owing for, all such Governmental Approvals and other third-party approvals required for use and operation of the Terminal Improvements, and (d) there exists no uncured violation of the terms and conditions of any such Governmental Approval or other third-party approvals;
9. Developer has prepared and submitted the Project Punch List in accordance with Section 5.11 and the procedures and schedules set forth in the Quality Management Plan;
10. Developer has completed all training required for the commencement of the O&M Services in accordance with the Activation and Training Plan;
11. All other Submittals required by the Project Management Plan or Contract Documents to be submitted to the Owner prior to Project Substantial Completion have been submitted and, to the extent Owner acceptance or approval is required under the Contract Documents, approved or accepted, as applicable, by the Owner, in the form and content required by the Project Management Plan or Contract Documents; and
12. Developer has furnished to the Owner copies of all payroll records and sworn statements, as required under Sections 9.11.5 and 9.11.6, demonstrating full compliance by Developer and applicable Contractors with the prevailing wage requirements under Section 9.11.4.

5.10.2.2 Developer shall provide not less than 60 days' prior written notice to the Owner of the date on which Developer will achieve Project Substantial Completion so as to allow the Owner to promptly commence its review of those conditions to Project Substantial Completion amenable to being reviewed at the time of the notice. Developer shall thereafter provide the Owner with written notification of the date Developer determines it has achieved Project Substantial Completion. During the 21-day period following receipt of such notice, Developer and the Owner shall meet and confer to facilitate the Owner's determination of whether Developer has met the criteria for Project Substantial Completion.

5.10.2.3 During such 21-day period, the Owner shall conduct an inspection of the Project and its components, a review of the Issued for Construction Documents, Construction Documents, other Submittals and such other investigation as may be necessary to evaluate whether Project Substantial Completion is achieved.

5.10.2.4 Within this 21-day period, the Owner shall either: (a) issue the Certificate of Project Substantial Completion, effective as of the date that the conditions to Project Substantial Completion were actually satisfied; or (b) notify Developer in writing of the reasons why Project Substantial Completion has not been achieved.

5.10.2.5 The Certificate of Project Substantial Completion will indicate the actual date on which Developer achieved Project Substantial Completion.

5.10.2.6 Not later than 180 days following the Project Substantial Completion Date, Developer shall deliver to the Owner, for each Contractor who has performed work on the Project, originally executed: (a) unconditional waivers and releases of liens and payment bond rights, in the form attached as Appendix 25-B, for payments received by such Contractor; and (b) conditional waivers and releases of liens and payment bond rights, in the form attached as Appendix 25-C, conditioned upon receipt by such Contractor of a specified payment for work completed up to Project Substantial Completion.

5.10.3 Project Final Acceptance

5.10.3.1 Promptly after achieving Project Substantial Completion, Developer shall perform all remaining Construction Work, including completion of all Punch List items. Developer shall exercise its reasonable best efforts to achieve Project Final Acceptance by the Project Final Acceptance Deadline. A failure by Developer to achieve Project Final Acceptance by the Project Final Acceptance Deadline shall not, in and of itself, constitute a Developer Default. The Owner will issue a written certificate of Project Final Acceptance ("**Certificate of Project Final Acceptance**") at such time as all of the following have occurred for the entire Project:

1. All Project Punch List items have been completed and the Work complies with the Contract Documents;
2. The Building Official has issued a Certificate of Occupancy for the Terminal Improvements, and Developer has delivered to the Owner a letter signed by the Architect of Record and the Engineer of Record, certifying that the D&C Work has been completed in accordance with the Issued for Construction Documents;
3. All other Submittals for the D&C Work that Developer is required by the Contract Documents to submit after Project Substantial Completion have been submitted to the Owner and approved by the Owner, in the form and content required by the Project Management Plan or the Contract Documents;
4. The Owner has received the Record Document BIM in accordance with the requirements of Appendix 3 of the Technical Requirements;
5. Developer has delivered to the Owner copies of all manufacturer warranties, guaranties and assignments as required under, and in the form and content specified by, the Contract Documents;
6. Developer has delivered: (a) to the Owner all IP Materials, work product, documents, results and related materials for Subject Intellectual Property; and (b) to the Owner, or deposited to the Intellectual Property Escrow(s) pursuant to Section 23.5, the IP Materials for all Project Intellectual Property other than Subject Intellectual Property, in each case incorporated into the Project prior to Project Final Acceptance;

7. If any Governmental Entity with jurisdiction requires any form of certification of design, engineering or construction with respect to the Project or any portion thereof, including any certifications from the Architect(s) of Record and Engineer(s) of Record for the Project, Developer has caused such certificates to be delivered and has concurrently issued identical certificates to the Owner;
8. There exist no uncured Developer Defaults, except any Developer Default: which will be cured by achieving Project Final Acceptance;
9. Developer has delivered to the Owner originally executed unconditional waivers and releases of liens and payment bond rights, in a form reasonably acceptable to the Owner, from each Contractor who has performed work at any time on the Project; and
10. Developer has paid for all D&C Work performed by third parties that Developer is obligated to pay for, other than disputed amounts, and Developer has delivered a certificate to the Owner certifying same.

5.10.3.2 Developer shall provide the Owner with written notification when Developer determines that it has achieved Project Final Acceptance. During the 30-day period following receipt of such notification, Developer and the Owner shall meet and confer to facilitate the Owner's determination of whether to issue a Certificate of Project Final Acceptance.

5.10.3.3 During such 30-day period, the Owner shall conduct an inspection of the Project Punch List items, a review of the Record Document BIM, other Submittals and such other investigation as may be necessary to evaluate whether Project Final Acceptance is achieved.

5.10.3.4 Within such 30-day period, the Owner shall either: (a) issue a Certificate of Project Final Acceptance effective as of the date that the conditions to Project Final Acceptance were actually satisfied; or (b) notify Developer in writing of the reasons why Project Final Acceptance has not been achieved. The Certificate of Project Final Acceptance will indicate the actual date on which Developer achieved Project Final Acceptance.

5.11 Punch Lists

5.11.1 Developer shall include in the Quality Management Plan procedures and schedules for preparing the Functional Area Punch Lists and the Project Punch List, and for completing the applicable Punch List work. Such procedures and schedules shall be in accordance with the requirements of Sections 5.11.2 through 5.11.5.

5.11.2 Developer shall prepare and maintain each Punch List. Developer shall schedule preparation of the Punch List so as to permit the Owner's review and inspection for Functional Area Readiness under Section 5.9.2 or for Project Substantial Completion under Section 5.10.2, as applicable.

5.11.3 Developer shall deliver to the Owner not less than five (5) days' prior written notice stating the date when Developer will commence Punch List field inspections and Punch List preparation. Developer shall cause the Lead Contractor, the Architect(s) of Record, the Engineer(s) of Record, and any other Key Contractor or Key Personnel reasonably requested by the Owner, to participate in the development of the Punch List. The Owner may, but is not obligated to, participate in the development of the Punch List. The Owner shall have the right in its reasonable discretion to add items to the Punch List in a timely manner to address incomplete Work or Work that is not in compliance with the Contract Documents prior to the

finalization of such Punch List, provided that Developer shall provide the proposed final Punch List and the Owner shall have 7 days within which to add or modify items on the proposed final Punch List. Developer shall deliver to the Owner a true and complete copy of the Punch List, and each modification thereto, as soon as it is prepared.

5.11.4 The Punch List inspection shall be performed on all definable features of the Work, against the Plans, the Contract Documents and applicable Laws, and note any discrepancies in the Work. Developer shall review the Project Records to ensure that all items addressed by Nonconformance Reports have been corrected, or have been included on the Punch List for corrective action.

5.11.5 Developer shall promptly commence work on the Punch List items and diligently prosecute such work to completion, consistent with the Contract Documents, the Issued for Construction Documents and the Construction Documents within the time period to be set forth in the Project Management Plan and, in any case, complete such work within 90 days following the earlier of the applicable Functional Area Readiness Date or the Project Substantial Completion Date, provided that Developer shall not be entitled to any relief from Performance Deductions arising from uncompleted Punch List items.

5.11.6 The Owner will monitor Developer's development of the Punch List. The Owner will review Developer's documentation of the Punch List to determine that all Punch List activities have been performed and will physically verify correction of a minimum of 10% of the Punch List items in the field. Discrepancies found in the physical verification may result in a greater percentage of physical verification of Punch List items depending on the severity. Increase in frequency or percentage of verification will be made in the Owner's good faith discretion.

5.12 LEED Certification

Developer shall comply with the activities contemplated in the LEED Checklist in effort towards achieving LEED Silver. Developer is required to achieve 34 LEED points in complying with the activities contemplated in the LEED Checklist, and will cooperate with the Owner in order to maximize the possibility of achieving Silver LEED certification for the Project, including cooperating with the Owner to identify potential additional LEED points and diligently pursuing achievement of the same, provided that Developer shall not be obligated to incur any additional costs or schedule delays in undertaking such additional efforts to achieve in excess of 34 LEED points.

5.13 Contaminated Materials and Undesirable Materials Management

5.13.1 Developer's General Responsibilities

5.13.1.1 Developer shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of all Contaminated Materials or Undesirable Materials encountered in performing the Work, including contaminated soil and groundwater, in accordance with applicable Laws, Governmental Approvals, the Health and Safety Plan, the Environmental Management Plan, Good Industry Practice, and all applicable provisions of the Contract Documents, including Section I.9.2 of the Technical Requirements. Developer shall, without cost to the Owner, adopt design and construction techniques for the Project that, to the maximum extent possible in accordance with Good Industry Practice, avoid the need for Contaminated Materials Management. Without limiting the foregoing, if, during the course of the Work, a Release of Contaminated Materials occurs or Developer otherwise encounters Contaminated Materials or Undesirable Materials, Developer shall: (a) follow the procedures

and perform the activities as set forth in the Contract Documents, the Health and Safety Plan and the Environmental Management Plan; (b) use Good Industry Practice, including design modifications and construction, operation, maintenance, and Contaminated Materials management techniques, to minimize costs of Contaminated Materials Management; and (c) in the case of any Release of Contaminated Materials from a third party vehicle operating or located within the Work Site or from such vehicle's cargo, use diligent efforts to handle disposal of the Contaminated Materials in a manner that does not place Developer, any Developer-Related Entity or the Owner in the position of assuming generator or arranger liability. The Owner shall have exclusive decision-making authority regarding the selection of any destination facility to which Contaminated Materials (other than those for which Developer is responsible under Section 5.13.1.2) shall be transported.

5.13.1.2 As between Developer and the Owner, Developer shall be considered the sole generator and arranger for, and shall be solely responsible for all costs relating to: (a) Developer Release of Contaminated Materials; and (b) Contaminated Materials that migrate into, onto or under the Work Site where the source of such Contaminated Materials is Developer or any Developer-Related Entity. Except to the extent available for Compensation Events described in clauses (m) and (n) of the definition of Compensation Event (Type 1) or clause (b) of the definition of Compensation Event (Type 2), Developer shall not be entitled to any additional monetary compensation, time extension or any other relief associated with discovering, encountering, managing, treating, handling, storing, remediating, removing, transporting or disposing of Contaminated Materials or Undesirable Materials, including contaminated soil and groundwater.

5.13.1.3 If Developer encounters or exposes any abnormal condition that may indicate the presence of Contaminated Materials, Developer shall discontinue such Work in the vicinity of the abnormal condition and notify the Owner immediately. Developer shall be alert for the presence of tanks or barrels; discolored or stained earth, metal, wood, ground water, etc.; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions that appear abnormal as possible indicators of the presence of Contaminated Materials and treat these conditions with extraordinary caution. Developer shall not resume the Work in the vicinity of the abnormal conditions until so directed by the Owner. Developer shall make every effort to minimize the spread of any Contaminated Materials into uncontaminated areas.

5.13.1.4 If, within a reasonable time after discovery of Contaminated Materials, taking into consideration the nature and extent of the contamination, the type and extent of action required and the potential impact upon Developer's schedule for use of and operations on the Work Site, Developer has not undertaken the Contaminated Materials Management required of it under this Section 5.13 and Section 1.9.2 of the Technical Requirements, the Owner may provide Developer with written notice that it will undertake the Contaminated Materials Management itself. The Owner thereafter may undertake the Contaminated Materials Management actions in compliance with a remediation plan approved by applicable Governmental Entities, if applicable, and in compliance with applicable Laws. Without limiting the Owner's role or responsibilities set forth in Section 5.13.2, Developer shall reimburse the Owner on a current basis within ten (10) days of request therefor, the reasonable costs, including the Owner's Recoverable Costs, that the Owner incurs in carrying out such Contaminated Materials Management actions. The Owner, absent willful misconduct or gross negligence, shall have no liability or responsibility to Developer arising out of the Owner's Contaminated Materials Management actions and such actions shall in no event constitute a basis for the assertion of a Compensation Event, Delay Event or other Claim.

5.13.2 Owner as Generator and Arranger

As between Developer and the Owner, the Owner shall be considered the sole generator and arranger of: (a) Pre-Existing Contaminated Materials; (b) Releases of Contaminated Materials by the Owner or any third party that is not Developer or a Developer-Related Entity; and (c) Contaminated Materials that migrate into, onto or under the Work Site where the source of such Contaminated Materials is not Developer or a Developer-Related Entity, in each such case, provided that such Contaminated Materials are managed, treated, handled, stored, remediated, removed, transported (where applicable) and disposed of by Developer strictly in accordance with the Contract Documents, the Health and Safety Plan, the Environmental Management Plan, all applicable Laws and Good Industry Practice. The foregoing shall not preclude or limit any rights or remedies that the Owner may have against Developer or any Developer-Related Entities, third parties and/or prior owners, lessees, licensees and occupants of the Work Site. The Owner shall be entitled to select the destination facility to which Contaminated Materials, other than Developer Releases of Contaminated Materials, will be transported.

5.13.3 Compensation Events for Contaminated Materials

5.13.3.1 Upon the occurrence of any Compensation Event described in clauses (m) and (n) of the definition of Compensation Event (Type 1) or clause (b) of the definition of Compensation Event (Type 2), Developer shall, upon receipt of any written request from the Owner, promptly assign and subrogate, or cause to be promptly assigned and subrogated, as applicable, to the Owner any and all rights of recovery of Developer and any Developer-Related Entity against the relevant third party(ies) in connection with such event, as such may exist.

5.13.3.2 Developer's entitlement to any monetary compensation in connection with a Compensation Event (Type 3) shall be subject to the following:

1. Developer shall promptly notify the Owner of incidents, potential claims and matters which may give rise to any such third-party claim;
2. The Owner may, in its sole discretion, give written notice to Developer to tender defense of any such third-party claim to the Owner at any time, in which case Developer shall promptly tender defense of such claim and cooperate with the Owner as necessary or reasonably requested by the Owner to defend such claim;
3. Unless and until the Owner assumes defense of any such third-party claim, Developer shall keep the Owner informed at all times regarding such claim; and
4. Developer shall not enter into any agreement or settlement with respect to any such claim without the prior written approval of the Owner.

5.13.3.3 Notwithstanding any other provision of this Agreement, Developer is not entitled to any monetary compensation in connection with a Compensation Event (Type 3), except as provided in Section 11.3.3.1.4, or any time extension or any other relief in connection with a Compensation Event (Type 3).

5.14 Environmental Compliance

Throughout the course of the D&C Work, Developer shall: (a) comply with all applicable Environmental Laws; and (b) perform, or cause to be performed, all environmental mitigation measures and permit conditions, monitoring and reporting required under the Contract

Documents and the Environmental Approvals applicable to the D&C Work and shall comply with all other conditions and requirements thereof. Developer, at its sole cost and expense, shall also abide by and comply with any additional commitments contained in any subsequent environmental re-evaluations submitted up to the Effective Date. If the Owner directs Developer to comply with commitments contained in re-evaluations submitted after the Effective Date that affect the D&C Work, such directive shall be deemed an Owner Change.

5.15 Oversight, Meetings and Reporting

5.15.1 Oversight by Owner and Third Parties

5.15.1.1 The Owner shall have the right at all times to conduct Oversight of the D&C Work to the extent the Owner deems necessary or advisable, in its sole discretion, provided that the Owner shall conduct any such Oversight in a manner that does not unreasonably interfere with the Work. The Owner may, in its sole discretion, designate any Person(s) to carry out Oversight on its behalf.

5.15.1.2 Developer shall furnish the Owner with every reasonable facility for ascertaining whether the D&C Work performed and materials used are in accordance with the requirements of the Contract Documents. If the Owner so requests at any time before Project Final Acceptance, Developer shall remove or uncover such portions of the finished D&C Work as directed. After examination, Developer shall restore the uncovered portions of the D&C Work to the standard required by the Contract Documents. If the Owner determines that the D&C Work so exposed or examined is not in accordance with the requirements of the Contract Documents (except for any approved Required Design Exceptions/Deviations or to the extent a Deviation is approved by the Owner with respect to such nonconformance in accordance with Section 12.3), Developer shall perform the uncovering or removal. Developer shall not be entitled to any additional monetary compensation, time extension or any other relief in connection with such request or work, unless the Owner determines, or it is finally determined pursuant to the Dispute Resolution Procedures, that the D&C Work thus exposed or examined is in accordance with the requirements of the Contract Documents, in which case such event shall constitute an Owner-Caused Delay under clause (f) of the definition of Owner-Caused Delays.

5.15.1.3 If, during or prior to construction operations, the Owner fails to reject defective D&C Work, whether from lack of discovery of such defect or for any other reason, such initial failure to reject in no way prevents the later rejection of defective D&C Work or obligates the Owner to accept such D&C Work at Project Final Acceptance. The Owner is not responsible for losses suffered due to any necessary removals or repairs of such defects.

5.15.1.4 Subject to any applicable cure periods set forth in the Contract Documents, if Developer fails or refuses to remove and renew any defective D&C Work, or to make any necessary repairs, in each case in accordance with the requirements of the Contract Documents within the time indicated in writing, the Owner has the authority to repair, remove, or renew the defective D&C Work as necessary, all at Developer's reasonable expense. The Owner will obtain payment for any reasonable expense it incurs in making these repairs, removals, or renewals for which Developer is otherwise liable, that Developer fails or refuses to make, by deducting such reasonable expenses from any moneys due or which may become due Developer, or by charging such amounts against the Performance Bond, except to the extent such expenses were previously recovered by the Owner under the Contract Documents.

5.15.1.5 Subject to Section 20.2.10, nothing contained in the Contract Documents shall in any way limit the right of the Owner to assert claims for damages resulting from patent or latent defects in the Work for the period of limitations prescribed by applicable

Law, and the foregoing shall be in addition to any other rights or remedies the Owner may have under the Contract Documents or under Law.

5.15.2 Meetings

5.15.2.1 Throughout the Term, Developer shall conduct weekly progress meetings in accordance with Section I.8.3.3 of the Technical Requirements and Section 013119 of Appendix 6 of the Technical Requirements. The Owner shall be invited to participate in such progress meetings. At the Owner's request, Developer will require relevant Contractors and Key Personnel to attend these progress meetings.

5.15.2.2 Throughout the Term, Developer shall provide written progress reports to the Owner in accordance with Section I.8.2 of the Technical Requirements.

5.15.2.3 Before Developer begins actual construction, the Owner will call a preconstruction conference at a place the Owner designates in the City of Denver to discuss the construction aspects of the Project. Developer shall attend this meeting, along with the Owner and any other Person designated by the Owner that will be involved with the Project.

5.15.2.4 In addition to the regularly scheduled meetings required under the Contract Documents, the Owner and Developer, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve matters relating to the D&C Work.

5.15.2.5 Developer shall schedule all meetings with the Owner at a date, time and place reasonably convenient to both Parties and, except in cases of urgency, shall provide the Owner with written notice and a meeting agenda at least three Business Days in advance of each meeting.

5.15.3 Reporting

Developer shall submit all reports relating to the D&C Work in the form, with the content and within the time required under the Contract Documents.

5.16 Design and Construction Warranties

5.16.1 Warranty Work

5.16.1.1 Developer shall perform, at Developer's sole cost and expense, Warranty Work for any Defect: (a) in respect of which the Owner delivers written notice to Developer within the applicable Warranty Period; or (b) of which Developer otherwise has actual knowledge prior to the expiry of the applicable Warranty Period.

5.16.1.2 Developer shall commence the applicable Warranty Work within: (a) ten (10) days of written notice of the relevant Defect from the Owner or Developer's actual knowledge thereof, whichever is earlier; or (b) such shorter period as may be designated by the Owner for emergency repairs; and Developer shall thereafter diligently complete the Warranty Work as soon as reasonably practicable and promptly notify the Owner in writing of completion of same. If Developer fails to commence or pursue with diligence and complete the Warranty Work as required, the Owner may, in its sole discretion, perform the Warranty Work upon written notice to Developer, and Developer shall reimburse the Owner within seven (7) days of any written demand from the Owner for all reasonable costs and expenses incurred by the Owner in connection with the performance of the Warranty Work, including any related reasonable attorneys' and consultants' fees and expenses.

5.16.1.3 In the event of an emergency constituting an immediate hazard to health or safety of Users, the Terminal or Owner property due to a Defect, the Owner may

undertake, at Developer's reasonable cost and expense and without prior notice, all work necessary to correct such hazardous condition(s).

5.16.1.4 Promptly upon expiry of the applicable Warranty Period, Developer shall execute and deliver to the Owner a written assignment, effective as of the expiry of the applicable Warranty Period and in form and substance acceptable to the Owner, acting reasonably, of all Developer's and Contractors' right, title and interest in and to all warranties, and to the extent assignable, claims and causes of action held by Developer or its Contractors against third parties, in connection with the applicable Terminal Improvements or D&C Work.

5.16.2 Contractor Warranties and Guaranties

5.16.2.1 Developer shall obtain from all Key Contractors representations, warranties, guarantees and obligations appropriate for work of similar scope and scale, with respect to design, materials, workmanship, equipment, tools and supplies furnished by such Key Contractors, which shall extend not only to Developer and the Owner but also to any third parties for whom Work is being performed; provided that the warranties from Key Contractors shall be for such periods as specified in the Technical Requirements or, if not specified, a period of not less than one (1) year from the applicable Functional Area Readiness Date or the Project Substantial Completion Date, whichever is earlier. All representations, warranties, guarantees and obligations of Key Contractors: (a) shall be written so as to survive all Owner and any third party inspections, tests and approvals; and (b) shall provide that, with respect to the O&M Segments, upon expiration or any earlier termination of this Agreement prior to the expiration of such representations, warranties, guarantees and obligations they shall automatically be for the benefit of and enforceable by the Owner and its successors and assigns, and any third parties for whom Work is being performed, subject to the rights of the Lenders as provided in any Direct Agreement.

5.16.2.2 To the extent that any Key Contractor warranty or guaranty would be voided by reason of Developer's negligence or failure to comply with the requirements of the Contract Documents in incorporating material or equipment into the Work, Developer shall be responsible for correcting, at Developer's expense, any defects in the Work performed by such Key Contractor.

5.16.3 No Limitation

The Contractor warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law, and shall not limit Developer's liability or responsibility imposed by the Contract Documents or applicable Law with respect to the Work.

5.16.4 FF&E Warranties

Developer shall obtain all customary manufacturer and supplier warranties with respect to the FF&E in the name of and for the benefit of the Owner.

ARTICLE 6. CONCESSIONS AND OTHER REVENUE

6.1 Concessions Program

6.1.1 General

6.1.1.1 As part of the Work, Developer shall plan, develop, implement and manage the Concessions Program during the Concessions Operating Period in accordance with, and subject to, the terms and conditions set forth in this Article 6 and Appendix 5.

6.1.1.2 The Owner will not engage in any commercial activity within Levels 5 and 6 of the Terminal other than the Non-Competing Activities.

6.1.1.3 The Owner may, from time to time during the Term as part of the planned updates to the CDMP pursuant to Appendix 5-A, identify non-competing commercial activities in addition to the Non-Competing Activities specified as of the Developer Execution Date. In order to undertake any such additional non-competing activity, the Owner must demonstrate the following: (a) the proposed non-competing activity would not require taking any space on Levels 5 and 6 of the Terminal included within the Concessions Layout Plan as of the date of the Owner's request or generate a change in the flow of passengers; (b) the proposed non-competing activity involves the sale of a product or service that is similar in nature to the Non-Competing Activities as of the Developer Execution Date, in that it is a commercial activity that responds to passenger, employee and/or tenant interests and industry trends but does not necessarily generate high revenues or profits and it is not anticipated to cause a loss of revenues or profits for the Developer; (c) the product(s) and/or service(s) to be offered as part of the proposed non-competing activity are not being provided by any Concession within Developer's Concession Program as of the date of the Owner's request; (d) the term of the Owner's agreement for the proposed non-competing activity does not exceed five (5) years, including any extensions; and (e) the Owner has provided Developer with a reasonable opportunity to undertake the commercial activity (including the provision of sufficient information by the Owner to Developer to permit Developer to evaluate the proposed non-competing activity and any potential revenue, costs or other implications related thereto and which information shall be consistent with the types and extent of information to be provided by Developer as part of the CDMP updates in accordance with Appendix 5-A) but Developer has declined to do so. Provided that the proposed additional non-competing activity meets the requirements of this Section 6.1.1.3, such non-competing activity shall be deemed to be a Non-Competing Activity.

6.1.1.4 Prior to the extension or renewal of any agreement for any additional Non-Competing Activities undertaken in accordance with Section 6.1.1.3, Developer will be given an opportunity to include the activity (or, if the location in which such additional Non-Competing Activity is being undertaken is within the Concessions Space, any other activity contemplated in the existing or contemplated CDMP) within Developer's Concession Program and to execute a Concession Agreement for the activity and commence operations within six (6) months following the expiration of the initial term of the Owner's agreement for the relevant Non-Competing Activity.

6.1.1.5 The procedures described in Sections 6.1.1.3 and 6.1.1.4 shall also apply to the extent that the use of a space where a Non-Competing Activity is located as of the Developer Execution Date is contemplated to be changed by the Owner during the Term, provided that if Developer declines to include the new Non-Competing Activity within Developer's Concession Program under Section 6.1.1.4, the Owner will provide Developer with an opportunity to do so in accordance with Section 6.1.1.4 every five (5) years thereafter.

6.1.2 **Commercial Revenue**

6.1.2.1 Subject to Section 6.1.2.3, Developer shall be entitled to the Developer Commercial Revenue; and

6.1.2.2 The Owner shall be entitled to the Owner Commercial Revenue.

6.1.2.3 Developer shall make remittances to the Owner in respect of the Owner Commercial Revenue and any Deduction Amounts in accordance with Section 1 of Appendix 10.

6.2 Other Revenue

All revenues generated in connection with the Project, the Terminal or the Airport, other than the Developer Commercial Revenue, shall be retained by the Owner, including revenues associated with any Non-Competing Activities.

6.3 Existing Concessions

Developer will not assume any rights, obligations or liabilities in respect of any concessions existing in the Terminal as of the Effective Date or be required to manage any such concessions, provided that Developer shall accommodate and ensure accessibility to any such concessions prior to the applicable Turnover Dates of the Construction Work Areas within which they are located. The Owner will take all actions necessary to terminate any existing concessions contracts, cause the removal of the relevant concessionaires and otherwise comply with its obligations under Section 1.2.2 of the Technical Requirements with respect to the condition of any Construction Work Area on the applicable Turnover Date.

6.4 Temporary Concessions during Construction

Developer shall cooperate with the Owner and perform the Construction Work so as to accommodate the Temporary Concessions Plan, provided that Developer shall not be responsible for procuring, constructing or operating any temporary concessions, whether within or outside of the Construction Limits, at any time.

6.5 No Advertising

The Owner will not advertise, and shall not permit any concessionaires from the concourses to advertise, in the Terminal regarding any concession businesses operating in the concourses, except with Developer's prior written consent.

ARTICLE 7. OPERATIONS AND MAINTENANCE

7.1 Commencement of O&M Services

Without limiting Developer's obligations under Section III.3 of the Technical Requirements, except as expressly provided otherwise in the Contract Documents, Developer shall commence the O&M Services (a) for each Functional Area, to the extent within the O&M Limits, on the applicable Functional Area Readiness Date; and (b) with respect to all other areas and Terminal Improvements within the O&M Limits, on the Project Substantial Completion Date.

7.2 Operation and Maintenance Standards and Requirements

7.2.1 General Obligations

7.2.1.1 Developer shall perform the O&M Services in accordance with: (a) Good Industry Practice, as it evolves from time to time; (b) the requirements, terms and conditions set forth in the Contract Documents; (c) all applicable Laws; (d) the Airport Rules and Regulations; (e) the requirements, terms and conditions set forth in all Governmental Approvals applicable to the O&M Services; (f) the then approved O&M Services Plan; and (g) any Safety Compliance Order and the Environmental Management Plan. If Developer encounters a contradiction between subsections (a) through (g), Developer shall advise the Owner of the contradiction and the Owner shall instruct Developer as to which subsection shall control in that instance. Developer is responsible for keeping itself informed of current Good Industry Practice.

7.2.1.2 Appendix 9-A sets forth certain minimum performance requirements related to the O&M Services. Developer's failure to comply with such requirements shall entitle the Owner to the rights and remedies set forth in the Contract Documents, including the assessment of Noncompliance Points, deductions from Developer Concessions Revenue and Supplemental Payments in accordance with Appendix 10, and termination for Developer Default.

7.2.1.3 Throughout the Concessions Operating Period, the Owner will maintain a goods delivery protocol (including a screening protocol) and related facilities and assume the costs of screening operations necessary for Developer to maintain a continuity of supply of goods for its Concessions operations as contemplated in this Agreement and the CDMP without incurring additional costs.

7.2.2 **Changes in Operation and Maintenance Standards**

7.2.2.1 The Owner shall have the right, in its sole discretion, to adopt at any time, and Developer acknowledges it must comply with, all changes and additions to, and replacements of, the Technical Requirements relating to the O&M Services. Without limiting the foregoing, the Parties anticipate that from time to time after the Effective Date, the Owner will adopt Non-Discriminatory O&M Changes. Developer shall be responsible for keeping itself informed of any Non-Discriminatory O&M Changes to the Manuals and Guidelines. For any other changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions to the Technical Requirements, the Owner shall provide written notice to Developer, whereupon they shall constitute amendments, and become part, of the Technical Requirements. Non-Discriminatory O&M Changes that encompass matters that are addressed in the Technical Requirements as of the Effective Date shall replace and supersede inconsistent provisions of such Technical Requirements.

7.2.2.2 If a Non-Discriminatory O&M Change requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element during the performance of the O&M Services, Developer shall perform the major repair, reconstruction, rehabilitation, restoration, renewal or replacement not later than the first to occur of: (a) any deadline reasonably prescribed by the Owner for the Non-Discriminatory O&M Change; (b) the date when Developer performs the Renewal Work on such Element; (c) the date when Developer is obligated to perform Renewal Work on such Element; and (d) provided the Owner gives no less than 30 days prior written notice to Developer, the date the Owner first applies the Non-Discriminatory O&M Changes to projects or facilities that the Owner manages or operates. Following commencement of any Work pursuant to this Section 7.2.2.2, Developer shall diligently prosecute the Work until completion, and in any event by the applicable deadline.

7.2.2.3 If a Non-Discriminatory O&M Change requires construction or installation of new improvements at, for or on the Project, Developer shall complete construction and installation of the new improvements according to the implementation period required by the Owner for such Non-Discriminatory O&M Change.

7.2.2.4 Developer shall be obligated to implement a Discriminatory O&M Change only after the Owner issues a Change Order or Change Directive, as applicable, which shall indicate the schedule, if applicable, for the completion of such work required by the Discriminatory O&M Change.

7.2.2.5 Developer may apply to the Owner for approval of Deviations regarding O&M Services in accordance with Section 12.3.

7.2.3 Management of Contaminated Materials and Undesirable Materials

In performing the O&M Services, Developer shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of all Contaminated Materials and Undesirable Materials, including contaminated soil and groundwater, in accordance with applicable Laws, Governmental Approvals, the O&M Services Plan, the Environmental Management Plan, DEN Environmental Management System, Good Industry Practice and all applicable provisions of the Contract Documents. The provisions of Section 5.13 shall apply to the O&M Services, provided that Developer shall not be responsible for management of Contaminated Materials and Undesirable Materials to the extent generated by the Owner in the course of its use of the Terminal Improvements following Project Substantial Completion.

7.2.4 Environmental Compliance

Throughout the performance of the O&M Services, Developer shall: (a) comply with all applicable Environmental Laws, the DEN Environmental Management System and the City Green Building Requirement; and (b) perform, or cause to be performed, all environmental mitigation measures and permit conditions, monitoring and reporting required under the Contract Documents and the Environmental Approvals applicable to the O&M Services and shall comply with all other conditions and requirements thereof. Developer, at its sole cost and expense, shall also abide by and comply with any Environmental Approvals required for the Renewal Work that may identify additional commitments.

7.2.5 Emergency Repair Work

7.2.5.1 Unless specified otherwise by the Owner and as demonstrated by issuance of a corresponding Change Order or Change Directive, as applicable, Developer shall be responsible for procuring and overseeing temporary and/or permanent Emergency repair work for the Project from and after the date of issuance of NTP 2 occurring within Construction Limits (during the Project Construction Period) or the O&M Limits (during the Project Operating Period). If specified by the Owner, Developer shall solicit competitive bids for such work in accordance with the Owner's policies and procedures. The Owner may, but is not obligated to, provide Oversight relating to Emergency repair work in accordance with the Contract Documents.

7.2.5.2 Developer shall ensure that all Emergency repair work is performed in accordance with Good Industry Practice, the Contract Documents and State and federal Laws applicable to such repair work. Further, Developer shall maintain estimates, cost records and supporting documentation in accordance with such Laws, and in a form and content to enable the Owner to seek reimbursement for eligible costs from the U.S. government, if applicable.

7.2.5.3 When an Emergency causes damage to any Element, the Owner authorizes Developer to pursue claims against any responsible third party for reimbursement of expenses incurred. Such authorization does not, and is not intended to, authorize Developer to seek reimbursement for any Performance Failure that would result if Developer fails to respond to the Emergency in accordance with the Contract Documents.

7.3 Oversight, Meetings and Reporting

7.3.1 Oversight by the Owner

The Owner shall have the right at all times to conduct Oversight relating to the O&M Services to the extent the Owner deems necessary or advisable, in its sole discretion, provided that the Owner shall conduct any such Oversight in a manner that does not unreasonably

interfere with the Work. The Owner may, in its sole discretion, designate any Person(s) to carry out Oversight on the Owner's behalf.

7.3.2 Meetings

7.3.2.1 Developer shall schedule all progress and periodic meetings with its Lead O&M Firm at a date, time and place reasonably convenient for the Owner to attend and, except in the case of urgency, shall provide the Owner with written notice and an agenda for such meetings at least seven days in advance of each meeting. Developer shall schedule a meeting within 24 hours of the occurrence of any Emergency and provide the Owner with written notice thereof as soon as practicable. The Owner may attend any such meeting and is permitted to raise any questions, concerns or opinions without restriction.

7.3.2.2 In addition to the regularly scheduled meetings set forth in Section III.3 of the Technical Requirements, the Owner and Developer, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve matters relating to the O&M Services or Project. Any such meeting may include the Lead O&M Firm, if its participation is requested in advance by Developer and agreed to by the Owner.

7.3.3 Reporting

Developer shall submit all reports relating to the O&M Services in the form, with the content and within the time required under the Contract Documents.

7.4 Renewal Work

7.4.1 Developer shall diligently perform Renewal Work as and when necessary to maintain compliance with performance measures and standards set forth in the Contract Documents. Developer also shall perform Renewal Work according to the other applicable terms of the Technical Requirements and, when applicable, the Handback Requirements. Developer shall use the Renewal Work Plan, as updated from time to time, for scheduling and performing Renewal Work, provided that Developer may perform Renewal Work not identified in the Renewal Work Plan at any time as necessary to maintain compliance with the Performance Standards, subject to scheduling the performance of such Renewal Work at times agreed to by the Owner, acting reasonably.

7.4.2 No later than 90 days after the end of each Calendar Year, Developer shall deliver to the Owner a written report of the Renewal Work performed as required under Section III.5.3 of the Technical Requirements. If applicable, the report also shall set forth the total draws and deposits made from and to the Renewal Work Reserve Account in the immediately preceding Calendar Year and the date, amount and use of each draw (including any use for Compliance Work or Handback Requirements work).

7.4.3 If at any time the Owner determines that Developer has failed to perform the Renewal Work in accordance with the then current Renewal Work Plan and applicable Technical Requirements, the Owner may give written notice thereof to Developer. If Developer has failed to complete the Renewal Work within 30 days after the Owner delivers such notice, then the Owner shall have the right to perform and complete such Renewal Work at the reasonable expense and for the account of Developer, and to make draws from the Renewal Work Reserve Account to pay the costs of such action, subject to the Lenders' rights to cure such failure and the Lenders' rights in and to the Renewal Work Reserve Account established in the Financing Documents. If the amounts in the Renewal Work Reserve Account are insufficient or the Owner is unable to make draws from the Renewal Work Reserve Account, the Owner shall have the right to use and apply payments otherwise payable to Developer by the

Owner under this Agreement to pay the costs of such action. The foregoing remedy is in addition to any other remedies available to the Owner under the Contract Documents on account of such failure, including the assessment of Noncompliance Points, and its right to intervene immediately and without notice to address Safety Compliance.

7.5 Renewal Work Plan

7.5.1 Within 45 days of the beginning of each Calendar Year, Developer shall submit a Renewal Work Plan and updates as required under Section III.5.3 of the Technical Requirements. The updated Renewal Work Plan shall show the revisions, if any, to the prior Renewal Work Plan and include an explanation of reasons for revisions. If no revisions are proposed, Developer shall include an explanation of the reasons no revisions are necessary. The updated Renewal Work Plan also shall set forth, by Element, Developer's planned draws from the Renewal Work Reserve Account during the forthcoming three Calendar Years.

7.5.2 At the Owner's request, Developer and its Lead O&M Firm, if any, shall promptly meet and confer with the Owner to review and discuss the original or updated Renewal Work Plan.

7.5.3 Within 30 days after receipt of the original and each updated Renewal Work Plan, the Owner shall have the right to make comments and recommendations and object to or disapprove the original or updated Renewal Work Plan or any elements thereof. Comments, objections, recommendations and disapprovals by the Owner shall be based on whether the original or updated Renewal Work Plan and underlying assumptions are reasonably likely to ensure that the condition of the Elements will meet or exceed the Technical Requirements throughout the rest of the Term and are consistent with the Contract Documents, including meeting the Performance Standards.

7.5.4 Within 30 days after receiving written notice of comments, objections, recommendations and disapprovals from the Owner, Developer shall submit to the Owner a revised original or updated Renewal Work Plan rectifying such matters and, for matters it disagrees with, a written notice setting forth those comments, objections, recommendations and disapprovals that Developer disputes, which notice shall give details of Developer's grounds for dispute. If Developer fails to give such notice within such time period, it shall be deemed to have accepted the comments, objections and recommendations and the original or updated Renewal Work Plan, as applicable, shall thereupon be deemed revised to incorporate the comments and recommendations and to rectify the objections. After timely delivery of any such notice, Developer and the Owner shall endeavor in good faith to reach agreement as to the matters listed in the notice. If no agreement is reached as to any such matter within 30 days after Developer delivers its notice, either Party may refer the Dispute for resolution in accordance with the Disputes Resolution Procedures.

7.5.5 The portions of the original or updated Renewal Work Plan submitted by Developer that are not in Dispute shall go into effect and govern, while the immediately preceding Renewal Work Plan (if any) shall remain in effect and govern until resolution as to those portions of the submitted Renewal Work Plan that are in Dispute.

7.6 Renewal Work Reserve Account

7.6.1 Establishment

7.6.1.1 Developer shall establish and fund a reserve account (the "**Renewal Work Reserve Account**") in accordance with Section 7.6.2 that may be used for the purposes permitted in the Funding Agreements.

7.6.1.2 Developer shall provide to the Owner the details regarding the Renewal Work Reserve Account, including the name, address and contact information for the depository institution.

7.6.2 Funding

Developer shall make deposits (or provide for other security, letter of credit or other instrument) to the Renewal Work Reserve Account at the frequencies or intervals and in the amounts as determined by the Lenders under the Funding Agreements, as such requirements may be waived or amended by the Lenders.

7.6.3 Use

Developer will have the right to draw from the Renewal Work Reserve Account for the purposes permitted in the Funding Agreements.

7.7 Handback Requirements

7.7.1 Handback Condition

7.7.1.1 Upon the Termination Date, Developer shall transfer the Project, including any Upgrades, to the Owner, at no charge to the Owner, in the condition that meets all of the applicable requirements of Part III of the Technical Requirements.

7.7.1.2 In the event of any earlier termination of this Agreement, Developer shall only be required to comply with the requirements of this Section 7.7 to the extent that any Renewal Work was scheduled to have been performed prior to the Early Termination Date.

7.7.2 Renewal Work

7.7.2.1 Developer shall diligently perform and complete all Renewal Work required to be performed and completed prior to the Termination Date based on the Renewal Work Plan.

7.7.2.2 In the event of any early termination of this Agreement, if Developer fails to complete such work prior to the Early Termination Date, the Owner shall deduct the cost of completing such work from the amount of compensation, if any, payable to Developer as a result of the early termination of this Agreement.

ARTICLE 8. NONCOMPLIANCE POINTS

8.1 Noncompliance Points System

Appendix 9 sets forth a table identifying Developer breaches or failures in performance of obligations under the Contract Documents including the Performance Standards (each, a “**Noncompliance**”) that may result in the assessment of Noncompliance Points and any cure periods (including any Temporary Cure Periods, Permanent Cure Periods and Fast Cure Periods, as applicable) available to Developer for each such Noncompliance. Noncompliance Points are a system to measure Developer performance levels during the concessions operations and O&M phases of the Project and trigger the remedies set forth in this Article 8. To the extent that a particular breach or failure of obligation under the Contract Documents may constitute more than one event of Noncompliance, such breach or failure shall be deemed to be solely the event of Noncompliance to which the greatest number of Noncompliance Points applies.

8.2 Assessment, Notification and Cure Process

8.2.1 Notification Initiated by Developer

As an integral part of Developer's self-monitoring and self-monitoring obligations, Developer shall notify the Owner of the occurrence of any Noncompliance in accordance with the procedures set forth in Appendix 9-B.

8.2.2 Notification Initiated by the Owner

If the Owner believes there has occurred any Noncompliance specified in Appendix 9, the Owner may deliver to Developer a notice of determination setting forth the Noncompliance, the applicable cure period and the Noncompliance Points to be assessed with respect thereto. Owner-initiated notifications of Noncompliance under this Section 8.2.2 shall not include notifications by any User other than the Owner's Authorized Representative.

8.2.3 Cure Periods

8.2.3.1 Developer shall have the cure period (if any) for each Noncompliance set forth in Appendix 9.

8.2.3.2 Developer's cure period (if any) with respect to such Noncompliance shall be deemed to start upon the date Developer first obtained knowledge of the Noncompliance. For this purpose, if the notice of the Noncompliance is initiated by the Owner, Developer shall be deemed to first obtain knowledge of the Noncompliance not later than the date of delivery of the notice to Developer.

8.2.3.3 Each of the cure periods set forth in Appendix 9 shall be the only cure period for Developer applicable to the Noncompliance.

8.2.4 Notification of Cure

When Developer determines that it has completed cure of any Noncompliance, Developer shall deliver notice thereof to the Owner in accordance with Appendix 9-A and the Parties shall follow the procedures set forth therein.

8.3 Assessment of Noncompliance Points

8.3.1 If at any time: (a) any report indicates or the Owner is notified or otherwise becomes aware of a Noncompliance; or (b) the Owner serves notice of determination under Section 8.2.2, then, without prejudice to any other right or remedy available to the Owner, the Owner may assess Noncompliance Points in accordance with Appendix 9, subject to the following terms and conditions:

8.3.1.1 The date of assessment shall be deemed to be the date of the initial notification under Section 8.2.

8.3.1.2 The number of points listed in Appendix 9 for any particular Noncompliance is the maximum number of Noncompliance Points that may be assessed for each event or circumstance that is a Noncompliance. The Owner may, in its sole discretion, assess less than the maximum.

8.3.1.3 Upon occurrence of the Noncompliance entitling the Owner to assess Noncompliance Points, and to the extent the Owner has determined to assess Noncompliance Points, the Owner shall only allocate the percent thereof set forth in the following table prior to expiration of the applicable cure period. If the Noncompliance is not fully and completely cured by the expiration of the applicable cure period, the remaining percentage

of Noncompliance Points indicated in the following table shall be deemed assessed, without further notice.

Notification Category:	Percent of Noncompliance Points Assessed Prior to Expiration of Applicable Cure Period (if any):	Remaining Percent of Noncompliance Points Assessed (a) if No Cure Period or (b) After Expiration of Applicable Cure Period without Full and Complete Cure (totaling 100%):
Notification initiated by Developer under <u>Section 8.2.1</u>	0%	100%
Notification initiated by the Owner under <u>Section 8.2.2</u>	100%*	0%

* This 100% allocation of Noncompliance Points may be reduced in accordance with Section 8.3.1.5.

8.3.1.4 For the purpose of applying the foregoing table, if the Owner and Developer deliver concurrent written notices under Section 8.2 of the same Noncompliance, Developer’s notice shall prevail. Notices shall be deemed to be concurrent if each sends its written notice before actually receiving the written notice from the other. Knowledge of the other’s written notice obtained prior to actual receipt of the notice shall have no effect on determining whether concurrent notice has occurred.

8.3.1.5 Appendix 9 assigns to certain instances of Noncompliance a fast cure period, which is a shorter cure period within the full cure period allowed for the associated Noncompliance (“**Fast Cure Period**”). If the Owner has delivered to Developer a notice of Cure Period assigned to it in Appendix 9, and if Developer cures the relevant Noncompliance within the Fast Cure Period, the Owner will not assess the Noncompliance Points that would otherwise be assessed in relation to that Noncompliance. Fast Cure Periods do not apply to circumstances where Developer delivers a written notice of a Noncompliance under Section 8.2.1.

8.3.2 If a Noncompliance is capable of being remedied but is not fully and completely cured within the applicable cure period, then continuation of such Noncompliance beyond such cure period, and each subsequent Recurrence Period (if any), shall be treated as a new and separate Noncompliance, without necessity for further notice, for the purpose of assessing Noncompliance Points and accruing Noncompliance Instances. Regardless of the continuing assessment of Noncompliance Points under this Section 8.3.2, the Owner shall be entitled to exercise its step-in rights under Section 20.2.4 and, if applicable, its work suspension rights under Section 20.2.7, after expiration of the initial cure period or Recurrence Period available to Developer. However, if and when the Owner commences to exercise its step-in rights (after any prior opportunity of Lenders to exercise their step-in rights has expired without exercise), Noncompliance Points and Noncompliance Instances shall no longer accrue with regard to the subject Noncompliance. If the Noncompliance is one for which no cure period is provided, then continuation thereof shall not be treated as a new or separate Noncompliance.

8.3.3 Developer is responsible for keeping and providing the Owner with current records of the number of assessed Noncompliance Points and accrued Noncompliance Instances, the date of each assessment or accrual, and the date when the Noncompliance were cured.

8.4 Monetary Deductions

8.4.1 General

In addition to Noncompliance Points, instances of Noncompliance referenced in Section 2.2 of Appendix 9 shall result in monetary deductions as set forth in Section 3 of Appendix 10 (Performance Deductions).

8.4.2 Basis for Deductions

8.4.2.1 Developer acknowledges that any Performance Deductions assessed in accordance with this Agreement are reasonable liquidated damages in order to compensate the Owner for:

1. The Owner's increased costs of administering the Contract Documents, including the increased costs of Oversight and any obligations to pay or reimburse Governmental Entities with regulatory jurisdiction over the Project for their increased costs of monitoring and enforcing Developer's compliance with applicable Governmental Approvals;
2. The Owner's increased costs of accommodating the Airport Activities;
3. The Owner's potential loss of Concession Revenues due to the reduction in the availability and quality of the Project so as to adversely affect the experience of Users;
4. Potential harm to the credibility and reputation of the Owner, the Airport and the revitalization project with Users and potential Users, stakeholders, policy makers and with the general public; and
5. Potential harm and detriment to Users, which may include disruption to travel, shopping and other Airport Activities.

8.4.2.2 Developer further acknowledges that such increased costs and loss of revenue, and harm and detriment to Users, would be difficult and impracticable to measure and prove, because, among other things, the costs of Oversight prior to increases in the level thereof will be variable and extremely difficult to quantify, the nature and level of increased Oversight will be variable depending on the circumstances, and the variety of factors that influence use of and demand for the Terminal Improvements make it difficult to sort out causation and quantify the precise revenue loss attributable to the matters that will trigger these liquidated damages.

8.4.2.3 Subject to any other remedy expressly provided in this Agreement, any monetary deduction assessed in accordance with this Agreement shall constitute the Owner's sole remedy in respect of the delay, breach or failure, as applicable, for which such monetary deduction is assessed.

8.4.3 Maximum Annual Monetary Deductions

Notwithstanding any other provision of this Agreement, the aggregate Deduction Amount per annum shall not exceed the MASP.

8.4.4 Owner Performance Deductions

Owner Performance Deductions may be assessed in accordance with Appendix 10 and Appendix 10-A.

8.5 Increased Oversight, Testing and Inspection

8.5.1 If at any time Developer is assessed Noncompliance Points, or accumulates Noncompliance Instances, in excess of the applicable Increased Oversight Threshold, then, in addition to other remedies available under the Contract Documents, the Owner shall be entitled, at Developer's reasonable expense, to increase the level of Oversight of the Project and Developer's compliance with its obligations under this Agreement, to such level as the Owner reasonably sees fit, in its reasonable discretion, until such time as Developer has demonstrated to the reasonable satisfaction of the Owner that Developer:

8.5.1.1 Has reduced the number of Noncompliance Points below the threshold triggering such heightened scrutiny;

8.5.1.2 Is diligently pursuing cure of all other instances of Noncompliance;

8.5.1.3 Has cured any then-existing Developer Defaults, except a Developer Default based on a Persistent Developer Noncompliance; and

8.5.1.4 Will perform and is capable of performing its obligations under the Contract Documents.

8.5.2 The foregoing does not preclude the Owner, at its sole discretion and expense, from increasing its level of Oversight at other times.

ARTICLE 9. CONTRACTING AND LABOR PRACTICES

9.1 Contracts and Contractors

9.1.1 Developer shall provide the Owner with a list of all Contracts and the Contractors thereunder with each monthly report required under this Agreement or the Technical Requirements. Developer shall allow the Owner ready access to all Contracts and records regarding Contracts in respect of the matters contemplated by the Contract Documents and shall deliver to the Owner, (a) within ten days after execution, complete copies of all Key Contracts, guarantees thereof and amendments and supplements to Key Contracts and guarantees thereof, in each case without redaction, and (b) within 20 days after receipt of a request from the Owner, complete copies of all other Contracts and amendments and supplements thereto, in each case without redaction, as may be requested by the Owner.

9.1.2 As soon as Developer identifies a potential first-tier Contractor, but in no event later than 15 days prior to the scheduled initiation of Work by such proposed Contractor, Developer shall notify the Owner in writing of the name, address, phone number and authorized representative of such Contractor.

9.1.3 Developer shall not include, and shall ensure that no Contractor includes, any restrictive covenant in any Contract limiting or prohibiting a Contractor from performing work for or providing services to the Owner following the expiration or any earlier termination of this Agreement.

9.2 Responsibility for Work, Contractors and Employees

9.2.1 Developer shall retain or cause to be retained only Contractors that are qualified, experienced and capable in the performance of the portion of the Work assigned. Developer shall assure that each Contractor has at the time of execution of the Contract, and maintains at all times during performance of the assigned Work, all licenses, bonds and insurance required by applicable Laws. The retention of Contractors by Developer will not

relieve Developer of its responsibilities hereunder or for the quality of the Work or materials or services provided by it.

9.2.2 Each Contract shall include terms and conditions sufficient to ensure both the acknowledgement and compliance by the Contractor with the applicable requirements of the Contract Documents, and shall include those terms that are specifically required by the Contract Documents to be included therein.

9.2.3 Developer shall require each Contractor to familiarize itself with the requirements of any and all applicable Laws, including those Laws applicable to the use of federal-aid funds, and the conditions of any required Governmental Approvals.

9.2.4 Nothing in this Agreement will create any contractual relationship between the Owner and any Contractor. No Contract entered into by or under Developer shall impose any obligation or liability upon any Indemnified Party, including to any Contractor or any of its employees.

9.2.5 Developer shall supervise and, as between Developer and the Indemnified Parties, be fully responsible for the actions, omissions, negligence, willful misconduct, fraud, bad faith or breach of applicable Law or contract by any Developer-Related Entity or by any member or employee of Developer or any Developer-Related Entity in connection with the Project, as though all such individuals were directly employed by Developer.

9.3 Key Contracts; Contractor Qualifications

For the purposes of this Section 9.3, references to Developer means Developer or the highest tier Contractor that is or will be party to the Key Contract, as the context may require.

9.3.1 Use of and Change in Contractors

Developer shall retain, employ and utilize the firms and organizations specifically listed in Appendix 3-H to fill the corresponding Key Contractor positions listed therein. Developer shall not remove or replace, and shall not permit removal or replacement of, such Key Contractors without the prior written approval of the Owner in its reasonable discretion. Each Key Contractor must meet the minimum qualifications for the relevant type of work category in accordance with the requirements set forth in the RFQ. Developer shall not terminate, and shall not permit any Contractor to terminate, any Key Contract with a Key Contractor, or permit or suffer any substitution or replacement (by way of assignment of the Key Contract, transfer to another of any material portion of the scope of work, or otherwise (other than permitted subcontracting of work)) of such Key Contractor, except, in each case:

9.3.1.1 In the case of material uncured default by the Key Contractor;

9.3.1.2 Termination of this Agreement and the Owner's election not to assume the Key Contract, in its reasonable discretion;

9.3.1.3 If there occurs any suspension, debarment, disqualification or removal (distinguished from ineligibility due to lack of financial qualifications) of the Contractor, or there goes into effect an agreement for voluntary exclusion of the Contractor, from bidding, proposing or contracting with any federal, State or local department or agency; or

9.3.1.4 With the Owner's prior written approval in its reasonable discretion.

9.3.2 Key Contract Provisions

Each Key Contract shall:

9.3.2.1 Require the Key Contractor to carry out its scope of work in accordance with the Contract Documents, the Governmental Approvals, applicable Law, and plans, systems and manuals developed and used by Developer pursuant to the Contract Documents;

9.3.2.2 Include a covenant to maintain all licenses required by applicable Law;

9.3.2.3 Set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of the Contract Documents and in accordance with Good Industry Practice for work of similar scope and scale;

9.3.2.4 Set forth representations, warranties, guaranties and liability provisions of the Key Contractor appropriate for work of similar scope and scale;

9.3.2.5 Expressly state that all remaining warranties and guarantees, express or implied, shall inure to the benefit of the Owner, its successors and assigns, and any third parties for whom Work is being performed, upon expiration of the Term or earlier termination of this Agreement;

9.3.2.6 If applicable, require the Key Contractor to procure the Payment Bond and Performance Bond in accordance with Section 18.2 prior to commencement of any work by or on behalf of the Key Contractor, and expressly require such Key Contractor to provide any surety notices of loss or potential loss to Developer and the Owner;

9.3.2.7 Expressly provide that the Key Contractor shall have no right to suspend or demobilize unless and until it delivers to the Owner written notice of Developer's breach or default;

9.3.2.8 Require the services of, and not be assignable by, the Key Contractor without Developer's and the Owner's prior written consent, provided that this provision shall not prohibit the subcontracting of portions of the Work;

9.3.2.9 Expressly include the requirements and provisions set forth in this Agreement applicable to Contractors regarding Intellectual Property rights and licenses;

9.3.2.10 Expressly require the Key Contractor to participate in meetings between Developer and the Owner concerning matters pertaining to such Key Contractor, its work or the coordination of its work with other Contractors, provided that in all cases direction to such Key Contractor shall be provided by Developer, and provided further that nothing in this Section 9.3.2.10 shall limit the authority of the Owner to give such direction or take such action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property;

9.3.2.11 Include an agreement by the Key Contractor to participate in any dispute resolution proceeding pursuant to Article 26, if such participation is requested by either the Owner or Developer;

9.3.2.12 Without cost to Developer or the Owner and subject to the Lender's rights under the Direct Agreement, expressly permit assignment to the Owner, the Lender, or either of their respective successors, assignees or designees, of all Developer's rights under the Key Contract, contingent only upon delivery of written request from the Owner following termination or expiration of this Agreement, allowing the Owner or its successor, assign or designee to assume the benefit of Developer's rights with liability only for those

remaining obligations of Developer accruing after the date of assumption, such assignment to include the benefit of all Key Contractor warranties, indemnities, guarantees and professional responsibility;

9.3.2.13 Expressly state that any acceptance of assignment of the Key Contract by the Owner, the Lender or any of their respective successors, assigns or designees shall not operate to make the assignee responsible or liable for any breach of the Key Contract by Developer or for any amounts due and owing under the Key Contract for work or services rendered prior to assignment;

9.3.2.14 Subject to the Lender's rights under the Direct Agreement, expressly include a covenant acknowledging that, upon receipt of written notice from the Owner, the Owner is entitled to exercise step-in rights with respect to the Key Contract, without any necessity for a consent or approval from Developer or the making of a determination whether the Owner validly exercised its step-in rights, and include a waiver and release by Developer of any claim or cause of action against the Key Contractor arising out of or relating to its recognition of the Owner's rights in reliance on any such written notice from the Owner;

9.3.2.15 Expressly include a covenant, expressly stated to survive termination of the Key Contract, to, subject to the rights of the Lenders as provided in any Direct Agreement, promptly execute and deliver to the Owner or its successor, assign or designee a new contract between the Key Contractor and the Owner or its successor, assign or designee on the same terms and conditions as the Key Contract, if (a) the Key Contract is rejected by Developer in bankruptcy or is wrongfully terminated by Developer and (b) the Owner delivers written request for such new contract within 60 days following termination or expiration of the Key Contract. The Key Contract also shall include a covenant, expressly stated to survive termination of the Key Contract, to the effect that if the Key Contractor was a party to an escrow agreement for an Intellectual Property Escrow and Developer terminates it, then the Key Contractor also shall execute and deliver to the Owner, concurrently with such new contract, a new escrow agreement on the same terms and conditions as the terminated escrow agreement, and shall concurrently make the same deposits to the new Intellectual Property Escrow as made or provided under the terminated escrow agreement. The obligation to include the same terms and conditions is subject to the following exceptions: (i) terms and conditions of a Key Contract or Intellectual Property Escrow agreement rendered moot or inapplicable solely due to change in the identity of the contracting party to the Owner or its successor, assign or designee; and (ii) terms and conditions of a Key Contract that must be adjusted due to schedule delay caused solely by Developer's rejection in bankruptcy or wrongful termination. This Section 9.3.2.15 shall not apply to Key Contracts with the Owner or Governmental Entities;

9.3.2.16 Expressly include requirements that the Key Contractor will: (a) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment supplier, designer, service provider), and retain such books and records for the period set forth in Section 23.1.2; and (b) permit audit thereof by both Developer and the Owner in respect of matters contemplated by the Contract Documents; and (c) provide progress reports to Developer appropriate for the type of work it is performing sufficient to enable Developer to provide the reports it is required to furnish the Owner under this Agreement;

9.3.2.17 Expressly include the Indemnified Parties as indemnitees, with direct right of enforcement, in any indemnity given by the Key Contractor under the Key Contract;

9.3.2.18 Expressly include an acknowledgement that the Key Contractor has no right or claim to any lien or encumbrance upon the Project, the Work Site or the Terminal

Improvements for failure of the other contracting party to pay amounts due the Key Contractor, and a waiver of any such right or claim that may exist at Law or in equity;

9.3.2.19 Expressly include the right of Developer to terminate the Key Contract in whole or in part upon any termination of this Agreement without liability of Developer or the Owner for the Key Contractor's lost profits or business opportunity;

9.3.2.20 Not contain any terms that do not comply or are inconsistent with the terms of the Contract Documents, including terms that do not comply or are inconsistent with this Article 9 or with the applicable requirements of Section 23.1 regarding maintenance of Project Records, or that are inconsistent with the requirements of the relevant scope of Work; and

9.3.2.21 Expressly provide that any purported amendment with respect to any of the foregoing matters without the prior written consent of the Owner shall be null and void.

9.3.3 Key Contract Amendments

Developer shall not amend any Key Contract with respect to any of the foregoing matters without the Owner's prior written consent in its good faith discretion.

9.4 Contracts with Affiliates

9.4.1 Developer shall have the right to have the Work performed by Affiliates of Developer only under the following terms and conditions:

9.4.1.1 Developer shall execute a written Contract with the Affiliate;

9.4.1.2 The Contract shall comply with all applicable provisions of the Contract Documents, be consistent with Good Industry Practice, and be in form and substance substantially similar to Contracts then being used by Developer or Affiliates of Developer for similar work with unaffiliated Contractors;

9.4.1.3 The Contract shall set forth the scope of Work and all the pricing, terms and conditions respecting the scope of Work;

9.4.1.4 The pricing, scheduling and other terms and conditions of the Contract shall be no less favorable to Developer than those that Developer could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor. Developer shall bear the burden of proving that the same are no less favorable to Developer; and

9.4.1.5 No Affiliate of Developer shall be engaged to perform any Work which: (a) any Contract Document or the Project Management Plan indicates are to be performed by an independent or unaffiliated Contractor; or (b) would be inconsistent with Good Industry Practice.

9.4.2 Before entering into a written Contract with an Affiliate of Developer or any supplement or amendment thereto, Developer shall submit a true and complete copy of the proposed Contract to the Owner for review and comment in respect of compliance thereof with the Contract Documents. The Owner shall have 20 days after receipt to deliver its comments to Developer. If the Contract with the Affiliate is a Key Contract, the Key Contract and the Affiliate shall be subject to the requirements of Section 9.3.

9.4.3 Developer shall make no payments to Affiliates of Developer for work or services in advance of provision of such work or services, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar

scope. Advance payments in violation of this provision shall be excluded from the calculation of Termination Compensation.

9.5 Payment to Contractors

9.5.1 Prompt Payment

9.5.1.1 Developer shall comply, and shall cause each Contractor to comply, with the provisions of Colorado Revised Statutes Sections 24-91-103 and any other applicable Law relating to prompt payment of contractors and/or subcontractors.

9.5.1.2 If any lien on funds or other claim is given, made or filed against the Owner or Project by any Contractor in connection with the performance of any portion of the Work, including the supply, furnishing or delivery of materials, equipment, labor and/or services, Developer shall promptly procure one or more bonds as necessary to release such claim within 10 days of the filing or receipt of same. All bonds furnished pursuant to this provision shall satisfy statutory requirements applicable to the subject lien on funds or other claim, for release of same, including Colorado Revised Statutes Section 38-26-106.

9.5.2 Retainage

Developer shall include in each Contract for any portion of the Construction Work, or cause to be included therein, the following provisions:

9.5.2.1 Execution of the Contract by Subcontracted Contractor shall constitute a waiver by Subcontracted Contractor to claim any right of payment of interest upon any such retained funds, or to claim any right of payment of interest upon funds withheld under the provisions of CRS §38-26-107.

9.5.2.2 All such retained amounts shall be released upon final acceptance by Subcontracting Contractor of the relevant work under the Contract.

9.6 Minority and Women's Business Enterprises

9.6.1 Developer shall comply with the M/WBE requirements set forth in Appendix 8-A and the M/WBE Plan attached as Appendix 8-A-1, as amended from time to time in accordance with this Agreement, in performing the D&C Work.

9.6.2 Developer shall comply with the ACDBE requirements set forth in Appendix 5-C, Appendix 5-C-2 and the ACDBE Plan in developing and implementing the Concessions Program.

9.7 Personnel and Supervision

9.7.1 Key Personnel

9.7.1.1 Developer shall retain, employ and utilize the individuals specifically listed in Appendix 3-H and in the Project Management Plan to fill the corresponding Key Personnel positions listed therein; provided, however, that in the event that an individual name is not listed for a Key Personnel position as of the Developer Execution Date, Developer may designate such individual following the Developer Execution Date, subject to providing the Owner with prior written notice of the proposed individual and the Owner's written confirmation that such individual meets or exceeds the applicable Key Personnel Criteria. Upon designation of any such approved individual, the Parties shall promptly amend Appendix 3-H to reflect such designation. The Parties hereby agree and confirm that the same individual may fill different Key Personnel positions. Developer shall not, prior to Project Substantial Completion, change

or substitute any such individuals except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment.

9.7.1.2 Developer shall notify the Owner in writing of any proposed replacement for any Key Personnel position. The Owner shall have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position (including personnel employed by Contractors to fill any such position) and to approve or disapprove, in its reasonable discretion, use of such individual in such position prior to the commencement of any Work by such individual.

9.7.1.3 Developer shall cause each individual filling a Key Personnel position to dedicate the full amount of time necessary for the proper prosecution and performance of the Work.

9.7.1.4 Developer shall provide the Owner with phone and cell phone numbers and email addresses for all Key Personnel. The Owner requires the ability to contact Key Personnel 24 hours per day, seven days per week.

9.7.2 **Supervision**

Developer shall give the Work the constant attention necessary to ensure the scheduled progress, and cooperate fully with the Owner. Without limiting the provisions of Section 9.4.1:

9.7.2.1 Developer shall ensure that the Project Executive or the Project Manager, or one of their Owner-approved designees, is at the Project Site at all times while Work is in progress to act as Developer's agent. Such supervisory personnel must be competent and capable of properly interpreting the Contract Documents and thoroughly experienced in the type of work being performed. Such supervisory personnel must have the full authority to receive instructions from the Owner and to execute the orders or directions of the Owner provided in accordance with the Contract Documents.

9.7.2.2 Developer shall provide a team or group of persons that speaks and understands English, are available at or reasonably near the Project Site on a 24-hour basis, seven days a week, and have authority to act on behalf of Developer as a point of contact for emergencies or in case immediate action is required to resolve any other problem that might arise.

9.8 **Labor Standards and Conduct of Developer Personnel**

9.8.1 **Compliance with Laws**

In the performance of its obligations under the Contract Documents, Developer at all times shall comply with, and require by contract that all Contractors and vendors comply with, all applicable labor, occupational safety and health Laws.

9.8.2 **Skill, Experience, Licenses and Certifications**

9.8.2.1 All individuals performing the Work shall have the skill and experience and all licenses or certifications required to perform the Work assigned to them in accordance with the Contract Documents. In addition to any other rights and remedies under the Contract Documents, the Owner shall have the right to require Developer to remove any person who fails to meet such requirements upon written notice to Developer.

9.8.2.2 If any individual employed by Developer or any Contractor lacks such skill, experience, licensing and certification, or is not performing the Work in a proper, safe and skillful manner, then Developer shall, or shall cause such Contractor to, remove such individual and such individual shall not be re-employed on the Work. If, after

notice and reasonable opportunity to cure, such individual is not removed or if Developer fails to ensure that skilled, experienced, licensed and certified personnel are furnished for the proper performance of the Work, then the Owner may suspend, upon written notice to Developer, the affected portion of the Work until such individual is removed or skilled, experienced, licensed and certified personnel are furnished, as applicable. Such suspension shall in no way relieve Developer of any obligation contained in the Contract Documents or entitle Developer to any additional compensation, time extension or other relief.

9.8.3 Conduct of Developer Personnel

9.8.3.1 All Developer Personnel must conduct themselves in an orderly and disciplined manner while engaged in the performance of the Project both on and off of the Work Site. The Owner expects and will demand that Developer enforce acceptable and appropriate conduct by all Developer Personnel to enhance job and public safety and to present to the public the best possible image of Owner construction, operation, maintenance and Concessions activities.

9.8.3.2 Should any Developer Personnel behave in a disorderly manner or be abusive to others by language or actions while engaged in the performance of the Work either on or off the Work Site, and if Developer fails to properly discipline the offender and provide satisfactory assurance that such behavior will not recur, the Owner is authorized to demand that Developer no longer assign the offender to any Work. Upon such written demand, Developer shall promptly remove that individual from the Project.

9.9 Ethical Standards

9.9.1 Within ninety (90) days after the Effective Date, Developer shall adopt written policies establishing ethical standards of conduct for Developer and all Developer-Related Entities, including Developer's supervisory and management personnel in dealing with: (a) the Owner; and (b) employment relations in connection with the Project. Such policy shall be subject to review and comment by the Owner prior to adoption solely with respect to compliance with the terms of this Section 9.9. Such policy shall include standards of ethical conduct concerning the following:

9.9.1.1 Restrictions on gifts and contributions to, and lobbying of, the Owner and any of its officers and employees;

9.9.1.2 Protection of employees from unethical practices in selection, use, hiring, compensation or other terms and conditions of employment, or in firing, promotion and termination of employees;

9.9.1.3 Protection of employees from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms and conditions of employment) in response to reporting of illegal (including the making of a false claim), unethical or unsafe actions or failures to act by Developer or any Developer-Related Entity;

9.9.1.4 Restrictions on directors, members, officers or supervisory or management personnel of Developer or any Developer-Related Entity engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the Project or employees; and

9.9.1.5 Restrictions on use of office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director,

member, officer or supervisory or management person, rather than primarily for the benefit of Developer or the Project, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

9.9.2 Developer shall cause its directors, members, officers and supervisory and management personnel, and require those of all Developer-Related Entities, to adhere to and enforce the adopted policy on ethical standards of conduct for the Project. Developer shall establish reasonable systems and procedures to promote and monitor compliance with the policy.

9.10 Nondiscrimination

In connection with the performance of the Work under this Agreement, Developer agrees not to refuse to hire, discharge, promote, demote, or to discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, and/or physical and mental disability. Developer further agrees to insert, or cause to be inserted, the foregoing provision in all Contracts. Failure by Developer or any Contractor to comply with this Section 9.10 shall constitute a Developer Default under Section 20.1.1.11.

9.11 Prevailing Wages and Fair Wages

9.11.1 Applicability

For purposes of this Section 9.11, the term Contractor shall not include Suppliers, manufacturers, or distributors.

9.11.2 Prevailing Wage Ordinance

Developer shall fully familiarize itself and comply with, and shall cause the Contractors to fully familiarize themselves and comply with, DRMC §20-76, et seq. (Payment of Prevailing Wages).

9.11.3 Posting of the Applicable Wage Rates

Developer shall post in a prominent and easily accessible place at the Project Site the “Auditor’s Notice to Employees” and the schedule of wage rates to be paid by Developer and all Contractors.

9.11.4 Rate and Frequency of Wages Paid

9.11.4.1 Developer shall be familiar with, and shall cause all Contractors performing any portion of the Construction Work to be familiar with, the Prevailing Wage Rate Schedule.

9.11.4.2 Developer shall pay, and shall cause Contractors performing any portion of the Construction Work to pay, their respective workers, mechanics, and laborers on a weekly basis according to the rates and classifications set forth in the Prevailing Wage Rate Schedule, provided that:

1. Developer and Contractors are not required to comply with any increases in the Prevailing Wage Rate Schedule that occur within the first year following the Developer Execution Date. Developers and Contractors must comply with any increases in the Prevailing Wage Rate Schedule that occur on or after the first anniversary of the Developer Execution Date in respect of any Contract for which the Contract Time exceeds one (1) year, provided that prevailing wage and fringe rates will adjust on, and only on, each anniversary

of the Developer Execution Date. In no event shall any increases in prevailing wages in excess of the amounts set forth in Appendix 8-B result in any increased liability on the part of the Owner, and the possibility and risk of any such increase is assumed by Developer.

2. Developer and Contractors may not reduce wages below the prevailing wages set forth in Appendix 8-B on account of any decreases in the Prevailing Wage Rate Schedule that occur within the first year following the Developer Execution Date. Decreases in prevailing wages shall not be effective except on or after the first anniversary of the Developer Execution Date.

9.11.5 Reporting Wages Paid

9.11.5.1 Developer and Contractors who are performing work that is covered by DRMC §20-76 shall furnish to the Owner, for each week during which workers are employed under this Agreement or any Contract, copies of the payroll records of all such workers. These payroll records shall contain information showing the name, social security number, and wage classification of each worker, the number of hours worked by each worker, the hourly rate of pay of each worker, the shift(s) and hours worked, the check number of funds paid for each worker, the itemized deductions made from the pay of each worker, and the gross and net amount of pay received by each worker for the week. Upon request, Developer shall provide other documentation deemed necessary by the Owner to verify the matters contemplated in this Section 9.11. All copies of the payroll records shall be accompanied by sworn statements of Developer and Contractors that: the copies are true and correct and are the payroll records of all mechanics, workers, and laborers employed under the Agreement and Contracts; the payments were made to the workers as stated in the payroll records; and no deductions were made other than those set forth in the payroll records.

9.11.5.2 The original of these payroll records shall be transmitted to the Owner Auditor. If required by the Owner Auditor, Developer will submit certified payroll information electronically on a system specified by the Owner Auditor at no cost to the Owner.

9.11.6 Failure to Pay Prevailing Wages

Failure to comply with Section 9.11 shall constitute a Developer Default under Section 20.1.1.11. In addition, Developer and/or applicable Contractor(s) may be subject to sanctions, penalties, or debarment under DRMC §20-77.

9.12 Use, Possession or Sale of Alcohol or Drugs

Developer shall cooperate and comply with, and shall cause the Contractors and their respective officers, agents and employees to cooperate and comply with, the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession, or sale of alcohol or drugs. Except as otherwise expressly authorized in this Agreement, Developer shall also prohibit consumption of alcohol within the Work Site. Violation of these provisions or refusal to cooperate with implementing this alcohol and drug policy can result in the Owner barring Developer or any Contractor from Owner facilities or participating in Owner operations and may result in a Developer Default.

9.13 Owner's Smoking Policy

Developer will prohibit smoking by its employees, the Contractors' employees and the public within the Work Site and the Terminal Improvements. Developer further agrees to not

sell or advertise tobacco products (except as expressly permitted under Appendix 5-A as part of the Concessions Program). Developer acknowledges that smoking is not permitted in Airport buildings and facilities except for designated areas. Developer and its officers, agents, and employees shall cooperate and comply with the provisions of Owner's Executive Order No. 99 dated December 1, 1993, Executive Order No. 13 dated July 31, 2002, the provisions of D.R.M.C., §§ 24-301 to 317 et seq., and the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 et seq. and the Airport's Rules and Regulations Rules 30 and 40.

9.14 No Employment of Illegal Aliens

9.14.1 This Agreement is subject to the Certification Ordinance.

9.14.2 Developer hereby certifies that:

9.14.2.1 At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under the Contract Documents; and

9.14.2.2 Developer will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Contract Documents.

9.14.3 Developer also agrees and represents that:

9.14.3.1 It shall not knowingly employ or contract with an illegal alien to perform work under the Contract Documents;

9.14.3.2 It shall not enter into a Contract with a Contractor that fails to certify to Developer that it shall not knowingly employ or contract with an illegal alien to perform work under the Contract Documents;

9.14.3.3 It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Contract Documents, through participation in the E-Verify Program.

9.14.3.4 It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Contract Documents, and that otherwise requires Developer to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

9.14.3.5 If it obtains actual knowledge that a Contractor performing work under the Contract Documents knowingly employs or contracts with an illegal alien, it will notify such Contractor and the Owner within three (3) days. Developer will also then terminate such Contractor if, within three (3) days after such notice, the Contractor does not stop employing or contracting with the illegal alien, unless during such three-day period the Contractor provides information to establish that the Contractor has not knowingly employed or contracted with an illegal alien.

9.14.3.6 It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the Owner Auditor, under authority of D.R.M.C. § 20-90.3.

9.14.4 Developer is liable for any violations as provided in the Certification Ordinance. If Developer violates any provision of this Section 9.14 or the Certification Ordinance, the Owner may terminate this Agreement for a Developer Default under Section 20.1.1.20. Any such termination of this Agreement due to a violation of this Section 9.14 or the

Certification Ordinance may also, at the discretion of the Owner, constitute grounds for disqualifying Developer from submitting bids or proposals for future contracts with the Owner.

ARTICLE 10. SAFETY COMPLIANCE

The Owner is entitled from time to time to issue Safety Compliance Orders to Developer with respect to the Project to correct a specific safety condition or risk involving the Project that the Owner has reasonably determined exists through investigation or analysis.

10.1 Safety Compliance Orders

10.1.1 The Owner shall use good faith efforts to inform Developer at the earliest practicable time of any circumstance or information relating to the Project which in the Owner's reasonable judgment is likely to result in a Safety Compliance Order. Except in the case of an Emergency, the Owner shall consult with Developer prior to issuing a Safety Compliance Order concerning the risk to User or worker safety, alternative compliance measures, cost impacts, and the availability of Developer resources to fund the required Work.

10.1.2 Subject to conducting such prior consultation, the Owner may issue Safety Compliance Orders to Developer at any time from and after the issuance of NTP 2 within the Work Site, excluding any Construction Work Areas not under its control.

10.2 Duty to Comply

Subject to Section 10.1, Developer shall implement all Safety Compliance as expeditiously as reasonably possible following issuance of the Safety Compliance Order. Developer shall diligently prosecute the work necessary to achieve such Safety Compliance until completion. Developer shall not be relieved from its obligation to comply with any Safety Compliance Order except to the extent that a Relief Event specifically prevents such compliance.

ARTICLE 11. RELIEF EVENT CLAIMS

11.1 General

11.1.1 Relief Events; Waiver

If a Relief Event occurs, subject to the limitations and exclusions provided in this Agreement, Developer may seek additional monetary compensation, time extension and/or other relief, as applicable, in accordance with this Article 11. The compensation amounts, time extensions and any other relief granted in accordance with this Article 11 shall represent the sole and exclusive right of Developer against the Owner and its successors, assigns, elected and appointed officials, officers, agents, representatives, consultants and employees, including members of a board or commission, for compensation, time extension or any other relief for any adverse financial, schedule or other effects of any Relief Event. Developer unconditionally and irrevocably waives the right to any claim against the Owner and its successors, assigns, elected and appointed officials, officers, agents, representatives, contractors, consultants and employees, including members of a board or commission, for any additional monetary compensation, time extension and/or any other relief with respect to the occurrence of Relief Events except to the extent granted in accordance with this Article 11. The provisions of this Section 11.1 shall not limit Developer's rights under Section **Error! Reference source not found.**, 21.3, 21.5 or 21.9, provided that no award of compensation or damages shall be duplicative.

11.2 Relief Event Claim Procedure

11.2.1 Relief Event Notice

In order to assert an entitlement based on the occurrence of a Relief Event, Developer shall give written notice (“**Relief Event Notice**”) of the occurrence of the Relief Event to the Owner as soon as practicable, and in any event within fourteen (14) days of the date Developer has knowledge (including knowledge of any Key Contractor) that the Relief Event has caused or is likely to cause an entitlement under this Agreement, provided that to the extent that Developer or any Key Contractor has knowledge of a Relief Event between the Developer Execution Date and the Effective Date, for purposes of the Relief Event Notice, the applicable 14-day period shall be deemed to commence on the Effective Date. The Relief Event Notice shall set forth, to the extent then known:

11.2.1.1 A description of the Relief Event and its cause;

11.2.1.2 The date on which the Relief Event began and its estimated duration;

11.2.1.3 Developer’s good faith estimate of the anticipated adverse and beneficial effects of the Relief Event and the basis for such estimate;

11.2.1.4 If the Relief Event will likely impact the D&C Work, Developer’s preliminary good faith estimate of expected delay to any critical path matter in the Project Schedule directly attributable to the Relief Event and the basis for such estimate, including a description of measures that will be taken by Developer to mitigate the impact of the Relief Event on the Project Schedule;

11.2.1.5 A summary of the consequences of the Relief Event and the expected impact on the performance of Developer’s obligations under the Contract Documents and on the Concessions Program, if applicable; and

11.2.1.6 The nature and scope of Developer’s potential entitlement to additional monetary compensation, time extension and any other relief, as applicable, under this Agreement.

11.2.2 Mandatory Claim Records

Upon submitting a Relief Event Notice, Developer shall keep detailed, daily records of the consequences of the Relief Event and its impact on the performance of Developer’s obligations under the Contract Documents. Without limiting the foregoing, such records shall identify each operation and specific location affected by the Relief Event and, for any Compensation Event, all labor, material and equipment costs incurred for operations affected by the Compensation Event. The Owner may also keep records of all labor, material and equipment used on the operations affected by a Relief Event. Developer shall provide to the Owner a copy of Developer’s daily records on a weekly basis and shall be entitled to receive a copy of the Owner’s daily records, if any, upon written request. Copies of daily records to be provided hereunder shall be provided at no cost to the recipient.

11.2.3 Updates and Supplemental Information

Developer shall provide the Owner with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Relief Event and the matters described in Section 11.2.1. Without limiting the foregoing, Developer shall promptly notify the Owner of the cessation of any Relief Event and when performance of its affected obligations can be resumed. The Owner may, at any time following receipt of a Relief Event Notice, request from Developer any further information that

the Owner may reasonably require, and Developer shall provide such information to the Owner within a reasonable period after such request.

11.2.4 Relief Event Claim

Developer shall submit to the Owner a formal request (“**Relief Event Claim**”) for specific monetary compensation, time extension and/or other relief, the basis therefor, and the event giving rise to the requested compensation, time extension and/or relief, as applicable, within 60 days after submittal of the corresponding Relief Event Notice. The Relief Event Claim shall include the following information, to the maximum extent then available:

11.2.4.1 Full details of the Relief Event, including its nature, the date of its occurrence, its duration (to the extent that the Relief Event and the effects thereof have ceased or estimated duration to the extent that the Relief Event and the effects thereof have not ceased), the portions of the Work affected. Impacts to the O&M Services and/or the Concessions, if any, shall be stated by Fiscal Year;

11.2.4.2 Identification of all pertinent documents and the substance of any oral communications, if any, relating to the Relief Event and the name of the person or persons making such material oral communications;

11.2.4.3 Identification of the particular provisions of this Agreement that are claimed to entitle Developer to the compensation, time extension and/or other relief sought, and a statement that sets forth the reasons why such provisions entitle Developer to such compensation, time extension and/or other relief. If the Relief Event Claim relates to a Compensation Event described in clause (c) of the definition of Compensation Event (Type 1), then Developer shall identify the provisions of the Contract Documents which the Owner has allegedly failed to perform or observe and the actions constituting such failure;

11.2.4.4 Where a request for a time extension, Delay Costs and/or compensation under Section 11.4 is made, a detailed analysis of the Relief Event Delay, including:

1. Its impact on the Project Schedule and the number of days by which Developer’s ability to meet any applicable Completion Deadline has been delayed; and
2. If compensation is sought under Section 11.4, any impact of the Relief Event Delay on: (a) the Project Debt draw down schedule (if applicable), funding and release of reserves, financing costs and debt service profile (including debt interest payments due and accrual of interest); and (b) the Committed Equity Investment draw down schedule, Developer’s dividend profile and Equity IRR, in each case to the minimum extent required for Developer to avoid breaching its minimum debt covenants under the Funding Agreements as a result of the Relief Event Delay while maximizing Equity IRR, taking into account the compensation sought under Section 11.4.

11.2.4.5 Where the Relief Event Claim is in respect of a Compensation Event, a detailed, itemized estimate of all amounts claimed under Sections 11.3.3 and 11.4. All amounts claimed under Section 11.3.3 shall be broken down into the Direct Costs identified in Appendix 11 (Direct Costs);

11.2.4.6 Where relief is sought under Section 11.3.1, the effect of the Relief Event on Developer’s ability to perform any of its obligations under the Contract Documents that would otherwise result in accrual of Noncompliance Point(s), Noncompliance Instances, assessment of monetary deductions under Appendix 10, or occurrence of a

Developer Default, in each case including details of the relevant obligations, the effect on each such obligation, the likely duration of that effect and the specific relief sought;

11.2.4.7 An explanation of the measures that Developer has previously taken to prevent, and proposes to undertake to mitigate, the costs, delay and other consequences of the Relief Event; and

11.2.4.8 The type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance.

If all of the information relating to a specific relief cannot reasonably be ascertained or furnished within such 60-day period, Developer shall provide the Owner with further details and supporting documentation as soon as possible after it obtains such information but not later than 90 days following the date on which the Owner receives the corresponding Relief Event Notice. The Owner may ask Developer to provide any further information that the Owner may reasonably require relating to any request for compensation, time extension and/or other relief, and Developer shall provide such information as soon as reasonably practicable and in any event not later than 14 days after such request.

11.2.5 **Delay in Notification**

If any Relief Event Notice, Relief Event Claim or any other required information is submitted by Developer to the Owner after the dates required under this Section 11.2, then (a) Developer shall not be entitled to any additional compensation, time extension or other relief in connection with such Relief Event for the period commencing on the date on which Developer was required to submit the relevant notice or other information until the actual date on which Developer submits the same, provided that if Developer fails to submit any such notice, claim or information within thirty (30) days following the date on which Developer was required to submit the same, Developer shall have no right to make any claim with respect to the Relief Event.

11.2.6 **No Multiple and Overlapping Claims**

Developer may not make multiple or duplicative claims with respect to a Relief Event, provided that this Section 11.2.6 does not limit Developer's obligation to provide updated information regarding a Relief Event Claim in accordance with the last paragraph of Section 11.2.4.

11.2.7 **Burden of Proof and Mitigation**

11.2.7.1 Developer shall bear the burden of proof of: (a) establishing the occurrence of a Relief Event and the entitlement to compensation, time extension and/or other relief for such event; and (b) demonstrating that Developer complied with its mitigation obligations under Section 11.2.7.2.

11.2.7.2 Developer shall take all steps necessary on a commercially reasonable basis to mitigate the consequences of any Relief Event, including all steps that would generally be taken in accordance with Good Industry Practice. The Owner shall reimburse Developer for any Direct Costs incurred by Developer in complying with its mitigation obligations under this Section 11.2.7.2 in respect of Compensation Events, but Developer shall be solely responsible for any mitigation costs incurred in respect of Delay Events. Any compensation, time extension or other relief to which Developer is entitled under this Article 11 shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by Developer or its Contractors, as applicable.

11.2.8 Resumption of Performance

Promptly following the occurrence of a Relief Event, Developer shall use all reasonable efforts to eliminate the cause of the Relief Event and resume performance of the Work.

11.2.9 Owner Response

Within 30 days after receipt of a Relief Event Claim submitted in full in accordance with Section 11.2.4, the Owner shall issue a written determination as to the extent, if any, to which it concurs with Developer's request (including reasons). Any failure by the Owner to respond to a full and final documentation of a Relief Event Claim within such 30-day period shall be deemed a rejection by the Owner of such Relief Event Claim.

11.2.10 Agreement or Dispute

11.2.10.1 The agreement of the Parties as to the specific compensation, time extension and/or other relief to be given Developer on account of a Relief Event shall be evidenced by a written confirmation that includes all pertinent information, references, and data to support the claim, including updated analyses, descriptions, actual amounts and impacts (including, with respect to any Relief Event Delay, information required under Section 11.2.4.4, updated to reflect actual amounts and impacts), and any other documentation covering the same scope of information as required for the request for specific relief, which written confirmation shall be promptly prepared by the Parties and signed by the Parties' Authorized Representatives.

11.2.10.2 Developer shall submit the full and final documentation of the Relief Event Claim in the form attached as Appendix 25-D, certified by Developer's Authorized Representative to be accurate, truthful and complete. Information submitted subsequent to the full and final documentation submittal will not be considered. No full and final documentation of a Relief Event Claim will be considered that does not have the same nature, scope (except for reductions) and circumstances, and basis of claim, as those specified in the Relief Event Notice and any updates submitted in accordance with Section 11.2.3 and in the Relief Event Claim.

11.2.10.3 In the event the Parties are unable to agree as to the specific compensation, time extension and/or other relief to be given Developer on account of a Relief Event, the Owner shall pay or grant, as applicable, any undisputed portion of compensation, time extension and/or other relief, and either Party may refer the disputed portion of the Relief Event Claim to the Dispute Resolution Procedures. If the Owner is deemed to have rejected the Relief Event Claim as provided in Section 11.2.9, Developer may refer the matter to the Dispute Resolution Procedures.

11.3 Compensation, Time Extension and Other Relief Entitlements

11.3.1 Defense to Noncompliance Points, Deductions, Liquidated Damages and Developer Default

Subject to the provisions of this Article 11 and any limitations and exceptions expressly provided in this Agreement, upon occurrence of a Relief Event and for so long as the Relief Event is continuing, Developer shall:

11.3.1.1 Be entitled to relief: (a) from accrual of Noncompliance Points and Noncompliance Instances; (b) from delivery by the Owner of an Initial Breach Notice or Final Breach Notice, as applicable; (c) from assessment of monetary deductions under Appendix 10; and (d) against the occurrence of a Developer Default, in each case to the extent

the Relief Event would otherwise have caused such accrual, notice, assessment or occurrence, as the case may be.

11.3.1.2 Not be excused from compliance with the Contract Documents, applicable Laws or Governmental Approvals due to the occurrence of a Relief Event, except for its temporary inability to comply as a direct result of a Relief Event.

Notwithstanding the foregoing, Developer shall not be entitled to any relief under this Section 11.3.1 in connection with a Compensation Event (Type 3).

11.3.2 Time Extensions

11.3.2.1 Subject to the provisions of this Article 11 and any limitations and exceptions expressly provided in this Agreement, upon occurrence of a Relief Event, Developer shall be entitled to an extension of:

1. The Construction Commencement Deadline solely to the extent that a Relief Event Delay actually delays satisfaction of the conditions set forth in Section 5.7 beyond the then current Construction Commencement Deadline;
2. The Scheduled Developer TSA Screening Area Handover Date solely to the extent that a Relief Event Delay actually delays handover by Developer to the Owner of the TSA Screening Area in accordance with Section 1.2.4 of the Technical Requirements beyond the then current Scheduled Developer TSA Screening Area Handover Date;
3. The applicable Scheduled Functional Area Readiness Date solely to the extent that a Relief Event Delay actually delays satisfaction of the conditions set forth in Section 5.9.2 beyond the then current Scheduled Functional Area Readiness Date;
4. The Scheduled Project Substantial Completion Date and a corresponding extension of the Project Substantial Completion Long Stop Date solely to the extent that a Relief Event Delay actually delays Project Substantial Completion beyond the then current Scheduled Project Substantial Completion Date, provided that if a Relief Event Delay occurs after the then current Scheduled Project Substantial Completion Date and Project Substantial Completion has not yet occurred, the Project Substantial Completion Long Stop Date will be extended by the length of such delay; and
5. The Project Final Acceptance Deadline solely to the extent that a Relief Event Delay actually delays Project Final Acceptance beyond the then current Project Final Acceptance Deadline.

11.3.2.2 To the extent that Developer is entitled under Section 11.3.2.1.3 to an extension of the Scheduled Functional Area Readiness Date of any Functional Area, the timely delivery of which depends upon delivery by the Owner of the Level 5.5 Project by the Level 5.5 Completion Deadline, the Level 5.5 Completion Deadline shall also be extended by the same number of days. The Level 5.5 Completion Deadline shall also be extended by any delay caused by Developer or any Developer-Related Entity that is not the direct result of a Relief Event.

11.3.2.3 To the extent that Developer is entitled under Section 11.3.2.1.2 to an extension of the Scheduled Developer TSA Screening Area Handover Date, the Scheduled Owner TSA Screening Area Handback Deadline shall also be extended by the same number of days.

11.3.2.4 If Developer fails to hand over the TSA Screening Area to the Owner on or prior to the Scheduled Developer TSA Screening Area Handover Date for any reason other than a Relief Event (a “**Developer TSA Handover Delay**”): (a) the Scheduled Owner TSA Screening Area Handback Deadline shall be extended by the TSA Handback Deadline Extension; and (b) Developer shall promptly reimburse the Owner for any additional direct costs paid by the Owner to TSA for flights and travel in order to reschedule or rearrange its TSA Work as a result of the Developer TSA Handover Delay; and (c) Developer shall promptly reimburse the Owner for any direct costs related to mitigation measures, provided that such measures were agreed to by Developer in advance. The Scheduled Project Substantial Completion Date and the Project Substantial Completion Long Stop Date shall not be extended for any Developer TSA Handover Delay.

11.3.3 Monetary Compensation for Compensation Events

11.3.3.1 Subject to the provisions of this Article 11 and any limitations and exceptions provided in this Agreement:

1. Developer shall be entitled to compensation for Direct Costs incurred by Developer or its Contractors, as determined in accordance with Appendix 11, in respect of an occurrence of any Compensation Event other than Compensation Event (Type 3);
2. To the extent that a Compensation Event Delay extends the Scheduled Project Substantial Completion Date beyond the Baseline Project Substantial Completion Date and actually delays receipt by Developer of Supplemental Payments beyond the Baseline Project Substantial Completion Date, Developer shall be entitled to compensation in accordance with Section 11.4.1;
3. To the extent that:
 - (a) A Compensation Event Delay in respect of a Compensation Event (Type 1) delays the Scheduled Functional Area Readiness Date of a Concessions Functional Area beyond the applicable Baseline Functional Area Readiness Date, and actually delays earning of Developer Concessions Revenue beyond the applicable Baseline Functional Area Readiness Date, Developer shall be entitled to compensation in accordance with Sections 11.4.2.1 through 11.4.2.3 and Section 11.4.2.6; and
 - (b) A Compensation Event (Type 1) occurs after the applicable Functional Area Readiness Date, Developer shall be entitled to compensation for lost Developer Concessions Revenue in accordance with Sections 11.4.2.4 through 11.4.2.6; and
4. Developer’s entitlement to monetary compensation for a Compensation Event (Type 3) shall be limited to the actual amount of any losses, expenses, damages, costs, claims, fees (including reasonable attorneys’ fees) or any other liability of Developer or Developer-Related Entity, as applicable, as described in the definition of such Compensation Event.

11.3.3.2 Notwithstanding any other provision of this Agreement, no compensation shall be payable by the Owner to Developer with respect to a Compensation Event unless and until the Owner has issued a written determination in respect of such Compensation Event under Section 11.2.9 (provided that the effective date from which

Developer is determined to be entitled to compensation may be earlier) or, to the extent there is a Dispute regarding Developer's entitlement to compensation on account of a Compensation Event, upon final determination thereof pursuant to the Dispute Resolution Procedures, and the final amount of compensation to which Developer is entitled on account of a Compensation Event shall be as evidenced in a written confirmation, executed by both Parties, in accordance with Section 11.2.10.

11.3.3.3 Notwithstanding any other provision of the Contract Documents:

1. The Owner shall have no liability to Developer for expenses, costs, or items of damages in connection with a Compensation Event other than those which are expressly provided as payable under this Agreement. In the event of any legal action for additional compensation, whether on account of Delay, breach of contract, or otherwise, in connection with a Compensation Event, Developer agrees that the Owner's liability in connection therewith will be limited to those items which are specifically identified as payable under this Agreement; and
2. Except as expressly provided in Section 11.4.3, Developer is not entitled to any monetary compensation in connection with a Delay Event.

11.3.4 Insurance; Deductions

Any entitlement of Developer to compensation or continued payment of any portion of the Supplemental Payments, as applicable, with respect to a Relief Event (including under Section 21.3, if applicable) shall be net of: (i) all insurance proceeds received in connection with the Relief Event by any Developer or any Developer-Related Entity pursuant to any Developer-Provided Insurance Policy or Owner-Provided Insurance Policy (inclusive of Developer's obligation to pay any applicable deductible or self-insured retention); (ii) any amounts which Developer is deemed to have self-insured under Section 18.1.4.4 in connection with the Relief Event; (iii) any other insurance proceeds received by Developer or any Developer-Related Entity in connection with the Relief Event; and (iv) any deductions as provided in this Agreement.

11.4 Supplemental Payments and Concessions Revenue

11.4.1 Supplemental Payments During Compensation Events

11.4.1.1 To the extent that a Compensation Event Delay delays the Scheduled Project Substantial Completion Date beyond the Baseline Project Substantial Completion Date, subject to the provisions of this Article 11, Developer shall be entitled to compensation for corresponding delays in receipt of Supplemental Payments in an amount equal to:

1. The amount of Supplemental Payments that would have been paid (assuming no Performance Deductions) to Developer during the period commencing on the Baseline Project Substantial Completion Date and ending on the Scheduled Project Substantial Completion Date, prorated for the number of days of Compensation Event Delays; minus
2. Avoidable O&M Costs; minus
3. The proceeds received by Developer from any delayed start up insurance policy procured to cover any delay in receipt of Supplemental Payments during the period commencing on the Baseline Project Substantial

Completion Date and ending on the Scheduled Project Substantial Completion Date, prorated for the number of days of Compensation Event Delays.

11.4.1.2 In no event shall Developer be entitled to compensation under this Section 11.4.1.1 in excess of 180 days for Compensation Event Delays in the aggregate. If Compensation Event Delays exceed 180 days in the aggregate, the Parties' rights and remedies shall be as set forth in Section 21.3.

11.4.1.3 Compensation owed under Section 11.4.1.1 shall be paid monthly, commencing on the last day of the month immediately following the month when Project Substantial Completion would have been achieved had the Compensation Event Delays not occurred, and continuing on the last day of each month thereafter until all compensation owed under Section 11.4.1.1 is paid, subject to: (a) Section 11.3.3.2; and (b) Developer delivering to the Owner, at least 30 days in advance of the applicable payment date, a written request for payment together with documentation demonstrating the amount owing under Section 11.4.1.1 for the applicable month. The amount paid each month shall not exceed the amount of compensation owed for 30 days of Compensation Event Delays, and any remaining amounts shall be paid in the subsequent month(s).

11.4.1.4 Notwithstanding any provision to the contrary, Developer shall not be entitled to any payments under Section 11.4.1.1: (a) if Developer achieves Project Substantial Completion on or before the Baseline Project Substantial Completion Date; or (b) to the extent that payment for Compensation Event Delays would compensate Developer for delay in receipt of Supplemental Payments earlier than the Baseline Project Substantial Completion Date.

11.4.1.5 If a Compensation Event occurs during the Project Operating Period and prevents Developer's performance of the O&M Services, in whole or in part, subject to the provisions of this Article 11, Developer shall be entitled to:

1. The amount of Supplemental Payments that would have been paid (assuming no Performance Deductions) to Developer for the Affected Operating Period, prorated for the number of days in the Affected Operating Period; minus
2. Avoidable O&M Costs; minus
3. The proceeds received by Developer from any business interruption insurance policy procured to cover any interruption in receipt of Supplemental Payments during the Affected Operating Period, prorated for the number of days in the Affected Operating Period.

11.4.1.6 In no event shall Developer be entitled to compensation under Section 11.4.1.5 in excess of 180 days of Affected Operating Periods in the aggregate. If Affected Operating Periods exceed 180 days in the aggregate, the Parties' rights and remedies shall be as set forth in Section 21.3.

11.4.1.7 Compensation owed under Section 11.4.1.5 shall be paid monthly on the latest date on which a Monthly Supplemental Payment would have otherwise been due and payable until all compensation owed under Section 11.4.1.5 is paid, subject to: (a) Section 11.3.3.2; and (b) Developer delivering to the Owner, at least 30 days in advance of the applicable payment date, a request for payment together with documentation demonstrating the amount owing under Section 11.4.1.5 for the applicable month.

11.4.1.8 Claims under this Section 11.4.1 shall be submitted and be subject to the claims procedures and requirements set forth in Section 11.2.

11.4.2 **Lost Concessions Revenue due to Compensation Events**

11.4.2.1 To the extent that a Compensation Event Delay for any Compensation Event (Type 1) or any Compensation Event (Type 2) delays the Scheduled Functional Area Readiness Date of a Concessions Functional Area beyond the applicable Baseline Functional Area Readiness Date and actually delays earning of Concessions Revenue beyond the applicable Baseline Functional Area Readiness Date, subject to the provisions of this Article 11, Developer shall be entitled to compensation in an amount equal to:

1. (a) With respect to a Compensation Event (Type 1), the Adjusted Base Case Developer Concessions Revenue of each Affected Concession, or (b) with respect to a Compensation Event (Type 2), the Base Case Developer Concessions Revenue of each Affected Concession, in each case aggregated for all Affected Concessions and prorated for the applicable number of days of Compensation Event Delays; minus
2. Avoidable O&M Costs; minus
3. The proceeds received by Developer from any business interruption insurance policy procured to cover any loss of Concessions Revenue during such period.

11.4.2.2 Notwithstanding any provision to the contrary, Developer shall not be entitled to any payments under Section 11.4.2.1: (a) if Developer achieves Functional Area Readiness of the relevant Concessions Functional Area on or before the applicable Baseline Functional Area Readiness Date; or (b) to the extent that payment for Compensation Event Delays would compensate Developer for delay in receipt of Developer Concessions Revenue earlier than the applicable Baseline Functional Area Readiness Date.

11.4.2.3 In no event shall Developer be entitled to compensation under Section 11.4.2.1 in excess of 180 days for Compensation Event Delays for Compensation Events in the aggregate. If such Compensation Event Delays exceed 180 days in the aggregate, the Parties' rights and remedies shall be as set forth in Section 21.3. Notwithstanding any other provision of this Agreement, Developer shall not be entitled to any compensation under Section 11.4.2.1 in connection with Compensation Event (Type 3).

11.4.2.4 Without duplicating any compensation payable under Section 11.4.2.1, to the extent that a Compensation Event (Type 1) or a Compensation Event (Type 2) occurs during the Concessions Operating Period and Developer suffers a loss of Developer Concessions Revenue directly attributable to such occurrence with respect to any Concessions in operation, Developer shall be entitled to compensation in an amount equal to:

1. (a) With respect to a Compensation Event (Type 1), the Historical Developer Concessions Revenue of each Affected Concession, prorated for the length of the applicable Affected Concession Period and aggregated for all Affected Concessions; or (b) with respect to a Compensation Event (Type 2), the Base Case Developer Concessions Revenue of each Affected Concession, prorated for the length of the applicable Affected Concession Period, and aggregated for all Affected Concessions; minus
2. Avoidable O&M Costs; minus

3. The proceeds received by Developer from any business interruption insurance policy procured to cover any loss of Concessions Revenue during such period.

11.4.2.5 In no event shall Developer be entitled to compensation under Section 11.4.2.4 in excess of 180 days of Affected Concession Periods in the aggregate. . If Affected Concession Periods exceed 180 days in the aggregate, the Parties' rights and remedies shall be as set forth in Section 20.3. Notwithstanding any other provision of this Agreement, Developer shall not be entitled to any compensation under this Section 11.4.2.5 in connection with any Compensation Event (Type 3).

11.4.2.6 Compensation owed under this Section 11.4.2 shall be paid monthly in arrears, subject to (a) Section 11.3.3.2, and (b) Developer delivering to the Owner a request for payment together with documentation demonstrating the amount owing under this Section 11.4.2 for the applicable month.

11.4.3 Delay Events During Project Operating Period

11.4.3.1 If a Delay Event occurs during the Project Operating Period and prevents Developer's performance of the O&M Services, in lieu of the Supplemental Payments that would have been payable during such period, subject to the provisions of this Article 11, Developer shall be entitled to:

1. The lesser of (a) the amount of debt service scheduled to be paid as shown in the Financial Model and (b) the actual amount of debt service required to be paid pursuant to the Financing Documents, in each case for the period during which the Delay Event persists; plus
2. Unavoidable O&M Costs; minus
3. Any insurance proceeds received by Developer in connection with the Delay Event.

11.4.3.2 Compensation owed under this Section 11.4.3 shall be paid monthly when a Monthly Supplemental Payment would have been paid but for the Delay Event, subject to Developer delivering to the Owner a request for payment together with documentation demonstrating the amount owing under this Section 11.4.3 for the applicable month.

11.5 Method of Payment of Compensation for Compensation Events

11.5.1 Except as provided in Section 11.4 or Section 11.5.2, the Owner shall compensate Developer for any additional compensation due for a Compensation Event: (a) as periodic payments over the Term; (b) as an adjustment to the MASP over the Term; (c) as progress payments invoiced as Work is completed; (d) as an up-front lump sum payment; or (e) through any combination of the above, as determined by the Owner in its sole discretion.

11.5.2 If the Owner elects to compensate Developer by way of periodic payments over the Term or as an adjustment to the MASP over the Term, and Developer demonstrates to the Owner's reasonable satisfaction that Developer has made good faith efforts to finance such payment method but is unable to do so, the Owner shall compensate Developer by way of progress payments invoiced as Work is completed or by an up-front lump sum payment, at the Owner's election in its sole discretion.

11.5.3 The Owner shall provide Developer with a written notice of the method chosen for paying Developer for the amounts owed under this Article 11. If the Owner elects to pay for such amounts by way of periodic payments, progress payments or lump sum payment, subject to Section 11.2.10, Developer shall submit an invoice to the Owner in the form attached as

Appendix 25-E for the amount of each such payment, and the Owner will make payment to Developer within 30 days of receipt of the invoice. The Parties shall conduct all discussions and negotiations to determine any compensation amount, and Developer shall provide the Owner with all data, documents and information pertaining thereto, on an open book basis.

11.6 Restoration of Financial Balance for Deferral of Compensation

11.6.1 If the Owner elects to compensate Developer through Deferral of Compensation, Developer shall be entitled to additional compensation as necessary to maintain the Equity IRR and debt service coverage ratio in the Financial Model as a result of the Deferral of Compensation.

11.6.2 Developer shall provide the Owner with the total amount of compensation that Developer considers owed to restore the Equity IRR and debt service ratios in the Financial Model as a result of the Deferral of Compensation, including supporting Financial Model calculations and documentation. If the Owner disagrees with the amount sought by Developer, the Owner shall pay the undisputed portion to Developer, and any amount determined to be due pursuant to the Dispute Resolution Procedures will be paid in accordance with Section 13.5.3. In no event shall Developer be entitled to any compensation for losses unrelated and not directly caused by the Deferral of Compensation.

11.7 Audit

All Relief Event Claims shall be subject to audit at any time following the filing of the Relief Event Claim, whether or not such Claim is part of a suit pending in the courts of the State. The audit may be performed, at the Owner's election in its sole discretion, by employees of the Owner or by any independent auditor appointed by the Owner, or both (at the sole cost of the Owner). The audit may begin on ten (10) days' written notice to Developer or its Contractors, as applicable. Developer and its Contractors shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any Relief Event Claim, Developer and its Contractors shall retain sufficient records, including Tax records, and provide full and reasonable access to such records, to allow the Owner's auditors to verify the Relief Event Claim, and failure to retain sufficient records of the Relief Event Claim or failure to provide full and reasonable access to such records shall constitute a waiver of that portion of the Relief Event Claim that cannot be verified and shall bar recovery thereunder. Furthermore, and in addition to such audit access, upon Developer submitting a Relief Event Claim, the Owner shall have the right to request and receive, and Developer shall have the affirmative obligation to provide to the Owner, copies of any and all documents in the possession of Developer or its Contractors as may be deemed relevant by the Owner, in its good faith discretion, in its review of the bases, validity or value of the Relief Event Claim.

ARTICLE 12. CHANGES IN THE WORK

12.1 Owner Changes

12.1.1 General

Subject to Section 12.1.2, the Owner reserves the right to make, at any time during the Term, alterations or changes in the Work, including additions to scope, deletions to scope of the D&C Work, deletions to scope of the O&M Services, and changes to requirements applicable to the Work, in each case as it may direct in its sole discretion (each, an "**Owner Change**") in accordance with the Owner Change procedure set forth in Appendix 12, and the provisions of Article 11 shall apply with respect to Owner Changes except Sections 11.2.1 through 11.2.5 and Section 11.2.9. No Owner Change shall constitute a breach of the Contract Documents,

invalidate the Contract Documents, or release the Surety from any liability arising out of the Contract Documents or the Performance Bond or Payment Bond. Developer agrees to perform the Work, as altered or changed by any Owner Change, as if it had been a part of the original Agreement. Developer shall not be entitled to any additional compensation, time extension or other relief in connection with an Owner Change except to the extent granted in accordance with Appendix 12 and the applicable provisions of Article 11. If an Owner Change results in a net reduction in cost to Developer, Developer will pay the Owner the amount of such net reduction in costs by way of reduction to the Maximum Progress Payment Amount or as a direct payment by Developer to the Owner, as selected by Developer.

12.1.2 Restrictions on Owner Changes

Developer shall not be required to implement any Owner Change to the extent the Owner Change would:

12.1.2.1 Result in a breach of Law or breach of any conditions of a Governmental Approval or revocation of any Governmental Approval;

12.1.2.2 Render any Developer-Provided Insurance Policy or Owner-Provided Insurance Policy void or voidable;

12.1.2.3 Require a new Governmental Approval which would not be reasonably obtainable;

12.1.2.4 Materially and adversely affect the health and safety of any person; or

12.1.2.5 Materially and adversely affect the risk allocation and payment regime under the Agreement with respect to the Work.

12.1.3 Renovations During Concessions Operating Period

Without limiting the provisions of Section 12.1.1 but subject to Section 12.1.2, an Owner Change may include, in whole or in part, Renovation(s) within the Project Site (O&M Limits) during the Concessions Operating Period.

12.2 Developer Change Proposals

12.2.1 Developer may request the Owner to approve modifications to the Technical Requirements by submittal of a written Developer Change Proposal in the form attached as Appendix 25-F. Developer Change Proposal shall set forth Developer's detailed estimate of net cost impact (positive or negative), commercial revenue impact (positive or negative), and schedule impact of the requested change.

12.2.2 The Owner, in its sole discretion may accept or reject any Developer Change Proposal submitted by Developer pursuant to Section 12.2.1. If such Change Proposal is accepted by the Owner, Developer shall implement the change in accordance with all applicable requirements contained in the Technical Requirements (as amended to reflect the Owner-approved Developer Change Proposal), the Project Management Plan, Good Industry Practice, and all applicable Laws.

12.2.3 Developer shall be solely responsible for payment of any increased Design and Construction Costs, finance or other costs, additional risks, and any Project Schedule delays or other impacts resulting from a Developer Change Proposal accepted by the Owner. To the extent a change under this Section 12.2 results in a net cost savings to Developer, the Owner shall be entitled to a credit in the amount of 50% of the savings related to the Design and

Construction Costs and costs of the O&M Services and Concessions operations. However, the Owner shall be entitled to a credit in the full amount of savings related to the financing costs (and all related upfront and ongoing fees) associated with the Design and Construction Cost and O&M Services and Concessions operations cost savings. The Owner may apply the credit to any amount otherwise payable by the Owner to Developer under the terms of this Agreement.

12.2.4 No Developer Change Proposal shall implement any change to the Work that is not specifically regulated or addressed by the Contract Documents or applicable Law.

12.2.5 Developer shall be responsible for identifying and assessing any potential impacts to a Utility that may be caused by the changes proposed by Developer. Developer shall include in Developer Change Proposal notice to the Owner of any such potential impacts to Utilities. The Owner's approval of Developer's proposed change does not relieve Developer of sole responsibility for all Utility impacts, costs, delays or damages, whether direct or indirect, resulting from Developer initiated changes in the design or construction activities from those in the Technical Requirements, design plans or other Contract Documents and which effect a change in Utility work different from that shown in the Utility plans, or joint project agreements.

12.3 Deviations

12.3.1 Developer may apply to the Owner for approval of any deviation from, or noncompliance with, the requirements of the Technical Requirements in Work performed (other than any Required Design Exception/Deviation) ("**Deviation**") in accordance with this Section 12.3.1. All such applications shall be in writing. The Owner shall consider, but shall have no obligation to approve, any such application, and Developer shall bear the burden of persuading the Owner that the Deviation sought constitutes sound and safe practices consistent with Good Industry Practice and achieves or substantially achieves the Owner's applicable Safety Standards and criteria. No Deviation shall be deemed approved unless and until approved by the Owner in writing in its sole discretion, signed by the Owner's Authorized Representative. If the Owner does not issue written approval of a Deviation within fourteen (14) days after Developer applies therefor in writing, the Owner shall be deemed to have disapproved the Deviation. Concurrently with the disapproval of a Deviation or at Developer's request, the Owner shall provide the reasons for the disapproval thereof. To the extent that an approved Deviation results in diminution of value of the completed Work or reduction in Design and Construction Costs or costs of the O&M Services, the Owner shall be entitled to 100% of the amount of such diminution in value or reduction in costs which shall be paid by Developer to the Owner by way of reduction of payments otherwise payable by the Owner to Developer under this Agreement.

12.3.2 During the Project Construction Period, Developer may submit to the Owner requests for Required Design Exceptions/Deviations in accordance with the terms of this Section 12.3.2.

12.3.2.1 Developer shall make any request for a Required Design Exception/Deviation in writing, identifying the relevant provisions of the Manuals and Guidelines and including a detailed explanation and supporting analyses (including the estimated cost and schedule impacts) that demonstrate that: (a) the requested change, deviation, modification, alteration or exception falls within the definition of Required Design Exception/Deviation; and (b) granting such Required Design Exception/Deviation would not result in any of the circumstances described in Section 12.3.2.2(a), (b) or (c).

12.3.2.2 Within seven (7) days following the Owner's receipt from Developer of a request in compliance with Section 12.3.2.1, the Owner shall provide to Developer a written response to the request. The Owner shall approve the request, unless:

1. The requested change, deviation, modification, alteration or exception is not a Required Design Exception/Deviation; or
2. The requested change, deviation, modification, alteration or exception is a Required Design Exception/Deviation but granting such design exception/deviation (a) would pose an increased danger or threat to the health or safety of any User, (b) is inconsistent with the Contract Documents (other than the Manuals and Guidelines) or any portion thereof; (c) would unduly interfere with (i) current Airport operations and associated rights of way, or Adjacent Projects, or (ii) future Airport operations and associated rights of way, as contemplated in the then current DEN Airport Master Plan or DEN Capital Improvement Program; or (d) would not result in performance, quality, and utility of the end product that is equal to or better than the performance, quality, and utility of the end product that would result from full compliance with the Manuals and Guidelines,

in which case the Owner may deny such request, setting forth the reason for such denial.

ARTICLE 13. PAYMENTS TO DEVELOPER

13.1 Progress Payments

13.1.1 The Owner will pay to Developer progress payments on a monthly basis (the “**Progress Payments**”) in arrears in accordance with this Section 13.1, provided that no Progress Payment shall be payable until NTP 1 has been issued.

13.1.2 Subject to this Section 13.1, the amount of each Progress Payment shall equal the total amount payable by Developer to its design-build contractor for the D&C Work performed in the relevant month, multiplied by the Progress Payment Percentage.

13.1.3 With respect to each Progress Payment, Developer shall submit to the Owner an application, in the form attached as Appendix 25-G (each, a “**Progress Payment Application**”), together with a copy of the corresponding design-build contractor’s payment application, detailed supporting calculations, and any other supporting documentation or information reasonably requested by the Owner.

13.1.4 The Owner will have five (5) Business Days to review the Progress Payment Application (or any amended version thereof if previously rejected in accordance with the terms of this Section 13.1.4) and to communicate its approval or disapproval to Developer. The Owner shall only be entitled to disapprove a Progress Payment Application if such application does not reflect the progress of the D&C Work as compared to the Cost-Loaded Project Schedule or comply with Section 13.1.3 or Appendix 25-G; provided, that the Owner shall provide to Developer concurrently with any disapproval, the reasons for the disapproval. Following an approval thereof, the Owner shall make payment to Developer within thirty (30) days thereof. If the Owner fails to communicate its disapproval to Developer within the applicable five (5) Business Days of receiving a Progress Payment Application (or amendment thereof), such Progress Payment Application shall be deemed approved.

13.1.5 The Owner shall deduct (a) from the first Progress Payment (and any subsequent Progress Payment, to the extent necessary) the aggregate amount of Early Design Work Payments made by the Owner to Developer with respect to the Early Design Work completed during the Interim Period, and (b) from the last Progress Payment any amount provided to be deducted pursuant to Section 13.4.3.2.

13.1.6 The Owner shall accrue, in accordance with the immediately succeeding sentence, an amount equal to five percent (5%) of the approved amount of any Progress Payment (excluding any deductions under Section 13.1.5). No deductions for this accrual will be made against any Progress Payment. Prior to the issuance of the Certificate of Project Final Acceptance, the Owner shall verify that all certificates have been received in accordance with Section 5.10.3.1.10. If the Certificate of Project Final Acceptance is not issued, the retained accruals shall be deducted from Supplemental Payments in inverse order of maturity.

13.1.7 All amounts accrued under Section 13.1.6 shall be released (and no longer apply) upon issuance of a Certificate of Project Final Acceptance.

13.2 Bonus Payment (TSA Screening Area)

If Developer hands over the TSA Screening Area to the Owner in accordance with Section I.2.4 of the Technical Requirements:

13.2.1 On, or less than thirty (30) days prior to, the Scheduled Developer TSA Screening Area Handover Date, Developer shall be entitled to a Bonus Payment in the amount of \$2 million; or

13.2.2 More than thirty (30) prior to the Scheduled Developer TSA Screening Area Handover Date, Developer shall be entitled to a Bonus Payment in the amount of \$3 million.

13.2.3 With respect to any Bonus Payment, Developer shall submit an invoice to the Owner, in the form attached as Appendix 25-H, and the Owner shall make payment to Developer within 30 days of receipt thereof.

13.3 Supplemental Payments

13.3.1 Timing and Basis for Supplemental Payments

13.3.1.1 From the Project Substantial Completion Date to the Termination Date, the Owner will make Supplemental Payments to Developer as provided in this Section 13.3.

13.3.1.2 The Supplemental Payments are based on the Terminal Improvements being available for the applicable Airport Activities and performance of the O&M Services as measured through Developer's conformance with the Contract Documents, including the minimum operating and maintenance requirements set forth in Section III.1 of the Technical Requirements.

13.3.2 Calculation and Invoicing of Supplemental Payments

13.3.2.1 Calculation of Supplemental Payments

3. Supplemental Payments shall be calculated and earned by Developer according to the methodology set forth in Section 2 of Appendix 10. The Supplemental Payments payable during any given Fiscal Year during the Project Operating Period shall never exceed the MASP for that year, adjusted for inflation, as described in Section 2.1 of Appendix 10.
4. In addition to any other deductions or withholdings allowed under this Agreement, the Supplemental Payments shall be subject to adjustment for Performance Failures, subject to Section 8.4.3, and other adjustments in accordance with Appendix 10.

13.3.2.2 Invoicing

1. Supplemental Payments shall be made by the Owner to Developer on a monthly basis as Monthly Supplemental Payments in accordance with Section 2.2 of Appendix 10.
2. With respect to each Monthly Supplemental Payment, Developer shall submit an invoice monthly in arrears within the first ten (10) days of each calendar month for the month immediately preceding such month. The invoice must set forth the amount of the Monthly Supplemental Payment due and the calculation of the Monthly Supplemental Payment due. Upon its receipt of a monthly invoice therefor, the Owner shall pay Developer the corresponding Monthly Supplemental Payment within 30 days of receipt of the invoice. Notwithstanding the foregoing, the Owner has no obligation to make a Monthly Supplemental Payment until Developer submits a proper monthly invoice therefor in accordance with this Section 13.3.2.2. The invoice must be accompanied by an attachment containing the following information: (a) the calculation of the actual Monthly Supplemental Payment earned using the methodology set forth in Appendix 10; (b) a description of any Performance Failures, including the date and time of occurrence and duration; (c) any adjustments to reflect previous over-payments and/or under-payments; (d) a detailed calculation of any interest payable in respect of any amounts owed; and (e) any other amount due and payable from Developer to the Owner or from the Owner to Developer under this Agreement.
3. The Owner may verify each Monthly Supplemental Payment amount by: (a) verifying the results reported by Developer in the invoice, including through the Owner's independent Oversight process; and (b) reconciling the amounts paid with the actual MSP earned and any other amount due and payable from Developer to the Owner or from the Owner to Developer under this Agreement. The Owner shall return any invoices that are incomplete and/or incorrect in any material respect, together with written reasons for so returning, to Developer promptly for correction and resubmission. Upon its receipt of an invoice therefor, the Owner shall pay Developer the corresponding undisputed Monthly Supplemental Payment amount within 30 days of receipt of the invoice. Notwithstanding the foregoing, the Owner has no obligation to pay the Monthly Supplemental Payment until Developer submits an invoice therefor in accordance with this Section 13.3.2.2.3.
4. To the extent that there is any Excess Deduction Amount in respect of any month, such Excess Deduction Amount shall be paid by Developer (a) in accordance with Section 6.1.2.3, and (b) any remaining Excess Deduction Amount thereafter shall accrue and be included in remittances under Section 6.1.2.3 and, to the extent provided in Section 2.2 of Appendix 10, the invoice(s) for subsequent month(s) in accordance with Section 13.3.2.2.2 until the full Excess Deduction Amount has been accounted for, subject to Section 8.4.3.
5. The Owner shall not be required to pay any monthly invoice if Developer has failed to submit the reports required to be submitted for that month as required by Section III.4.11.1 of the Technical Requirements, unless and until the required report is submitted. If it is determined that any monthly report required to be submitted pursuant to Section III.4.11.1 of the Technical

Requirements is found to be inaccurate, which, had it been accurate, would have revealed that a Performance Failure had occurred, then the Owner shall not be required to pay any monthly invoice submitted by Developer unless and until a revised report which is accurate is subsequently submitted to the Owner. Once the required or revised reports are submitted, the Owner shall process the applicable invoice(s) for payment. The failure to file a monthly report or the submission of an inaccurate report may result in the assessment of Noncompliance Points.

6. The Monthly Supplemental Payment for a month in which the Project Substantial Completion Date or the Termination Date occurs shall be prorated in accordance with Section 2.2 of Appendix 10.

13.4 Allowances

13.4.1 The D&C Contract Amount includes the following allowances (each, an “Allowance”):

Allowance Items	Amount
Ticketing Equipment and Kiosks	\$37,500,000
Curbside Canopies	\$8,000,000
FF&E	\$11,000,000
Aggregate Allowance Amount:	\$56,500,000

13.4.2 All Allowance Items shall be subject to the Executive Design Review.

13.4.3 At Project Substantial Completion, if the aggregate price of all Allowance Items (inclusive of mark-ups consistent with those set forth in Form G-1 attached as Appendix 3-K):

13.4.3.1 Exceeds the Aggregate Allowance Amount, the amount of the difference shall be paid by the Owner by way of Change Order; or

13.4.3.2 Is less than the Aggregate Allowance Amount, sixty percent (60%) of the amount of the difference shall be deducted from the final Progress Payment otherwise payable by the Owner to Developer under Section 13.1.

13.5 Disputed Amounts

13.5.1 The Owner shall have the right to dispute, in good faith, any amount specified in an invoice submitted by Developer under this Agreement. Notwithstanding any other provision of this Agreement, the Owner will pay the amount of the invoice in question that is not in dispute, and will be entitled to withhold the balance pending resolution of the Dispute, and the Owner will provide written reasons for any such withholding.

13.5.2 Developer and the Owner will use their reasonable efforts to resolve any such Dispute within thirty (30) days after the Dispute arises. If they fail to resolve the Dispute within that period, then the Dispute shall be resolved according to the Dispute Resolution Procedures.

13.5.3 Any amount determined to be due pursuant to the Dispute Resolution Procedures will be paid within thirty (30) days following final resolution of the Dispute.

13.6 Interest on Payments

13.6.1 If a Party fails to pay any undisputed amount, or any amount that is not subject to a good faith dispute, that is due and owing from such Party to the other Party under this Agreement (in the case of any amount due and owing from the Owner to Developer, subject to receipt by the Owner of an invoice from Developer for such amount as required under this Agreement), the owing Party shall pay to the other Party interest on such amount at the Late Payment Rate from the due date thereof until the date of payment. Amounts due to Developer which are subject to a good faith dispute which is subsequently resolved in Developer's favor, shall accrue interest at the Late Payment Rate from their original due date under this Agreement and until payment of the same is made.

13.6.2 Without limiting the provisions of Section 13.3.1, if, as a result of any inaccuracy in an invoice any overpayment is made by the Owner to Developer, then, in addition to the adjustments provided in Section 13.3.2.2.2, the Owner shall be entitled to deduct or receive as a payment from Developer, interest thereon at the Late Payment Rate from the date of payment of the invoice by the Owner to the date the overpayment is deducted or paid. The right of the Owner to receive a payment from Developer is without prejudice to any other rights the Owner may have under this Agreement.

13.7 Retainage

Execution of the Agreement by Developer shall constitute a waiver by Developer to claim any right of payment of interest upon any funds retained in accordance with this Agreement, or to claim any right of payment of interest upon funds withheld under the provisions of CRS §38-26-107. Substitution of securities in lieu of retainage shall not be permitted, except as approved by the Owner in its sole discretion.

13.8 Maximum Contract Amount

13.8.1 Notwithstanding any other provision of this Agreement, in no event shall the total amount of compensation paid to Developer by the Owner exceed \$1,800,000,000, as modified by any duly authorized Change Order, except as provided in Section 13.8.2.

13.8.2 The Owner is authorized, without further approval of City Council, to make additional payments that may be required by the terms of this Agreement. Potential additional payments include any compensation payable by the Owner in connection with Compensation Events and Termination Compensation. The conditions upon which these additional payments may be required are set forth with specificity in Articles 11 and 21 and Appendix 1. The Owner is authorized to execute any documents necessary to facilitate the additional payments.

13.8.3 Payments under this Agreement shall be paid from the City and County of Denver Airport system funds. The City has no obligation to make payments from any other source.

13.9 Set-Off

13.9.1 The Owner may set off any amounts owed by Developer to the Owner under this Agreement against any amounts due and payable by the Owner to Developer other than the Supplemental Payments (for which permitted deductions are set forth in Appendix 10).

ARTICLE 14. GUARANTORS

The parties acknowledge and agree that as of the Developer Execution Date no guaranty of Developer's obligations under the Contract Documents by any Guarantor is or shall

be required under this Agreement or under any other Contract Document. No Guarantor shall be added herein without the prior written consent of Developer.

ARTICLE 15. EQUITY TRANSFERS AND CHANGE OF CONTROL; COMMITTED INVESTMENT REQUIREMENT

15.1 Restrictions on Equity Transfers and Change of Control

15.1.1 Except as provided in Section 15.1.3, 15.1.4, 15.1.5 or 15.1.6, no equity transfer shall result in any Qualified Investor ceasing to own (directly or indirectly) the same percentage of the issued share capital, partnership or membership interests, as applicable, in Developer that it owned (directly or indirectly) as of the Financial Close Date, unless Developer obtains the Owner's prior written approval as provided in Section 15.2.

15.1.2 Except as provided in Section 15.1.3, any Change of Control of Developer shall be subject to the Owner's prior written approval in accordance with Section 15.2.

15.1.3 Transfers and transactions within any of the exceptions described in clauses (a) through (f) of the definition of Change of Control are allowed at any time without necessity for the Owner's approval but, in the case of:

15.1.3.1 An exception described in clauses (a) (with respect to any initial public offering), (b), (c) or (d), subject to the condition that Developer deliver to the Owner, within ten (10) days prior to the effectiveness of the transfer or transaction; and

15.1.3.2 An exception described in clause (a) (other than with respect to an initial public offering), subject to the condition that Developer deliver to the Owner, within five (5) days after the effectiveness of the transfer or transaction,

written notice describing the transfer or transaction and (if applicable) the names of the transferor and transferee, together with documentation demonstrating that the transfer or transaction is within such an exception.

15.1.4 A Qualified Investor that has a Controlling Interest in Developer at Financial Close may effect an Equity Transfer without any prior approval of the Owner, provided that:

15.1.4.1 No Change of Control in Developer will occur as a result thereof;

15.1.4.2 The proposed transfer and proposed transferee (and its ultimate parent) meet the following criteria:

1. The proposed transferee shall have financial strength (a) sufficient to respond to any of funding obligations to Developer under this Agreement, under any Funding Agreement or in respect of the Project and (b) consistent or better than other typical investors for such P3 projects;
2. The proposed transfer would not violate any applicable Laws, including any applicable money laundering regulations, OFAC and similar applicable Laws;
3. Neither the proposed transferee nor the ultimate parent of such proposed transferee has been debarred by the United States, any State or any foreign state, or is otherwise not permitted to do business with any State or foreign state; and
4. During the ten (10) years immediately preceding the proposed transfer, neither the proposed transferee nor the ultimate parent of such proposed transferee has been terminated by (a) the Owner for a material breach of

contract or (b) any other Governmental Entity (domestic or foreign) for default due to a material breach of its obligations under a P3 or similar contract; and

15.1.4.3 Developer shall provide thirty (30) days' prior written notice to the Owner of the proposed transfer, together with a certificate of Developer, signed by Developer's Authorized Representative, confirming that to the best of Developer's knowledge and belief, after reasonable inquiry and due diligence, the proposed transfer and proposed transferee meet the requirements described in Section 15.1.4.2. For purposes of Sections 15.1.4.2.3 and 15.1.4.2.4, Developer may rely on a certificate of the proposed transferee and its ultimate parent, signed by their respective Chief Financial Officers, Treasurers or similar officers, confirming that the proposed transferee and its ultimate parent meet the requirements described in such Sections, provided that Developer does not have knowledge or belief of any matters that are inconsistent with such certification.

If any Equity Transfer is effected in breach of this Section 15.1.4, the Owner may require Developer to unwind (or cause the relevant equity investors to unwind) such transfer without any liability to the Owner, in lieu of terminating Developer for Developer Default.

15.1.5 Equity Transfers where the transferring Equity Member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer, will not require Owner's approval, provided that Developer shall provide 30 days' prior written notice to the Owner of any such proposed transfer, together with a certificate of Developer, signed by Developer's Authorized Representative, confirming the information necessary, to allow the Owner to confirm whether the proposed transfer falls within this exception.

15.1.6 Following the second anniversary of the Project Substantial Completion Date, any Equity Transfer that does not result in a Change of Control will not require any prior approval of the Owner, provided that Developer, the proposed transfer and the proposed transferee, as applicable, comply with the requirements set forth in Sections 15.1.4.1 through 15.1.4.3.

15.2 Standards and Procedures for Owner Approval

15.2.1 Where the Owner's prior written approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use, management or control, or for any proposed Equity Transfer or Change of Control of Developer (each, a "**Transaction**"), and such Transaction is proposed at any time during the period ending two (2) years after the Project Substantial Completion Date, the Owner may withhold or condition its approval in its sole discretion. Any such decision of the Owner to withhold consent shall be final, binding and not subject to the Dispute Resolution Procedures.

15.2.2 After the second anniversary of the Project Substantial Completion Date, the Owner shall not unreasonably withhold its approval of a Transaction.

15.2.3 It shall be reasonable for the Owner to withhold its approval if any of the following occurs or exists:

15.2.3.1 Developer fails to demonstrate to the Owner's reasonable satisfaction that:

1. The proposed assignment, grant or transfer that would amount to a Change of Control of Developer will not have any adverse effect on Developer's ability to timely perform its obligations under the Contract Documents and Principal Developer Documents, taking into account the financial resources,

qualifications and experience of the proposed assignee, grantee or transferee;

2. The proposed assignee, grantee or transferee is in compliance with the Owner's rules, regulations, and adopted written policies regarding organizational conflicts of interest;
3. The proposed transfer and proposed transferee (and its ultimate parent) meet the criteria set forth in Section 15.1.4.2; or

15.2.3.2 At the time of the proposed Transaction, there exists any uncured Developer Default or any event or circumstance that with the lapse of time, the giving of notice or both would constitute a Developer Default, unless the Owner receives from the proposed transferee assurances of cure and performance acceptable to the Owner in its good faith discretion.

15.2.4 For transactions subject to the Owner's prior reasonable approval, the Owner will approve or disapprove in writing within sixty (60) days after it receives from Developer:

15.2.4.1 A request for approval;

15.2.4.2 A reasonably detailed description of the proposed Transaction;

15.2.4.3 Such information, evidence, and supporting documentation as the Owner may request concerning the identity, financial resources, qualifications, experience, and potential conflicts of interest of the proposed transferee and its proposed contractors; and

15.2.4.4 Such evidence of organization and authority, and such incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations, and warranties as the Owner may reasonably request.

15.2.5 Except as otherwise provided in Section 15.2.7, for Transactions subject to the Owner's prior reasonable approval, the Owner will evaluate the identity, financial resources, qualifications, experience, and potential conflicts of interest using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to the Owner's requests for qualifications for concession or similar agreements for comparable projects and facilities.

15.2.6 If for any reason the Owner does not act within such sixty (60) day period, or any extension thereof by mutual agreement of the Parties, then the proposed Transaction shall not be permitted, subject to Developer's right, in the case of a proposed Transaction governed by Section 15.2.2, to submit a Dispute for resolution according to the Dispute Resolution Procedures.

15.2.7 Notwithstanding the foregoing, prior to the period ending two (2) years after the Project Substantial Completion Date, any Initial Equity Member whose role, and its Affiliates' roles, if any, are restricted solely to financial matters and which has no role in the performance of the Work and does not have a Controlling Interest, may assign, sell or transfer its interest (whether direct or indirect) in Developer, provided that any such Equity Transfer shall be subject to the Owner's prior reasonable approval unless such Equity Transfer constitutes a Change of Control (in which case it shall be subject to the Owner's approval, in its sole discretion). Developer shall deliver to the Owner, within sixty (60) days prior to the effectiveness of such transfer or transaction, written notice describing the transfer or transaction and the names of the transferor and transferee, together with documentation demonstrating that the Initial Equity Member's and any Affiliates' roles are restricted solely to financial matters with no role in the performance of the Work, and all other documentation and information required under Section

15.2.4. In determining whether to give its consent, the Owner will evaluate the financial qualifications and potential conflicts of interest of the transferee using the same standards and criteria that it applied to the evaluation of Developer in its response to the Owner's requests for qualifications to develop, design, construct, finance, operate, and maintain the Project and to plan, develop, implement and manage the Concessions Program.

15.3 Minimum Equity Requirement

15.3.1 Developer shall have and maintain a Construction Equity Ratio of at least five percent (5%) throughout the period between the Financial Close Date and the Project Substantial Completion Date, except to the extent:

15.3.1.1 The Owner otherwise approves in writing in its sole discretion;

15.3.1.2 Developer must reduce the Construction Equity Ratio below five percent (5%) as part of a workout of a breach or default under the Financing Documents; or

15.3.1.3 The Construction Equity Ratio is reduced below five percent (5%) because Developer incurs additional Project Debt pursuant to a Rescue Refinancing.

ARTICLE 16. FINANCIAL MODEL FOR THE PROJECT

16.1 Financial Model

16.1.1 Developer shall bear the entire risk of any errors in or omissions from the Initial Financial Model (Developer Execution), the Initial Financial Model (Financial Close), and any subsequent Financial Model and shall not be entitled to any compensation from, claim or other relief against the Owner in relation to any loss or damage that it suffers in consequence of such error or omission.

16.1.2 In the event the Owner is requested to disclose the Initial Financial Model (Developer Execution), the Initial Financial Model (Financial Close), or any subsequent Financial Model and Developer has identified the relevant Financial Model as confidential material, the Owner will promptly notify Developer so that Developer may seek a protective order or other appropriate remedy. If it wishes to protect the materials from disclosure, Developer shall seek court protection immediately on an emergency basis. In the event that such protective order or other remedy is not timely sought or obtained by Developer, the Owner will release the relevant Financial Model if the Owner concludes, in its good faith discretion, that such disclosure is required by the Open Records Act.

16.2 Financial Model Updates

16.2.1 Developer shall run new projections and calculations under the Financial Model Formulas to establish a Financial Model Update:

16.2.1.1 For Financial Close;

16.2.1.2 Whenever there occurs a Relief Event;

16.2.1.3 Whenever there occurs a Refinancing with Refinancing Gain in which the Owner participates;

16.2.1.4 Whenever there occurs an event for which the Owner is entitled to compensation pursuant to Section 12.2.3;

16.2.1.5 Whenever the Contract Documents are amended and the Parties agree that the amendment has a material effect on the Financial Model; and

16.2.1.6 As otherwise agreed to from time to time by the Parties.

The Financial Model Update shall only incorporate (a) changes to revenues and expenses that arise directly from the circumstances described above, and (b) consequential changes to the Project Debt draw down schedule, funding and release of reserves, financing costs, debt service profile, Committed Equity Investment draw down schedule and Developer's dividend profile. The Financial Model Update shall not (x) incorporate information or assumptions based on Developer's actual financial performance, or (y) generally update projections through the end of the Term based on current market conditions except as contemplated in Appendix 15.

16.2.2 Developer shall prepare the Financial Model Updates and shall provide the Owner with each Financial Model Update including any updated and revised assumptions, and other data that form a part of the Financial Model as updated, including updated and revised cash flow projections. Financial Model Updates shall be audited by a Financial Model Auditor in accordance with Section 16.3.2 prior to such Financial Model Update becoming a part of this Agreement.

16.2.3 The Owner shall have the right at all times to gain access, on an open book basis, to the Financial Model and each Financial Model Update and the set of updated and revised assumptions and other data that form part of each such model. The Owner shall have the right to challenge the validity, accuracy or reasonableness of any Financial Model Update or the related updated and revised assumptions and data. In the event of a challenge, the Financial Model effective prior to the submission of the Financial Model Update shall remain in effect pending the outcome of the challenge or until a new Financial Model Update is issued and not challenged.

16.3 Model Audits

16.3.1 Initial Financial Model

16.3.1.1 Developer has caused the Financial Model Auditor to conduct an independent audit of the Initial Financial Model (Developer Execution) as of the Developer Execution Date and has delivered to the Owner the Financial Model Auditor's report that includes a statement that the Initial Financial Model (Developer Execution) is: (a) free of mechanical errors; (b) suitable for use in connection with the Termination Compensation calculations set forth in the Contract Documents; and (c) suitable for use in connection with the Relief Event procedures set forth in the Agreement.

16.3.1.2 Concurrently with Financial Close, Developer shall have delivered to the Owner a copy of an update of the audit and opinion for the Initial Financial Model (Financial Close) obtained from the independent model auditor that provided an opinion on the suitability of the Initial Financial Model (Developer Execution). The updated audit and opinion shall be in the same form as that delivered as of the Developer Execution Date, and shall take into account the final terms and conditions of the Initial Funding Agreements and Initial Security Documents.

16.3.2 Financial Model Updates

Developer shall cause a Financial Model Auditor to audit any Financial Model Update and Developer shall deliver the relevant Financial Model Audit Report to the Owner prior to such Financial Model Update becoming effective under this Agreement. The updated Financial Model Audit Report shall take into account the changes incorporated in the Financial Model Update in accordance with Section 16.2.1.

16.4 Escrow of Financial Model

16.4.1 Within 10 days (or such other period as the Parties may agree in writing) following execution of this Agreement by Developer, the Owner shall have reviewed and approved, and the Parties shall have jointly deposited, the Initial Financial Model (Developer Execution) in an escrow established at a commercial business located in Colorado, and on terms and conditions, mutually acceptable to the Parties, acting reasonably (the “**Financial Escrow**”).

16.4.2 Promptly after Financial Close, the Owner and Developer shall jointly deposit the Initial Financial Model (Financial Close) in the Financial Escrow on the same terms and conditions as the Initial Financial Model (Developer Execution).

16.4.3 The Parties shall follow comparable procedures for examining, verifying and depositing into the Financial Escrow the Initial Financial Model (Financial Close) and any subsequent Financial Model developed after the Financial Close Date. The Parties shall complete the examination and make the deposit within ten (10) days after the Financial Model Update is developed.

16.4.4 If the Owner elects not to be a signatory party to the escrow agreement establishing the Financial Escrow, then the Owner shall be a named, intended third-party beneficiary of the escrow agreement and the Financial Escrow with direct rights of enforcement against Developer and the escrow agent. The escrow agreement shall provide that neither Developer nor the escrow agent shall have any right to amend or supplement it, or waive any provision thereof, without the Owner’s prior written approval in its sole discretion. Provisions in the escrow agreement for access to the escrowed materials shall be consistent with this Section 16.4.

16.4.5 Developer shall submit the Initial Financial Model (Developer Execution), the Initial Financial Model (Financial Close), and any subsequent Financial Model into the Financial Escrow in macro-enabled excel format by email, on electronic storage media, or by such other method and medium as the Parties may agree in writing, provided that irrespective of method or medium, the electronic file containing the Financial Model being submitted and any medium on which it is stored, if applicable, shall be clearly marked with Developer's name, date of submittal, contract number and the words, "Financial Model for Escrow." Developer certifies that: (a)(i) the material submitted to the Financial Escrow as of the Developer Execution Date constitutes the Initial Financial Model (Developer Execution) and (ii) the material submitted to the Financial Escrow as of the Financial Close Date constitutes the Initial Financial Model (Financial Close); (b) Developer has personally examined the contents of the electronic file and/or electronic storage media, as applicable; and (c) they are complete.

16.4.6 Whenever Developer makes an additional deposit of the Financial Model to the Financial Escrow, Developer shall certify to the Owner in writing at the time of deposit that: (a) the material deposited into the Financial Escrow constitutes the true Initial Financial Model (Developer Execution), Initial Financial Model (Financial Close), or subsequent Financial Model, as applicable; (b) Developer has personally examined the contents of the electronic file; and (c) they are complete.

16.4.7 Each of the Owner and Developer shall have the right to examine, through one or more designated representatives, any and all components of the escrowed material in the Financial Escrow at any time. The Party undertaking an examination need not have or state a specific reason to examine such material. The applicable escrow agreement shall require that the escrowed information made accessible to the Parties shall be in read-only format and shall not be in a form that would permit either Party to modify, manipulate or delete such escrowed

information. Without limiting the foregoing, the Parties recognize that examination of the escrowed material may assist in the negotiation or determination of Payment adjustments, compensation, damages, extension of Completion Deadlines, Owner Changes and Refinancing Gain calculations, or may assist in the potential resolution or settlement of Claims or Disputes.

16.4.8 The escrowed material in the Financial Escrow is, and shall remain, the property of Developer or its Contractors.

16.4.9 Either Party may introduce the escrowed material in the Financial Escrow into evidence before the Dispute Resolution Panel and in court proceedings. The Parties shall promptly abide by any request of the Dispute Resolution Panel to receive, review and utilize escrowed material to assist the Dispute Resolution Panel in its deliberations.

16.4.10 The Financial Escrow shall remain in effect throughout the Term and thereafter until final resolution of all Disputes, subject to any mutual agreement of the Parties to discard materials therein from time to time.

16.4.11 Developer shall be responsible for the fees and costs of the escrow agent for the Financial Escrow.

ARTICLE 17. PROJECT FINANCING AND REFINANCING

17.1 Developer Right and Responsibility to Finance Project

17.1.1 Developer is solely responsible for obtaining and repaying, at its own cost and risk and without recourse to the Owner, all financing necessary for the Work, including the design, permitting, development, construction, equipping, operation, maintenance, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Project as provided in the Contract Documents, except as otherwise expressly provided in this Agreement. Developer will diligently pursue its obligations to obtain the necessary financing, as described in its financial plan reflected in the Financial Model.

17.1.2 Notwithstanding the foreclosure or other enforcement of any security interest created or perfected by a Financing Document, Developer shall remain liable to the Owner for the payment of all sums owing to the Owner under this Agreement and the performance and observance of all of Developer's covenants and obligations under this Agreement.

17.2 No Owner Responsibility for Project Debt

All Project Debt or other obligations issued or incurred by Developer or a Developer-Related Entity in connection with this Agreement or the Project shall be issued or incurred only in the name of Developer or a Developer-Related Entity. Except as otherwise expressly provided in this Agreement, the Owner shall have no obligation to pay debt service on any debt issued or incurred by Developer or a Developer-Related Entity. The Owner shall have no obligation to join in, execute or guarantee any note or other evidence of indebtedness of Developer or a Developer-Related Entity, any other Funding Agreement or any Security Document (other than the Direct Agreement).

17.3 Refinancing

17.3.1 Right of Refinancing

Subject to obtaining the Owner's prior written approval as provided in Section 17.3.3, Developer from time to time may consummate Refinancings on terms and conditions acceptable to Developer and in compliance with Sections 17.3.2 and 17.3.3; provided that the Owner's consent shall not be required for an Exempt Refinancing or a Rescue Refinancing so long as

Developer shall: (a) notify the Owner (i) at least 60 days in advance of any Exempt Refinancing, (ii) at least 45 days in advance of any Rescue Refinancing, and (b) include in any such notice facts to support the basis on which Developer believes the Refinancing constitutes an Exempt Refinancing or a Rescue Refinancing, as applicable. The Owner's approval of a Refinancing shall be based on confirming compliance with Sections 17.3.2 and 17.3.3 and agreement on the amount, if any, of Refinancing Gain payable to the Owner upon the closing of the Refinancing or as directed by the Owner in accordance with Appendix 15. Except as otherwise expressly provided in Section 17.3.2.1, the Owner shall have no obligations or liabilities in connection with any Refinancing except to deliver estoppel certificates and other deliverables in accordance with Section 18 of the Direct Agreement and to allow for the inclusion of the new Lender to be added to the Direct Agreement.

17.3.2 Notice, Consent and Documentation of Refinancing

17.3.2.1 In connection with any proposed Refinancing, except a Refinancing that is exempt from approval as provided in Section 17.3.1, Developer shall as soon as practicable submit to the Owner a summary outline of the proposed Refinancing, together with a schedule setting forth the various activities, each with schedule durations, to be accomplished from the commencement through the close of the proposed Refinancing. At least 60 days prior to the proposed date for closing the Refinancing, Developer shall submit to the Owner all information and materials relevant to the Refinancing as required by Appendix 15. The Owner shall have up to 40 days to review and determine whether the proposed Refinancing: (a) will result in a Refinancing Gain; and (b) is an Exempt Refinancing, and, if applicable, select the means for payment of its portion of the Refinancing Gain. If the Owner approves the draft proposed Financing Documents for further processing pursuant to such review, Developer shall submit final drafts of these documents, including updated versions of the background information previously submitted to the Owner, for final review and approval not later than 15 days prior to the proposed date for closing the Refinancing. Developer shall only proceed with the Refinancing upon receipt of prior written consent from the Owner, which will be provided no later than ten days after receiving the final documents. If Developer proceeds with the Refinancing, the Owner will provide documents as are reasonably necessary to comply with applicable Laws as well as customary opinions and certificates in connection with the closing of such Refinancing. Developer shall perform a final calculation of the Refinancing Gain and deliver the results to the Owner in accordance with Section 5 of Appendix 15, and Developer shall pay the Owner its portion of the Refinancing Gain in accordance with Section 4 of Appendix 15. Developer shall deliver to the Owner copies of all signed Financing Documents in connection with such Refinancing not later than ten days after close of the Refinancing, together with a revised Financial Model reflecting the final terms of the Refinancing and showing Developer's final calculation of the Refinancing Gain.

17.3.2.2 With respect to a Rescue Refinancing, at least 30 days prior to the proposed date for closing the Refinancing, Developer shall submit to the Owner the proposed term sheet, the financial model and the other documents required by Appendix 15 showing how Developer has calculated the Refinancing Gain following the procedures set forth in Appendix 15 or demonstrating that the Rescue Refinancing will not produce a Refinancing Gain. The Owner will have up to 20 days to review and dispute Developer's calculation of Refinancing Gains, provide comments and determine whether such calculations have been made in accordance with the requirements of Appendix 15.

17.3.3 Refinancing Limitations, Requirements and Conditions

Proposed Refinancings are subject to the following limitations, requirements and conditions precedent:

17.3.3.1 Refinancings other than Exempt Refinancings and Rescue Refinancings shall be subject to the Owner's prior written approval in its reasonable discretion. Except to the extent approved by the Owner in its sole discretion, Developer must demonstrate that: (a) the Committed Equity Investment requirements under Section 15.3 will continue to be satisfied following the Refinancing; and (b) the Refinancing will not increase the amount of Lenders' Liabilities by more than ten percent (10%).

17.3.3.2 If the Owner renders any assistance or performs any requested activity in connection with a Refinancing apart from delivering an estoppel certificate, then concurrently with, and as a condition precedent to Developer's right to close a Refinancing, Developer shall reimburse the Owner all the Owner's Recoverable Costs the Owner incurs in connection therewith. The Owner shall deliver to Developer a written invoice and demand therefor prior to the scheduled date of closing. If for any reason the Refinancing does not close, Developer shall reimburse such the Owner's Recoverable Costs and such other fees, costs and expenses within ten days after the Owner delivers to Developer a written invoice and demand therefor.

17.3.3.3 For any Refinancing other than an Exempt Refinancing, the Owner shall be entitled to 50% of any Refinancing Gain, calculated in accordance with Appendix 15. The Parties shall negotiate in good faith to determine the Refinancing Gain.

17.3.3.4 Developer shall bear all risks for any Refinancing that negatively affects its Equity IRR, debt coverage ratios or financial performance.

ARTICLE 18. INSURANCE, PAYMENT AND PERFORMANCE SECURITY, AND INDEMNITY

18.1 Insurance

18.1.1 Insurance Policies and Coverage

18.1.1.1 Owner-Provided Insurance Policies

The Owner shall procure and maintain the Owner-Provided Insurance Policies strictly in accordance with the minimum coverage requirements and terms of coverage as set forth in Appendix 18. The Owner-Provided Insurance Policies described in Section 1(a) of Appendix 18 will be procured and maintained by the Owner pursuant to the Owner-Controlled Insurance Program, or such alternative or replacement insurance policies that the Owner may procure that meet the applicable requirements in Appendix 18. Developer shall, and shall cause all eligible Contractors to enroll in the OCIP in accordance with the enrollment instructions set forth in the OCIP Project Insurance Manual and to comply with the terms and conditions thereof. In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the OCIP Project Insurance Manual, the provisions of this Agreement shall prevail. The Parties will share any OCIP Cost Savings equally in accordance with Appendix 18-B. The Owner shall invite Developer to participate in the insurance reviews conducted by the Owner and the selected OCIP insurer regarding the status of claims and reserves, as such reviews are conducted from time to time, and, at the election of Developer, the Lead Contractor may also be included in such reviews.

18.1.1.2 Developer-Provided Replacement Property Policy

If the Owner determines, in its good faith discretion, that continuing to include Developer and/or its Contractors as additional insureds under the Owner-Provided Property Policy will adversely impact the Owner or the terms, conditions and/or costs of the Owner-Provided Property Policy due to the claims and loss experience for the Project caused by the negligence, willful misconduct, or breach of applicable Law or contract by Developer or any Developer-

Related Entity, the Owner may, upon 60 days' prior written notice to Developer, require Developer to procure and maintain a replacement property policy for the Project on the applicable terms and conditions set forth in Appendix 18 for the Owner-Provided Insurance Policy, and such replacement policy shall be deemed a Developer-Provided Insurance Policy for the purposes of this Agreement. From and after the effective date of such replacement policy: (a) the Owner will pay to Developer the Base Project Property Insurance Cost, payable in twelve (12) equal monthly installments per annum as part of the Monthly Supplemental Payments; and (b) the Base Project Property Insurance Cost will be subject to the benchmarking provisions set forth in Section 18.1.2.12.

18.1.1.3 Developer-Provided Insurance Policies

Developer shall procure and maintain, or cause to be procured or maintained, the Developer-Provided Insurance Policies strictly in accordance with the minimum coverage requirements and terms of coverage as set forth in Appendix 18 and in this Section 18.1.

18.1.2 General Insurance Requirements

18.1.2.1 Insurers

All Developer-Provided Insurance Policies shall be procured from insurers that at the time coverage commences are admitted/authorized insurers to do business in the State and have a current policyholder's management and financial size category rating of not less than AX according to A.M. Best's Financial Strength Rating and Financial Size Category, except as otherwise provided in Appendix 18 or approved in writing by the Owner in its reasonable discretion.

18.1.2.2 Deductibles; Self-Insured Retentions; Claims in Excess of Coverage

Developer shall be responsible for paying all insurance deductibles and self-insured retentions under the Developer-Provided Insurance Policies (and Developer shall promptly indemnify the Owner upon written demand for any such deductibles and self-insured retentions paid by the Owner in respect thereof) and the Owner shall have no liability for deductibles, self-insured retentions or claim amounts in excess of the required coverage for the Developer-Provided Insurance Policies. The Owner shall be responsible for paying insurance deductibles and self-insured retentions under the Owner-Provided Insurance Policies. The Owner shall be entitled to set off any deductible and/or self-insured retention amounts owing from Developer to the Owner under this Section 18.1.2.2 from any amounts due and payable by the Owner to Developer under this Agreement. In the event that any Developer-Provided Insurance Policy involves a self-insured retention: (a) the entity responsible for the self-insured retention shall, in addition to naming the Owner as an additional insured as specified in Appendix 18, have an authorized representative issue a letter to the Owner, at the same time Developer-Provided Insurance Policy is to be procured, stating that the entity shall protect and defend the Owner to the same extent as if an insurer provided coverage for the Owner; and (b) Developer shall ensure that the relevant Developer-Provided Insurance Policy expressly permits (but does not obligate) the Owner, or a designee of the Owner, to pay the self-insured retention amount on behalf of the entity responsible for the self-insured retention. If the entity responsible for the self-insured retention does not promptly pay the self-insured retention amount when due, then the Owner may, but is not obligated to, pay the self-insured retention amount on behalf of such entity, and Developer shall indemnify the Owner for such amount and any other Losses incurred by the Owner in connection with the entity's failure to promptly pay the self-insured retention amount.

18.1.2.3 Primary Coverage

Each policy shall provide that the coverage thereof is primary and noncontributory with respect to all named insureds and Owner Additional Insureds. Any insurance or self-insurance beyond that specified in this Agreement that is maintained by an insured or any the Owner Additional Insured shall be excess of such insurance and shall not contribute with it.

18.1.2.4 Verification of Coverage

1. At each time Developer is required to initially obtain or cause to be obtained each Developer-Provided Insurance Policy, and thereafter not less than 30 days prior to the expiration date of each Developer-Provided Insurance Policy, Developer shall deliver to the Owner a written binder of insurance. The binder of insurance shall be on the most recent ACORD form consistent with the required coverage, without disclaimer. The Owner may, in its reasonable discretion, accept a written binder in a standard form other than the ACORD form. Each required binder must be an original in standard form, state the identity of all Insurers, named insureds and additional insureds, state the type and limits of coverage, deductibles, waiver of subrogation and termination provisions of the policy, list and describe all applicable endorsements, and include as attachments copies of all additional insured endorsements and copies of any other endorsements requested by the Owner in its reasonable discretion addressing the matters contemplated in this Agreement, and be signed by an authorized representative of the insurance company shown on the certificate, including its licensed agent or broker. Each required binder must be personally and manually signed by a representative or agent of the insurance company shown on the binder with a statement that he/she is an authorized representative or agent of such insurance company and is authorized to bind it to the coverage, limits, endorsements and termination provisions shown on the binder. The binder must state the signer's company affiliation, title and phone number, and, where required by this Agreement, include a statement that coverage may not be cancelled by the insurer for any reason except for non-payment of premium.
2. In addition, as soon as they become available, Developer shall deliver to the Owner: (a) a true and complete copy of each such Developer-Provided Insurance Policy or modification, or renewal or replacement Developer-Provided Insurance Policy and all endorsements thereto; and (b) satisfactory evidence of payment of the premium therefor.
3. If Developer has not provided the Owner with the foregoing proof of coverage and payment within ten days after receipt of written request therefor, the Owner may, upon three Business Days written notice to Developer, in addition to any other available remedy, without obligation and without further inquiry as to whether such insurance is actually in force, obtain such an Developer-Provided Insurance Policy; and Developer shall reimburse the Owner for the cost thereof upon demand. In addition, the Owner shall have the right, without obligation or liability, to suspend all or any portion of Work, during any time that such proofs of coverage, in compliance with this Section 18.1, have not been provided.

18.1.2.5 Project-Specific Insurance

All insurance coverage required to be provided by Developer, the Lead Contractor, the Lead Designer and/or the Lead O&M Firm shall apply specifically and exclusively to the Project and extend to all aspects of the Work, with coverage limits dedicated solely to the Project, except with respect to off-site Workers Compensation/Employers Liability, off-site Commercial General Liability and Excess/Umbrella Liability, and Commercial Automobile Liability coverages or if otherwise specified in Appendix 18. Insurance programs providing dedicated Project-specific limits and identified premiums are acceptable, provided that they otherwise meet all requirements described in Appendix 18 and this Section 18.1.

18.1.2.6 Endorsements and Waivers

All Developer-Provided Insurance Policies that Developer is required to provide hereunder shall contain or be endorsed to comply with all requirements specified in the Contract Documents, as well as the following provisions, provided that: (a) for the workers' compensation policy, only subsections (3) and (7) below shall be applicable; and (b) for the professional liability policy, only subsections (3), (7) and (8) shall be applicable:

1. Any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured or others, or any change in ownership of all or any portion of the Project or Developer's Interest shall not affect coverage provided to the other named insureds or the Owner Additional Insureds;
2. The insurance shall apply separately to each named insured and the Owner Additional Insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability;
3. Each policy shall be endorsed to state that coverage cannot be canceled, voided, suspended, lapsed, modified or reduced in coverage or in limits except after 60 days' (or for non-payment of premium, 10 days') prior written notice by registered or certified mail, return receipt requested, has been given to the Owner, except as otherwise specified in Appendix 18. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice;
4. Endorsements adding the Owner Additional Insureds to required policies shall contain no limitations, conditions, restrictions or exceptions to coverage beyond those that apply under the policy generally, and shall state that the interests and protections of each the Owner Additional Insureds shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage. The commercial general liability policy shall contain no limitations to coverage for the Owner Additional Insureds arising out of "completed operations";
5. The commercial general liability policy shall cover liability arising out of the acts or omissions of Developer's employees engaged in the Work and employees of Contractors to the extent Contractors are provided coverage under such liability policy;
6. The commercial automobile liability insurance policy shall be endorsed as necessary to provide Motor Carrier Act Endorsement-Hazardous Materials

Clean up (MCS-90) for those Contractors who will at any time transport Contaminated Materials;

7. Unless specified otherwise in Appendix 18, each Developer-Provided Insurance Policy shall provide coverage on an "occurrence" basis and not a "claims made" basis; and
8. Each Developer-Provided Insurance Policy shall contain a priority of payments clause, providing that the policy will respond in priority to Developer's rights to recover under the Agreement.

18.1.2.7 Waivers of Subrogation

The Owner and Developer waive all rights against each other, against each of their respective agents, employees and Project consultants, and against Contractors and their respective members, directors, officers, employees, subcontractors and agents for any claims to the extent covered and paid by insurance obtained pursuant to this Section 18.1, except such rights as they may have to the proceeds of such insurance. Developer shall require all Contractors to provide similar waivers in writing each in favor of all other parties specified above. Each policy for which Developer or its Contractor is required to provide coverage for the Owner Additional Insureds shall include a waiver of any right of subrogation against the Owner Additional Insureds.

18.1.2.8 No Recourse

Except as may be included in the MASP or as expressly provided otherwise in this Section 18.1, there shall be no recourse against the Owner for payment of premiums or other amounts with respect to Developer-Provided Insurance Policies.

18.1.2.9 Support of Indemnifications

The coverage provided by Developer-Provided Insurance Policies shall support but is not intended to limit Developer's indemnification obligations under the Contract Documents.

18.1.2.10 Adjustments in Developer-Provided Insurance Policy Coverage Amounts

1. At least once every two years during the Project Operating Period (commencing initially on the Project Substantial Completion Date), the Owner and Developer shall review and adjust, as appropriate, the per occurrence and aggregate limits for Developer-Provided Insurance Policies that have stated dollar amounts set forth in Appendix 18.
2. In determining adjustments, Developer and the Owner shall take into account: (a) claims and loss experience for the Project; (b) the condition of the Project; (c) the Safety Compliance and Noncompliance Points record for the Project; and (d) then prevailing Good Industry Practice for insuring comparable infrastructure projects.
3. If an Owner Change to increase required limits of Developer-Provided Insurance Policies results in a net increase in applicable insurance premiums, Developer shall be entitled to the amount of such net increase, provided that to the extent such adjustments are made to reflect Developer's adverse performance on the Project (including for reasons described in Section 18.1.2.10.2(a), (b) or (c)), Developer shall not be entitled to any compensation. If an Owner Change to reduce the required limits of Developer-Provided Insurance Policies results in a net reduction in applicable

insurance premiums, the Owner shall be entitled to 100% of the amount of such net reduction.

18.1.2.11 Inadequacy and Unavailability of Required Coverages for Developer-Provided Insurance Policies

If Developer demonstrates to the Owner's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to procure the required insurance coverages for Developer-Provided Insurance Policies, and if despite such diligent efforts and through no fault of Developer any of such coverages (or any of the required terms of such coverages, including policy limits) become completely unavailable or unavailable at commercially reasonable rates from insurers meeting the financial requirements set forth in Section 18.1.2.1, the Owner will consider in good faith alternative insurance packages and programs that provide coverage as comparable to that contemplated in this Section 18.1 as is possible under then-existing insurance market conditions. For purposes of this Section 18.1.2.11, commercially reasonable rates are rates equal to or less than 200% of the benchmark for the Developer-Provided Insurance Policy at issue as described in Section 18.1.2.12. The Owner will be entitled to a credit for any insurance premium savings resulting from the modification or elimination of the insurance requirements, and the Owner will act as the insurer of last resort to cover the unavailable Developer-Provided Insurance Policy or portion thereof. In the alternative and in the Owner's sole discretion, the Owner may terminate this Agreement if the insurance coverages required under this Agreement become completely unavailable or unavailable at commercially reasonable rates from insurers meeting the financial requirements set forth in Section 18.1.2.1, with the Termination Compensation owed to Developer being calculated pursuant to Section 21.3.7. If the required insurance coverage is available in the market at commercially reasonable rates, the Owner's decision to approve or disapprove a variance from the requirements of this Section 18.1 shall be final and not subject to the Dispute Resolution Procedures.

18.1.2.12 Insurance Premium Benchmarking

1. Except as otherwise provided in Section 18.1.2.11 and this Section 18.1.2.12, Developer shall bear the full risk of any insurance premium increases with respect to Developer-Provided Insurance Policies from the Developer Execution Date until the Project Substantial Completion Date (or, if Developer-Provided Insurance Policies required for the O&M Services are already in force at the Project Substantial Completion Date, until the expiration of those policies), and shall not be entitled to any claim for any additional compensation or relief for such increases. The Owner will allocate the risk of insurance premium volatility through an insurance benchmarking process as set forth in this Section 18.1.2.12. In no event shall the Owner participate in any insurance premium risk associated with additional or extended coverages beyond those required under Appendix 18, or changes in premiums that are not the result of market-wide factors. The benchmarking process will occur every three (3) years at each insurance renewal during the Project Operating Period, through the following:
 - (a) 90 days prior to the (i) the Project Substantial Completion Date (or, if Developer-Provided Insurance Policies required for the O&M Services are already in force at the Project Substantial Completion Date, the expiration of those policies) and (ii) every three (3) years at the insurance renewal period (each, a "**Benchmarking Date**"), Developer

shall submit a report (“**Insurance Review Report**”) to the Owner that includes the following elements:

- i. Three bindable quotes from three (3) established and recognized insurance providers for Developer-Provided Insurance Policies required in Appendix 18, subject to Section 18.1.2.11, for performing the O&M Services (“**Required Minimum Developer-Provided Insurance Policies**”). The quotes shall represent the current and fair market cost of providing the Required Minimum Developer-Provided Insurance Policies.
 - ii. Except with respect to the initial Insurance Review Report, the premium invoices for the actual Developer-Provided Insurance Policies obtained by Developer for the O&M Services for the period immediately preceding a Benchmarking Date (“**Actual Developer-Provided Insurance Policies**”).
 - iii. Except with respect to the initial Insurance Review Report, a comprehensive written explanation of any effect that Developer’s or any Developer-Related Entity’s loss experience has had on the premiums for the Required Minimum Developer-Provided Insurance Policies and the Actual Developer-Provided Insurance Policies. The explanation shall include: (i) an assessment by an independent insurance broker mutually selected by Owner and Developer addressing industry trends in premiums for the Required Minimum Developer-Provided Insurance Policies and analysis (if applicable) of any Project-specific reasons for the increase in premiums; and (ii) detailed information regarding any claims (paid or reserved) since the last review period, with claim date(s), description of incident(s), claims amount(s), and the level of deductibles provided; (iii) an analysis of the effect of the referenced claims on the insurance quotes received.
2. The Owner may independently assess the accuracy of the information in the Insurance Review Report and retains the right to perform its own independent insurance review, which may include retaining advisors at its own expense, obtaining independent quotes for the Required Minimum Developer-Provided Insurance Policies or performing its own assessment as to the impact of claims history on renewal costs.
 3. The Starting Insurance Benchmarking Premiums shall be calculated based on the premium information obtained from the initial Insurance Review Report or, if the Owner deems appropriate in its reasonable discretion, from information obtained pursuant to Section 18.1.2.12.2.
 4. The Starting Insurance Benchmarking Premiums established on the Benchmarking Date shall be used in the benchmarking process for the remainder of the Term in accordance with the following procedures:
 - (a) 90 days prior to every third year renewal date, Developer shall provide the Insurance Review Report, with the information specified in Section 18.1.2.12.1. The Owner shall determine, based on the Insurance Review Report and, if applicable, its own independent assessment pursuant to Section 18.1.2.12.2, if applicable, the change in premium

costs on a coverage-by-coverage basis for the Required Minimum Developer-Provided Insurance Policies. Broker's/agent's fees and/or commissions are the exclusive responsibility of Developer and will not be considered as part of the benchmarking exercise described in this Section 18.1.2.12. The Insurance Review Report shall clearly identify brokers' fees and commissions so that they may be excluded from the insurance benchmarking calculations.

- (b) If the total insurance premiums for the proposed renewal insurance policies are in excess of one hundred and forty percent (140%) of the benchmark premiums, the Owner shall increase the MASP by sixty-five percent (65%) of such portions of the premiums that are in excess of one hundred forty percent (140%) of the applicable insurance benchmark premiums until the next benchmarking period. If the total insurance premiums for the proposed renewal insurance policies are less than sixty percent (60%) of the benchmark premiums, the Owner shall reduce the MASP by sixty five percent (65%) of the difference between such premiums and sixty percent (60%) of the benchmark premiums until the next benchmarking period. No increase shall be made to the MASP unless Developer has demonstrated it has obtained bindable quotes from three (3) or more established and recognized insurance providers and that all premium quotes are above the one hundred forty percent (140%) threshold after adjustments are made for excluded premium increases.
- (c) The Owner will use the Starting Insurance Benchmarking Premiums to measure changes in premium costs at each Benchmarking Date for each of the Required Minimum Developer-Provided Insurance Policies. The Starting Insurance Benchmarking Premiums established on the Benchmarking Date shall be escalated by applying a fixed 3% annual increase ("**Escalated Benchmark Insurance Premiums**").
- (d) The subsequent Insurance Review Reports shall be used to establish the renewal premiums for the Required Minimum Developer-Provided Insurance Policies for purposes of the benchmarking process described in this Section 18.1.2.12. In no event shall premium increases that are caused by Project-specific losses, changes in deductibles or matters within the control of Developer or any Developer-Related Entity be subject to the benchmarking exercise or risk sharing described in this Section 18.1.2.12. Developer may voluntarily choose to procure an insurance package which is greater than the Required Minimum Developer-Provided Insurance Policies (with for example different deductibles, different coverage amounts, different exclusions, etc.), in which case both Parties recognize that: (i) the actual variations in Developer's insurance premiums may not necessarily reflect the variations in the minimum insurance requirements and (ii) the Owner will disregard the actual insurance package and will rely upon the analysis from the Insurance Review Report and its own independent analysis of the effect on the minimum insurance requirements. Any insurance beyond the Required Minimum Developer-Provided Insurance Policies shall not be subject to the insurance benchmarking process.

- (e) If the Owner elects to retain its own insurance advisor to analyse the extent of eligible premium increases, Developer shall cooperate in good faith with any reasonable requests for additional information from the Owner's insurance advisor.

18.1.2.13 Defense Costs

Unless otherwise agreed to in writing by the Owner in its reasonable discretion, no defense costs shall be included within or erode the limits of coverage of any of Developer-Provided Insurance Policies, except that defense costs may be included within the limits of coverage of professional liability, contractor's pollution liability and pollution legal liability policies.

18.1.2.14 Contesting Denial of Coverage

If any Insurer under a Developer-Provided Insurance Policy described in Sections 18.1.1 and 18.1.3 denies coverage with respect to any claims reported to such Insurer, Developer and the Owner shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; provided that if the reported claim is a matter covered by an indemnity in favor of the Owner or the denial is the result of Developer's failure to comply with an insurance requirement, then Developer shall bear all costs of contesting the denial of coverage.

18.1.3 Lender Insurance Requirements

If under the terms of any Funding Agreement or Security Document Developer is obligated to, and does, carry insurance coverage with higher limits, lower deductibles or self-insured retentions, or broader coverage than required under this Agreement, Developer's provision of such insurance shall satisfy the applicable requirements of this Agreement provided such policy meets all the other applicable requirements of this Section 18.1. If Developer carries insurance coverage in addition to that required under this Agreement, then Developer shall include the Owner Additional Insureds as additional insureds thereunder, under additional insured endorsements as described in Section 18.1.2.6.4, and shall provide to the Owner the proofs of coverage and copy of the policy described in Section 18.1.2.4. If, however, Developer demonstrates to the Owner that inclusion of such Persons as additional insureds will increase the premium, the Owner shall elect either to pay the increase in premium or forego additional insured status.

18.1.4 Prosecution of Claims

18.1.4.1 Unless otherwise directed by the Owner in writing with respect to the Owner's insurance claims, Developer shall be responsible for reporting and processing all potential claims by the Owner or Developer against Developer-Provided Insurance Policies. Developer agrees to report timely to the insurer(s) under such policies any and all matters which may give rise to an insurance claim by Developer or the Owner and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such policies, whether for defense or indemnity or both. Developer shall enforce all legal rights against the insurer under the applicable Developer-Provided Insurance Policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that Developer shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

18.1.4.2 The Owner agrees to promptly notify Developer of the Owner's incidents, potential claims, and matters which may give rise to an Owner insurance claim, to tender to the insurer the Owner's defense of the claim (if applicable) under such Developer-

Provided Insurance Policies, and to cooperate with Developer as necessary for Developer to fulfill its duties hereunder.

18.1.4.3 With respect to the Owner-Provided Insurance Policies, Developer shall promptly notify the Owner in writing of any incidents, potential claims, and matters which may give rise to a claim thereunder. Upon receipt of any such notice, the Owner shall promptly process the claim, provided that Developer shall cooperate with the Owner as necessary for the Owner to prosecute the claim.

18.1.4.4 If in any instance: (a) Developer has not performed its obligations respecting insurance coverage set forth in this Agreement; (b) Developer is unable to enforce and collect any insurance under Developer-Provided Insurance Policies for failure to assert claims in accordance with the terms of Developer-Provided Insurance Policies or to prosecute claims diligently; or (c) the Owner is unable to enforce and collect any insurance under the Owner-Provided Insurance Policies for failure of Developer to comply with Section 18.1.4.3, then for purposes of determining Developer's liability and the limits thereon or determining reductions in compensation due from the Owner to Developer on account of available insurance, Developer shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had Developer performed such obligations. Nothing in this Section 18.1.4 or elsewhere in this Section 18.1 shall be construed to treat Developer as electing to self-insure where Developer is unable to collect due to the bankruptcy or insolvency of any insurer which at the time Developer-Provided Insurance Policy is written meets the rating qualifications set forth in this Section 18.1.

18.1.4.5 In the event that an insurer providing any of Developer-Provided Insurance Policies required by this Agreement becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of an order or directive limiting its business activities given by any Governmental Entity, Developer shall exercise best efforts to promptly and at its own cost and expense secure alternative coverage in compliance with the insurance requirements contained in this Section 18.1 so as to avoid any lapse in insurance coverage.

18.1.4.6 If in any instance Developer has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by the Owner, then the Owner may report the claim directly to the insurer and thereafter seek coverage under the relevant policy.

18.1.4.7 The Parties acknowledge and agree that the Colorado Governmental Immunities Act, C.R.S. §§ 2410-101, et seq., provides certain rights, immunities, and protections to the Owner and its officials, officers and employees. For any claims arising from an accident or incident involving the Owner, the Parties agree to engage as counsel one of the following individuals, or any other counsel agreed to in writing by the Parties:

Andrew Carafelli
Nixon Shefrin Hensen Ogburn
5619 DTC Parkway, Suite1200
Greenwood Village, CO 80111
303-773-3500

Neema J. Kassai
Cozen O'Connor

707 17th Street, Suite 3100
Denver, CO 80202
720-479-3855

18.1.5 Application of Insurance Proceeds

All insurance proceeds received by Developer for physical property damage to the Project under any insurance policies required under Appendix 18, other than any business interruption or delay in start up insurance maintained as part of such insurance policies, shall be first applied to repair, reconstruct, rehabilitate, restore, renew, reinstate and replace each part or parts of the Project in respect of which such proceeds were received. With respect to physical property damage to the Project covered by the Owner-Provided Insurance Policy, except to the extent the Owner is expressly responsible under this Agreement for paying Developer for the cost of such Work, applicable insurance proceeds will be paid by the Owner's third party claims administrator to Developer.

18.1.6 Drug Testing

18.1.6.1 The Owner will bear the costs of pre-employment drug testing required under OCIP. Developer will bear the costs of post-accident, return to work and reasonable suspicion testing required under OCIP. All such testing shall be conducted by the Owner's chosen provider, using panels and subject to rules and procedures reasonably acceptable to the Owner, and shall be no broader than allowed by Law or prevailing labor agreements.

18.2 Performance and Payment Bonds

18.2.1 Performance Bond

18.2.1.1 Developer shall obtain, or cause to be obtained, a Performance Bond in an amount equal to \$325,000,000 as a condition to the commencement of Design Work (except for the Design Work completed by Developer pursuant to the PDA and the Early Design Work completed by Developer pursuant to Section 2.3) and the Owner's issuance of NTP 1, securing performance of the D&C Work.

18.2.1.2 The Performance Bond must be in the form set forth in Appendix 17-A, and must be issued by a licensed surety or insurance company authorized to issue bonds in the State and approved by the Owner that is rated in the top two categories by two nationally recognized rating agencies or at least "BBB+" or better and "Class VIII" or better according to A.M. Best and Company's Financial Strength Rating and Financial Size Category, except as otherwise approved in writing by the Owner in its reasonable discretion. The surety bond must include a multiple obligee rider, in the form of Appendix 17-C.1, which shall name the Owner as an additional obligee and may also name the Collateral Agent as an additional obligee. Developer may elect to procure the surety bond directly rather than rely upon its design-build contractor to do so as contemplated by the form contained in Appendix 17-A. If Developer makes this election, the Owner need not be named as an additional obligee under a multiple obligee rider, and the language of the bond form shall be adjusted to reflect the election, but only as necessary to eliminate references to the design-build contractor and to add the Owner. Subject to the Lenders' rights under the Direct Agreement, proceeds from a call on the Performance Bond by Developer shall be placed in a trust account and used solely for purposes of remedying the underlying performance default and the payment of costs contemplated under the bond.

18.2.2 Payment Bonds

18.2.2.1 Developer shall obtain, or cause to be obtained, a Payment Bond in an amount equal to \$325,000,000 as a condition to the commencement of Design Work (except for the Design Work completed by Developer pursuant to the PDA and the Early Design Work completed by Developer pursuant to Section 2.3) and the Owner's issuance of NTP 1, securing the design-build contractor's obligation to pay for labor and materials in connection with the D&C Work.

18.2.2.2 The Payment Bond required by this Section 18.2.2 must be issued in the form set forth in Appendix 17-B, and must be issued by a surety or an insurance company authorized to issue bonds in the State that is rated in the top two categories by two of the three nationally recognized rating agencies or at least "BBB+" or better and "Class VIII" or better according to A.M. Best's Financial Strength Rating and Financial Size Category except as otherwise approved in writing by the Owner in its reasonable discretion. The Payment Bond must each include a multiple obligee rider in the form of Appendix 17-C.2, which shall name the Owner as an additional obligee and may also name the Collateral Agent as an additional obligee. Developer may elect to procure the Payment Bond directly rather than rely upon its design-build contractor to do so as contemplated by the form contained in Appendix 17-B. If Developer makes this election, the Owner need not be named as an additional obligee under a multiple obligee rider, and the language of the bond form shall be adjusted to reflect the election, but only as necessary to eliminate references to the design-build contractor and to add the Owner.

18.2.3 Other Security-Related Provisions

18.2.3.1 In the event that Developer gives notice to the surety of a loss or potential loss under any Performance Bond or Payment Bond, Developer shall provide a copy of such notice concurrently to the Owner, together with a description of the underlying default or potential default under the relevant Key Contract and any corresponding default or potential default under this Agreement.

18.3 Letters of Credit

18.3.1 Any terms and conditions applicable to a particular letter of credit which Developer is required to or may provide under this Agreement are set forth in the provisions of this Agreement describing such letter of credit. Wherever in the Contract Documents Developer has the option to deliver to the Owner a letter of credit, the provisions of this Section 18.3 shall apply:

18.3.2 The letter of credit shall:

18.3.2.1 Be a direct pay, standby letter of credit;

18.3.2.2 Be issued by an Eligible LC Issuer, substantially in the form of Appendix 16, provided that any deviation from the form of Appendix 16 shall be subject to the Owner's approval in its reasonable discretion. If the bank issuing the letter of credit fails to remain an Eligible LC Issuer, Developer shall provide a substitute letter of credit issued by an Eligible LC Issuer within 30 days of notice by the Owner of noncompliance or otherwise furnish replacement security acceptable to the Owner;

18.3.2.3 Be payable immediately, conditioned only on written presentment by the beneficiary to the issuer of a sight draft drawn on the letter of credit as provided in the applicable form of letter of credit attached as Appendix 16;

18.3.2.4 Be in place for the entire period of time for which the letter of credit is providing security. Letters of credit with an expiration date shall provide for automatic annual renewal no later than 30 days prior to the expiration date;

18.3.2.5 Allow for multiple draws; and

18.3.2.6 Name the Owner as sole beneficiary.

18.3.3 The Owner shall have the right to draw on the letter of credit, without prior notice unless otherwise expressly provided in this Agreement with respect to the letter of credit (provided that the Owner will endeavor to provide advance notice to Developer), and use and apply the proceeds as provided in this Agreement for such letter of credit, if: (a) Developer has failed to pay or perform when due the duty, obligation or liability under this Agreement for which the letter of credit is held; (b) the Issuer of the Letter of Credit upon which draft is made has failed to remain an Eligible LC Issuer and Developer has failed to provide an acceptable substitute letter of credit issued by an Eligible LC Issuer other acceptable security within 30 days of the Owner's notice; or (c) Developer for any reason fails to deliver to the Owner an acceptable new or replacement letter of credit, on the same terms, by not later than 14 days before such expiration date, unless the applicable terms of this Agreement expressly require no further letter of credit with respect to the duty, obligation or liability in question. For all draws conditioned on prior written notice from the Owner to Developer, no such notice shall be required if it would preclude draw before the expiration date of the letter of credit. Draw on the letter of credit shall not be conditioned on prior resort to any other security of Developer.

18.3.4 Developer's sole remedy in connection with the improper presentment or payment of sight drafts drawn under letters of credit shall be to obtain from the Owner a refund of the proceeds which are misapplied and the reasonable costs Developer incurs as a result of such misapplication; provided that at the time of such refund Developer increases the amount of the letter of credit to the amount (if any) then required under applicable provisions of this Agreement. Developer acknowledges that the presentment of sight drafts drawn upon a letter of credit could not under any circumstances cause Developer injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, Developer covenants: (a) not to request or instruct the issuer of any letter of credit to refrain from paying any sight draft drawn under the letter of credit; and (b) not to commence or pursue any legal proceeding seeking, and Developer irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any letter of credit.

18.3.5 Developer shall obtain and furnish all letters of credit and replacements thereof at its sole cost and expense, and shall pay all charges imposed in connection with the Owner's presentment of sight drafts and drawing against letters of credit or any replacements thereof.

18.3.6 In the event the Owner's rights and interests under this Agreement are assigned, Developer shall cooperate so that concurrently with the effectiveness of such assignment, either replacement letters of credit for, or appropriate amendments to, the outstanding letters of credit shall be delivered to the assignee naming the assignee as beneficiary, at no cost to Developer.

18.4 Indemnity by Developer

18.4.1 Subject to Sections 18.4.2 and 20.2.10, Developer agrees to defend, indemnify and hold harmless the Indemnified Parties, against all liabilities, claims, judgments, suits, investigations, legal or administrative proceedings, or demands for damages to persons or

property arising out of, resulting from, or relating to the work performed under the Contract Documents, in each case if threatened, asserted or incurred by or awarded to any third party, including to the extent caused by:

18.4.1.1 The breach or alleged breach by Developer of the Contract Documents or any Principal Developer Document to which it is a party, including any Developer Event of Default;

18.4.1.2 The failure or alleged failure by Developer or any Developer-Related Entity to comply with the Governmental Approvals, any applicable Environmental Laws or other Laws (including Laws regarding Contaminated Materials Management) in connection with the Work;

18.4.1.3 Any alleged patent, trademark, or copyright infringement or other allegedly improper appropriation or use by Developer or any Developer-Related Entity of trade secrets, patents, proprietary information, know-how, copyright rights, inventions or other third-party proprietary rights in performance of the Work, or arising out of any use in connection with the facility of methods, processes, designs, information, or other items furnished or communicated by or on behalf of Developer to the Owner or another Indemnified Party pursuant to the Contract Documents; provided that this indemnity shall not apply to any infringement resulting from the Owner's failure to comply with specific written instructions regarding use provided to the Owner by Developer;

18.4.1.4 The actual or alleged negligence or willful misconduct of Developer or any Developer-Related Entity in or associated with performance of the Work, provided that if the conduct, act or omission is not insured because it is not required to be insured under this Agreement or because it is uninsurable, that shall not lessen or limit the liability of Developer under the terms of this indemnification obligation;;

18.4.1.5 The actual or alleged breach of applicable Law or contract of Developer or any Developer-Related Entity in or associated with performance of the Work;

18.4.1.6 Any and all claims by any governmental or taxing authority claiming Taxes based on gross receipts, purchases or sales, the use of any property or income of Developer or any Developer-Related Entity with respect to any payment for the Work made to or earned by Developer or any Developer-Related Entity;

18.4.1.7 Any and all stop payment notices and/or liens filed by a Contractor in connection with the Work, including all reasonable expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice or lien, provided that the Owner is not in default in payments owing to Developer with respect to such Work;

18.4.1.8 Any actual or threatened Release of Contaminated Materials by Developer or any Developer-Related Entity or Contaminated Materials that migrate into, onto, under or from the Work Site where the source of such Contaminated Materials is Developer or a Developer-Related Entity;

18.4.1.9 Any dispute between Developer and a Utility Owner;

18.4.1.10 (a) Developer or any Developer-Related Entity's breach of or failure to perform an obligation that the Owner owes to a third person, including Governmental Entities, under Law or under any agreement between the Owner and a third person, where the Owner has delegated performance of the obligation to Developer under the Contract Documents and, in respect of any such agreement, the Owner has given a copy of the same to Developer prior to the Developer Execution Date (without giving effect to any amendment

thereof following such date); or (b) the negligence, willful misconduct or breach of applicable Law or contract of Developer or any Developer-Related Entity which renders the Owner unable to perform or abide by an obligation that the Owner owes to a third person, including Governmental Entities, under any agreement between the Owner and a third person, where the agreement was previously disclosed or known to Developer prior to the Developer Execution Date (without giving effect to any amendment thereof following such date);

18.4.1.11 Trespass, nuisance or similar taking of or harm to real property by reason of: (a) the failure of Developer or any Developer-Related Entity to comply with Good Industry Practice, requirements of the Contract Documents, Operations and Maintenance Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts; (b) the intentional misconduct or negligence of Developer or any Developer-Related Entity in connection with the Work; or (c) the actual physical entry onto or encroachment upon another's property outside the Work Site by Developer or any Developer-Related Entity; or

18.4.1.12 Errors or other defects in the design or construction of the Project.

This indemnity shall be interpreted in the broadest possible manner to indemnify the Indemnified Parties for any acts or omissions of Developer or the Contractors either passive or active, irrespective of fault, including Owner's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of Owner.

18.4.2 Subject to Section 18.4.4 and the releases and disclaimers herein, including all the provisions set forth in Section 4.4.7, Developer's indemnity obligations shall not extend to any claim, cause of action, suit, investigation, legal or administrative proceeding, demand or Loss which has been specifically determined by the trier of fact to be:

18.4.2.1 The sole negligence or willful misconduct of such Indemnified Party;

18.4.2.2 A Relief Event, subject to Developer's obligations as provided for in this Agreement; or

18.4.2.3 The Owner's breach of any of its obligations under the Contract Documents, including an Owner Event of Default.

18.4.3 In claims by an employee of Developer, a Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 18.4 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Developer or a Contractor under workers' compensation, disability benefit or other employee benefits laws.

18.4.4 It is specifically agreed between the Parties that it is not intended by any of the provisions of any part of the Contract Documents to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to the Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract Documents.

18.4.5 The Owner will promptly notify Developer of its receipt of any third party claim relating to this Agreement. Developer's duty to defend and indemnify the Indemnified Parties shall arise at the time written notice of the Claim is first provided to Indemnified Parties regardless of whether Claimant has filed suit on the Claim. Developer's duty to defend and indemnify Indemnified Parties shall arise even if Owner is the only party sued by claimant and/or claimant alleges that Indemnified Parties' negligence or willful misconduct was the sole cause of

claimant's damages; provided, however, that Developer shall not be required to indemnify the Indemnified Party to the extent the claim is excluded under Section 18.4.2.

18.4.6 Any Indemnified Party entitled to an indemnity hereunder shall be entitled, upon written notice to Developer, to the timely appointment of counsel by Developer for the defense of any claim, which counsel shall be subject to the reasonable approval of the Indemnified Party. If, in the Indemnified Party's reasonable judgment, a conflict of interest exists between the Indemnified Party and Developer at any time during the defense of the Indemnified Party, the Indemnified Party may appoint independent counsel of its choice for the defense of the Indemnified Party as to such claim. Additionally, regardless of whether the Indemnified Party is appointed counsel or selects independent counsel: (a) the Indemnified Party shall have the right to participate in the defense of any claim; and (b) all reasonable costs, expenses and attorneys' fees of the Indemnified Party shall be borne by Developer. If Developer fails to timely pay such costs, expenses and attorneys' fees, the Indemnified Party may, but shall not be obligated to, pay such amounts and be reimbursed by Developer for the same, which amounts shall bear interest at the Late Payment Rate until paid in full. Such payment on behalf of Indemnified Parties shall be in addition to any other legal remedies available to the Indemnified Parties and shall not be considered Indemnified Parties exclusive remedy. Developer acknowledges that it is not a defense to a demand for indemnity that less than all claims asserted against the Indemnified Party are subject to indemnification. If a claim is covered by Developer's liability insurance, the Indemnified Party shall not take or omit to take any action that would cause the insurer not to defend such claim or to disclaim liability in respect thereof. The Owner hereby agrees for itself and each Indemnified Party that, in respect of any claim contemplated herein, the Owner shall not be entitled to settle or compromise any such claim without the prior written consent of Developer, at its reasonable discretion. Developer shall have the ability to settle or compromise any such claim without the consent of the Owner so long as there is no attribution of liability or guilt to the Owner or any Indemnified Party or other adverse impact on the Owner or any Indemnified Party arising therefrom, and further provided that Developer shall have provided the Owner with not less than 30 days' prior written notice of the proposed settlement or compromise and the Owner has confirmed in writing that the proposed settlement or compromise complies with the requirements hereof.

ARTICLE 19. REPRESENTATIONS AND WARRANTIES

19.1 Developer Representations and Warranties

Developer represents and warrants to the Owner as follows:

19.1.1 The Initial Financial Model (Developer Execution) and Financial Model Formulas: (a) will be prepared by or on Developer's behalf in good faith; (b) will be the same financial formulas that Developer utilized and is utilizing in the Financial Model in making its decision to enter into this Agreement and in making disclosures to potential equity investors and Lenders under the Initial Funding Agreements; and (c) as of the Financial Close Date will be suitable for making reasonable projections.

19.1.2 The Initial Financial Model (Developer Execution) and any subsequent Financial Model, as applicable: (a) will be prepared by or on Developer's behalf in good faith; (b) will be audited and verified by an independent recognized model auditor prior to Financial Close or the relevant Financial Model Update, as applicable; (c) will fully disclose all cost, revenue and other financial assumptions and projections that Developer has used or is using in making its decision to enter into this Agreement and in making disclosures to Lenders under the Initial Funding Agreements and the Funding Agreements in effect as of the relevant Financial Model Update, as applicable; and (d) as of the Financial Close Date and the date of any

Financial Model Update, will represent the projections that Developer believes in good faith are the most realistic and reasonable for the Project; provided, however, that such projections (i) are based upon a number of estimates and assumptions, (ii) are subject to significant business, economic and competitive uncertainties and contingencies, and (iii) accordingly are not a representation or warranty that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results.

19.1.3 Developer has reviewed all applicable Laws relating to Taxes for which it may be liable, has taken into account all requirements imposed by such Laws in preparing the Initial Financial Model (Developer Execution) and any subsequent Financial Model, and agrees to pay, prior to delinquency, all applicable Taxes owed by it except for those disputed in good faith. Further, Developer accepts sole responsibility and agrees that it shall have no right to compensation or other claim due to its misinterpretation of such Laws or incorrect assumptions regarding the applicability of Taxes.

19.1.4 Developer and its Contractor(s) have maintained (as and when required), and throughout the Term shall maintain, all required authority, license status, applicable licensing standards, certification standards, accrediting standards, professional ability, skills and capacity to perform the Work.

19.1.5 Without limiting its rights and remedies expressly granted hereunder, Developer has evaluated the constraints affecting design and construction of the Project, including the Work Site, and has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints.

19.1.6 Developer has examined the Work Site and surrounding locations and reviewed the geotechnical conditions, Contaminated Materials, structural conditions, Utilities and other information provided in this Agreement and the Reference Documents, and other available public records and information, to familiarize itself with existing conditions, including geotechnical conditions, the presence of Utilities, Contaminated Materials, any defects in the design or construction of the Terminal, and any other condition affecting the Work Site or surrounding locations; and as a result of such examination and review, Developer is familiar with and accepts the physical requirements of the Work and all associated risks and costs, except as otherwise expressly provided in this Agreement.

19.1.7 Developer has familiarized itself with the requirements of any and all applicable Laws, and the conditions of any required Governmental Approvals prior to entering into this Agreement. Developer will comply with such provisions before commencing performance of the Work under the Contract Documents and at all times during the Term.

19.1.8 Except as otherwise expressly provided in this Agreement, Developer shall be responsible for complying with all applicable Laws and conditions of any required Governmental Approvals at its sole cost and without any increase in compensation or extension of any deadlines in the Project Schedule on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract Documents. Developer has no reason to believe that any Governmental Approval required to be obtained by Developer will not be granted in due course and, thereafter, remain in effect so as to enable the Work to proceed in accordance with the Contract Documents.

19.1.9 All Work furnished by Developer will be performed by or under the supervision of Persons who hold all necessary, valid licenses to practice in the State, by personnel who are skilled, experienced and competent in their respective trades or professions, who are

professionally qualified to perform the Work in accordance with the Contract Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents and other documents prepared or checked by them.

19.1.10 Developer is a limited liability company duly organized and validly existing under the laws of Delaware, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and the Principal Developer Documents to which Developer is a party and to perform each and all of the obligations of Developer provided for herein and therein. Developer is duly qualified to do business, and is in good standing, in the State, and will remain in good standing throughout the Term and for as long thereafter as any obligations remain outstanding under the Contract Documents.

19.1.11 The execution, delivery and performance of this Agreement and the Principal Developer Documents to which Developer is (or will be) a party have been (or will be) duly authorized by all necessary corporate action of Developer; each person executing this Agreement and such Principal Developer Documents on Developer's behalf has been (or at the time of execution will be) duly authorized to execute and deliver each such document on Developer's behalf; and this Agreement and such Principal Developer Documents have been (or will be) duly executed and delivered by Developer.

19.1.12 Neither the execution and delivery by Developer of this Agreement and the Principal Developer Documents to which Developer is (or will be) a party, nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the governing instruments of Developer or any other agreements or instruments to which it is a party or by which it is bound.

19.1.13 Each of this Agreement and the Principal Developer Documents to which Developer is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

19.1.14 There is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability against Developer of, this Agreement and the Principal Developer Documents to which Developer is a party, or which challenges the authority of Developer's representative executing this Agreement or such Principal Developer Documents; and Developer has disclosed to the Owner any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware.

19.1.15 Developer represents and warrants, as of the effective date of the relevant Key Contract, as follows: (a) each of (i) the joint venture members of the Lead Contractor, (ii) the Lead Designer and (iii) the Lead O&M Firm is duly organized, validly existing and in good standing under the laws of the state of its organization; (b) except to the extent that any of them are publicly traded companies, the capital stock of each of them (including options, warrants and other rights to acquire capital stock) is owned by the Persons who Developer has set forth in a written certification delivered to the Owner prior to the Effective Date; (c) each of them has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Developer; (d) each of them has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the Design Work, Construction Work and the O&M

Services, as applicable, of the Project in accordance with the Contract Documents; and (e) each of them is not in breach of any applicable Law that would have a material adverse effect on the Design Work, Construction Work and O&M Services, as applicable, of the Project.

19.1.16 Developer has no authority or right to impose any fee, toll, charge or other amount for the use of the Project, except to the extent expressly provided in Article 6 and Appendix 5-A.

19.1.17 Developer certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State. For purposes of this Section 19.1.17, the term "principal" means an officer, director, owner, partner, Key Personnel, employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Developer.

19.1.18 As of the Effective Date, Developer has disclosed to the City in writing all organizational conflicts of interest of Developer and its Contractors of which Developer is aware as of the Effective Date.

19.1.19 All Subject Intellectual Property, Developer Intellectual Property and, to the best of Developer's knowledge after due inquiry, Third Party Intellectual Property, does not infringe any right, title or interest of any other Person. Developer has executed, or shall have executed prior to incorporation, a license for, and in the name of, the Owner in respect of all Third Party Intellectual Property incorporated into the Project.

19.2 Owner Representations and Warranties

The Owner represents and warrants to Developer as follows:

19.2.1 The Owner is a municipal corporation of the State of Colorado, duly formed and validly existing pursuant to Article XX, Section 1, of the Constitution of the State of Colorado, and has full status, power, right and authority to execute, deliver and perform this Agreement, the Direct Agreement, and the other Contract Documents to which the Owner is a party and to perform each and all of the obligations of the Owner provided for herein and therein.

19.2.2 This Agreement, the Direct Agreement, and the other Contract Documents to which the Owner is a party have each been duly authorized by the Owner, and each constitutes a legal, valid and binding obligation of the Owner enforceable against the Owner in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors and the general principles of equity.

19.2.3 Each person executing this Agreement, the Direct Agreement and the other Contract Documents to which the Owner is a party has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of the Owner; and this Agreement, the Direct Agreement and the other Contract Documents to which the Owner is a party have been (or will be) duly executed and delivered by the Owner.

19.2.4 Neither the execution and delivery by the Owner of this Agreement, the Direct Agreement and the other Contract Documents to which the Owner is a party nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of execution will be) in conflict with or will result in a default under or violation of Article XX, Section 1, of the Constitution of the State of Colorado or any other agreements or instruments to which it is a party or by which it is bound.

19.2.5 There is no action, suit, proceeding, investigation or litigation pending and served on the Owner which challenges the Owner's authority to execute, deliver or perform, or the validity or enforceability against the Owner of, this Agreement, the Direct Agreement or the other Contract Documents to which the Owner is a party, or which challenges the authority of the Owner official executing this Agreement, the Direct Agreement, or the other Contract Documents to which the Owner is a party; and the Owner has disclosed to Developer any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Owner is aware.

19.3 Survival of Representations and Warranties

The representations and warranties of Developer and the Owner contained herein shall survive expiration or earlier termination of this Agreement.

ARTICLE 20 DEFAULT; SUSPENSION OF WORK; SUSPENSION FOR DELINQUENCY

20.1 Default by Developer; Cure Periods

20.1.1 Developer Default

Developer shall be in breach of this Agreement upon the occurrence of any one or more of the following events or conditions (each a "**Developer Default**"):

20.1.1.1 Developer fails to satisfy the conditions to NTP 1 as set forth in Section 5.6 within 30 days of the Financial Close Date;

20.1.1.2 Developer fails to begin the applicable portion of the Design Work within 10 days following the Owner's issuance of NTP 1;

20.1.1.3 Except to the extent expressly permitted in Section 20.4.2.1.2, Developer discontinues the prosecution of the Work for a continuous period of 20 days (except in accordance with a written directive issued by the Owner pursuant to Section 20.2.7) or fails to resume discontinued Work as required by the Contract Documents within 30 days after the Owner notifies Developer to do so;

20.1.1.4 Developer fails to perform the Work or any portion thereof in accordance with the Contract Documents in any material respect, including conforming to applicable Technical Requirements; provided that a failure by Developer to perform any obligation for which Noncompliance Points are assigned or a Noncompliance Instance accrues pursuant to Appendix 9 will not constitute a Developer Default under this Section 20.1.1.4;

20.1.1.5 Developer fails to comply with applicable Governmental Approvals and Laws in any material respect;

20.1.1.6 Developer fails in any material respect to make an undisputed payment to the Owner under this Agreement when due, or fails to deposit funds to any reserve or account in the amount and within the time period required by this Agreement;

20.1.1.7 There occurs any use of the Project or a material portion thereof by Developer or any Developer-Related Entity in violation of, or not otherwise contemplated by, the Contract Documents, Governmental Approvals or Laws;

20.1.1.8 Developer fails to obtain, provide and maintain any insurance (except to the extent permitted under Section 18.1.2.11), bonds, guarantees, letters of credit or other performance security as and when required under this Agreement for the benefit of relevant parties, or fails to comply with any requirement of this Agreement pertaining to the amount, qualifications, terms or coverage of the same;

20.1.1.9 Developer makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of this Agreement, the Project or Developer's equity or economic interest therein in violation of Article 25 or there occurs any transaction in violation of Section 15.1 or 15.2;

20.1.1.10 Any representation or warranty made by Developer or any Guarantor in the Contract Documents, any guaranty or any certificate, schedule, report, instrument or other document delivered to the Owner pursuant to the Contract Documents is false in any material respect or materially misleading or inaccurate in any material respect when made or omits material information when made necessary to include so as not to make such disclosure misleading;

20.1.1.11 Developer materially fails to timely observe or perform or cause to be observed or performed any other material covenant, agreement, obligation, term or condition required to be observed or performed by Developer under the Contract Documents; provided that: (a) such actions shall not be considered a Developer Default if they are the direct result of the Owner's breach of its obligation to make payments to Developer; and (b) a failure by Developer to perform any obligation for which Noncompliance Points are assigned or a Noncompliance Instance accrues pursuant to Appendix 9 will not constitute a Developer Default under this Section 20.1.1.11;

20.1.1.12 Developer commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due or admits in writing its inability to pay its debts (other than: (i) debts that are otherwise paid by an Equity Member; (ii) Project Debt that is otherwise paid by a financial guarantor that is a Lender to the holders thereof under its financial guaranty; or (iii) debt otherwise owing to a financial guarantor); makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to: (a) any Equity Member with a material financial obligation owing to Developer for Committed Equity Investment; or (b) any Guarantor of material Developer obligations owed to the Owner under the Contract Documents, provided such actions shall not be considered a Developer Default if they are the sole and direct result of the Owner's breach of its obligation to make payments to Developer;

20.1.1.13 An involuntary case is commenced against Developer seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Developer or Developer's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Developer or any substantial part of Developer's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by Developer in good faith or shall remain undismissed and unstayed for a period of 60 days; or any such involuntary case, or any of the foregoing acts or events, shall occur with respect to: (a) any Equity Member with a material financial obligation owing to Developer for Committed Equity Investment; or (b) any Guarantor of material Developer obligations owed to the Owner under the Contract Documents; provided such actions shall not be considered a Developer Default if they are the sole and direct result of the Owner's breach of its obligation to make payments to Developer;

20.1.1.14 Developer fails to comply with the Owner's written suspension of Work and/or Project Right of Entry order issued in accordance with Section 20.2.7 within the time reasonably allowed in such order;

20.1.1.15 Developer fails to: (a) commence the Construction Work by the Construction Commencement Deadline; or (b) achieve Project Substantial Completion by the Project Substantial Completion Long Stop Date;

20.1.1.16 A Persistent Developer Noncompliance exists;

20.1.1.17 Developer fails to comply with Section 23.3.1;

20.1.1.18 Developer or any Qualified Investor, or any of its respective partners, members, officers, directors, responsible managing officers, or responsible managing employees, has been convicted in a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Section 24-91-103.5 of the Colorado Revised Statutes, with any public entity, as defined in Section 24-91-102 of the Colorado Revised Statutes;

20.1.1.19 A Persistent Developer Breach exists; or

20.1.1.20 The circumstances described in Section 9.14.4 have occurred.

20.1.2 Initial Notice and Cure Periods

The Owner shall provide written notice to Developer of the occurrence of a Developer Default, except that no written notice is required for a Developer Default under Section 20.1.1.18 and, subject to the terms of the Direct Agreement, the Owner may terminate the Agreement for default immediately under Section 21.4 for such default. Upon receipt of the Owner's notice (if required), Developer shall have the following cure periods within which to cure the relevant Developer Default:

20.1.2.1 For a Developer Default under Sections 20.1.1.1 through 20.1.1.3, Sections 20.1.1.5 through 20.1.1.9, Section 20.1.1.14, Section 20.1.1.17, Section 20.1.1.18 and Section 20.1.1.20, a period of 30 days after Developer receives written notice from the Owner of Developer Default; provided that as to a Developer Default under Section 20.1.1.7, such cure period shall not preclude or delay the Owner's immediate exercise, without notice or demand, of its remedy set forth in Section 20.2.2.

20.1.2.2 For a Developer Default under Sections 20.1.1.4, 20.1.1.10 and 20.1.1.11, a period of 30 days after Developer receives written notice from the Owner of Developer Default; provided that if Developer Default is of such a nature that the cure cannot with diligence be completed within such time period and Developer has commenced meaningful steps to cure immediately after receiving the default notice, Developer shall have such additional period of time, up to a maximum cure period of 90 days, as is reasonably necessary to diligently effect cure.

20.1.2.3 For a Developer Default under Section 20.1.1.12 or Section 20.1.1.13 relating to an Equity Member or a Guarantor, Developer shall have a period of 30 days to effect cure of such default by providing a substitute Equity Member or Guarantor reasonably acceptable to the Owner or by providing a letter of credit or other form of security reasonably acceptable to the Owner in the amount of, as the case may be: (a) the Equity Member's financial obligation for Committed Equity Investment to or for the benefit of Developer; or (b) the Guarantor's specified sum or specified maximum liability under its guaranty, or if none is specified, the reasonably estimated maximum liability of the Guarantor. Notwithstanding the foregoing, if such default relates to an Equity Member who holds a

Controlling Interest in Developer, Developer shall cure such default only by providing a letter of credit or other form of security reasonably acceptable to the Owner in the amount of such Equity Member's financial obligation for Committed Equity Investment to or for the benefit of Developer.

20.1.2.4 For (i) a Developer Default under Section 20.1.1.12 or Section 20.1.1.13 relating to Developer; or (ii) a Developer Default under Section 20.1.1.15, Section 20.1.1.16, or Section 20.1.1.19, there is no cure period.

20.2 Owner Remedies for Developer Default

20.2.1 Termination

If any Developer Default occurs and has not been cured within the applicable cure period, if any, set out in Section 20.1.2, the Owner may terminate this Agreement in accordance with Section 21.4.

20.2.2 Immediate Owner Entry and Cure of Wrongful Use

Without notice and without awaiting lapse of the period to cure, in the event of any Developer Default under Section 20.1.1.7 (use of the Project in violation of the Contract Documents), the Owner may enter and take control of the Project (or relevant portion thereof, as applicable) to restore the permitted uses and reopen and continue operations for the benefit of Developer and the public, until such time as Developer or the Lenders cure such breach, or the Owner terminates this Agreement. Developer shall pay to the Owner on demand the Owner's Recoverable Costs in connection with such action. Immediately following cure of such Developer Default, as determined by the Owner, acting reasonably, the Owner shall relinquish control and possession of the Project (or relevant portion thereof, as applicable) back to Developer. So long as the Owner undertakes such actions in good faith, such actions shall not be deemed unlawful or a breach of this Agreement, and shall not expose the Owner to any liability to Developer and shall not entitle Developer to any other remedy, provided that if the Owner undertook such action under a mistaken belief in the occurrence of such a Developer Default, such event shall constitute an Owner-Caused Delay under clause (g) of the definition of Owner-Caused Delays.

20.2.3 Remedies for Failure to Meet Safety Standards or Perform Safety Compliance

20.2.3.1 If at any time Developer, or its Surety under payment and performance bonds, fails to meet any Safety Standard or timely perform Safety Compliance or the Owner and Developer cannot reach an agreement regarding the interpretation or application of a Safety Standard or the valid issuance of a Safety Compliance Order within a period of time acceptable to the Owner, acting reasonably, the Owner shall have the absolute right and entitlement to undertake or direct Developer to undertake any work required to ensure implementation of and compliance with Safety Standards as interpreted or applied by the Owner or with the Safety Compliance Order.

20.2.3.2 To the extent that any work done pursuant to Section 20.2.3.1 is undertaken by the Owner and is reasonably necessary to comply with Safety Standards or perform validly issued Safety Compliance Orders, Developer shall pay to the Owner on demand the Owner's Recoverable Costs in connection with such work, and the Owner (whether it undertakes the work or has directed Developer to undertake the work) shall have no obligation or liability to compensate Developer for any Losses it suffers or incurs as a result thereof, except as a result of the Owner's gross negligence, recklessness, willful misconduct or bad faith.

20.2.3.3 To the extent that any work done pursuant to Section 20.2.3.1 is undertaken by the Owner and is not reasonably necessary to comply with Safety Standards or perform validly issued Safety Compliance Orders, the Owner shall compensate Developer only for Losses it suffers or incurs as a direct result thereof.

20.2.3.4 Notwithstanding anything to the contrary contained in this Agreement, if, in the Owner's good faith discretion, Developer has failed to meet any Safety Standards or perform Safety Compliance and the failure results in an Emergency or danger to persons or property, and if Developer is not then diligently taking all necessary steps to cure or deal with such Emergency or danger, the Owner may (but is not obligated to), without notice and without awaiting lapse of the period to cure any breach, and in addition and without prejudice to its other remedies: (a) immediately take such action as may be reasonably necessary to rectify the Emergency or danger, in which event Developer shall pay to the Owner on demand the Owner's Recoverable Costs; or (b) suspend the Work and/or close or cause to be closed any and all portions of the Project affected by the Emergency or danger. So long as the Owner undertakes such action in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an Emergency or danger as a result thereof, such action shall not be deemed unlawful or a breach, shall not expose the Owner to any liability to Developer, except if the Owner's action constitutes gross negligence, recklessness, willful misconduct or bad faith, and shall not entitle Developer to any other remedy, it being acknowledged that the Owner has a high priority, paramount public interest in protecting public and worker safety at the Project and adjacent and connecting areas. Immediately following rectification of such Emergency or danger, as determined by the Owner, acting reasonably, the Owner shall allow the Work to continue or such portions of the Project to reopen, as the case may be.

20.2.4 Owner Step-in Rights

Upon the occurrence of a Developer Default and expiration, without full and complete cure, of the cure period, if any, available to Developer, without waiving or releasing Developer from any obligations, but subject to the rights of the Lenders under the Direct Agreement, the Owner shall have the right, but not the obligation, to pay and perform all or any portion of Developer's obligations and the Work that relates to the Developer Default, on and subject to the following terms and conditions.

20.2.4.1 The Owner may, to the extent necessary to cure the Developer Default:

1. Perform or attempt to perform, or caused to be performed, such Work;
2. Employ security guards and other safeguards to protect the Project;
3. Spend such sums as the Owner deems necessary and reasonable to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required for the purpose of completing the Work;
4. Draw on and use proceeds from the Payment Bond and Performance Bond and any other available security to pay such sums;
5. Execute all applications, certificates and other documents as may be required for completing the Work;
6. Make decisions respecting, assume control over and continue Work as the Owner determines appropriate, in its sole discretion;

7. Pursuant to the term of such agreement, modify or terminate any contractual arrangements, without liability for termination fees, costs or other charges so long as the Owner step-in is intended to be permanent following a termination hereof;
8. Meet with, coordinate with, direct and instruct Contractors, process invoices and applications for payment from Contractors, pay Contractors, and resolve claims of Contractors in accordance with the terms of the applicable Contracts, and for this purpose Developer irrevocably appoints the Owner as its attorney-in-fact with full power and authority to act for and bind Developer in its place and stead;
9. Take any and all other actions which it may in its sole discretion consider necessary to complete the Work; and
10. Prosecute and defend any action or proceeding incident to the Work.

20.2.4.2 Developer shall reimburse the Owner, on demand, the Owner's Recoverable Costs in connection with the performance of any act or Work authorized by this Section 20.2.4.

20.2.4.3 For the purpose of carrying out the Owner's step-in rights under this Section 20.2.4, the Owner shall have the right to take exclusive possession of the Project (or portion thereof), the Work Site and the Terminal and to suspend or revoke Developer's right to enter the same, and the Owner is also granted a perpetual, irrevocable right of entry for the Owner and its authorized representatives, contractors, subcontractors, vendors and employees to enter onto any other construction, lay down, staging, borrow and similar areas, exercisable at any time or times without notice. Neither the Owner nor any of its authorized representatives, contractors, subcontractors, vendor and employees shall be liable to Developer in any manner for any inconvenience or disturbance arising out of any such exclusion of Developer from the Project, the Work Site or the Terminal or its entry onto any construction lay down, staging, borrow and similar areas in order to perform under this Section 20.2.4, unless caused by the gross negligence, recklessness, willful misconduct or bad faith of such Person. If any Person exercises any right to pay or perform under this Section 20.2.4, it nevertheless shall have no liability to Developer for the sufficiency or adequacy of any such payment or performance, or for the manner or quality of design, construction, operation or maintenance, unless caused by the gross negligence, recklessness, willful misconduct or bad faith of such Person.

20.2.4.4 The Owner's rights under this Section 20.2.4 are subject to:

1. The terms of the Direct Agreement;
2. The right of any Surety under the Performance Bond to assume performance and completion of all bonded Work; and
3. The exercise of rights by the Collateral Agent under the senior Security Documents, provided that the Collateral Agent complies with its obligations under the Direct Agreement.

20.2.5 Damages; Offset

20.2.5.1 Subject to Section 20.2.10, the Owner shall be entitled to recover any and all damages available under Law on account of the occurrence of a Developer Default, including loss of any compensation due to the Owner under this Agreement proximately caused by the Developer Default. Developer shall be liable for any damages that accrue after the occurrence of a Developer Default, regardless of whether Developer Default is subsequently

cured, which shall be due and owing after the expiration of all cure periods available to Developer and Lenders under the Contract Documents.

20.2.5.2 In the case of a termination for Developer Default, the Owner may deduct and offset any damages owing to it under the Contract Documents from and against any amounts the Owner may owe to Developer. If the amount of damages owing to the Owner is not liquidated or known with certainty at the time a payment is due from the Owner to Developer with respect to such termination for a Developer Default, the Owner may deduct and offset the amount it reasonably estimates will be due, subject to the Owner's obligation to adjust such deduction or offset when the amount of damages owing the Owner is liquidated or becomes known with certainty.

20.2.6 Persistent Developer Noncompliance

20.2.6.1 Developer recognizes and acknowledges that a pattern or practice of continuing, repeated or numerous Noncompliance Instances, whether cured or not, will undermine the confidence and trust essential to the success of the public-private arrangement under this Agreement and will have a material, cumulative adverse impact on the value of this Agreement to the Owner. Developer acknowledges and agrees that measures for determining the existence of such a pattern or practice described in the definition of Persistent Developer Noncompliance and this Section 20.2.6 are a fair and appropriate objective basis to conclude that such a pattern or practice will continue.

20.2.6.2 A Persistent Developer Noncompliance shall be deemed to exist if:

1. The cumulative number of Noncompliance Points assessed during any consecutive 365-day period equals or exceeds 2000; or
2. The cumulative number of Noncompliance Instances, cured or uncured, during any consecutive 365-day period equals or exceeds 3500.

20.2.7 Suspension of Work

20.2.7.1 Subject to the rights of the Lenders as provided in the Direct Agreement, the Owner shall have the right and authority to suspend, in whole or in part, the Work (including, in the Owner's discretion, suspension of the Project Right of Entry in whole or in part) by written order to Developer for Developer's failure to cure and correct, within the applicable cure period available to Developer (if any), the following:

1. Material failure to perform the Work in compliance with the Contract Documents;
2. Failure to comply with any Law or Governmental Approval (including failure to handle Contaminated Materials, in accordance with applicable Laws and Governmental Approvals);
3. The existence of conditions unsafe for workers, other Project personnel, Users or the general public, including failures to comply with Safety Standards or perform Safety Compliance as set forth in Section 20.2.3;
4. Failure to provide proof of required insurance coverage as set forth in Section 18.1.2.4 or obtain and maintain the Payment Bond and Performance Bond required under Section 18.2;
5. Failure of Developer or any Contractor to pay prevailing wages in accordance with Section 9.11.4 in connection with the Construction Work; and

6. Material failure to carry out and comply with orders given by the Owner in accordance with the Contract Documents.

The Owner shall have no liability to Developer, and Developer shall have no right to any additional monetary compensation, time extension or any other relief under Article 11, for the duration of any suspension under this Section 20.2.7.1, except to the extent such suspension is an Owner-Caused Delay described in clause (d) of the definition of Owner-Caused Delays.

20.2.7.2 The Owner shall have the right and authority, in its sole discretion, to suspend, in whole or in part, the Work (including, in the Owner's discretion, suspension of the Project Right of Entry in whole or in part) by written order to Developer for reasons other than set forth in Section 20.2.7.1; the written order shall set for the reason for such suspension.

20.2.7.3 For any suspension order issued under this Section 20.2.7, the Owner will provide Developer the reason for such suspension, and Developer shall comply with such suspension order in accordance with the following provisions:

1. Developer shall immediately comply with any suspension order. Developer shall not resume the suspended Work (or, if applicable, enter onto the Work Site and Terminal Improvements for which the Project Right of Entry has been suspended) until authorized to do so by the Owner in writing. Developer assumes the full risk and liability for any Work performed by Developer (and, if applicable, entry onto the Work Site and Terminal Improvements for which the Project Right of Entry has been suspended) after receipt by Developer of the suspension order and prior to the Owner's authorization to resume such Work (and, if applicable, entry onto the Work Site and Terminal Improvements for which the Project Right of Entry has been suspended). Further, failure to immediately comply with any suspension order will also constitute a default by Developer under the Contract Documents.
2. If the Owner suspends the Work and/or the Project Right of Entry, as applicable, for an indefinite period, Developer shall store all materials in such manner that they will not obstruct or impede the Airport Activities unnecessarily or become damaged in any way. Developer shall take every reasonable precaution to prevent damage to or deterioration of the Work performed.

20.2.7.4 Except to the extent expressly permitted in Section 20.4.2.1.2, Developer shall not suspend the Work or remove equipment or materials necessary for completing the Work without obtaining the Owner's written permission. Developer shall submit all requests for suspension of Work in writing to the Owner, and identify specific dates to begin and end the suspension. Developer is not entitled to any additional compensation, time extension or other relief for suspension of operations during such periods, except to the extent Developer is granted any such compensation, time extension or relief under Article 11 in connection with a Relief Event.

20.2.8 Persistent Developer Breach

20.2.8.1 If Developer commits a breach of any of the provisions of the Contract Documents (other than (a) any breach for which a Noncompliance Point, Noncompliance Instance or payment deduction under Appendix 9 could have been assessed or (b) any breach that arises as a direct result of the occurrence of a Relief Event) that continues for more than twenty (20) consecutive days or occurs more than three (3) times in any

consecutive six (6) month period, then the Owner may serve a notice (an “**Initial Breach Notice**”) on Developer:

1. Specifying that it is an Initial Breach Notice;
2. Giving reasonable details of the relevant breach; and
3. Stating that the relevant breach is a breach which, if it recurs frequently or continues, may result in termination of this Agreement for Persistent Developer Breach.

20.2.8.2 If the breach specified in an Initial Breach Notice continues or recurs within the three (3) month period after the date of service of the Initial Breach Notice, then the Owner may serve another notice (a “**Final Breach Notice**”) on Developer:

1. Specifying that it is a Final Breach Notice;
2. Stating that the breach specified has been the subject of an Initial Breach Notice served within the three (3)-month period prior to the date of service of the Final Breach Notice; and
3. Stating that if the breach continues or recurs within the three (3)-month period after the date of service of the Final Breach Notice, this Agreement may be terminated for Persistent Developer Breach.

20.2.9 **Cumulative, Non-Exclusive Remedies**

Subject to Sections 20.2.10 and 21.10, and except as specifically provided otherwise in this Agreement, each right and remedy of the Owner hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing under Law or in equity, and the exercise or beginning of the exercise by the Owner of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by the Owner of any or all other such rights or remedies.

20.2.10 **Limitation on Developer’s Liability for Certain Damages**

20.2.10.1 Notwithstanding any other provision of the Contract Documents, and except as set forth in Section 20.2.10.2, to the extent permitted by applicable Law, Developer shall not be liable to the Owner for special, punitive damages or indirect, incidental or consequential damages, whether arising out of breach by Developer, tort (including negligence) or any other theory of liability, and the Owner releases Developer from any such liability.

20.2.10.2 The foregoing limitation on Developer’s liability shall not apply to or limit the Owner’s right of recovery respecting the following:

1. Losses (including defense costs) to the extent: (a) covered by the proceeds of insurance required to be carried pursuant to Section 18.1 and received by the Owner or Developer; (b) covered by the proceeds of insurance actually carried by or insuring Developer under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Section 18.1; or (c) Developer is deemed to have self-insured the Loss pursuant to Section 18.1.4.4;
2. Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness or bad faith on the part of Developer or any Developer-Related Entity;

3. Developer's indemnities set forth in this Agreement, to the extent any such remedies relate to claims, causes of action or Losses asserted by or awarded to third parties;
4. Developer's obligation to pay liquidated damages in accordance with the Contract Documents, including any Performance Deductions;
5. Losses arising out of Releases of Contaminated Materials by Developer or any Developer-Related Entity;
6. Amounts Developer may owe or be obligated to reimburse to the Owner under the express provisions of the Contract Documents, including the Owner's Recoverable Costs, but excluding Developer's indemnities set forth in this Agreement other than as provided in clause (3) above; and
7. Interest, late charges, fees, transaction fees and charges, penalties and similar charges that the Contract Documents expressly state are due from Developer to the Owner.

20.3 Default by the Owner; Cure Periods

20.3.1 Owner Default

The Owner shall be in breach of this Agreement upon the occurrence of any one or more of the following events or conditions (each, a "**Owner Default**"):

20.3.1.1 The Owner fails to make any payment due to Developer under this Agreement for a period of fifteen (15) days from the due date hereunder, provided that such payment is not subject to a good faith Dispute;

20.3.1.2 Any representation or warranty made by the Owner under Section 19.2 is false or materially misleading or inaccurate when made in any material respect or omits material information when made necessary to include so as not to make such disclosure misleading;

20.3.1.3 The Owner ceases or fails to perform any of its material obligations under this Agreement as a direct result of which Developer is unable to perform all or substantially all of its obligations under this Agreement for a continuous period of 120 days; or

20.3.1.4 The Owner or any other Governmental Entity confiscates, sequesters, condemns or appropriates the Project or any material part thereof, or Developer's Interest or any material part thereof, excluding a Termination for Convenience or any other exercise of a right of termination set forth in this Agreement or any suspensions or limitations on access due to TSA, FAA or other Governmental Entity's requirements in response to Emergencies, Terrorism or Relief Events.

20.3.2 Cure Periods

The Owner shall have the following cure periods with respect to the following the Owner Defaults:

20.3.2.1 For an Owner Default under Section 20.3.1.1, with respect to (a) any Progress Payment or Supplemental Payment, a period of 30 days after Developer delivers to the Owner written notice of the Owner Default with respect thereto, and (b) with respect to any other Payment, 75 days after Developer delivers to the Owner written notice of the Owner Default with respect thereto; and

20.3.2.2 For an Owner Default under Section 20.3.1.2, 20.3.1.3 or 20.3.1.4, a period of 30 days after Developer delivers to the Owner written notice of the Owner Default; provided that if the Owner Default is of such a nature that the cure cannot with diligence be completed within such time period and the Owner has commenced meaningful steps to cure immediately after receiving the default notice, the Owner shall have such additional period of time, up to a maximum cure period of 120 days, as is reasonably necessary to diligently effect cure.

20.4 Developer Remedies for Owner Default

20.4.1 Termination

Subject to Section 20.4.3, Developer will have the right to terminate this Agreement and recover termination damages as more particularly set forth in, and subject to the terms and conditions of Section 21.5.

20.4.2 Damages and Other Remedies

20.4.2.1 Subject to Section 20.4.3, Developer shall have and may exercise the following remedies upon the occurrence of an Owner Default but only following expiration, without cure, of the applicable cure period:

1. If Developer does not terminate this Agreement, Developer may submit a Relief Event Claim to the extent permitted under Article 11;
2. Solely with respect to an Owner Default under Section 20.3.1.1, if Developer does not terminate this Agreement, Developer may suspend performance of the Work until such Owner Default is cured; and
3. Developer may exercise any other rights and remedies available under this Agreement or available at Law or in equity.

20.4.2.2 Subject to Section 20.4.3 and except as specifically provided otherwise in this Agreement, each right and remedy of Developer shall be cumulative and shall be in addition to every other right or remedy provided by this Agreement or now or hereafter existing under Law, and the exercise or beginning of the exercise by Developer of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Developer of any or all other such rights or remedies.

20.4.3 Limitations on Remedies

20.4.3.1 Notwithstanding any other provision of the Contract Documents and except as provided in Section 20.4.3.2, to the extent permitted by applicable Law, the Owner shall not be liable to Developer for punitive damages or indirect, incidental or consequential damages, whether arising out of a breach by the Owner, tort (including negligence) or any other theory of liability, and Developer releases the Owner from any such liability.

20.4.3.2 The foregoing limitation on the Owner's liability for damages shall not apply to or limit Developer's right of recovery respecting the following:

1. Losses (including defense costs) to the extent covered by the proceeds of insurance actually paid and received (inclusive of any deductibles and retentions for which Developer is responsible under this Agreement);
2. Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness or bad faith on the part of the Owner;

3. Any amounts the Owner may owe or be obligated to reimburse to Developer under the express provisions of the Contract Documents (including pursuant to a Compensation Event (Type 3)); or
4. Interest, late charges, fees, transaction fees and charges, penalties and similar charges that the Contract Documents expressly state are due from the Owner to Developer.

20.4.3.3 The measure of compensation available to Developer as set forth in this Agreement for an event of termination shall constitute the sole and exclusive monetary relief and damages available to Developer arising out of or relating to such event; and Developer irrevocably waives and releases any right to any other or additional damages or compensation. No award of compensation or damages shall be duplicative.

ARTICLE 21. TERMINATION

21.1 Termination for Failure to Achieve Financial Close

21.1.1 If Financial Close does not occur by the Financial Close Deadline and such failure is directly attributable to an Excused FC Delay:

21.1.1.1 Subject to the provisions of Appendix 2-E, if applicable, either Party may terminate this Agreement upon written notice to the other Party with immediate effect; and

21.1.1.2 Upon any such termination:

1. Developer shall transfer to the Owner all rights in and to the work product developed under the PDA, as contemplated in Section 8.02(a)-(c) of the PDA, and in the Early Design Work, in the same manner, and Developer acknowledges and agrees that Section 23.5 governs the Early Design Work;
2. Subject to Developer complying with Section 21.1.1.2.1, the Owner shall pay to Developer the sum of (a) the PDA Termination Amount, and (b) \$8 million;
3. Without duplication of any Early Design Work Payment for which an Early Design Work Payment Application has been submitted by Developer under Section 2.3.2.3, any Early Design Work Payment that would be payable under Section 2.3.2 in the absence of termination under this Section 21.1.1 that has not yet been paid; and
4. The Owner shall pay to Developer an amount equal to the lesser of (a) \$500,000 and (b) costs reasonably incurred by Developer following the Developer Execution Date in an effort to achieve Financial Close (including costs reasonably incurred by Developer following the Developer Execution Date to procure ratings from the Rating Agencies for the Project Debt).

21.1.1.3 The Owner shall return the Financial Close Security to Developer within five (5) Business Days following the Early Termination Date.

21.1.2 If Developer fails to achieve Financial Close by the Financial Close Deadline, and such failure is not directly attributable to an Excused FC Delay and the Agreement is not terminated pursuant to Section 21.5.2:

21.1.2.1 The Owner shall have the right to terminate this Agreement upon written notice to Developer with immediate effect;

21.1.2.2 Upon any such termination:

1. Developer shall transfer to the Owner all rights in and to the work product developed under the PDA, as contemplated in Section 8.02(a)-(c) of the PDA, and in the Early Design Work, in the same manner, and Developer acknowledges and agrees that Section 23.5 applies to the Early Design Work;
2. Subject to Developer complying with Section 21.1.2.2.1, the Owner shall pay to Developer the sum of (a) the PDA Termination Amount, and (b) \$4 million; and
3. Without duplication of any Early Design Work Payment for which an Early Design Work Payment Application has been submitted by Developer under Section 2.3.2.3, any Early Design Work Payment that would be payable under Section 2.3.2 in the absence of termination under this Section 21.1.1 that has not yet been paid.

21.1.2.3 Developer shall be liable to the Owner for liquidated damages in the full amount of the Financial Close Security, and the Owner shall be entitled to draw on the Financial Close Security for such amount on or after the Early Termination Date. Such liquidated damages shall constitute the Owner's sole right to damages on account of such failure. Developer acknowledges that the time period that the Owner has provided to Developer to achieve Financial Close is ample and reasonable, and that such liquidated damages are reasonable in order to compensate the Owner for damages it will incur as a result of the lost opportunity to the Owner represented by the Contract Documents. Such damages include the harm from the difficulty, and substantial additional expense, to the Owner, to procure and deliver, operate and maintain the Project through other means, loss of or substantial delay in use, enjoyment and benefit of the Project by the general public, and injury to the credibility and reputation of the Owner and the Airport with policy makers, other Governmental Entities and the general public who depend on and expect availability of service. Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

21.2 Termination for Convenience

21.2.1 The Owner may, in its sole discretion, terminate this Agreement in whole if the Owner determines that a termination is in the Owner's best interest (a "**Termination for Convenience**"). The Owner will deliver to Developer a written Notice of Termination for Convenience specifying the election to terminate and its effective date, which shall not be less than 90 days following the date of delivery of such notice. Termination of this Agreement shall not relieve Developer or any Guarantor or Surety of its obligation for any claims arising from the Work performed prior to such termination.

21.2.2 In the event of a Termination for Convenience, the Owner shall pay compensation to Developer (or to the Collateral Agent as provided in the Direct Agreement) in an amount equal to:

21.2.2.1 To the extent it is a positive amount, (a) all amounts shown in the Financial Model as payable by Developer from the Early Termination Date, either in dividends or other distributions on the share capital of Developer or as payments of interest or repayments of principal made by Developer under the Equity Members Funding Agreements, each amount discounted back at the Termination for Convenience Discount Rates (as of the Early Termination Date) from the date on which it is shown to be payable in the Financial Model to the Early Termination Date, minus (b) Deferred Equity Amounts as at the Early Termination

Date (or the net present value of the same if termination occurs prior to the Project Substantial Completion Date); plus

21.2.2.2 Lenders' Liabilities; plus

21.2.2.3 Contractor Breakage Costs; plus

21.2.2.4 Redundancy Payments; plus

21.2.2.5 If the termination occurs during the Project Operating Period, the incremental increase, if any, in the federal and State income tax liability of the Equity Members due to payment of the Termination Compensation under this Section 21.2.2 (other than the amount contemplated in this Section 21.2.2.5) over the Base Tax Liability; minus

21.2.2.6 Account Balances; minus

21.2.2.7 Insurance Proceeds.

21.3 Termination for Extended Relief Events

21.3.1 Notice of Conditional Election to Terminate

Either Party may deliver to the other Party written notice of its conditional election to terminate this Agreement based on Relief Events (other than Owner Default, which is governed by Section 21.4.1) (each, a "Notice of Conditional Termination") under the following circumstances:

21.3.1.1 A Compensation Event has occurred and:

1. (a) The Compensation Event will result in a delay in achieving Project Substantial Completion beyond the period when the Owner is required to make payments as provided in Section 11.4.1.2 or 11.4.2.1, or (b) for which the period of time during which the Owner is required to make payments as provided in Section 11.4.1.2 or 11.4.2.1 has expired; or
2. (a) The Notice of Conditional Termination is delivered after the Project Substantial Completion Date, and (b) as a direct result of the Compensation Event, but for the limitations set forth in (i) Section 11.4.1.6, the period during which compensation would be payable by the Owner under Section 11.4.1.5 would exceed 180 days, or (ii) Section 11.4.2.5, the period during which compensation payable by the Owner under Section 11.4.2.4 would exceed 180 days;

or

21.3.1.2 A Delay Event has occurred and:

1. (a) The Notice of Conditional Termination is delivered before the Project Substantial Completion Date, (b) as a direct result of the Delay Event, Developer is unable to perform all or substantially all of its obligations under the Contract Documents for a period of 180 consecutive days or more, and such inability to perform its obligations is not attributable to another concurrent non-Delay Event; or
2. (a) The Notice of Conditional Termination is delivered on or after the Project Substantial Completion Date, (b) as a direct result of the Delay Event all or substantially all of the Project has become and remain inoperable for a period of 180 consecutive days or more, and (c) such suspension of operations is not attributable to another concurrent non-Delay Event;

and

21.3.1.3 Developer could not have mitigated or cured such result through the exercise of diligent efforts; and

21.3.1.4 Such result is continuing at the time of delivery of the written notice; and

21.3.1.5 The written notice sets forth in reasonable detail the Relief Event, a description of the direct result and its duration, and the notifying Party's intent to terminate this Agreement.

21.3.2 **No Right to Termination Election**

Notwithstanding the foregoing, if following the occurrence of any Relief Event results in damage or partial destruction of the Project and:

21.3.2.1 The conditions listed in Sections 21.3.1.1 through 21.3.1.5 are satisfied;

21.3.2.2 Insurance proceeds actually paid and received are available to fund work required to remedy the effects of the Relief Event and, without duplication, to otherwise compensate Developer for amounts that would otherwise have been payable by the Owner under this Agreement but for the expiry of the applicable time period referenced in Section 21.3.1.1 or 21.3.1.2, provided that each Party shall remain responsible for any deductibles and retentions for which such Party is expressly responsible under this Agreement; and

21.3.2.3 The Parties agree to a restoration plan in respect of such work required to remedy the effect of the Relief Event, then neither Party shall have the right to elect to terminate this Agreement pursuant to Section 21.3.1.

21.3.3 **Developer Options Upon Owner Notice**

If the Owner delivers a Notice of Conditional Termination, Developer shall have the option either to accept such notice or to continue this Agreement in effect by delivering to the Owner written notice of Developer's choice not later than 30 days after the Owner delivers its notice. If Developer does not deliver such written notice within such 30-day period, then it shall be conclusively deemed to have accepted the Owner's election to terminate this Agreement. If Developer delivers timely written notice choosing to continue this Agreement in effect, then:

21.3.3.1 The Owner shall have no obligation to compensate Developer for any costs or for any loss of Payments or any other relief, in each case arising out of the Relief Event and incurred after the date on which the Owner gives written notice of conditional election to terminate under this Section 21.3;

21.3.3.2 If the Relief Event occurred prior to the Project Substantial Completion Date and resulted in a Relief Event Delay, Developer shall be entitled to an extension of the applicable Completion Deadlines in accordance with the Contract Documents; and

21.3.3.3 This Agreement shall continue in full force and effect and the Owner's election to terminate shall be deemed withdrawn.

21.3.4 **Owner Options Upon Developer Notice**

If Developer delivers a Notice of Conditional Termination, including an estimate (with supporting documentation) of the compensation that would be paid or reimbursed to Developer under Section 21.3.7, the Owner shall have the option either: (a) to accept such notice, or (b) to

continue this Agreement in effect for a period of up to 180 days or such longer period as may be mutually agreed to in writing by the Parties, provided that the Owner in its reasonable discretion determines that the Project can be completed or re-opened, as applicable, on a commercially reasonable basis, in each case by delivering to Developer written notice of the Owner's choice not later than 30 days after Developer delivers its Notice of Conditional Termination. If the Owner does not deliver such written notice within such 30-day period, then it shall be conclusively deemed to have accepted Developer's election to terminate this Agreement. If the Owner delivers timely written notice choosing to continue this Agreement in effect, then:

21.3.4.1 Subject to Section 11.2.7, the Owner shall be obligated to pay or reimburse Developer an amount equal to (without double-counting):

1. The Direct Costs to repair and restore any physical damage or destruction to the Project, including any Delay Costs directly caused by the Relief Event which are incurred after the date Developer delivers its Notice of Conditional Termination; plus
2. (a) If the Notice of Conditional Termination is delivered before the Project Substantial Completion Date, an amount equal to the amount of compensation described in Sections 11.4.1.1 and 11.4.2.1, or (b) if the Notice of Conditional Termination is delivered on or after the Project Substantial Completion Date, without duplication, the amount of Supplemental Payments that Developer would have received under Sections 11.4.1.5 and 11.4.2.4 during such extended period, in each case prorated for the number of days in the period and to be paid in monthly installments;

21.3.4.2 Developer's rights under Section 11.3.1 shall continue to apply to the Relief Event until the damages produced by such Relief Event are compensated as provided in this Agreement and the restoration works are completed; and

21.3.4.3 This Agreement shall continue in full force and effect and Developer's election to terminate shall not take effect for the period specified in the Owner's written notice under this Section 21.3.4 or such longer period as may be mutually agreed to in writing by the Parties.

21.3.5 **No Waiver**

No election by Developer under Section 21.3.3 or by the Owner under Section 21.3.4 to keep this Agreement in effect shall prejudice or waive such Party's right to thereafter give a written notice of conditional election to terminate with respect to the same or any other Relief Event.

21.3.6 **Concurrent Notices**

If the Owner and Developer deliver concurrent written notices of conditional election to terminate under this Section 21.3, Developer's notice shall prevail. Notices shall be deemed to be concurrent if each Party sends its written notice before actually receiving the written notice from the other Party. Knowledge of the other Party's written notice obtained prior to actual receipt of the notice shall have no effect on determining whether concurrent notice has occurred.

21.3.7 **Termination Compensation for Extended Relief Events**

If either Party accepts the other Party's conditional election to terminate, then this Agreement shall be deemed terminated on an Early Termination Date that is 60 days after the date of acceptance of the conditional election to terminate; and Developer will be entitled to

compensation calculated as follows (calculated at the Early Termination Date and without double-counting):

21.3.7.1 All amounts paid to Developer by way of equity to the capital of Developer, less dividends and other distributions paid to the Equity Members (save to the extent deducted below), which shall never be a negative number; plus

21.3.7.2 All outstanding Equity Member Debt less an amount equal to the aggregate of all payments of interest made by Developer under the Equity Members Funding Agreements prior to the Termination Date; plus

21.3.7.3 Lenders' Liabilities; plus

21.3.7.4 Contractor Breakage Costs; plus

21.3.7.5 Redundancy Payments; minus

21.3.7.6 Account Balances; minus

21.3.7.7 Insurance Proceeds,

provided that with respect to a termination for (A) an extended Compensation Event (Type 1), Developer will be entitled to compensation in the amount described in Section 21.2.2, and (B) an extended Compensation Event (Type 2), Developer will be entitled to compensation in the amount described in Section 21.2.2, except a discount rate of 10.8% shall apply instead of the Termination for Convenience Discount Rates.

21.4 Termination for Developer Default

21.4.1 Termination Upon Written Notice

Subject to the rights of the Lenders pursuant to any Direct Agreement, if any Developer Default occurs and has not been cured within the applicable cure period, if any, set out in Section 20.1.2, the Owner may terminate this Agreement with immediate effect upon written notice to Developer.

21.4.2 Compensation to Developer

If the Owner issues a notice of termination of this Agreement due to a Developer Default, Developer will be entitled to:

21.4.2.1 If termination occurs prior to the Project Substantial Completion Date, compensation in an amount equal to the lesser of: (a) the D&C Work Value, plus the lesser of (i) the amount of O&M Services costs scheduled in the Financial Model to be incurred by Developer through the Early Termination Date and (ii) the actual amount of O&M Services costs actually incurred by Developer through the Early Termination Date; and (b) the Net Lenders' Liabilities.

21.4.2.2 If termination occurs on or after the Project Substantial Completion Date, compensation equal to the amount calculated at the Early Termination Date (without double-counting) as follows:

1. Eighty percent (80%) of Lenders' Liabilities; minus
2. Maintenance Rectification Costs; minus
3. Account Balances; minus
4. Deferred Equity Amounts; minus
5. Insurance Proceeds.

21.4.3 If this Agreement is terminated for grounds which are later determined not to justify a termination by the Owner pursuant to Section 21.4.1, such termination shall be deemed to constitute a Termination for Convenience pursuant to Section 21.2.1, and Developer's remedy shall be as set forth in Section 21.2.2.

21.4.4 Notwithstanding any provision to the contrary in this Agreement, Developer shall not be entitled to any compensation for termination of this Agreement under any of the circumstances described in Section 16.1(a) or Section 16.1(b) of the Direct Agreement if a new Project Agreement has been executed and delivered.

21.5 Termination for Owner Default or Suspension of Work; Termination by Court Ruling

21.5.1 Termination for Owner Default

In the event of a material Owner Default under Section 20.3.1 that remains uncured following notice and expiration of the applicable cure period under Section 20.3.2, Developer shall have the right to terminate this Agreement, effective immediately upon delivery of written notice of termination to the Owner. In the event of such termination, the Owner shall pay compensation to Developer in an amount equal to the amount described in Section 21.2.2.

21.5.2 Termination by Court Ruling

Termination by Court Ruling means, and becomes effective upon: (a) issuance of a final order by a court of competent jurisdiction after exhaustion of all appeals to the effect that this Agreement is void, voidable, and/or unenforceable or impossible to perform in its entirety for reasons beyond the reasonable control of Developer; or (b) issuance of a final order by a court of competent jurisdiction after exhaustion of all appeals upholding the binding effect on Developer and/or the Owner of a Change in Law that causes impossibility of performance of a fundamental obligation by Developer or the Owner under the Contract Documents or impossibility of exercising a fundamental right of Developer or the Owner under the Contract Documents. The final court order shall be treated as the notice of termination. In the event of such termination, Developer will be entitled to compensation in an amount equal to the amount described in Section 21.3.7, provided that if the Termination by Court Ruling is caused solely by an Owner Default or an Owner-Caused Compensation Event, Developer will be entitled to compensation in the amount described in Section 21.2.2.

21.6 Termination Procedures and Duties

Upon expiration of the Term or any earlier termination of this Agreement for any reason, the provisions of this Section 21.6 shall apply. Except as expressly provided otherwise in this Section 21.6, Developer shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due Developer or the Owner on account of termination.

21.6.1 Transition Plan

21.6.1.1 Within three days after receipt of a notice of termination, Developer shall meet and confer with the Owner for the purpose of developing an interim transition plan for the orderly transition of Work, demobilization and transfer of control of the Project, the Work Site and the Terminal Improvements to the Owner. The Parties shall use diligent efforts to complete preparation of the interim transition plan within 15 days after the date the relevant Party receives the notice of termination.

21.6.1.2 The Parties shall use diligent efforts to complete a final transition plan within 30 days after such date. The transition plan shall be in form and

substance reasonably acceptable to the Owner and shall include and be consistent with the other provisions and procedures set forth in this Section 21.6, all of which procedures Developer shall immediately follow, regardless of any delay in preparation or acceptance of the interim or final transition plan. Developer will take all necessary actions to give effect to the transition plan. The transition plan shall include an estimate of costs and expenses to be incurred by both Parties in connection with implementation of the transition plan.

21.6.2 Relinquishment and Possession of the Project

21.6.2.1 On the Termination Date, or as soon thereafter as is possible as provided in the transition plan, Developer shall relinquish and surrender full control and possession of the Project, the Work Site and the Terminal Improvements to the Owner, and shall cause all Persons claiming under or through Developer to do likewise, in at least the condition required by the Handback Requirements.

21.6.2.2 On the later of the Termination Date or the date Developer relinquishes full control and possession as provided in the transition plan, the Owner shall assume responsibility, at its expense (subject to the right to recover damages under this Agreement), for the Project, the Work Site and the Terminal Improvements.

21.6.3 Continuance or Termination of Key Contracts Prior to Work Completion

21.6.3.1 If, as of the Termination Date, Developer has not completed the Work, in whole or in part, the Owner may elect, by written notice to Developer, to continue in effect the relevant Key Contracts or to require their termination. If the Owner elects to continue such Key Contracts, then Developer shall execute and deliver (or, if Developer is not a party to such Key Contract, shall cause the relevant Key Contractor(s) to execute and deliver) to the Owner a written assignment, in form and substance acceptable to the Owner, acting reasonably, of all Developer's or such Key Contractor's, as applicable, right, title and interest in and to such Key Contracts, and the Owner shall assume in writing Developer's or such Key Contractor's, as applicable, obligations thereunder that arise from and after the Termination Date.

21.6.3.2 If the Owner elects to require termination of the Key Contracts, then Developer shall (or, if Developer is not a party to such Key Contracts, shall cause the relevant Key Contractor(s) to):

1. Unless the Owner has entered into a new project agreement with a Lender or its Substituted Entity, take such steps as are necessary to terminate the relevant Key Contracts, including notifying each Key Contractor that its Key Contract is being terminated and that each of them is to immediately stop work and stop and cancel orders for materials, services or facilities unless otherwise authorized in writing by the Owner;
2. Immediately demobilize and secure in a safe manner construction, staging, lay down and storage areas for the Project to the reasonable satisfaction of the Owner, and remove all debris and waste materials (including Contaminated Materials and Undesirable Materials that are in the process of removal) except as otherwise approved by the Owner in writing;
3. Take such other actions as are necessary or appropriate to mitigate further cost under such Key Contracts;
4. Subject to the Owner's reasonable prior written approval, settle all outstanding liabilities and all claims arising out of the Key Contracts; and

5. As a condition to Developer receiving all payments required to be paid by the Owner under this Article 21 and pursuant to the requirements of the transition plan, cause each of the Key Contractors to execute and deliver to the Owner a written assignment, in form and substance acceptable to the Owner, acting reasonably, of all of their right, title and interest in and to all warranties, to the extent assignable, claims and causes of action held by each of them against subcontractors and other third parties in connection with the Project or the Work, to the extent the Project or the Work is adversely affected by any subcontractor or other third-party breach of warranty, contract or other legal obligation.

21.6.4 Assignment of Concession Agreements

Upon the expiration of the Term or any earlier termination of the Agreement, Developer shall execute and deliver to the Owner, effective as of the Termination Date, a written assignment, in form and substance acceptable to the Owner, acting reasonably, of all Developer's right, title and interest in and to each Concession Agreement, and the Owner shall assume in writing Developer's obligations thereunder that arise from and after the Termination Date. Developer shall ensure that each such assignment shall be effected without cost to the Owner and without need for any consent of the Concessionaire, and that the Owner shall not be responsible or liable for any breach of the Concession Agreement by Developer prior to the Termination Date or for any amounts due and owing by Developer under the Concession Agreement prior to the Termination Date.

21.6.5 Other Close-Out Activities

21.6.5.1 Within 30 days after notice of termination is delivered or no later than 30 days prior to the natural expiration of the Term (as applicable), Developer shall provide the Owner with a true and complete list of all materials, goods, machinery, equipment, parts, supplies and other property in inventory or storage (whether held by Developer or any Person on behalf of or for the account of Developer) for use in or respecting the Work or the Project, or on order or previously completed but not yet delivered from Suppliers for use in or respecting the Work or the Project, and on or about the Termination Date shall transfer title and deliver to the Owner or the Owner's Authorized Representative, through bills of sale or other documents of title, as directed by the Owner, all such materials, goods, machinery, equipment, parts, supplies and other property.

21.6.5.2 Developer shall take all action that may be necessary, or that the Owner may direct, acting reasonably, for the protection and preservation of the Project, the Work and such materials, goods, machinery, equipment, parts, supplies and other property.

21.6.5.3 On or about the Termination Date, Developer shall execute and deliver to the Owner the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to the Owner, acting reasonably, assigning and transferring to the Owner the following:

1. All completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, Design Documents, Record Document BIM, surveys, and other documents, models and information pertaining to the Work; and
2. All books, records, reports, test reports, studies and other documents relating to the Work, the Work Site or the Terminal Improvements.

21.6.5.4 Within 90 days after the Termination Date, the Parties shall adjust and prorate costs of operation and maintenance of the Project, including utility service costs, as of the Termination Date. If the Parties do not have complete or accurate information by such date, they shall make the adjustment and proration using a good faith estimate, and thereafter promptly readjust when the complete and accurate information is obtained. The Parties acknowledge that certain adjustments or readjustments may depend on receipt of bills, invoices or other information from a third party, and that the third party may delay in providing such information. Any readjustment necessary only because of error in calculation and not due to lack of complete and accurate information shall be irrevocably waived, unless the Party seeking readjustment delivers written request for such readjustment to the other Party not later than 180 days following the Termination Date.

21.6.5.5 On or about the Termination Date, Developer shall execute and deliver to the Owner a perpetual, non-exclusive license, in form and substance acceptable to the Owner, acting reasonably, to use, exploit, manufacture, distribute, reproduce, adapt and display all of Developer's right, title and interest in and to any escrows or similar arrangements for the protection of Intellectual Property, source code or source code documentation of others (to the extent permitted by such third parties) used for or relating to the Project or the Work.

21.6.5.6 On or about the Termination Date, Developer shall execute and deliver to the Owner a written assignment, in form and substance acceptable to the Owner, acting reasonably, of all Developer's right, title and interest in and to all warranties, to the extent assignable, claims and causes of action held by Developer against third parties in connection with the Project or the Work which are not to be pursued by Developer as provided in the final transition plan.

21.6.5.7 On or about the Termination Date, Developer shall deliver: (a) to the Owner all IP Materials, work product, documents, results and related materials for Subject Intellectual Property not yet delivered to the Owner; and (b) to the Owner, or deposit into Intellectual Property Escrow(s) pursuant to Section 23.5, the IP Materials for Developer Intellectual Property and Third Party Intellectual Property not yet so delivered or deposited, as applicable.

21.6.5.8 Developer shall otherwise assist the Owner in such manner as the Owner may require to ensure the orderly transition of the Project, and shall, if appropriate and if requested by the Owner, take all steps as may be necessary to enforce the provisions of the Key Contracts and Concession Agreements pertaining to the surrender of the Project.

21.7 Effect of Termination

21.7.1 Cessation of Developer's Project Interests

Termination of this Agreement and payment of compensation as required under any provision of this Article 21 shall automatically cause, as of the Termination Date, the cessation of any and all interests of Developer in or with respect to the Project, the Work Site and the Payments, which thereupon shall be and remain free and clear of any lien or encumbrance created, permitted or suffered by Developer or anyone claiming by, through or under Developer, including the liens, pledges, assignments, collateral assignments, security interests and encumbrances of any and all Financing Documents. In order to confirm the foregoing, at the Owner's request, Developer shall promptly obtain and deliver to the Owner reconveyances, releases and discharges of all Security Documents, executed by the Lenders in proper form for recording or filing (as appropriate), but no such reconveyances, releases and discharges shall be necessary to the effectiveness of the foregoing.

21.7.2 Contracts and Agreements

Regardless of the Owner's prior actual or constructive knowledge thereof, no contract or agreement to which Developer is a party as of the Termination Date shall bind the Owner, unless the Owner elects to assume such contract or agreement in writing. Except in the case of the Owner's express written assumption, no such contract or agreement shall entitle the contracting party to continue performance of work or services respecting the Project following Developer's relinquishment to the Owner of possession and control of the Project, or to any claim, legal or equitable, against the Owner.

21.8 Liability After Termination; Final Release

21.8.1 No termination of this Agreement shall excuse either Party from any liability arising out of any default as provided in this Agreement that occurred prior to termination, provided that no liquidated damages shall be assessed in respect of the period following the Termination Date.

21.8.2 Subject to Section 21.6.5.4, if this Agreement is terminated for any reason, then the Owner's payment to Developer of the amounts required under this Agreement (if any) shall constitute full and final satisfaction of, and upon payment the Owner shall be forever released and discharged from, any and all claims, causes of action, suits, demands and Losses, known or unknown, suspected or unsuspected, that Developer may have against the Owner arising out of or relating to this Agreement or termination thereof, or the Project. Upon such payment, Developer shall execute and deliver to the Owner all such releases and discharges as the Owner may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

21.9 Payment of Termination Compensation

21.9.1 Termination Compensation for termination pursuant to Section 21.1 shall be due and payable within 60 days after receipt of an invoice, in the form attached hereto as Appendix 25-I, certifying expenditures in the amount claimed in the invoice, together with supporting documentation evidencing such expenditures as reasonably requested by the Owner.

21.9.2 Termination Compensation for termination pursuant to Section 21.2 shall be due and payable by the Owner within 60 days and Termination Compensation for termination pursuant to Section 21.5 shall be due and payable by the Owner within 90 days, in each case after: (a) the Owner or Developer, as the case may be, gives its written notice of its election to terminate; (b) the Collateral Agent provides the Owner with a written statement as to (i) the Lenders' Liabilities and (ii) the Account Balances, to the extent such accounts are controlled by the Collateral Agent, with documentation reasonably required by the Owner to support such statement and certified that such amounts are true and correct; and (c) Developer provides the Owner with a written statement as to the amounts described in clauses (a) and (b) of Section 21.2.2.1 and Sections 21.2.2.3, 21.2.2.4 and 21.2.2.6, together with documentation reasonably required by the Owner to support such statement and a certification that such amounts are true and correct.

21.9.3 Compensation for termination pursuant to Section 21.3 shall be due and payable by the Owner within 180 days after: (a) either Party has accepted the other Party's election to terminate this Agreement; (b) the time period for the other Party to elect not to terminate this Agreement has expired and the party has not made the election; (c) the Collateral Agent provides the Owner with a written statement as to (i) the Lenders' Liabilities and (ii) Account Balances, to the extent such accounts are controlled by the Collateral Agent, with

documentation reasonably required by the Owner to support such statement and certified that such amounts are correct; and (d) Developer provides the Owner with a written statement as to the amounts described in Sections 21.3.7.1, 21.3.7.2, 21.3.7.4, 21.3.7.5 and 21.3.7.7, together with documentation reasonably required by the Owner sufficient to support such statement and a certification that such amounts are true and correct.

21.9.4 Compensation for termination pursuant to Section 21.4 shall be due and payable by the Owner within 180 days after: (a) the Owner has given written notice of its election to terminate this Agreement; (b) the Collateral Agent provides the Owner with a written statement as to (i) the Lenders' Liabilities and (ii) the Account Balances, to the extent such accounts are controlled by the Collateral Agent, with documentation reasonably required by the Owner to support such statement and certified that such amounts are correct; and (c) Developer provides the Owner with a written statement as to (i) the amounts described in subsections (2), (4) and (5) of Section 21.4.2.2, if applicable, (ii) the amount described in clause (c) of the definition of Net Lenders' Liabilities, and (iii) the total Net Lenders' Liabilities, together with written documentation sufficient to support such statement and a certification that such amounts are true and correct.

21.9.5 If as of the date the Owner tenders payment the Parties have not agreed upon the amount of Termination Compensation due, then:

1. The Owner shall proceed to make payment to Developer of the undisputed portion of the Termination Compensation;
2. Within ten (10) days after receiving such payment Developer shall deliver to the Owner written notice of the additional amount of Termination Compensation that Developer in good faith determines is still owing (the "**disputed portion**"); and
3. The Owner shall pay the disputed portion of the Termination Compensation to Developer after the disputed portion is agreed to by the Parties or otherwise determined to be payable pursuant to Article 26, as the case may be.

21.10 Exclusive Termination Rights

This Article 21 contains the entire and exclusive provisions and rights of the Owner and Developer regarding termination of this Agreement, and any and all other rights to terminate under Law are waived to the maximum extent permitted by Law.

ARTICLE 22. RESERVED RIGHTS

22.1 General

Without prejudice to Developer's rights to additional compensation, time extensions and other relief expressly provided in this Agreement, Developer's rights and interests in the Project and the Work Site are and shall remain specifically limited only to such personal property rights and interests that are necessary and required for developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, repairing, reconstructing, rehabilitating, restoring, renewing or replacing the Project. Developer's rights and interests specifically exclude any real property interest in the Project, the Work Site, any and all Airspace and any and all improvements and personal property above, on or below the surface of the Work Site.

22.2 Reserved Business Opportunities

22.2.1 The Owner reserves to itself, and Developer relinquishes, all right and opportunity to develop and pursue anywhere in the world entrepreneurial, commercial and business activities related to the Project, the Work Site, the Terminal, and all ancillary or collateral use, enjoyment and operation of any of the foregoing, except to the extent such rights are expressly granted to Developer under this Agreement (“**Business Opportunities**”). Unless expressly authorized by the Owner under this Agreement or otherwise in its sole discretion, Developer will not grant permission for any Person to use or occupy the Project, the Work Site or the Terminal for any ancillary or collateral purpose. The foregoing reservation in no way precludes Developer or its Affiliates and Contractors from: (a) carrying out its financial plan reflected in its the Financial Model; (b) arranging and consummating Refinancings; or (c) competing on any request or solicitation for proposals or bids issued by the Owner in connection with Business Opportunities.

22.2.2 The Business Opportunities reserved to the Owner include all the following:

22.2.2.1 All rights to finance, design, construct, operate and maintain Project Enhancements in the Airspace or within the Work Site, and to grant others such rights;

22.2.2.2 All rights to grant concessions outside of the Concessions Space;

22.2.2.3 All rights to install, use, lease, grant indefeasible rights of use, sell and derive revenues from electrical and fiber optic conduit, cable, capacity and associated equipment or other telecommunications equipment and capacity, existing over, on, under or adjacent to any portion of the Work Site or Terminal;

22.2.2.4 All rights to use, sell and derive revenues data generated from the operation of the Project;

22.2.2.5 All ownership, possession and control of, and all rights to develop, use, operate, lease, sell and derive revenues from, the Airspace, the Work Site or the Terminal, except as otherwise expressly provided in the Contract Documents;

22.2.2.6 All ownership, possession and control of, and all rights to develop, use, lease, sell and derive revenues from, carbon credits or other environmental benefits generated by or arising out of the development, use, operation or maintenance of the Project;

22.2.2.7 All rights to market, distribute, sell and derive revenues from any goods, products or merchandise depicting, utilizing or exploiting any name, image, logo, caricature or other representation, in any form or medium, of the Owner, the Airport, the Terminal, or the Project;

22.2.2.8 All rights and opportunities to grant to others sponsorship, advertising and naming rights with respect to the Project or any portion thereof, provided that in any sponsorship or naming rights transaction the Owner shall cause to be granted to Developer a non-exclusive license to use the name in connection with Project operations; and

22.2.2.9 Any other commercial or noncommercial development or use of the Airspace, the Work Site or the Terminal for other than operation of the Project.

22.2.3 Prior to deciding whether to pursue or implement a Business Opportunity, the Owner may require Developer to provide analysis of the impacts thereof on Developer’s costs and schedule.

22.2.4 In the event a Developer Default concerns a breach of the provisions of this Section 22.2, in addition to any other remedies, the Owner shall be entitled to Developer's disgorgement of all profits from the prohibited activity, together with interest thereon at the maximum rate permitted by Law, and to sole title to and ownership of the prohibited assets and improvements and revenues derived therefrom.

22.3 Advertising and Public Disclosures

22.3.1 Developer shall not include any reference to the Owner in any of its advertising or public relations or materials without first obtaining the written approval of the Owner's Authorized Representative. Developer shall be entitled to advertise or include references to its participation in the Project, this Agreement or its activities related to the Project in any such materials without the Owner's prior consent. The foregoing includes creating and using brochures and other marketing materials that include descriptions, presentations and images of Developer's participation in the Project or the Work. Notwithstanding the foregoing, any oral presentation or written materials that include information relating to the Owner, the Terminal or the Airport shall include only presentation materials, work product, and technical data which have been accepted by the Owner, and designs and renderings, if any, which have been accepted by the Owner. The CEO shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Developer's use of this Agreement and its component parts in GSA form 254 or 255 presentations, or the transmittal of any information to officials of the Owner or the City, including the Mayor, the CEO, any member or members of City Council, and the Auditor.

ARTICLE 23. RECORDS; INTELLECTUAL PROPERTY

23.1 Maintenance and Inspection of Records

23.1.1 Subject to, and in addition to, the delivery requirements for IP Materials and related obligations included in Section 23.4, Developer shall keep and maintain in Denver, Colorado, or other location approved by the Owner in writing, all books, records and documents relating to the Project, the Work Site, the Terminal Improvements and the Work, including copies of all original documents delivered to the Owner, invoices, Tax records, records described in Section 4.3.2 of Appendix 5-A of the Agreement, and all books of account, supporting documents, and papers that the Owner deems necessary to ensure compliance with the Contract Documents (collectively, "**Project Records**") regardless of physical or digital medium, now known or hereinafter devised including transitory storage environments. Developer shall keep and maintain Project Records in accordance with applicable provisions of the Contract Documents and in accordance with Good Industry Practice. Complete financial Project Records shall be maintained, prepared in accordance with GAAP or any other generally accepted accounting principles reasonably acceptable to the Owner. Subject to Section 23.3, all Project Records produced, stored or recorded in a digital medium shall be kept and maintained in accordance with then-current data security Laws and data security storage standards in no event less than the standards outlined by ISO/IEC 27040:2015 (International Organization for Standardization). Developer shall notify the Owner where the Project Records are kept or maintained, including any cloud storage, server storage or hosting locations, or portable digital storage. Developer may delete, destroy or erase Project Records in any digital medium only when such Project Records (a) are reproduced completely in a physical medium and kept and maintained in accordance with this Section 23.1, or (b) the applicable retention period under Section 23.1.2 has expired.

23.1.2 Developer shall retain:

23.1.2.1 Project Records related to the D&C Work until the later of: (a) ten (10) years after Project Substantial Completion; and (b) the last audit related to the D&C Work commenced within the period specified in clause (a) of this Section 23.1.2.1 is completed; and

23.1.2.2 All other Project Records until the later of: (a) seven (7) years after the Termination Date; and (b) the last audit related to such Project Records commenced within the period specified in clause (a) of this Section 23.1.2.2 is completed.

23.2 Audits

23.2.1 In respect of any of the matters contemplated by the Contract Documents, the Owner reserves the right to conduct an audit of all Project Records at any time, provided that any such audit shall be commenced prior to the expiry of the period specified in Section 23.1.2.1(a), if related to the D&C Work, or prior to the expiry of the period specified in Section 23.1.2.2(b), if related to the O&M Services. Developer shall make all Project Records available for inspection and audit by the Owner or its representative at Developer's offices in Denver, Colorado or other location approved by the Owner in writing, at all times during normal business hours, following reasonable notice (which notice shall describe what is being requested from Developer), without charge. Developer shall provide to the Owner copies thereof, in any physical and/or digital medium, as and when reasonably requested by the Owner. The Owner may conduct any such inspection upon 48 hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud or criminal activity. The right of inspection includes the right to make extracts and take notes. The Owner may also require submittal of the records from Developer, its Contractors, or both. Without limiting the foregoing, the Owner or its representatives shall have such rights to review and audit Developer, its Contractors and their respective Project Records as the Owner deems necessary for purposes of verifying compliance with the Contract Documents and applicable Law. The Owner shall have the right to audit the Project Management Plan and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Project Management Plan and other relevant Contract Documents.

23.2.2 All Claims filed against the Owner shall be subject to audit in accordance with, and Developer and its Contractors shall comply with, the provisions in Section 11.7. Full compliance by Developer with the provisions of this Section 23.2 is a condition precedent to Developer's right to seek relief on a Claim under this Agreement.

23.2.3 If Developer fails to comply with the requirements set forth in this Section 23.2, the Owner may disqualify or suspend Developer from any opportunity in participating on future contracts with the Owner. Developer shall ensure that the Contractors provide access to their records pertaining to the Project upon request by the Owner.

23.2.4 The Owner's audit rights include the right to observe the business operations of Developer and its Contractors to confirm the accuracy of Project Records.

23.2.5 Developer shall include in the Project Management Plan internal procedures to facilitate review and audit by the Owner.

23.2.6 Developer represents and warrants the completeness and accuracy of all information it or its agents provides in connection with the Owner audits, and shall cause all Contractors to warrant the completeness and accuracy of all information such Contractors provide in connection with the Owner audits.

23.2.7 Developer's internal and third-party quality and compliance auditing responsibilities shall be set forth in the Project Management Plan.

23.3 Open Records Act

23.3.1 Developer shall allow public access to all documents, papers, letters, or other material subject to the provisions of the Open Records Act, made or received by Developer solely in conjunction with the Contract Documents. Specifically, Developer shall:

23.3.1.1 Keep and maintain public records that ordinarily and necessarily would be required by the Owner in order to perform the services being performed by Developer;

23.3.1.2 Provide the public with access to public records on the same terms and conditions that the Owner would provide the records as provided by Law;

23.3.1.3 Ensure that public records that are exempt or confidential and exempt from disclosure requirements are not disclosed except as authorized by Law; and

23.3.1.4 Meet all requirements for retaining public records and transfer, at no cost, to the Owner all public records in possession of Developer upon expiry or earlier termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner in a format that is compatible with the information technology systems of the Owner.

Failure to grant such public access will be grounds for termination of the Agreement by the Owner for a Developer Default under Section 20.1.1.17. Developer shall promptly provide the Owner with a copy of any request to inspect or copy public records in possession of Developer and shall promptly provide the Owner a copy of Developer's response to each such request.

23.3.2 Developer acknowledges and agrees that, except as provided by the Open Records Act, all Submittals, records, documents, drawings, plans, specifications and other materials in the Owner's possession, including the Contract Documents and other materials submitted by Developer to the Owner, are subject to the provisions of the Open Records Act. If Developer believes information or materials submitted to the Owner constitute trade secrets, proprietary information or other information excepted from disclosure, Developer shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate, and placing the materials in a folder or binder clearly labeled with the citation to the specific provision of the Open Records Act that exempts the material from disclosure. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim including the specific provision of the Open Records Act that authorizes the confidentiality and exempts the material from disclosure. Nothing contained in this provision shall modify or amend requirements and obligations imposed on the Owner by the Open Records Act or other applicable Law, and the provisions of the Open Records Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. Developer is advised to contact legal counsel concerning such Laws and its application to Developer.

23.3.3 If the Owner receives a request for public disclosure of materials marked "CONFIDENTIAL," the Owner will notify Developer of the request and give Developer an opportunity to assert, in writing and at its sole expense, a claimed exception under the Open Records Act or other applicable Law within the time period specified in the notice issued by the

Owner and allowed under the Open Records Act. Under no circumstances, however, will the Owner be responsible or liable to Developer or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, or court order, or occurs through inadvertence, mistake or negligence on the part of the Owner or its officers, employees, contractors or consultants. Developer agrees to defend, indemnify, hold harmless, and fully cooperate with the Owner in the event of a request for disclosure or legal process arising under such act for the disclosure of any documents or information, which Developer asserts is confidential and exempt from disclosure.

23.3.4 If any legal action is filed against the Owner to enforce the provisions of the Open Records Act in relation to confidential information, the Owner agrees to promptly notify Developer of such action, and the Owner's sole involvement in such proceedings or litigation will be as the custodian retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and Developer shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that the Owner reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Developer shall defend, indemnify, and hold harmless the Owner, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Developer's objection to disclosure, including prompt reimbursement to the Owner of all reasonable attorney fees, costs, and damages that the Owner may incur directly or may be ordered to pay by a court.

23.4 Data Security

23.4.1 Developer will establish and maintain safeguards against the destruction, loss, or alteration of Owner data or third party data that Developer may gain access to or be in possession of in the performance of the Contract Documents. Developer will not attempt to access, and will not allow its personnel access to, Owner data or third party data that is not required for the performance of the Work by such personnel.

23.4.2 Developer will adhere to and abide by the security measures and procedures established by the Owner. In the event Developer or any Contractor discovers or is notified of a breach or potential breach of security relating to Owner data or third party data, Developer will promptly (a) notify the Owner of such breach or potential breach, and (b) if the applicable Owner data or third party data was in the possession of Developer or any Contractor at the time of such breach or potential breach, Developer will investigate and cure the breach or potential breach.

23.5 Intellectual Property

23.5.1 Subject Intellectual Property

23.5.1.1 Developer acknowledges and agrees that all Subject Intellectual Property, in any medium, is specially ordered or commissioned by the Owner, including works made for hire in accordance with Section 101 of the Copyright Act of the United States. Developer hereby assigns to the Owner all rights, title and interest in and to the Subject Intellectual Property including any and all software, work product and designs.

23.5.1.2 Developer shall deliver to the Owner all IP Materials, work product, documents, results and related materials created in the development of Subject Intellectual Property as soon as reasonably practicable after incorporation of the relevant Subject Intellectual Property into the Project, provided that: (a) such IP Materials, work product, documents, results and related materials for all Subject Intellectual Property incorporated into the Project prior to Functional Area Readiness, Project Substantial Completion or Project Final Acceptance, respectively, shall have been delivered to the Owner as a condition precedent to

the issuance of a Certificate of Functional Area Readiness, Certificate of Project Substantial Completion or Certificate of Project Final Acceptance, as applicable; and (b) such IP Materials, work product, documents, results and related materials for all other Subject Intellectual Property incorporated into the Project shall be delivered to the Owner by on or about the Termination Date.

23.5.1.3 The Owner hereby grants to Developer a limited, non-exclusive license to use, exploit, manufacture, distribute, reproduce, adapt and display the Subject Intellectual Property solely in connection with and limited to the Allowable Uses. "Allowable Uses" are: (a) incorporation into the Project; and (b) performance, provision, furnishing and discharge of the Work. No Intellectual Property rights of the Owner, including the name of the Owner, the Airport, the Terminal, or other trademarks, are being licensed to Developer except as otherwise expressly provided in this Section 23.5 and Section 1.2(a) of Appendix 19, and all other rights are reserved to the Owner.

23.5.2 Developer Intellectual Property

23.5.2.1 Developer hereby grants to the Owner an irrevocable, perpetual, non-exclusive, transferable (solely to a permitted Owner's assignee under Section 25.2), fully paid-up right and license to use, exploit, manufacture, distribute, reproduce, adapt and display Developer Intellectual Property, including any Technology Enhancements that are Developer Intellectual Property, in connection with the Owner Uses.

23.5.2.2 Developer shall identify and disclose all Developer Intellectual Property contained, or included in, the Project Intellectual Property including (when reasonably available): full and specific information detailing Intellectual Property claimed, date of authorship, creation and/or invention, date of application(s), application number(s) and registering entity(ies), date of registration(s), registration number(s) and registering entity(ies), if any, and owner including person or entity name and address. Subject to the IP Materials deposit requirements of Section 23.6, Developer shall not be required to identify or disclose Developer Intellectual Property only to the extent that doing so would eliminate or substantially limit the legal protections for such Intellectual Property.

23.5.3 Third Party Intellectual Property

23.5.3.1 Developer shall secure perpetual, nonexclusive, transferable, irrevocable, unconditional, royalty-free license(s) in the name of the Owner to use, exploit, manufacture, distribute, reproduce, adapt and display the Third Party Intellectual Property in connection with the Owner Uses, and shall pay any and all royalties and license fees required to be paid for any Intellectual Property incorporated into the Project Intellectual Property. In no event shall Developer incorporate Third Party Intellectual Property into the Project without first securing such licenses.

23.5.3.2 Developer shall use reasonable efforts to:

1. Obtain the Owner's prior written approval of the terms and conditions of Third Party Intellectual Property licenses;
2. Identify and disclose to the Owner all Third Party Intellectual Property contained, or included, in the Project Intellectual Property, including (when reasonably available): full and specific information detailing Intellectual Property claimed; date of authorship, creation and/or invention; date of application(s); application number(s) and registering entity(ies); date of registration(s), registration number(s) and registering entity(ies), if any, and owner, including person or entity name and address; and

3. Obtain from each owner of the Third Party Intellectual Property consent to have the relevant Third Party Intellectual Property deposited into an Intellectual Property Escrow in accordance with Section 23.6, provided that no Third Party Intellectual Property shall be incorporated into the Project without the Owner's prior written approval to the extent the owner of the relevant Third Party Intellectual Property has not provided such consent.

23.5.3.3 In addition to the foregoing, Developer shall comply with its obligations under Appendix 19.

23.5.4 Delivery of IP Materials

Developer shall deliver to the Owner all IP Materials related to Developer Intellectual Property and Third Party Intellectual Property, or deposit such IP Materials into Intellectual Property Escrow(s) in accordance with Section 23.6, as soon as reasonably practicable following incorporation of the relevant Intellectual Property into the Project, provided that: (a) IP Materials for all such Intellectual Property incorporated into the Project prior to Functional Area Readiness, Project Substantial Completion or Project Final Acceptance shall have been delivered to the Owner or deposited into Intellectual Property Escrow(s) as a condition precedent to the issuance of a Certificate of Functional Area Readiness, Certificate of Project Substantial Completion or Certificate of Project Final Acceptance, as applicable; and (b) IP Materials for all other Developer Intellectual Property and Third Party Intellectual Property incorporated into the Project shall have been delivered to the Owner or deposited into Intellectual Property Escrow(s) by on or about the Termination Date.

23.5.5 Payments Inclusive

Developer acknowledges and agrees that the Payments include all royalties, fees, costs and expenses arising from or related to the Project Intellectual Property.

23.6 Intellectual Property Escrows

23.6.1 The Owner and Developer acknowledge that Developer, a Person and/or Contractors that supply software, source code or other Intellectual Property may not wish to deliver the applicable IP Materials directly to the Owner, as public disclosure could deprive Developer and/or Contractors of commercial value. Developer further acknowledges that the Owner nevertheless must be ensured access to such IP Materials at any time, and must be assured that the IP Materials are delivered to the Owner pursuant to this Section 23.6.

23.6.2 The IP Materials shall be released and delivered to the Owner in any of the following circumstances:

23.6.2.1 In the case of Developer Intellectual Property developed by Developer or an Affiliate of Developer other than a Contractor: (a) this Agreement is terminated for Developer Default; (b) a voluntary or involuntary bankruptcy or insolvency of Developer occurs; (c) Developer is dissolved or liquidated; or (d) Developer fails or ceases to provide services as necessary to permit continued use of any such Developer Intellectual Property pursuant to the license or any sublicense thereof.

23.6.2.2 In the case of Developer Intellectual Property developed by a Contractor other than an Affiliate of Developer or Third Party Intellectual Property, this Agreement is terminated for any reason (including for Owner Default) and either: (a) voluntary or involuntary bankruptcy of the Contractor occurs; or (b) the Contractor is dissolved or liquidated or otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining and servicing the software, product, part or other item containing such Intellectual Property.

23.6.3 In lieu of delivering the IP Materials directly to the Owner, Developer may, from time to time, elect to deposit it with a neutral depository. In such event, the Owner and Developer shall: (a) mutually select one or more escrow companies or other neutral depositories (each an "**IP Escrow Agent**") engaged in the business of receiving and maintaining escrows of software source code or other Intellectual Property; (b) establish one or more escrows (each an "**Intellectual Property Escrow**") with the IP Escrow Agent on terms and conditions reasonably acceptable to the Owner and Developer for the deposit, retention, upkeep and release of IP Materials to the Owner pursuant to this Agreement; (c) determine a date for Developer's deposit of the IP Materials into the Intellectual Property Escrow; and (d) determine a process for releasing from escrow the IP Materials to be delivered to the Owner pursuant to this Agreement. Intellectual Property Escrows also may include Affiliates of Developer and Contractors as parties and may include deposit of their Intellectual Property. Developer shall be responsible for the fees and costs of the IP Escrow Agent.

23.6.4 The Intellectual Property Escrows shall survive expiration or earlier termination of this Agreement regardless of the reason.

ARTICLE 24. OTHER LEGAL AND FEDERAL REQUIREMENTS

24.1 Suspension and Debarment

Developer shall deliver to the Owner, not later than January 31 of each year through Project Final Acceptance, and upon Project Final Acceptance, signed certifications regarding suspension, debarment, ineligibility, voluntary exclusion, convictions and civil judgments from Developer, from each affiliate of Developer (as "affiliate is defined in 2 C.F.R. § 180.905), and from each Contractor whose Contract amount equals or exceeds US\$25,000.

24.2 Colorado Governmental Immunity Act

The Parties acknowledge and agree that the Owner and its officials, officers and employees are relying on, and do not waive or intend to waive, by any provision of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 2410-101, et seq., or otherwise available to the Owner and its officials, officers and employees.

24.3 FAA Grants

24.3.1 Developer acknowledges that the Owner has applied for and received grant(s) from the Administrator of the FAA and has applied for and received permission to collect and use PFCs (and may take such actions again in the future) and that, in connection with such actions, the Owner has undertaken (and may in the future undertake) certain obligations respecting its operation of the Airport and the activities of, among others, its contractors and lessees at the Airport in applications for such grants and permissions. Without limiting the Owner's obligations hereunder, Developer acknowledges and agrees that the Contract Documents are subordinate to the Owner's contractual obligations, including the grant assurances, to the FAA.

24.3.2 Subject to Section 24.3.3, Developer shall comply with any direction issued by the Owner to comply with applicable Law, existing or future grant assurances, statement of policy, advisory circular, recommendation or suggestion of the Administrator of the FAA or any other Governmental Entity or officer having jurisdiction over the enforcement of the obligations of the Owner under Federal law in respect of the Owner's obligations as set forth in Section 24.3.1 above, and any failure to do so that results in the denial or revocation of any such grant or permission shall constitute a Developer Default under Section 20.1.1.11.

24.3.3 To the extent that compliance by Developer with any direction issued by the Owner under Section 24.3.2 would require Developer to incur additional costs or adversely impact, or require modification of, its rights and obligations under this Agreement, the Parties shall negotiate in good faith to address such impact to the mutual satisfaction of the Parties, and if the Parties are unable to reach agreement within a reasonable time period, either Party may terminate the Agreement upon written notice to the other Party, and such termination shall be treated in the same manner and shall entitle Developer to the same Termination Compensation as a termination for extended Compensation Event (Type 2).

ARTICLE 25 ASSIGNMENT AND TRANSFER

25.1 Restrictions on Assignment, Subletting and Other Transfers

25.1.1 Developer shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber Developer's Interest or any portion thereof without the Owner's prior written approval, in its sole discretion, except:

25.1.1.1 To Lenders for security as permitted by this Agreement, provided Developer retains responsibility for the performance of Developer's obligations under the Contract Documents; or

25.1.1.2 To any Substituted Entity approved (or deemed approved) by the Owner in accordance with the Direct Agreement, provided that such Substituted Entity assumes in writing full responsibility for performance of the obligations of Developer under this Agreement, the other Contract Documents, and the Principal Developer Documents arising from and after the date of assignment.

25.1.2 Developer shall not grant any special right of entry onto, use of, or right to manage and control the Project to any other Person except as expressly contemplated in this Agreement without the Owner's prior written approval, in its sole discretion.

25.1.3 Any purported voluntary or involuntary sale, assignment, subletting, conveyance, transfer, pledge, mortgage, encumbrance or grant of other special use, management or control of the Project in violation of this provision shall be null and void *ab initio* and the Owner, at its option, may declare any such attempted action to be a material Developer Default.

25.2 Assignment by the Owner

The Owner may assign all or any portion of its rights, title and interests in and to, and obligations and liabilities under (if applicable), the Contract Documents, Payment Bond, Performance Bond, guarantees, letters of credit and other security for payment or performance: (a) in its sole discretion and without Developer's consent, to any other Person that succeeds to the statutory powers and authority of the Owner; and (b) to others with the prior written consent of Developer. Any assignment by the Owner in violation of this provision shall be null and void *ab initio*.

25.3 Notice and Assumption

Except for any assignment of the Owner's interest pursuant to Section 25.2(a), assignments and transfers of Developer's Interest or the Owner's interest permitted under this Article 25 or otherwise approved in writing by the Owner or Developer, as applicable, shall be effective only upon receipt by the non-assigning Party of written notice of the assignment or transfer and a written instrument executed by the transferee, in form and substance reasonably acceptable to the non-assigning Party, in which the transferee, without condition or reservation,

assumes all of Developer's or the Owner's (as the case may be) obligations, duties and liabilities under this Agreement and the other Contract Documents then in effect and agrees to perform and observe all provisions thereof applicable to Developer or the Owner. Each transferee of Developer's rights and obligations under this Agreement, including any Person who acquires Developer's Interest pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, shall take Developer's Interest subject to, and shall be bound by, the various plans under the Contract Documents, including the Project Management Plan and the Concessions Management and Development Plan, the Key Contracts to which Developer is a party, the Concession Agreements, the Governmental Approvals, and all agreements between the transferor and Governmental Entities with jurisdiction over the Project or the Work, except to the extent otherwise approved by the Owner in writing in its good faith discretion. Except with respect to assignments and transfers to foreclosure, transfer in lieu of foreclosure or similar proceeding or otherwise contemplated in the Direct Agreement, the transferor and transferee shall give the Owner written notice of the assignment not less than 30 days prior to the effective date thereof.

25.4 Change of Organization or Name

25.4.1 Developer shall not change the legal form of its organization without the prior written approval of the Owner, which consent shall not be unreasonably withheld.

25.4.2 If either Party changes its name, such Party agrees to promptly furnish the other Party with written notice of change of name and appropriate supporting documentation.

ARTICLE 26. DISPUTE RESOLUTION PROCEDURES

26.1 General

26.1.1 All Disputes shall be subject to the Dispute Resolution Procedures, except:

26.1.1.1 With respect to any decision, determination, judgment or other action of the Owner that is expressly provided in the Contract Documents as being subject to the Owner's sole discretion, which decision, determination, judgment or other action shall be final, binding and not subject to dispute resolution and shall not constitute a basis for any claim for additional monetary compensation, time extension or any other relief; or

26.1.1.2 To the extent expressly otherwise provided in the Contract Documents.

26.1.2 If a Dispute is subject to the Dispute Resolution Procedures, the Owner's initial determination shall be binding upon the Parties pending any final determination of the Dispute in accordance with Appendix 20, except as expressly otherwise provided in the Contract Documents.

26.1.3 The Parties agree to use reasonable efforts to resolve any Disputes as quickly as possible.

26.2 Continuance of Work During Dispute

During the course of any Dispute Resolution Procedures, without prejudice to its rights thereunder, Developer shall continue performing the Work, including any Work that is the subject of the Dispute, as directed by the Owner in accordance with the Contract Documents.

ARTICLE 27. MISCELLANEOUS

27.1 Amendments

Except as otherwise expressly provided in this Agreement with respect to Discriminatory O&M Changes and Non-Discriminatory O&M Changes, the Contract Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, provided that unless otherwise required by law, the following shall only require execution by the Parties' Authorized Representatives: (a) Change Orders and Change Directives; (b) any amendments or supplements to, or replacement of, Appendices of this Agreement or the Technical Requirements; (c) any extension of the Financial Close Deadline, and (d) any other amendments that do not materially alter the rights and obligations of the Parties or the risk allocation under the Agreement, as reasonably determined by the Owner's Authorized Representative.

27.2 Ancillary Agreements

The City Council hereby delegates authority to the CEO to execute and deliver, on behalf of the Owner, the Direct Agreement, the Project Office Lease Agreement, the Interim Office Lease Agreement, the Concessionaires Office Lease Agreement, and any other ancillary agreement, instrument, certificate or other document required to consummate the transactions contemplated in this Agreement, and any amendments thereto.

27.3 Waiver

Either Party's waiver of any breach or to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

27.4 Independent Contractor

27.4.1 Developer is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with the Owner other than that of Project Developer and independent contractor. It is the express intent and agreement of the Parties that nothing in the Contract Documents is intended or shall be construed to create any landlord-tenant, lessor-lessee of real property, optionor-optionee, vendor-purchaser, mortgagor-mortgagee, or principal-agent relationship between the Owner and Developer; and in no event shall either Party take a position in any tax return, insurance application or questionnaire, financial statement, financial report, regulatory filing, securities filing, loan document, or other writing of any kind that any such relationship exists.

27.4.2 Nothing in the Contract Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between the Owner and Developer; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term "public-private partnership" may be used on occasion to refer to contractual relationships of the type created, the Parties do not thereby express any intention to form or hold themselves out as a *de jure* or *de facto* partnership, joint venture or similar relationship, to share net profits or net losses, or to give the Owner control or joint control over Developer's financial decisions or discretionary actions concerning the Project and Work.

27.4.3 In no event shall the relationship between the Owner and Developer be construed as creating any relationship whatsoever between the Owner and Developer's employees. Neither Developer nor any of its employees is or shall be deemed to be an employee of the Owner. Except as otherwise specified in the Contract Documents, Developer has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Contractors and for all other Persons that Developer or any Contractor hires to perform or assist in performing the Work.

27.5 Successors and Assigns

The Contract Documents shall be binding upon and inure to the benefit of the Owner and Developer and their permitted successors, assigns and legal representatives.

27.6 Agents and Representatives

27.6.1 The Owner and Developer shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the Contract Documents ("**Authorized Representative**"). Appendix 21 to this Agreement provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 27.9. Without limiting the foregoing, any approval of the Owner under the Contract Documents shall not be effective unless the approval is given in writing and is signed by the Owner's Authorized Representative.

27.6.2 In carrying out any of the provisions of the Contract Documents or in exercising any power or authority granted to the Owner or any of its employees or agents, there shall be no liability on behalf of any employee, officer or official of the Owner for which such individual is responsible, either personally or as officials or representatives of the Owner. It is understood that in all such matters such individuals act solely as agents and representatives of the Owner.

27.7 Survival

Developer's representations and warranties, the Dispute Resolution Procedures contained in Article 26, the indemnifications and releases contained in Section 18.4, the limitations on remedies contained in Sections 20.2.10 and 20.4.3, the rights to compensation contained in Article 21 and any other obligation to pay amounts hereunder, and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the Work under this Agreement, shall survive the expiration or earlier termination of this Agreement and/or the completion of the Work under this Agreement. The Owner's obligation to pay compensation to Developer upon the early termination of this Agreement as provided in Article 21 and any other payment obligations of the Owner arising prior to expiration or early termination of this Agreement shall survive the expiration or earlier termination of this Agreement.

27.8 Limitation on Third-Party Beneficiaries

It is not intended by any of the provisions of the Contract Documents to create any third-party beneficiary hereunder or to authorize anyone not a Party to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions and the Direct Agreement) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 27.8, the duties, obligations and responsibilities of the Parties to the

Contract Documents with respect to third parties shall remain as imposed by Law. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Owner and a Contractor or any Person other than Developer. The use of any third party logos shall not be construed as an undertaking by such party of any obligation under the Contract Documents and Developer shall be the sole party subject to the matters contemplated thereby.

27.9 Governing Law

The Contract Documents shall be governed by and construed in accordance with the laws of the State of Colorado. The venue for any litigation arising from a Dispute shall be in the City and County of Denver, Colorado.

27.10 Notices and Communications

27.10.1 Notices under the Contract Documents shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

1. All notices, correspondence and other communications to Developer shall be delivered to the following address or as otherwise directed by Developer's Authorized Representative:

Denver Great Hall LLC
24735 E. 75th Avenue
Suite 100
Denver, Colorado 80249-6340

Attention: Chris Butler, Chief Executive Officer

Telephone: (303) 810-0386

E-mail: cbutler@ferrovial.com

In addition, copies of all notices to proceed, notices regarding Disputes, and suspension, termination and default notices shall be delivered to the following persons:

Calle Quintanavides 21, 28051

Attention: Juan Carlos Bullón Alemán

Telephone: +34 917686614

E-mail: jbullon@ferrovial.com

2. All notices, correspondence and other communications to the Owner shall be marked as regarding the Project and shall be delivered to the following address or as otherwise directed by the Owner's Authorized Representative:

City and County of Denver
Department of Aviation

Attention: Stuart Williams

Senior Vice President of Special
Programs
24735 E. 75th Avenue
Denver, Colorado 80249-6340
Email: Stuart.williams@flydenver.com
Phone: (720) 840-5292

Copy: Kim Day
Chief Executive Officer
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340
Email: Kim.day@flydenver.com
Phone: (303) 342-2206

In addition, copies of all notices regarding Disputes, and termination and default notices shall be delivered to the following:

8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340
Attention: Xavier S.L. DuRan, General Counsel
Phone: (303) 342-2203
E-mail: Xavier.duran@flydenver.com

27.10.2 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Any technical or other communications pertaining to the Work shall be conducted by Developer's Authorized Representative and technical representatives designated by the Owner.

27.11 Integration of Contract Documents

Subject to Section 27.11, the Owner and Developer agree and expressly intend that this Agreement and other Contract Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

27.12 Severability

If any clause, provision, section or part of the Contract Documents is ruled invalid by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Financial Model Update (or, if there has been no update, the Financial Model) and the Owner's compensation to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the Contract Documents, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable clause, provision, section or part.

27.13 Entire Agreement

The Contract Documents contain the entire understanding of the Parties with respect to the subject matter thereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to their subject matter.

27.14 Further Assurances

Each Party shall do, execute and deliver, or shall cause to be done, executed and delivered, all such further acts, documents and things as the other Party may reasonably request for the purpose of giving effect to the Contract Documents.

27.15 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart, to be followed thereafter by an original of such counterpart. The Parties, in the manner specified by Owner, may sign this Agreement electronically.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CITY AND COUNTY OF DENVER

By: _____
Name:
Title:

DENVER GREAT HALL LLC

By: _____
Name:
Title: Authorized Representative

By: _____
Name:
Title: Authorized Representative