

**Appendix D: *Sample Contract* for the Sale of ANS Royalty Gas**

**SAMPLE CONTRACT  
FOR THE SALE OF  
ANS ROYALTY GAS**

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This Sample Contract shows the type of contract the State expects to negotiate for the sale of ANS Royalty Gas. It is illustrative only. It is not an offer to sell ANS Royalty Gas. Volumes are expressed in MMcf and prices are expressed as dollars per MMcf. It may be appropriate to use MMBtus instead of MMcfs. Negotiations with purchasers will set the actual terms and conditions of contracts for the sale of ANS Royalty Gas.

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**AGREEMENT FOR THE SALE AND  
PURCHASE OF ROYALTY GAS**

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This Agreement is between the State of Alaska (“State”) and \_\_\_\_\_  
 (“Buyer”). The effective date of this Agreement is \_\_\_\_\_, 2002.

**ARTICLE I  
DEFINITIONS**

As used in this Agreement, the terms listed below shall have the following meanings:

1.1 “Commissioner” means the Commissioner of the Alaska Department of Natural Resources or the Commissioner’s designee.

1.2 “Day” means a period of twenty-four (24) consecutive hours, beginning at 12:00:01 a.m., Alaska Standard Time.

1.3 “Gas” means natural gas tendered in gaseous phase by the Lessees to the State as royalty. Gas [includes] [excludes] natural gas liquids (“NGLs”) tendered by the Lessees as Royalty Gas.

1.4 “Gas Pipeline” means the pipeline and related facilities to be constructed to deliver ANS gas from the North Slope to markets inside or outside the State of Alaska.

1.5 “Leases” means the oil and gas leases issued by the State and subject to the terms of either the Prudhoe Bay Unit Agreement or Point Thomson Unit Agreement.

1.6 “Lessee” means a person, as “person” is defined in Alaska Statutes 01.10.060, owning a working interest in any of the Leases.

1.7 “Mcf”; “MMcf”; “Bcf” – “Mcf” means one thousand (1,000) Standard Cubic Feet; “MMcf” means one million (1,000,000) Standard Cubic Feet; and “Bcf” means one billion (1,000,000,000) Standard Cubic Feet.

1.8 “MMBtu” means one million (1,000,000) British Thermal Units.

1.9 “Month” means a period beginning at 12:00:01 a.m., Alaska Standard Time, on the first Day of the calendar Month and ending at 12:00:01 a.m., Alaska Standard Time, on the first Day of the following calendar Month.

1.10 “Nomination” is defined in Paragraph 3.1.4.

1.11 “Open Season” means the period during which shippers must contract for space on the Gas Pipeline.

1.12 “Parties” means, collectively, Buyer and State.

1.13 “Party” means Buyer or State, individually.

1.14 “Point of Delivery” means the location or locations where the State receives Royalty Gas in-kind from the Lessees.

1.15 “Reserved Gas” is defined in Paragraph 3.1.5(a).

1.16 “Royalty Gas” means that portion of Total Royalty Gas the State has agreed to sell to Buyer and Buyer has agreed to purchase under this Agreement.

1.17 “Royalty Value” is defined and calculated as shown in Paragraph 3.3.1 and Exhibit 1.

1.18 “Total Royalty Gas” means the total volume of Gas produced each Day from the Prudhoe Bay and Point Thomson units that the State takes as its royalty under the Leases, whether in-kind or in-value.

1.19 “Unit Agreement” means the Prudhoe Bay or Point Thomson unit agreement, as appropriate.

1.20 “Unit” means the Prudhoe Bay Unit or the Point Thomson Unit, as appropriate.

**ARTICLE II**  
**SPECIAL COMMITMENTS**

[This Article is reserved for Special Commitments offered by Buyer. A Special Commitment could be a commitment to in-state processing, in-state use, in-state investment, in-state exploration, local hire, or anything else that Buyer offers to enhance its proposal. Performance of a Special Commitment must be measurable and enforceable. A Buyer is not required to propose a Special Commitment. Special Commitments may be given weight in the State's evaluation process.]

**ARTICLE III**  
**SALE AND PURCHASE OF GAS**

3.1 Quantity.

3.1.1 Maximum Quantities. The State agrees to sell and the Buyer agrees to buy each day Royalty Gas in the quantities shown in the attached Schedule 1, "Royalty Gas Purchase Schedule." The quantities shown in Schedule 1 are the Maximum Quantities available to Buyer.

3.1.2 Reduction in Maximum Quantities. The Buyer may at any time reduce the Maximum Quantities by giving two years notice. No quantity shown in Schedule 1 may be reduced by more than fifty percent (50%).

3.1.3 No Guarantee of Quantity. The State can deliver Royalty Gas only to the extent it receives Royalty Gas from the Lessees. The quantity of Total Royalty Gas available to the State may vary and may be interrupted from time to time depending on a variety of factors, including the rate of production from the Leases and Units. Furthermore, the State is or may be required to nominate Royalty Gas as a percentage of Total Royalty Gas, and not by quantity. The State disclaims and Buyer waives any guarantee, representation, or warranty, either express or implied, that a specific quantity of the total, daily, monthly, average or aggregate Royalty Gas will be delivered to Buyer under this Agreement. Buyer disclaims any interest in or right to stored Royalty Gas to which the State is or may become entitled.

3.1.4 Monthly Nomination to Take Less Than the Maximum Quantities. Buyer may request an increase or decrease in the quantity of Royalty Gas it will take each Month (a “Nomination”). A Nomination must be in writing and shall be effective on the first Day of the seventh Month after the Nomination is received by the State. The Nomination for any Month:

- a. cannot exceed the Maximum Quantities for that Month; and
- b. cannot change the Nomination for the prior Month by more than the percent change allowed by the applicable Unit Agreement.

3.1.5 Source of Royalty Gas. The State will deliver the quantities nominated by Buyer first from the Prudhoe Bay Unit and, if adequate Royalty Gas is not available from the Prudhoe Bay Unit, then from the Point Thomson Unit, subject to the following rules and conditions:

- a. The State reserves for later sale or any other use thirty percent (30%) of the Total Royalty Gas produced each Month from each Unit (“Reserved Gas”). Reserved Gas shall not be available to supply quantities nominated by Buyer.
- b. If the quantity of Total Royalty Gas sold under this Agreement and any other agreements exceeds seventy percent (70%) of the Total Royalty Gas produced each Month from the Prudhoe Bay Unit, the quantities nominated by Buyer shall be taken pro rata from the Prudhoe Bay Unit based on the ratio of Buyer’s nominated quantities for the Month to total quantities nominated by all buyers for the Month. For example, assume (1) that the Prudhoe Bay Unit produces 1,000 MMcf in a given Month, (2) that Buyer’s Nomination for that Month is 500 MMcf, and (3) that all other buyers under other agreements have nominations which total 400 MMcf. After the State’s reservation of 30 percent (which could be reduced by a later sale), 700 MMcf are available. Nominations total 900 MMcf. Buyer would therefore receive

from the Prudhoe Bay Unit 500/900 x 700 = 388 MMcf, and the balance (112 MMcf) from the Point Thomson Unit.

3.1.6 State's Warranty of Title. The State warrants that it has good and marketable title to the Royalty Gas delivered and sold under this Agreement.

3.2 Quality.

3.2.1 Quality of Royalty Gas. The Royalty Gas sold under this Agreement shall be of the same quality as the Royalty Gas produced from the Units and delivered by the Lessees to the State at the Point of Delivery. The quality of the Royalty Gas may vary from time to time. The State disclaims, and Buyer waives, any guarantee, representation, or warranty, either expressed or implied, of merchantability, fitness for use, or suitability for any particular use or purpose, or otherwise, and of any specific, average, or overall quality or characteristic of Royalty Gas delivered under this Agreement. Buyer specifically waives any claim that any liquid or other hydrocarbons delivered with the Royalty Gas are not Royalty Gas for purposes of this Agreement.

3.3 Price of Royalty Gas. The Buyer shall pay the State a Royalty Gas price ("Price") for each Mcf of Royalty Gas purchased from the State. The Price shall equal the Base Price plus the Price Premium.

3.3.1 Base Price. The Base Price shall be the greater of \$\_\_\_ per Mcf or the Royalty Value per Mcf for Gas taken from each Unit. The Royalty Value shall be the volume-weighted average of the amounts per Mcf paid in royalty by all Lessees each Month on Total Royalty Gas not taken in-kind, plus any processing and field costs incurred by the State on the Royalty Gas which would not have been incurred if the Royalty Gas had been taken in value. An example of the calculation of the Base Price is shown in Exhibit 1.

3.3.2 Price Premium. [This paragraph is reserved for any price premium a Buyer wishes to offer.]



3.4 Reservation Fee. If, in any Month, Buyer does not nominate the Maximum Quantities in effect for that Month, Buyer shall pay, in addition to the Price, a reservation fee equal to \_\_\_\_\_ percent of the Price on the difference in quantity between the Maximum Quantities and the quantity of Royalty Gas actually purchased as a result of Buyer's Nomination for the Month.

3.5 Current and Future Agreements, and Arbitration and Litigation Results Between the State and the Lessees.

3.5.1 Non-Intervention. The Buyer shall not intervene or otherwise participate in any way in any discussions, negotiations, agreements, settlements, reopeners, audits, arbitration, or litigation between the State and Lessees pertaining to royalty, nor shall the Buyer have any independent right to invoke any provision of any agreement between the State and Lessees.

3.5.2 Binding Effect. The Buyer agrees to be conclusively bound by the terms of any agreements, settlements, reopeners, audits, arbitration, or litigation between the State and Lessees pertaining to royalty, regardless of whether the Buyer agrees with or consents to the agreements, settlements, reopeners, audits, arbitration, or litigation.

3.6 Delivery of Royalty Gas.

3.6.1 Day of First Delivery. The State will make its first delivery of Royalty Gas to Buyer at the Point of Delivery immediately upon the State's first receipt of Royalty Gas from the Lessees.

3.6.2 Later Deliveries. After the first delivery, the State shall tender Royalty Gas to Buyer at the Point of Delivery immediately upon receipt of the Royalty Gas from the Lessees.

3.7 Passage of Title and Risk of Loss. Title to, and risk of loss of, the Royalty Gas shall pass from the State to Buyer for all purposes when the State tenders the Royalty Gas to Buyer at the Point of Delivery. Buyer shall bear all risk and responsibility for the Royalty Gas after passage of title.

3.8 Indemnification After Passage of Title. Buyer shall indemnify and hold the State harmless from and against any and all claims, costs, damages (including reasonably foreseeable consequential damages), expenses, or causes of action arising from or related to any transaction or event in any way related to the Royalty Gas after title has passed to Buyer.

3.9 Transportation Arrangements. Buyer shall make all arrangements for, and bear all costs of, transportation of the Royalty Gas from the Point of Delivery to, through, and away from the Gas Pipeline, and shall be responsible for meeting any requirements imposed by the Gas Pipeline or any other pipeline used to transport the Royalty Gas purchased under this Agreement. On the State's request, Buyer shall provide the State with evidence of (1) the arrangements for transportation of the Royalty Gas from the Point of Delivery, to, through, and away from the Gas Pipeline; (2) arrangements for resale, exchange, or other disposal of the Royalty Gas; (3) arrangements for the treating, conditioning, or processing of the Royalty Gas; (4) information on specific deliveries of Royalty Gas by Buyer to the Gas Pipeline. Buyer's failure to provide information, evidence, or assurances requested by the State shall, at the State's election and after notice to Buyer, constitute a material default under this Agreement.

3.10 Absolute Obligations. Buyer's obligations to pay for the Royalty Gas, provide security as required by Article 6 and 10.3, pay reservation fees, and purchase, transport, and dispose of Royalty Gas are absolute. These obligations shall not be excused or discharged by the operation of any disability of Buyer, event of force majeure, impracticability of performance, change in conditions, or other reason or cause.

#### **ARTICLE IV** **INVOICING AND PAYMENT**

4.1 Production Month Invoices. On or before the tenth business Day of each Month after the first Month of delivery of Royalty Gas, the State shall send to Buyer a statement of account with

an invoice for the total amount due for the estimated quantity of Royalty Gas delivered to Buyer during the immediately preceding Month and the estimated Price applicable to those deliveries. The State will base its estimates on the best information reasonably available to the State. The State shall adjust production month invoices as provided in Article 4.4 and Article 4.6.

4.2 Payment of Production Month Invoices. Buyer shall pay the total amount of each production month invoice, in full, on or before the third business Day after the date of the statement of account that includes the invoice. Any amount not paid in full on or before the third business Day after the date of the statement of account shall accrue interest as provided in Article 4.8, and become subject to the late payment provisions of Article 4.10, and any other remedies available to the State under this Agreement or at law.

4.3 Adjustments. Buyer acknowledges that any time after a production month invoice is sent, the State may receive more accurate information concerning the actual quantity, quality, and Price for Royalty Gas delivered to Buyer. Buyer agrees that any time such information becomes available to the State, the State may make adjustments to the preceding invoice(s), and invoice Buyer for the adjustments, plus interest as provided in Article 4.8 on the amount of any adjustment.

Buyer should expect adjustments to be made over a period of years and to increase the Price for Royalty Gas.

4.4 Initial Adjustments. Any adjustment made to an invoice issued during the immediately preceding month is an initial adjustment.

4.5 Payment of Initial Adjustments. Buyer shall pay the total amount of each initial adjustment invoice, plus interest as provided in Article 4.8, in full, on or before the third business Day after the date of the statement of account that includes the initial adjustment invoice. If an adjustment is due to Buyer for an overpayment, the State shall credit or refund to Buyer the amount of the overpayment, plus interest as provided in Article 4.8, on or before the third business Day after

the date of the statement of account that includes the initial adjustment invoice. Any amount Buyer does not pay in full when due shall become subject to the late payment provisions of Article 4.10, and any other remedies available to the State under this Agreement or at law.

4.6 Subsequent Adjustments. Any adjustment made to an invoice issued prior to the immediately preceding month is a subsequent adjustment.

4.7 Payment of Subsequent Adjustments. Buyer shall pay in full the total amount of each subsequent adjustment invoice, plus interest as provided in Article 4.8, on or before the thirtieth Day after the date of the statement of account that includes the subsequent adjustment invoice. If an adjustment is due to Buyer for an overpayment, the State shall credit or refund to Buyer the amount of the overpayment, plus interest as provided in Article 4.8, on or before the thirtieth Day after the date of the statement of account that includes the adjustment invoice. Any amount Buyer does not pay in full when due shall become subject to the late payment provisions of Article 4.9, and any other remedies available to the State under this Agreement or at law.

4.8 Interest. All amounts Buyer does not pay in full when due under this Agreement, and all amounts invoiced as adjustments for underpayments and overpayments for Royalty Gas delivered to Buyer, shall bear interest from the date accrued until paid in full at the rate provided by Alaska Statute 38.05.135(d), or as that statutory provision may later be amended. In this Agreement, “date accrued” means the third business Day after the date of the first statement of account that contains the production month invoice to which the initial or subsequent adjustment applies. Exhibits 2 and 3 illustrate accrual of interest and other calculations under Article IV.

4.9 Non-Termination and Limitations. Buyer acknowledges that the State may continue to make adjustments after termination of this Agreement, and agrees that the provisions of Articles IV and IX shall survive termination of this Agreement for any reason.

4.10 Late Payment Penalty. In addition to all other remedies available to the State, if Buyer fails to make timely payment in full of any amount due, Buyer shall pay the State an amount equal to five percent of the amount not timely paid as a late payment penalty, in addition to the amount not paid when due, plus interest as provided in Article 4.8 from the date accrued until paid in full.

4.11 Disputed Payments. If a dispute arises concerning the amount of an invoice, Buyer agrees to pay the full amount of the invoice when due pending final resolution of the dispute.

4.12 Confidential Information. The State and Buyer agree that the State may invoice Buyer for, and Buyer agrees to pay, amounts that are based upon confidential information held or received by the State. If confidential information is used as the basis for an invoice, upon receipt of a written request from Buyer, the State shall furnish to Buyer a certified statement of the Commissioner to the effect that, based upon the best information available to the State, the invoiced amounts are correct.

4.13 Manner of Payment. Buyer shall pay all invoices in full within the times specified and without any deduction, set off, or withholding. Buyer shall pay all invoices by wire transfer of immediately available funds to the State's account at the following address:

State Street Bank & Trust Company  
Boston, Massachusetts  
ABA No. 011000028  
For credit to the State of Alaska  
General Investment Fund, AY01  
Account No. 00657189  
Attn: Kim Chan, Public Funds

Buyer shall pay an invoice in any other manner or to any other address the State has specified in an invoice or by other written notice. All other payments due shall be paid in the same manner and according to the same time schedule provided in this Article. If payment falls due on a Saturday, Sunday, or legal federal holiday, payment shall be made on the next business day.

4.13.1 Direct Payment to Lessees. If the State directs Buyer in an invoice or other writing to remit all or a portion of a payment required under this Agreement directly to one or more of the Lessees, Buyer shall remit the payment to the Lessee or Lessees in the manner designated by the State, and within the time limits specified in Article IV. The State may, in writing, authorize a Lessee to request direct remittance of all or a portion of a payment due under this Agreement, and to designate the manner for payment. Unless otherwise specified by the State in writing, the balance of a direct partial payment to a Lessee, and all subsequent payments, shall be made to the State in accordance with Article IV.

4.13.2 Direct Payment to Other Third Parties. Upon a determination by the State that remittance to a third party of an amount due under this Agreement will assist the State in monitoring or enforcing the Agreement, the State may direct Buyer in an invoice or other writing to remit all or a portion of a payment due under this Agreement directly to a designated third party other than a Lessee, and Buyer shall remit the payment to the designated third party in the manner designated by the State, and within the time limits specified in Article IV. Unless otherwise specified by the State in writing, the balance of a direct partial payment to a third party, and all subsequent payments, shall be made to the State in accordance with Article IV.

4.13.3 Direct Payment to State. In the event of any default by Buyer, including, without limitation, failure to make any payment when due, the State may demand payment directly from any person or entity which purchases Royalty Gas from Buyer.

## **ARTICLE V**

### **BUYER'S REPRESENTATIONS AND OBLIGATIONS**

5.1 Good Standing and Due Authorization. Buyer warrants that it is, and shall remain at all times during the term of this Agreement: (1) a corporation organized and existing under the laws of the United States or of a state, territory, or the District of Columbia; (2) qualified to do

business in Alaska; and (3) in good standing with the State. Buyer warrants that it has all corporate power and authority necessary, and has performed all corporate action required, to enter into and fulfill its obligations under this Agreement.

5.2 Financial Condition. Buyer warrants: (1) that all financial information submitted to the State is complete, accurate, and fairly represents Buyer's financial condition at the time of submission; and (2) that there has been no material change in Buyer's financial condition, business operations, or properties since it submitted the financial information to the State. Buyer warrants that the financial information was prepared in accordance with generally accepted accounting principles. Buyer shall immediately inform the State of any material change in its financial condition, business operations, agreements, or property that may affect its ability to perform its obligations under this Agreement. Buyer shall immediately inform the State of any significant change in ownership of Buyer or of Buyer's parent company or affiliates.

5.3 Financial Statements. Within one hundred and twenty Days after the end of its fiscal year, Buyer shall, at its own cost and expense, submit to the State a complete financial report. The report shall include Buyer's balance sheet as of the close of the fiscal year and the income statement for that year prepared in accordance with generally accepted accounting principles. The report shall include a copy of Buyer's annual report (if any) filed with the United States Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Security Exchange Act of 1934. From time to time the State may require submission of additional financial information in such form or forms as the State may prescribe.

## **ARTICLE VI** **SECURITY**

6.1 Letter of Credit. Seven months before the Day of First Delivery, Buyer shall deliver to the State an irrevocable stand-by letter of credit (the "Letter"). The Letter shall be in a form

satisfactory to the Commissioner and shall be in effect by the Day of First Delivery. It shall be issued for the benefit of the State by a state or national banking institution of the United States that is insured by the Federal Deposit Insurance Corporation and has an aggregate capital and surplus amount of not less than One Hundred Million Dollars (\$100,000,000) (“Issuer”), or other banking institution acceptable to the Commissioner. The principal face amount of the Letter shall be an amount estimated by the Commissioner to be equal to the value of all Royalty Gas to be delivered by the State to Buyer during the 180 Days immediately following the Day of First Delivery. The Letter shall not require the State to submit any documentation in support of drafts drawn against it other than a certified statement by the Commissioner and the State’s Attorney General that Buyer is liable to the State for an amount of money equal to the amount of the draft, that the amount of money is due and payable in full, and it has not been timely paid.

The Letter shall provide that the State has the right to draw and present drafts to the Issuer through \_\_\_\_\_ months after the State’s last delivery of Royalty Gas to Buyer under this Agreement. The Letter shall be in effect continuously from the Day of First Delivery through \_\_\_\_\_ months after the date of the State’s last delivery of Royalty Gas to Buyer. If the Letter is not in effect for any reason, (1) Buyer shall be deemed to have materially breached this Agreement; (2) a default under Article IX will have occurred; and (3) all Buyer’s obligations, expenses, and liabilities accrued as of that date, whether yet due and payable, shall become immediately due and payable in full.

If the State asserts a claim or claims that equal a total amount of money greater than the principal face amount of the Letter in effect, Buyer shall, upon the State’s request, cause the principal face amount of the Letter to be increased by an amount sufficient to secure the total amount of the State’s claims. Buyer is subject to this obligation even if Buyer denies, rejects, or otherwise contests the State’s claims.



If the principal face amount of the effective letter of credit is ever less than the estimated price of 180 Days of Royalty Gas deliveries, Buyer shall automatically and immediately cause the principal face amount of the effective Letter to be increased to an amount equal to the estimated price of 180 Days delivery of Royalty Gas. If the principal face amount of the effective Letter is greater than the estimated price of 180 Days delivery of Royalty Gas, upon written approval of the Commissioner, in the Commissioner's sole discretion, Buyer may decrease the principal face amount of the Letter to an amount equal to the estimated price of 180 Days delivery of Royalty Gas.

6.2 Security Contract. Upon approval by the Commissioner, in the Commissioner's sole discretion, as alternative security to the Letter required in Article 6.1, Buyer may deliver to the State: (1) an irrevocable stand-by letter of credit in the principal face amount estimated by the Commissioner to be equal to the value of Royalty Gas to be delivered by the State to Buyer during the 90 Days immediately following the Day of First Delivery; and (2) an irrevocable contract between a major oil company ("Promisor") and Buyer for the direct benefit of the State, in which the Promisor agrees to assume full liability for Royalty Gas upon notice that Buyer is in default of this Agreement ("Security Contract"). The 90-Day letter of credit shall be subject to all the terms and conditions of Article 6.1. The Security Contract shall designate the State as intended third-party beneficiary and shall be in effect by the Day of First Delivery. It shall provide that upon written notice by the Commissioner to Buyer and the Promisor that Buyer is in default of this Agreement, the Promisor shall immediately assume full liability for purchase, transportation, and disposal of a minimum of 90 Days deliveries of Royalty Gas from the Point of Delivery. It shall provide the State a direct right of action against Buyer and the Promisor, jointly and severally, to enforce the Security Contract, regardless of whether the State takes action to enforce this Agreement against Buyer. It shall also provide that the Promisor has no right of action against the State and may not assert against the State any defense it may have against Buyer under the Security Contract.

6.3 Special Security. [Reserved for additional or other security a Buyer may offer.]

6.4 Other Security. The Commissioner may, in the Commissioner's sole discretion, require such other or additional security from Buyer as the Commissioner considers adequate to protect the State's interest. [The State may require (1) an escrow account of \$\_\_\_ per Mcf to pay for adjustments or (2) that the Letter be maintained in an amount sufficient to pay for adjustments after the State stops delivering Royalty Gas.]

#### **ARTICLE VII** **MEASUREMENTS**

7.1 Measurements. Procedures used for metering and measuring the Royalty gas shall be in accordance with the procedures in effect in the Units.

#### **ARTICLE VIII** **EFFECTIVE DATE AND TERM**

8.1 Approval. This Agreement is subject to approval under Alaska Statute 38.06.055. If all approvals required by AS 38.06.055 have not been obtained by August 31, 2002, either Party may terminate the Agreement on 30 Days notice. If an Open Season for the Gas Pipeline is not completed by December 31, 2004, either Party may terminate this Agreement on 30 Days notice.

8.2 Term. [The term will be determined by the proposal.] Termination of this Agreement shall not relieve either party from any expense, liability, or other obligation or any remedy that has accrued or attached prior to the date of termination. For Royalty Gas actually delivered under this Agreement, termination of this Agreement shall not relieve Buyer of its obligation to pay all production month invoices, initial adjustments, subsequent adjustments, and interest, and, where applicable, penalties, costs, attorney fees, and any other charges related to the Royalty Gas actually delivered. The provisions of Article IV shall survive termination of this Agreement.

8.3 No Delivery of Royalty Gas. This Agreement shall terminate on July 31, 2012 if the Gas Pipeline is not in service by that date or if no Royalty Gas has been delivered by that date.

8.4 If the conditions set forth in Article 8.1 fail and this Agreement is not approved by August 31, 2002, or is terminated under Article 8.1, or if the Gas Pipeline is not in service by July 31, 2012, the State shall return to the Buyer the bonus paid by the Buyer, without interest.

## **ARTICLE IX DEFAULT OR TERMINATION**

### 9.1 Default.

9.1.1 Events of Default. The Commissioner may, in the Commissioner's sole discretion, suspend, terminate, or reduce the State's obligation to tender, deliver, and sell Royalty Gas to Buyer, and may exercise any one or more of the rights and remedies provided in this Agreement, or at law, if any one or more of the following events of default occur:

- (i) Buyer fails to pay in full any sum of money owed under this Agreement within two business Days after the State gives Buyer notice that payment is past due and has not been paid;
- (ii) Within five Days after written request from the State, Buyer fails to provide written assurances satisfactory to the State of its intention to perform its obligations under this Agreement and evidence or assurances of transportation arrangements under Article 3.9;
- (iii) There is a substantial change in Buyer's financial condition, business operations, agreements, or property or ownership that may affect Buyer's ability to perform its obligations under this Agreement, and within five Days after a request by the State, Buyer is unable or unwilling to provide the State with adequate assurance of continued performance;

- (iv) Buyer fails to perform any of its obligations under this Agreement, and cannot cure the non-performance or the non-performance continues for more than thirty Days after the State has notified Buyer of its non-performance;
- (v) Any representation or warranty made by Buyer in this Agreement is found to have been materially false or incorrect when made; or
- (vi) Buyer fails, or is unable for any reason (including reasons beyond Buyer's control), to maintain the [security letter of credit] [other security] required under Article VI, regardless of Buyer's willingness or ability to perform any other obligations under this Agreement.

9.1.2 Default by Inability to Pay. Buyer shall immediately provide the State with written notice if Buyer is unable to pay any of its debts when due or is otherwise insolvent. Upon such notice from Buyer, or if the State independently determines that Buyer is unable to pay any of its debts when due or is otherwise insolvent, the State's obligations to deliver and sell Royalty Gas to Buyer shall automatically and immediately terminate without any requirement of notice to Buyer or other action by the State. Within thirty Days after termination under this Article 9.1.2, the State shall have the right, upon written notice to Buyer, to reinstate all of the State's and Buyer's obligations under this Agreement retroactive to the date of termination.

9.2 State's Remedies. If Buyer defaults under this Agreement, in addition to all other remedies available to the State under this Agreement or at law, the following remedies shall be available to the State in the Commissioner's sole discretion.

9.2.1 Buyer's Obligations Become Due. All monetary obligations Buyer has accrued under this Agreement, even if not yet due and payable, shall immediately be due and payable in full.

9.2.2 State May Dispose of Royalty Gas. The State may dispose of some or all of the Royalty Gas to third parties. If the State exercises this remedy, regardless of whether this Agreement is terminated, Buyer shall be and remain liable to the State for the amount of the difference between the Price for the Royalty Gas under Article III and the actual price the State receives from disposition of the Royalty Gas to third parties.

9.2.3 Indemnification for Loss. Buyer shall hold the State harmless and indemnify it against all liability, damages, expenses, attorney's fees and costs, and losses arising out of Buyer's default, termination of the State's obligations, and disposal of the Royalty Gas to third parties. Additionally, if Buyer defaults in the payment of the Base Price, Buyer shall pay the State 100% of costs and attorney fees incurred by the State in pursuing payment of the Base Price, regardless of whether litigation is commenced and regardless of whether legal services are provided by the Attorney General's office or private counsel.

9.2.4 Damages for Breach of Special Commitments. If a Buyer offers Special Commitments, the Buyer should propose liquidated damages payable upon its failure to perform those Special Commitments.

9.2.5 Other Rights and Remedies. The State shall have the right cumulatively to exercise all rights and remedies provided in this Agreement and by law, and obtain all other relief available under law or at equity, including mandatory injunction and specific performance, except that Buyer's Special Commitments shall not be subject to specific performance.

9.3 Limitation of Buyer's Remedies. If the State breaches or defaults in any of its obligations under this Agreement, Buyer shall not obtain a temporary restraining order or preliminary injunction preventing the State from disposing of the Royalty Gas subject to this Agreement.

9.4 Termination. [If Buyer wishes to have the right to terminate the contract or to reduce the quantities shown in Schedule 1 by more than 50 percent, there will be a fee to be negotiated as part of the contract.]

9.5 Article Survives Termination. This Article survives termination of the Agreement.

## **ARTICLE X**

### **DISPOSITION OF ROYALTY GAS**

10.1 Disposition of Royalty Gas Upon Default or Termination. Buyer acknowledges that the State may be required to provide six Months notice to the Lessees before the State may decrease its in-kind Nomination of Royalty Gas in any Month. It is within the Commissioner's sole discretion to request a waiver of any notice provision, condition, or requirement of a Lease, Unit Agreement, settlement agreement or other agreement. If this Agreement terminates for default or any other reason, Buyer shall continue to accept and pay for Royalty Gas through the first Day of the Month following expiration of six months after the date of termination, if the Commissioner, in the Commissioner's sole discretion, so requires. If this Agreement terminates for default or any other reason, and the Commissioner, in the Commissioner's sole discretion, chooses to dispose of the Royalty Gas to a third party during the notice period for decreases in in-kind nominations, Buyer shall be and remain liable to the State for the amount of the difference between the Price for the Royalty Gas under Article III and the actual price the State receives from disposition of the Royalty Gas to third parties.

10.2 Inability to Receive Royalty Gas. If Buyer is unable or refuses to accept or receive Royalty Gas, Buyer shall nevertheless remain liable for disposal and payment for Royalty Gas as though it had been accepted by Buyer. The Commissioner may, in the Commissioner's sole discretion, waive this requirement.

10.3 Security for Disposal of Royalty Gas. To secure Buyer's obligations to purchase and dispose of Royalty Gas, upon the Commissioner's request, Buyer shall assign or otherwise transfer to the State, or its designee, all or part of Buyer's right, title, and interest in any arrangements for transportation of the Royalty Gas to, through, and away from the Gas Pipeline, whether such interests are under nominations, leases, contracts, tariffs, or other agreements. The State will incur liability or obligations under any assignment or transfer only to the extent the State actually exercises its rights to succeed to Buyer's interests under and obtain the benefits of the assignments or transfer.

## **ARTICLE XI NON-WAIVER**

11.1 Non-Waiver. The failure of either party to insist upon strict or a certain performance, or acceptance by either party of a certain performance or course of performance under this Agreement shall not: (1) constitute a waiver or estoppel of the right to require certain performance or claim breach by similar performance in the future; (2) affect the right of either party to enforce any provision; or (3) affect the validity of any part of this Agreement.

## **ARTICLE XII INTERPRETATION OF TERMS AND CONDITIONS**

12.1 Interpretation of Terms and Conditions. Any disagreement or dispute about the meaning or application of a word, term, or condition, or about a right or obligation in this Agreement shall be decided according to the dispute resolution procedure set forth in this Article. The procedure set forth in this Article shall be initiated by either party providing written notice of the disagreement or dispute to the other party. No later than sixty Days after either party provides written notice, Buyer and the State shall each present any arguments and evidence supporting their views of the disputed term or condition in writing to the Commissioner for consideration. Buyer

shall not have the right to civil litigation-type discovery or a civil litigation-type trial with the right to call or cross-examine witnesses unless granted by the Commissioner, after request. Within thirty Days after both parties submit their arguments and evidence, the Commissioner shall issue a finding interpreting the meaning or application of the disputed word, term, or condition, and shall set forth the basis for the conclusions. Buyer agrees to accept findings of the Commissioner under this Article that are reasonable and not arbitrary.

### **ARTICLE XIII** **SEVERABILITY**

13.1 Severability. If a court decrees any provision of this Agreement to be invalid, all other provisions of this Agreement shall remain valid. If, however, invalidation of a provision impairs a material right or remedy under this Agreement, either party may terminate this Agreement by notice to the other party as provided under Article XV.

### **ARTICLE XIV** **FORCE MAJEURE**

14.1 Effect of Force Majeure. Except for Buyer's absolute obligations to pay for the Royalty Gas, provide security, pay reservation fees, and purchase, transport and dispose of Royalty Gas, neither party shall be liable for failure to perform if performance is substantially prevented by force majeure after good faith efforts to perform. If Buyer is prevented by force majeure from performing any material obligation for sixty successive Days or more, the State, in the Commissioner's sole discretion, shall have the right to terminate this Agreement. Before the State exercises this right, the Commissioner may require Buyer to negotiate in good faith to restore performance.

14.2 Notice of Force Majeure. If a party believes that force majeure has occurred, the party shall immediately notify the other party of its claim of force majeure. Except for Buyer's



absolute obligations to pay for the Royalty Gas, provide security, pay reservation fees, and purchase, transport and dispose of Royalty Gas, the disabled party's obligations to perform that are affected by the force majeure shall be suspended from the time of notification to the other party until the disability caused by the force majeure should have been remedied with reasonable diligence.

**ARTICLE XV**  
**NOTICES**

15.1 Method. Unless otherwise specifically provided in this Agreement, all notices, requests, demands, or statements shall be in writing and delivered to the address specified in this Article in person, by telecopier or other form of facsimile, by United States mail, postage prepaid, registered or certified with a return receipt requested, to the party to be notified. A statement of account the State delivers to Buyer by telecopy shall be deemed delivered to Buyer when the State's telecopier confirms that it was received at Buyer's telecopy number. A notice, request, demand, or statement delivered by United States mail shall be deemed delivered on the earlier of expiration of seven Days after it is deposited in the mail, or upon the date of receipt by the party to whom it is directed. A notice, request, demand, or statement delivered in any other manner shall be effective only if and when received by the party to whom it is directed. The address of the parties shall be as follows:

State: State of Alaska  
Commissioner of Natural Resources  
400 Willoughby Avenue  
Juneau, Alaska 99801

and Director, Division of Oil and Gas  
550 W 7<sup>th</sup> Avenue, Suite 800  
Anchorage, Alaska 99501-3560  
Telecopy No.: 907-269-8938

Buyer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telecopy No.: \_\_\_\_\_

15.2 Change of Address. Each party may notify the other of changes in its address by delivering written notice of the change.

**ARTICLE XVI**  
**RULES AND REGULATIONS**

16.1 Rules and Regulations. This Agreement is subject to all applicable laws of the State of Alaska, and orders, rules, and regulations of the United States, the State of Alaska, and any duly constituted agency of the State of Alaska.

**ARTICLE XVII**  
**SOVEREIGN POWER OF THE STATE**

17.1 Sovereign Power of the State. This Agreement shall not be interpreted to limit in any way the State's ability to exercise any sovereign or regulatory powers, whether conferred by constitution, statute, or regulation. The State's exercise of any sovereign or regulatory power shall not be deemed to enlarge any of Buyer's rights, or limit any of Buyer's obligations or liabilities under this Agreement.

**ARTICLE XVIII**  
**APPLICABLE LAW**

18.1 Governing Law. This Agreement, and all matters arising from or related to this Agreement, shall be governed, construed, and determined by the laws of the State of Alaska.

18.2 Jurisdiction. After exhaustion of the dispute resolution provisions in Article XII, any legal action or proceeding arising out of or related to this Agreement shall be brought in a state court of general jurisdiction sitting in the State of Alaska, and Buyer hereby irrevocably submits to the jurisdiction of that court in any such action or proceeding.

**ARTICLE XIX**  
**WARRANTIES**

19.1 Warranties by State. The purchase and sale of Royalty Gas under this Agreement are subject only to the warranties the State has expressly set forth in this Agreement. The State disclaims and Buyer waives all other warranties, express or implied in law.

**ARTICLE XX**  
**AMENDMENT**

20.1 Amendment. This Agreement may be supplemented, amended, or modified only by written instrument duly executed by the parties and, where required, approved under Alaska Statute 38.06.055.

**ARTICLE XXI**  
**SUCCESSORS AND ASSIGNS**

21.1 Successors and Assigns. No assignment, pledge, or encumbrance of this Agreement shall be made by either party without first obtaining the written consent of the other party, which shall not be unreasonably withheld. The Commissioner may consent on behalf of the State. Subject to the requirement of written consent, this Agreement shall be binding upon and inure to the benefit of each of the parties and their successors and permitted assignees, and they must agree in writing to be bound by this Agreement.

**ARTICLE XXII**  
**RECORDS**

22.1 Preservation of Records. Buyer shall maintain and preserve all books, accounts, and records that relate to or arise from performance of this Agreement for six years from the date of the transaction or date of the latest adjustment relating to the transaction, or for any longer period requested by the State if, in the State's sole discretion and opinion, the books, accounts, and records are relevant to a pending audit, arbitration, or litigation. Buyer shall also maintain and preserve all

books, accounts, and records, in its possession or control, that belong to any third party with whom Buyer contracts for the performance of any part of this Agreement. Buyer and the State shall not be required to retain any records for more than six years from the time of a transaction unless retention of such records is specifically required by applicable law or regulation, or this Agreement. Buyer shall maintain its records within the State or make the records available to the State at Buyer's principal office in the State within thirty Days after written request by the State.

22.2 Inspection of Records. Buyer and the State shall each accord to the other and the other's authorized agents, attorneys, and auditors access during reasonable business hours to any and all property, records, books, documents, or indices related to Buyer's or the State's performance under this Agreement and which are under possession or control of the party from which access is sought, so the other party may inspect, photograph, and make copies of the property, records, books, documents, or indices. The State shall not be required to disclose any information, data, or records that is required by state or federal law or regulation, or by agreement with the person supplying the record, to be held confidential. If information the State obtains from Buyer may be held confidential under state or federal law or regulation, Buyer must request in writing that the State hold the information confidential, and the State shall keep the information confidential to the extent and for the term provided by the applicable law or regulation.

### **ARTICLE XXIII EMPLOYMENT OF ALASKA RESIDENTS**

23.1 Employment of Alaska Residents. Buyer shall comply with all valid federal, state, and local laws in hiring Alaska residents and companies, and shall not discriminate against Alaska residents and companies. Within the constraints of law, Buyer voluntarily agrees to employ Alaska residents and Alaska companies to the extent they are available, willing, and qualified for work performed in Alaska in connection with this Agreement. "Alaska resident" means an individual who

is physically present in Alaska with the intent to remain in the state indefinitely. An individual may demonstrate an intent to remain in the state by maintaining a residence in the state, possessing a resident fishing, trapping or hunting license, or receiving a permanent fund dividend. “Alaska companies” means companies incorporated in Alaska or whose principal place of business is in Alaska. If a court invalidates any portion of this provision, Buyer agrees to employ Alaska residents and Alaska companies to the extent permitted by law.

#### **ARTICLE XXIV COUNTERPARTS**

24.1 Counterparts. This Agreement may be executed in multiple counterparts. It is not necessary for the parties to sign the same counterpart. Each duly executed counterpart shall be deemed to be an original and all executed counterparts taken together shall be considered to be one and the same instrument.

#### **ARTICLE XXV MISCELLANEOUS**

25.1 Agreement Not to Be Construed Against Either Party as Drafter. The Parties recognize that this Agreement is the product of the joint efforts of the Parties and agree that it shall not be construed against either Party as drafter.

25.2 Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties about the subject matter of this transaction and all prior agreements, understandings, and representations, whether oral or written, about this subject matter are merged into and superseded by this written Agreement.

25.3 Headings. The headings throughout this Agreement are for reference purposes only and shall not be construed or considered in interpreting the terms and provisions of this Agreement.

25.4 Authority to Sign. Each person signing this Agreement warrants that he or she has authority to sign the Agreement.

25.5 Further Assurances. The Parties agree to do such further acts or execute such further documents as may reasonably be required to implement this Agreement.

**ARTICLE XXVI**  
**REOPENER**

[This Article is reserved for any reopeners which the Parties consider necessary.]

STATE OF ALASKA:

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date \_\_\_\_\_

BUYER:

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date \_\_\_\_\_

**SCHEDULE 1**

<b>Royalty Gas Purchase Schedule</b>	
<b>Month<sup>1</sup></b>	<b>Quantity (MMcf/Day)</b>

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<sup>1</sup>Because the date of first production is not known, the “month” column will be expressed as first production month, second production month, and so on.

**EXHIBIT 1**

**EXAMPLE OF CALCULATION OF BASE PRICE**

**[To be prepared as part of the final contract.]**



**EXHIBIT 2**

**SAMPLE CALCULATION OF INVOICE PRICE**

**[To be prepared as part of the final contract.]**

**EXHIBIT 3**

**SAMPLE CALCULATION OF INTEREST  
AND LATE PAYMENT PENALTY**

**[To be prepared as part of the final contract.]**

N:\SJWJLM\Gas Agreement (12-20)