

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-K

(MARK ONE)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2019

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File No. 001-36842

**NEXTDECADE CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or organization)

**46-5723951**  
(I.R.S. Employer Identification No.)

**1000 Louisiana Street, Suite 3900**  
**Houston, Texas**  
(Address of principal executive offices)

**77002**  
(Zip code)

Registrant's telephone number, including area code: **(713) 574-1880**

Securities registered pursuant to Section 12(b) of the Act:

**Title of each Class:**  
Common stock \$0.0001 par value

**Trading Symbol:**  
NEXT

**Name of each exchange on which registered:**  
The Nasdaq Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act:  
**Redeemable Warrants, each to purchase one share of Company common stock**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically, every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (\$232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer   
Non-accelerated filer

Accelerated filer   
Smaller reporting company   
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The aggregate market value of the registrant's voting and non-voting common equity held by non-affiliates of the registrant was approximately \$129.0 million as of June 28, 2019 (based on the closing price of the registrant's common stock on June 28, 2019 of \$6.32 per share).

120,837,640 shares of the registrant's Common Stock, \$0.0001 par value, were outstanding as of February 28, 2020.

Documents incorporated by reference: The definitive proxy statement for the registrant's Annual Meeting of Stockholders (to be filed within 120 days of the close of the registrant's fiscal year) is incorporated by reference into Part III of this Form 10-K.

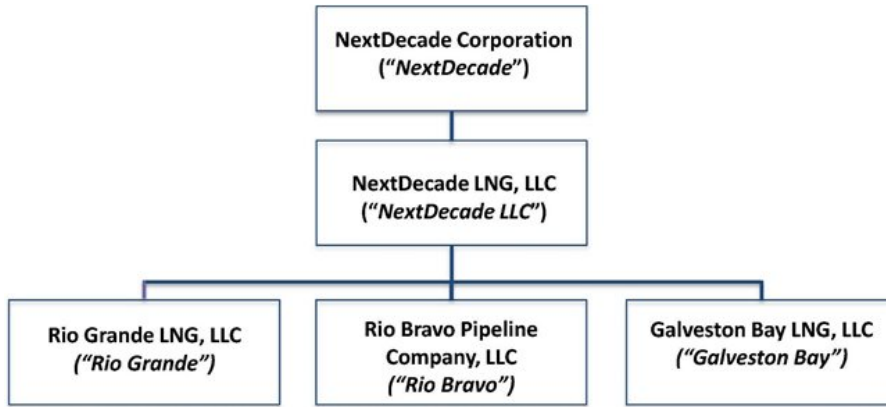
NEXTDECADE CORPORATION

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**Organizational Structure**

The following diagram depicts our abbreviated organizational structure as of December 31, 2019 with references to the names of certain entities discussed in this Annual Report.



Unless the context requires otherwise, references to “NextDecade,” the “Company,” “we,” “us” and “our” refer to NextDecade Corporation and its consolidated subsidiaries.

### Cautionary Statement Regarding Forward-Looking Statements

This Annual Report on Form 10-K contains certain statements that are, or may be deemed to be, “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). All statements other than statements of historical fact contained in this Annual Report on Form 10-K, including statements regarding our future results of operations and financial position, strategy and plans, and our expectations for future operations, are forward-looking statements. The words “anticipate,” “contemplate,” “estimate,” “expect,” “project,” “plan,” “intend,” “believe,” “may,” “might,” “will,” “would,” “could,” “should,” “can have,” “likely,” “continue,” “design” and other words and terms of similar expressions, are intended to identify forward-looking statements.

We have based these forward-looking statements largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, strategy, short-term and long-term business operations and objectives and financial needs.

Although we believe that the expectations reflected in our forward-looking statements are reasonable, actual results could differ from those expressed in our forward-looking statements. Our future financial position and results of operations, as well as any forward-looking statements are subject to change and inherent risks and uncertainties, including those described in the section entitled “Risk Factors” in this Annual Report on Form 10-K. You should consider our forward-looking statements in light of a number of factors that may cause actual results to vary from our forward-looking statements including, but not limited to:

- our progress in the development of our liquefied natural gas (“LNG”) liquefaction and export projects and the timing of that progress;
- our final investment decision (“FID”) in the construction and operation of a LNG terminal at the Port of Brownsville in southern Texas (the “Terminal”) and the timing of that decision;
- the successful completion of the Terminal by third-party contractors and an approximately 137-mile pipeline to supply gas to the Terminal being developed by a third-party;
- our ability to secure additional debt and equity financing in the future to complete the Terminal;
- the accuracy of estimated costs for the Terminal;
- statements that the Terminal, when completed, will have certain characteristics, including amounts of liquefaction capacities;
- the development risks, operational hazards, regulatory approvals applicable to the Terminal’s and the third-party pipeline’s construction and operations activities;
- our anticipated competitive advantage and technological innovation which may render our anticipated competitive advantage obsolete;
- the global demand for and price of natural gas (versus the price of imported LNG);
- the availability of LNG vessels worldwide;
- changes in legislation and regulations relating to the LNG industry, including environmental laws and regulations that impose significant compliance costs and liabilities;
- risks related to doing business in and having counterparties in foreign countries;
- our ability to maintain the listing of our securities on a securities exchange or quotation medium;
- changes adversely affecting the business in which we are engage;
- management of growth;
- general economic conditions;
- our ability to generate cash;
- compliance with environmental laws and regulations; and
- the result of future financing efforts and applications for customary tax incentives.

Should one or more of the foregoing risks or uncertainties materialize in a way that negatively impacts us, or should the underlying assumptions prove incorrect, our actual results may vary materially from those anticipated in our forward-looking statements and, our business, financial condition and results of operations could be materially and adversely affected.

You should not rely upon forward-looking statements as predictions of future events. In addition, neither we nor any other person assumes responsibility for the accuracy and completeness of any of these forward-looking statements. Except as required by applicable law, we do not undertake any obligation to publicly correct or update any forward-looking statement.

Please read “Risk Factors” contained in this Annual Report on Form 10-K for a more complete discussion of the risks and uncertainties mentioned above and for a discussion of other risks and uncertainties. All forward-looking statements attributable to us are expressly qualified in their entirety by these cautionary statements and hereafter in our other filings with the Securities and Exchange Commission (the “SEC”) and public communications. You should evaluate all forward-looking statements made by us in the context of these risks and uncertainties.

## Part I

### Item 1. Business

#### *Our Formation*

We were incorporated in Delaware on May 21, 2014 and were formed for the purpose of acquiring, through a merger, share exchange, asset acquisition, stock purchase, recapitalization, reorganization or other similar business combination, one or more businesses or entities. On July 24, 2017, one of our subsidiaries merged with and into NextDecade LLC, a LNG development company founded in 2010 to develop LNG export projects and associated pipelines. Prior to the merger with NextDecade LLC, we had no operations and our assets consisted of cash proceeds received in connection with our initial public offering.

Our common stock trades on the Nasdaq Capital Market (“Nasdaq”) under the symbol “NEXT.”

Our warrants issued in connection with our initial public offering in 2015 (the “IPO Warrants”) trade on the OTC Pink Market under the symbol “NEXTW.”

#### *Company Overview*

Our management is comprised of a team of industry leaders with extensive experience in LNG marketing and project development. We have focused and continue to focus our development activities on the Terminal and have undertaken and continue to undertake various initiatives to evaluate, design and engineer the Terminal that we expect will result in demand for LNG supply at the Terminal, which would enable us to seek construction financing to develop the Terminal. We believe the Terminal possesses competitive advantages in several important areas, including engineering, design, commercial, regulatory and gas supply. We submitted a pre-filing request for the Terminal and the Pipeline (as described below) to the Federal Energy Regulatory Commission (the “FERC”) in March 2015 and filed a formal application with the FERC in May 2016. We also believe we have robust commercial offtake and gas supply strategies and we estimate that the Terminal will commence commercial operations as early as 2023.

On March 2, 2020, we completed the sale of Rio Bravo to Spectra Energy Transmission II, LLC, a wholly owned subsidiary of Enbridge, Inc. Rio Bravo is developing a proposed 137-mile interstate natural gas pipeline (the “Pipeline”) to supply natural gas to the Terminal. In connection with the sale of Rio Bravo, our indirect, wholly owned subsidiary, Rio Grande LNG Gas Supply LLC (“Rio Grande Gas Supply”), entered into precedent agreements (the “Transportation Precedent Agreements”) with Rio Bravo and Valley Crossing Pipeline, LLC (“VCP”), pursuant to which Rio Grande Gas Supply will retain its rights to the natural gas firm transportation capacity on the Pipeline for a term of at least twenty years and Rio Bravo and VCP, will provide firm pipeline transportation service to Rio Grande Gas Supply in order to supply natural gas to the Terminal. As of March 2, 2020, VCP and Rio Bravo are wholly owned subsidiaries of Enbridge, Inc.

We believe that the Terminal, to be located on a 984-acre site in Brownsville, Texas, along with the Pipeline to connect the Terminal to the Agua Dulce supply area, is well-positioned among the second wave of United States (“U.S.”) LNG projects. It is located to take advantage of natural gas resources in Texas, including the Permian Basin and Eagle Ford Shale. We plan to construct, develop, own and operate the Terminal.

On November 22, 2019, the Terminal and the Pipeline received an order from the FERC (“the Order”) authorizing the siting, construction, and operation of six liquefaction trains, four LNG storage tanks (each with a capacity of 180,000 cubic meters), two marine jetties for ocean-going LNG vessels, one turning basin, and six truck loading bays for LNG and natural gas liquids and all associated facilities for the production of up to 27 million tonnes per annum (“mtpa”). Simultaneously, FERC issued a certificate of public convenience and necessity authorizing the construction of the Pipeline, which will be developed by a third-party following our sale of Rio Bravo and is expected to be comprised of twin, 137-mile-long, 42-inch-outside diameter, natural gas pipelines, three 180,000-horsepower compressor stations, two 30,000-horsepower interconnect booster stations, six mainline valve sites, four metering sites, and various ancillary facilities. The twin pipelines are expected to be rated to a maximum allowable operating pressure of 1,480 pounds per square inch and total deliverability of at least 4.5 billion cubic feet per day (“Bcf/d”). On January 23, 2020, the FERC issued its final order on rehearing rejecting all challenges to the Order. While the Order authorizes six liquefaction trains, we may make a positive FID on as few as two liquefaction trains.

We have also leased a 994-acre site on the Houston Ship Channel in Texas City, Texas for our second U.S. LNG project, which is expected to be permitted for up to three trains (each with a nominal capacity of 5.5 mtpa), a minimum of two LNG storage tanks (each with a capacity of 200,000 cubic meters), two marine jetties for ocean-going LNG vessels and one turning basin (the “Galveston Bay Terminal”). We intend to use similar design and engineering for the Galveston Bay Terminal as for the Terminal.

#### *Engineering, Procurement, and Construction*

During the third quarter of 2018, we initiated a competitive engineering, procurement and construction (“EPC”) bid process. We received expressions of interest (the “EOIs”) from multiple EPC contractors to participate in the EPC process. We reviewed the EOIs against a series of selection criteria and issued formal invitations to bid to Bechtel Oil, Gas and Chemicals, Inc. (“Bechtel”), Fluor Enterprises, Inc. (“Fluor”) and McDermott International, Inc. In December 2018, each of the EPC bidders provided us with an endorsement of the Terminal’s front-end engineering and design (“FEED”), which indicates the bidders’ confirmation that the Terminal is technically feasible and can be further designed, engineered, permitted, constructed, commissioned and safely placed into operations. On April 22, 2019, we received EPC bid packages from each of Bechtel and Fluor, two of the global LNG market’s leading EPC contractors. The technical and commercial bid packages, which were received on-schedule, were for fully wrapped lump-sum separated turnkey (“LSTK”) EPC contracts for the Terminal.

On May 24, 2019, Rio Grande entered into two LSTK EPC agreements with Bechtel for the construction of (i) two LNG trains with expected aggregate production capacity up to approximately 11.74 mtpa, two 180,000m<sup>3</sup> full containment LNG tanks, one marine loading berth, related utilities and facilities, and all related appurtenances thereto, together with certain additional work options (the “Trains 1 and 2 EPC Agreement”) and (ii) an LNG train with expected production capacity of up to approximately 5.87 mtpa, related utilities and facilities, and all related appurtenances thereto (the “Train 3 EPC Agreement”) and together with the Trains 1 and 2 EPC Agreement, the “EPC Agreements”). During 2019, we issued two limited notice to proceed (“LNTP”) to Bechtel under the Trains 1 and 2 EPC Agreement.

*Commercial*

We are continuing commercial discussions with a variety of parties ranging from large utilities and state-sponsored enterprises to portfolio and multinational commodity interests. Leveraging the global relationships and extensive experience of our management team, we expect to sign long-term binding offtake commitments for substantially all of the Terminal's capacity prior to a FID.

We believe the Terminal's location will provide customers with access to low-cost natural gas from the Permian Basin and Eagle Ford Shale. We are focused on selling LNG to customers through a "free on board" model whereby a marketing affiliate would acquire feed gas, the Terminal would produce the LNG and the title transfer would occur at the interface between the Terminal and the customer's ship.

We offer multiple LNG pricing options, meeting the evolving needs of our customers and maximizing our total addressable market. Global LNG customers are expressing interest in contracting their LNG offtake to indexes other than Henry Hub. We are working with U.S. producers to provide alternative indexation, including netback pricing, to satisfy global LNG customers' needs. LNG pricing options may include indexation to Brent Crude Oil, Agua Dulce hub, Waha hub, Japan Korea Marker ("JKM") and Title Transfer Facility ("TTF"), among others.

In March 2019, we entered into a 20-year sale and purchase agreement (the "SPA") with Shell NA LNG LLC ("Shell") for the supply of two million tonnes per annum of liquefied natural gas from the Terminal. Pursuant to the SPA, Shell will purchase LNG on a free-on-board basis starting from the commercial operation date of the Terminal, currently expected in 2023, with approximately three-quarters of the purchased LNG volume indexed to Brent and the remaining volume indexed to domestic United States gas indices, including Henry Hub. The Shell SPA becomes effective upon the satisfaction of certain conditions precedent, which include a positive FID in the Terminal.

*Governmental Permits, Approvals and Authorizations*

We will be required to obtain governmental approvals and authorizations to implement our proposed business strategy, which includes the design, construction and operation of the Terminal and the export of LNG from the U.S. to foreign countries. The design, construction and operation of LNG export terminals is a regulated activity and is subject to Section 3 of the Natural Gas Act (the "NGA"). Federal law has bifurcated regulatory jurisdiction of LNG export activities. The FERC has jurisdiction over the siting, construction and permitting of LNG export facilities. The U.S. Department of Energy (the "DOE") has jurisdiction over the import and export of the natural gas commodity, including natural gas in the form of LNG. The FERC also has jurisdiction over the siting, construction and operation of interstate natural gas pipelines under Section 7 of the NGA and regulates interstate pipelines' terms and conditions of service under Sections 4 and 5 of the NGA. In 2002, the FERC established a policy of not regulating the terms and conditions of service for LNG import or export facilities or requiring that LNG import or export facilities operate as "open access" facilities for all customers. The Energy Policy Act of 2005, which amended the NGA, codified this policy until January 1, 2015, and the FERC has not indicated that it intends to depart from its policy of not regulating the terms or conditions of service or requiring that LNG terminals operate on an open access basis.

Although the FERC acts as the lead agency with jurisdiction over LNG import and export facilities, other federal and state agencies act as cooperating agencies, coordinating with the FERC to evaluate applications for LNG export facilities. These agencies include the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (the "PHMSA"), the U.S. Coast Guard (the "Coast Guard"), the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the International Boundary and Water Commission and other federal agencies with jurisdiction over potential environmental impacts of LNG terminal construction and operation. Certain federal laws, such as the Clean Water Act, the Clean Air Act and the Coastal Zone Management Act, delegate authority over certain actions to state agencies, like the Texas Commission on Environmental Quality and the Railroad Commission of Texas. In reviewing an application for an LNG import or export terminal or an interstate natural gas pipeline, the FERC also works with these state agencies that have jurisdiction over certain aspects of LNG terminal or interstate natural gas pipeline construction or operation.

In particular, the PHMSA has established safety standards for interstate natural gas pipelines and LNG facilities. Similarly, the Coast Guard has established safety regulations for marine operations at LNG facilities and the operation of LNG carriers. The FERC, the PHMSA and the Coast Guard entered into a Memorandum of Understanding in 2004 that establishes the FERC's primary role in evaluating LNG terminal applications and defines the process for coordinating the review of an LNG import or export terminal application with the PHMSA and the Coast Guard. In 2018, the FERC and the PHMSA entered into a separate Memorandum of Understanding that establishes the process and timeline by which the PHMSA should determine whether an LNG terminal project will meet the PHMSA's LNG safety siting standards.

We filed our formal application for the Terminal with the FERC on May 5, 2016, received a Final Environmental Impact Statement from the FERC on April 26, 2019 and received the Order on November 22, 2019 authorizing the siting, construction and operation of the Terminal. Other major regulatory permits obtained in 2019 include the Biological Opinion and Incidental Take Statement from the U.S. Fish and Wildlife Service. Following receipt of the Order on November 22, 2019, two requests for re-hearing were filed challenging the Order. One of those requests for rehearing also requested that the FERC stay the Order. On January 23, 2020, the FERC issued its Order on Rehearing and Stay in which the FERC rejected all challenges presented in the requests for rehearing and the request for stay.

Separately, we submitted a pre-filing request to the FERC for the Galveston Bay Terminal on August 31, 2018, and the FERC initiated its pre-filing process for that application on October 10, 2018.

Section 3 of the NGA requires prior authorization by the DOE for the import or export of natural gas, including LNG, from the U.S. The DOE's practice has been to include certain reporting requirements in its LNG export authorizations, including mandating the reporting of the foreign destination of U.S.-sourced LNG. In December 2018, the DOE clarified its reporting requirements, directing LNG export authorization holders and their downstream counterparties to report the destination to which the U.S.-sourced LNG was "actually delivered," in contrast to the agency's prior policy requiring the reporting of where the LNG was "delivered for end use." This revised policy recognizes the increasing flexibility and liquidity in the global LNG market.

On September 7, 2016, Rio Grande obtained an authorization for export of LNG to countries with which the U.S. has a Free Trade Agreement ("FTA") on our own behalf and as an agent for others for a term of 30 years. On June 13, 2018, Galveston Bay obtained a similar authorization for export of LNG to FTA countries on our own behalf and as an agent for others for a term of 20 years. The DOE's December 2018 order adjusting the reporting requirements applies to both of the authorizations for LNG to FTA countries. However, many of our target markets are not FTA countries. We have applied to the DOE for approval to export LNG to non-FTA countries for both projects. As a result of the legal standard under the NGA and consistent with federal appeals court precedent, the DOE has adopted an approach whereby it issues a non-FTA authorization after the FERC issues its order authorizing the project facilities. On February 10, 2020, the DOE issued its "Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations to Rio Grande" in DOE/FE Order No. 4492. There are no legal intervenors in the docket and therefore we expect that this order is final.

## Gas Supply

The proposed Terminal site will be located in Brownsville, Texas, benefiting from close access to the Permian Basin and Eagle Ford Shale. We expect to realize material benefits from providing our customers with access to these low-cost associated gas resources. Major oil companies and independent shale producers have created extraordinary efficiencies and improvements, including enhanced well recoveries through extended lateral lengths and hydraulic fracturing technology, rig productivity, and operating and lifecycle costs. However, U.S. demand has not risen proportionally with the growth in recoverable reserves.

Through the Pipeline, projected to have interconnects with a combined receipt capacity of more than 10 Bcf/d, we believe that we will have supply flexibility established by the Transportation Precedent Agreements. The combination of increased production and expanding takeaway capacity indicates that the Agua Dulce supply area, from which the Pipeline is proposed to be routed, is expected to become increasingly liquid and remain competitively priced to Henry Hub. We believe our proximity to two major gas reserves basins, increasing takeaway capacity in the area, a significant influx of production and infrastructure investment, as well as our existing contacts and discussions with some of the largest regional operators, represent key elements of a compelling feed gas strategy for partners and customers alike. We are continuing to advance substantive negotiations in these areas.

The Permian Basin offers one of the deepest inventories of economic natural gas resource in the world. According to RS Energy Group, there are approximately 700 trillion cubic feet ("Tcf") of remaining natural gas resource in the Permian Basin and Eagle Ford Shale. Permian Basin economics are largely driven by the production of oil, not gas; due to flaring restrictions, producers must market their natural gas in order to sustain oil production programs. We believe the Permian Basin will produce significant quantities of low-cost natural gas for decades.

Driven by the Permian Basin, natural gas production in Texas continues to grow at a rapid pace. According to data from the Energy Information Administration ("EIA"), natural gas production in the Permian Basin, alone, has grown by more than 40 percent annually in recent years. By the end 2019, the Permian Basin was producing more than 11 billion cubic feet per day ("Bcf/d") of natural gas. We estimate dry gas production in Texas could still reach nearly 40 Bcf/d by 2030.

There is not enough domestic demand within Texas to support our projections for Texas natural gas production. We believe new LNG projects will need to absorb large volumes of natural gas. To support Permian Basin gas production, Texas may need more than 14 Bcf/d of LNG export capacity by 2030; in a higher oil price environment, even more LNG export capacity may be needed. To date, only 6 Bcf/d of LNG export capacity on the Texas Gulf Coast has achieved a final investment decision. We estimate that 8.2 Bcf/d of incremental LNG FIDs – equivalent to more than 60 mtpa – may be needed in the next 12 to 36 months to support Permian Basin gas production forecasts.

## Competition

We are subject to a high degree of competition in all aspects of our business. See "Item 1.A — Risk Factors — *Competition in the energy industry is intense, and some of our competitors have greater financial, technological and other resources.*"

The Terminal will compete with liquefaction facilities worldwide to supply low-cost liquefaction to the market. In addition, we will compete with a variety of companies in the global LNG market, such as independent, technology-driven companies, state-owned and other independent oil and natural gas companies and utilities. Many of these competitors have longer operating histories, more development experience, greater name recognition, greater access to the LNG market, more employees and substantially greater financial, technical and marketing resources than we currently possess.

## Employees

As of December 31, 2019, we had 74 full-time employees and 14 independent contractors. We hire independent contractors on an as-needed basis and have no collective bargaining agreements with our employees.

## Offices

Our principal executive offices are located at 1000 Louisiana St., Suite 3900, Houston, Texas, 77002, and our telephone number is (713) 574-1880.

## Available Information

Our internet website address is [www.next-decade.com](http://www.next-decade.com). We intend to use our website as a means of disclosing material non-public information and for complying with disclosure obligations under Regulation FD. Such disclosures will be included on our website under the heading "Investors." Accordingly, investors should monitor such portion of our website, in addition to following our press releases and SEC filings. Within our website under the heading "Investors," we make available free of charge our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed with or furnished to the SEC under applicable securities laws. These materials are made available as soon as reasonably practical after we electronically file such materials with or furnish such materials to the SEC. Information on our website is not incorporated by reference into this Annual Report on Form 10-K and should not be considered part of this document. In addition, we intend to disclose on our website any amendments to, or waivers from, our Code of Conduct and Ethics that are required to be publicly disclosed pursuant to rules of the SEC.

The SEC also maintains a website that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC at [www.sec.gov](http://www.sec.gov).

## Item 1A. Risk Factors

We are subject to uncertainties and risks due to the nature of the business activities we conduct. The following information describes certain uncertainties and risks that could affect our business, financial condition or results of operations or could cause actual results to differ materially from estimates or expectations contained in our forward-looking statements on page 3 of this Annual Report on Form 10-K. This section does not describe all risks applicable to us, our industry or our business, and it is intended only as a summary of known material risks that are specific to us. We may experience additional risks and uncertainties not currently known to us or that we currently deem to be immaterial which may materially and adversely affect our business, financial condition and results of operations.

***We are in the process of developing LNG liquefaction and export projects, and the success of such projects is unpredictable; as such, positive cash flows and even revenues will be several years away, if they occur at all.***

We are not expected to generate cash flow, or even obtain revenues, unless and until the Terminal is operational, which is expected to be at least three years away, and accordingly, distributions to investors may be limited, delayed, or non-existent.

Our cash flow and consequently our ability to distribute earnings is solely dependent upon the revenue Rio Grande receives from the Terminal and the transfer of funds by Rio Grande to NextDecade in the form of distributions or otherwise. Rio Grande's ability to complete the Terminal, as discussed further below, will be dependent upon, among other things, our ability to obtain necessary regulatory approvals and raise the capital necessary to fund development of the Terminal.

Our ability to pay dividends is almost entirely dependent upon our ability to complete the Terminal and generate cash and net operating income from operations. We do not expect to generate any revenue until the completion of construction of the first phase of the Terminal. Upon such completion, financing and numerous other factors affecting the Terminal may reduce our cash flow. As a result, we may not make distributions of any amount or any distributions may be delayed.

Substantially all of our anticipated revenue will be dependent upon the Terminal. Due to our lack of asset diversification, adverse developments at or affecting the Terminal would have a significantly greater impact on our financial condition and results of operations than if we maintained a more diverse portfolio of assets.

***We will be required to seek additional debt and equity financing in the future to complete the Terminal and may not be able to secure such financing on acceptable terms, or at all.***

Since we will be unable to generate any revenue while we are in the development and construction stages for multiple years, we will need additional financing to provide the capital required to execute our business plan. We will need significant funding to develop and construct the Terminal as well as for working capital requirements and other operating and general corporate purposes.

There can be no assurance that we will be able to raise sufficient capital on acceptable terms, or at all. If sufficient capital is not available on satisfactory terms, we may be required to delay, scale back or eliminate the development of business opportunities, and our operations and financial condition may be adversely affected to a significant extent.

Debt financing, if obtained, may involve agreements that include liens on Terminal assets and covenants limiting or restricting our ability to take specific actions, such as paying dividends or making distributions, incurring additional debt, acquiring or disposing of assets and increasing expenses. Debt financing would also be required to be repaid regardless of our operating results.

In addition, the ability to obtain financing for the Terminal is expected to be contingent upon, among other things, our ability to enter into sufficient long-term commercial agreements prior to the commencement of construction. For additional information regarding our ability to enter into sufficient long-term commercial agreements, see "*Our ability to generate cash is substantially dependent upon us entering into satisfactory contracts with third parties and the performance of those third parties under those contracts.*"



***Postponement in making a positive FID in the construction and operation of the Terminal may require us to amend some of our agreements.***

The terms of certain agreements to which we are a party require that a positive FID in the Terminal occur no later than specified dates or may otherwise terminate at the end of their respective terms. If we postpone making a positive FID in the construction and operation of the Terminal beyond any such date or term, we may need to amend the corresponding agreement in order to extend such date or term. Our business could be materially adversely affected if certain of such agreements are not amended.

***The Terminal's operations will be substantially dependent on the development and operation of the Pipeline by Enbridge, Inc. and its affiliates.***

The Terminal will be dependent on a pipeline owned by an affiliate of Enbridge, Inc. (the "Transporter") for the delivery of all of its natural gas. The Pipeline is currently in development and its construction will require the Transporter to secure options for rights-of-way along the approximately 137-mile proposed Pipeline route. It is possible that, in negotiating to secure these rights-of-way, the Transporter encounters recalcitrant landowners or competitive projects, which could result in additional time needed to secure the Pipeline route and, consequently, delays in, or abandonment of, its construction. Construction of the Pipeline could be delayed or abandoned for any of many other reasons, such as it becoming economically disadvantageous to the Transporter, a failure to obtain or maintain necessary permits for construction or operation, mechanical or structural failures, inadvertent damages during construction, or any terrorist attack, including cyberterrorism, affecting the Pipeline or the Transporter. Any such delays in the construction of the Pipeline could delay the development of the Terminal and its becoming operational.

***We may be subject to risks related to doing business in, and having counterparties based in, foreign countries.***

We may engage in operations or make substantial commitments to and investments in, and enter into agreements with, counterparties located outside the U.S., which would expose us to political, governmental and economic instability and foreign currency exchange rate fluctuations.

Any disruption caused by these factors could harm our business, results of operations, financial condition, liquidity and prospects. Risks associated with potential operations, commitments and investments outside of the U.S. include but are not limited to risks of:

- currency exchange restrictions and currency fluctuations;
- war or terrorist attack;
- expropriation or nationalization of assets;
- renegotiation or nullification of existing contracts or international trade arrangements;
- changing political conditions;
- macro-economic conditions impacting key markets and sources of supply;
- changing laws and policies affecting trade, taxation, financial regulation, immigration, and investment;
- the implementation of tariffs by the U.S. or foreign countries in which we do business;
- duplicative taxation by different governments;
- general hazards associated with the assertion of sovereignty over areas in which operations are conducted, transactions occur, or counterparties are located; and
- the unexpected credit rating downgrade of countries in which our LNG customers are based.

As our reporting currency is the U.S. dollar, any operations conducted outside the U.S. or transactions denominated in foreign currencies would face additional risks of fluctuating currency values and exchange rates, hard currency shortages and controls on currency exchange. In addition, we would be subject to the impact of foreign currency fluctuations and exchange rate changes on our financial reports when translating our assets, liabilities, revenues and expenses from operations or transactions outside of the U.S. into U.S. dollars at the then-applicable exchange rates. These translations could result in changes to our results of operations from period to period.

***Costs for the Terminal are subject to various factors.***

Construction costs for the Terminal will be subject to various factors such as economic and market conditions, government policy, claims and litigation risk, competition, the final terms of any definitive agreement for services with our EPC service provider, change orders, delays in construction, legal and regulatory requirements, unanticipated regulatory delays, site issues, increased component and material costs, escalation of labor costs, labor disputes, increased spending to maintain our construction schedule and other factors. In particular, costs for the Terminal are expected to be substantially affected by:

- global prices of nickel, steel, concrete, pipe, aluminum and other component parts of the Terminal and the contractual terms upon which our contractors are able to source and procure required materials;
- any U.S. import tariffs or quotas on steel, aluminum, pipe or other component parts of the Terminal, which may raise the prices of certain materials used in the Terminal;
- commodity and consumer prices (principally, natural gas, crude oil and fuels that compete with them in our target markets) on which our economic assumptions are based;
- the exchange rate of the U.S. Dollar with other currencies;
- changes in regulatory regimes in the U.S. and the countries to which we will be authorized to sell LNG;
- levels of competition in the U.S. and worldwide;
- changes in the tax regimes in the countries to which we sell LNG or in which we operate;
- cost inflation relating to the personnel, materials and equipment used in our operations;
- delays caused by events of force majeure or unforeseeable climatic events;
- interest rates; and
- synergy benefits associated with the development of multiple phases of the Terminal using identical design and construction philosophies.

In addition to our willingness to make a FID and our ability to construct the Terminal and achieve operations, events related to such activities may cause actual costs of the Terminal to vary from the range, combination and timing of assumptions used for projected costs of the Terminal. Such variations may be material and adverse, and an investor may lose all or a portion of its investment.

***The construction and operation of the Terminal remains subject to further governmental approvals, and some approvals may be subject to further conditions, review and/or revocation and other legal and regulatory risks, which may result in delays, increased costs or decreased cash flows.***

We are required to obtain governmental approvals and authorizations to implement our proposed business strategy, which includes the design, construction and operation of the Terminal and the export of LNG from the U.S. to foreign countries. As described above under “Business– Governmental Permits, Approvals and Authorizations,” the design, construction and operation of LNG export terminals is a highly regulated activity in the U.S., subject to a number of permitting requirements, regulatory approvals and ongoing safety and operational compliance programs. There is no guarantee that we will obtain or, if obtained, maintain these governmental authorizations, approvals and permits. Failure to obtain, or failure to obtain on a timely basis, or failure to maintain any of these governmental authorizations, approvals and permits could have a material adverse effect on our business, results of operations, financial condition and prospects.

Authorizations obtained from the FERC, the DOE and other federal and state regulatory agencies also contain ongoing conditions, and additional approval and permit requirements may be imposed. We do not know whether or when any such approvals or permits can be obtained, or whether any existing or potential interventions or other actions by third parties will interfere with our ability to obtain and maintain such permits or approvals. If we are unable to obtain and maintain the necessary approvals and permits, including as a result of untimely notices or filings, we may not be able to recover our investment in the Terminal. Additionally, government disruptions, such as a U.S. government shutdown, may delay or halt our ability to obtain and maintain necessary approvals and permits. There is no assurance that we will obtain and maintain these governmental permits, approvals and authorizations, or that we will be able to obtain them on a timely basis, and failure to obtain and maintain any of these permits, approvals or authorizations could have a material adverse effect on our business, contracts, financial condition, operating results, cash flow, liquidity and prospects.

In addition, some of these governmental authorizations, approvals and permits require extensive environmental review. Some groups have perceived, and other groups could perceive, that the proposed construction and operation of the Terminal or the Galveston Bay Terminal could negatively impact the environment or cultural heritage sites. Objections from such groups could cause delays, damage to reputation and difficulties in obtaining governmental authorizations, approvals or permits or prevent the obtaining of such authorizations, approvals or permits altogether. Although the necessary authorizations, approvals and permits to construct and operate the Terminal and the Galveston Bay Terminal may be obtained, such authorizations, approvals and permits may be subject to ongoing conditions imposed by regulatory agencies or may be subject to legal proceedings not involving us, which is customary for U.S. LNG projects.

***The Terminal and the Galveston Bay Terminal will be subject to a number of environmental laws and regulations that impose significant compliance costs, and existing and future environmental and similar laws and regulations could result in increased compliance costs, liabilities or additional operating restrictions.***

Our business will be subject to extensive federal, state and local regulations and laws, including regulations and restrictions on discharges and releases to the air, land and water and the handling, storage and disposal of hazardous materials and wastes in connection with the development, construction and operation of its liquefaction facilities. These regulations and laws will require us to maintain permits, provide governmental authorities with access to its facilities for inspection and provide reports related to its compliance. Violation of these laws and regulations could lead to substantial fines and penalties or to capital expenditures related to pollution control or remediation equipment that could have a material adverse effect on our business, results of operations, financial condition, liquidity and prospects. Federal and state laws impose liability, without regard to fault or the lawfulness of the original conduct, for the release of certain types or quantities of hazardous substances into the environment. As the owner and operator of the Terminal and the Galveston Bay Terminal, we could be liable for the costs of cleaning up hazardous substances released into the environment and for damage to natural resources.

In addition, future federal, state and local legislation and regulations, such as regulations regarding greenhouse gas emissions and the transportation of LNG may impose unforeseen burdens and increased costs on our business that could have a material adverse effect on our financial results. As an international shipper of LNG, our operations could also be impacted by environmental laws applicable under international treaties or foreign jurisdictions.

***Changes in legislation and regulations or interpretations thereof, such as those relating to the importation and exportation of LNG, could have a material adverse effect on our business, results of operations, financial condition, liquidity and prospects and could cause additional expenditures and delays in connection with the proposed LNG facilities and their construction.***

The laws, rules and regulations applicable to our business, including federal agencies' interpretations of and policies under such laws rules and regulations, are subject to change, either through new or modified regulations enacted on the federal, state or local level or by a change in policy of the agencies charged with enforcing such regulations. For example, the provisions of the Energy Policy Act of 2005 that codified the FERC's policy of not regulating the terms and conditions of service for LNG import or export facilities expired in 2015. Although the FERC has not indicated that it intends to depart from this policy, there can be no assurance it will not do so in the future. The nature and extent of any changes in these laws, rules, regulations and policies may be unpredictable and may have material effects on our business. Future legislation and regulations or changes in existing legislation and regulations, or interpretations thereof, such as those relating to the liquefaction, storage, or regasification of LNG, or its transportation, could cause additional expenditures, restrictions and delays in connection with our operations as well as other future projects, the extent of which cannot be predicted and which may require us to limit substantially, delay or cease operations in some circumstances. Revised, reinterpreted or additional laws and regulations that result in increased compliance costs or additional operating costs and restrictions could have an adverse effect on our business, the ability to expand our business, including into new markets, results of operations, financial condition, liquidity and prospects.

***We will be dependent on third-party contractors for the successful completion of the Terminal, and these contractors may be unable to complete the Terminal or may build a non-conforming Terminal.***

The construction of the Terminal is expected to take several years, will be confined to a limited geographic area and could be subject to delays, cost overruns, labor disputes and other factors that could adversely affect financial performance or impair our ability to execute our scheduled business plan.

Timely and cost-effective completion of the Terminal in conformity with agreed-upon specifications will be highly dependent upon the performance of third-party contractors pursuant to their agreements. However, we have not yet entered into definitive agreements with certain of the contractors, advisors and consultants necessary for the development and construction of the Terminal. We may not be able to successfully enter into such construction contracts on terms or at prices that are acceptable to us.

Further, faulty construction that does not conform to our design and quality standards may have an adverse effect on our business, results of operations, financial condition and prospects. For example, improper equipment installation may lead to a shortened life of our equipment, increased operations and maintenance costs or a reduced availability or production capacity of the affected facility. The ability of our third-party contractors to perform successfully under any agreements to be entered into is dependent on a number of factors, including force majeure events and such contractors' ability to:

- design, engineer and receive critical components and equipment necessary for the Terminal to operate in accordance with specifications and address any start-up and operational issues that may arise in connection with the commencement of commercial operations;
- attract, develop and retain skilled personnel and engage and retain third-party subcontractors, and address any labor issues that may arise;
- post required construction bonds and comply with the terms thereof, and maintain their own financial condition, including adequate working capital;
- adhere to any warranties the contractors provide in their EPC contracts; and
- respond to difficulties such as equipment failure, delivery delays, schedule changes and failure to perform by subcontractors, some of which are beyond their control, and manage the construction process generally, including engaging and retaining third-party contractors, coordinating with other contractors and regulatory agencies and dealing with inclement weather conditions.

Furthermore, we may have disagreements with our third-party contractors about different elements of the construction process, which could lead to the assertion of rights and remedies under the related contracts, resulting in a contractor's unwillingness to perform further work on the relevant project. We may also face difficulties in commissioning a newly constructed facility. Any of the foregoing issues or significant project delays in the development or construction of the Terminal could materially and adversely affect our business, results of operations, financial condition and prospects.

***Our ability to generate cash is substantially dependent upon us entering into satisfactory contracts with third parties and the performance of those third parties under those contracts.***

We have not yet entered into, and may never be able to enter into, satisfactory commercial arrangements with third-party suppliers of feedstock or other required supplies to the Terminal, or customers for products and services from the Terminal.

Our business strategy regarding how and when the Terminal's export capacity or LNG produced by the Terminal is marketed may change based on market factors. Without limitation, our business strategy may change due to inability to enter into agreements with customers or based on our or market participants' views regarding future supply and demand of LNG, prices, available worldwide natural gas liquefaction capacity or regasification capacity or other factors. If efforts to market the Terminal's export capacity or LNG produced by the Terminal are not successful, our business, results of operations, financial condition and prospects may be materially and adversely affected.

***Our construction and operations activities will be subject to a number of development risks, operational hazards, regulatory approvals and other risks which may not be fully covered by insurance, and which could cause cost overruns and delays that could have a material adverse effect on our business, results of operations, financial condition, liquidity and prospects.***

Siting, development and construction of the Terminal will be subject to the risks of delay or cost overruns inherent in any construction project resulting from numerous factors, including, but not limited to, the following:

- difficulties or delays in obtaining, or failure to obtain, sufficient debt or equity financing on reasonable terms;
- failure to obtain all necessary government and third-party permits, approvals and licenses for the construction and operation of any of the proposed LNG facilities;
- failure to obtain sale and purchase agreements that generate sufficient revenue to support the financing and construction of the Terminal;
- difficulties in engaging qualified contractors necessary to the construction of the contemplated Terminal or other LNG facilities;
- shortages of equipment, materials or skilled labor;
- natural disasters and catastrophes, such as hurricanes, explosions, fires, floods, industrial accidents and terrorism;
- delays in the delivery of ordered materials;
- work stoppages and labor disputes;
- competition with other domestic and international LNG export terminals;
- unanticipated changes in domestic and international market demand for and supply of natural gas and LNG, which will depend in part on supplies of and prices for alternative energy sources and the discovery of new sources of natural resources;
- unexpected or unanticipated additional improvements; and
- adverse general economic conditions.

Delays beyond the estimated development periods, as well as cost overruns, could increase the cost of completion beyond the amounts that are currently estimated, which could require us to obtain additional sources of financing to fund the activities until the Terminal is constructed and operational, which could cause further delays. The need for additional financing may also make the Terminal uneconomic. Any delay in completion of the Terminal may also cause a delay in the receipt of revenues projected from the Terminal or cause a loss of one or more customers. As a result, any significant construction delay, whatever the cause, could have a material adverse effect on our business, results of operations, financial condition, liquidity and prospects.

Our operations will be subject to all of the hazards inherent in the receipt and processing of natural gas to LNG, and associated short-term storage including:

- damage to pipelines and plants, related equipment, loading terminal, and surrounding properties caused by hurricanes, tornadoes, floods, fires and other natural disasters, acts of terrorism and acts of third parties;
- damage from subsurface and/or waterway activity (for example, sedimentation of shipping channel access);
- leaks of natural gas, natural gas liquids, or oil or losses of natural gas, natural gas liquid, or oil as a result of the malfunction of equipment or facilities;
- fires, ruptures and explosions;
- other hazards that could also result in personal injury and loss of life, pollution and suspension of operations; and
- hazards experienced by other operators that may affect our operations by instigating increased regulations and oversight.

Any of these risks could adversely affect our ability to conduct operations or result in substantial loss to us as a result of claims for:

- injury or loss of life;
- damage to and destruction of property, natural resources and equipment;
- pollution and other environmental damage;
- regulatory investigations and penalties;
- suspension of our operations;
- failure to perform contractual obligations; and
- repair and remediation costs.

Due to the scale of the Terminal, we may encounter capacity limits in insurance markets, thereby limiting our ability to economically obtain insurance with our desired level of coverage limits and terms. We may elect not to obtain insurance for any or all of these risks if we believe that the cost of available insurance is excessive relative to the risks presented. In addition, contractual liabilities and pollution and environmental risks generally are not fully insurable. The occurrence of an event that is not fully covered by insurance could have a material adverse effect on our business, financial condition and results of operations.

***We may experience increased labor costs, and the unavailability of skilled workers or our failure to attract and retain qualified personnel could adversely affect us. In addition, changes in our senior management or other key personnel could affect our business operations.***

We are dependent upon the available labor pool of skilled employees authorized to work in the U.S. We compete with other energy companies and other employers to attract and retain qualified personnel with the technical skills and experience required to construct and operate our facilities and pipelines and to provide our customers with the highest quality service. A shortage in the labor pool of skilled workers able to legally work in the U.S. or other general inflationary pressures or changes in applicable laws and regulations could make it more difficult for us to attract and retain qualified personnel and could require an increase in the wage and benefits packages that we offer, thereby increasing our operating costs. Any increase in our operating costs could materially and adversely affect our business, financial condition, operating results, liquidity and prospects.

We depend on our executive officers for various activities. We do not maintain key person life insurance policies on any of our personnel. Although we have arrangements relating to compensation and benefits with certain of our executive officers, we do not have any employment contracts or other agreements with key personnel binding them to provide services for any particular term. The loss of the services of any of these individuals could have a material adverse effect on our business.

***Technological innovation, competition or other factors may negatively impact our anticipated competitive advantage or our processes.***

Our success will depend on our ability to create and maintain a competitive position in the natural gas liquefaction industry. We do not have any exclusive rights to any of the technologies that we will be utilizing. In addition, the technology we anticipate using in the Terminal may face competition due to the technological advances of other companies or solutions, including more efficient and cost-effective processes or entirely different approaches developed by one or more of our competitors or others, which could affect our business, results of operations, financial condition, liquidity and prospects.

***Failure of exported LNG to be a competitive source of energy for international markets could adversely affect our customers and could materially and adversely affect our business, contracts, financial condition, operating results, cash flow, liquidity and prospects.***

Operations of the Terminal will be dependent upon our ability to deliver LNG supplies from the U.S., which is primarily dependent upon LNG being a competitive source of energy internationally. The success of our business plan is dependent, in part, on the extent to which LNG can, for significant periods and in significant volumes, be supplied from North America and delivered to international markets at a lower cost than the cost of alternative energy sources. Through the use of improved exploration technologies, additional sources of natural gas may be discovered outside the U.S., which could increase the available supply of natural gas outside the U.S. and could result in natural gas in those markets being available at a lower cost than that of LNG exported to those markets.

Additionally, our liquefaction projects will be subject to the risk of LNG price competition at times when we need to replace any existing LNG sale and purchase contract, whether due to natural expiration, default or otherwise, or enter into new LNG sale and purchase contracts. Factors relating to competition may prevent us from entering into a new or replacement LNG sale and purchase contract on economically comparable terms as prior LNG sale and purchase contracts, or at all. Factors which may negatively affect potential demand for LNG from our liquefaction projects are diverse and include, among others:

- increases in worldwide LNG production capacity and availability of LNG for market supply;
- decreases in demand for LNG or increases in demand for LNG, but at levels below those required to maintain current price equilibrium with respect to supply;
- increases in the cost of natural gas feedstock supplied to any project;
- decreases in the cost of competing sources of natural gas or alternate sources of energy such as coal, heavy fuel oil, diesel, nuclear, hydroelectric, wind and solar;
- decrease in the price of non-U.S. LNG, including decreases in price as a result of contracts indexed to lower oil prices;
- increases in capacity and utilization of nuclear power and related facilities;
- increases in the cost of LNG shipping; and
- displacement of LNG by pipeline natural gas or alternate fuels in locations where access to these energy sources is not currently available.

Political instability in foreign countries that import natural gas, or strained relations between such countries and the U.S. may also impede the willingness or ability of LNG suppliers, purchasers and merchants in such countries to import LNG from the U.S. Furthermore, some foreign purchasers of LNG may have economic or other reasons to obtain their LNG from non-U.S. markets or our competitors' liquefaction facilities in the U.S.

As a result of these and other factors, LNG may not be a competitive source of energy internationally. The failure of LNG to be a competitive supply alternative to local natural gas, oil and other alternative energy sources in markets accessible to our customers could adversely affect the ability of our customers to deliver LNG from the U.S. on a commercial basis. Any significant impediment to the ability to deliver LNG from the U.S. generally or from the Terminal specifically could have a material adverse effect on our customers and our business, contracts, financial condition, operating results, cash flow, liquidity and prospects.

***Decreases in the global demand for and price of natural gas (versus the price of imported LNG) could lead to reduced development of LNG projects worldwide.***

We are subject to risks associated with the development, operation and financing of domestic LNG facilities. The development of domestic LNG facilities and projects is generally based on assumptions about the future price of natural gas and LNG and the conditions of the global natural gas and LNG markets. Natural gas and LNG prices have been, and are likely to remain in the future, volatile and subject to wide fluctuations that are difficult to predict. As a result, our activities will expose us to risks of commodity price movements, which we believe could be mitigated by entering into long-term LNG sales contracts. There can be no assurance that we will be successful in entering into long-term LNG sales contracts. Additionally, the global LNG market could shift toward the use of shorter-term LNG sales contracts.

Fluctuations in commodity prices may create a mismatch between natural gas and petroleum prices, which could have a significant impact on our future revenues. Commodity prices and volumes are volatile due to many factors over which we have no control, including competing liquefaction capacity in North America; the international supply and receiving capacity of LNG; LNG marine transportation capacity; weather conditions affecting production or transportation of LNG from the Terminal; domestic and global demand for natural gas; the effect of government regulation on the production, transportation and sale of natural gas; oil and natural gas exploration and production activities; and the development of and changes in the cost of alternative energy sources for natural gas and political and economic conditions worldwide.

Our activities are also dependent on the price and availability of materials for the construction of the Terminal, such as nickel, aluminum, pipe, and steel, which may be subject to import tariffs in the U.S. market and are all also subject to factors affecting commodity prices and volumes. In addition, authorities with jurisdiction over wholesale power rates in the U.S., Europe and elsewhere, as well as independent system operators overseeing some of these markets, may impose price limitations, bidding rules and other mechanisms which may adversely impact or otherwise limit trading margins and lead to diminished opportunities for gain. We cannot predict the impact energy trading may have on our business, results of operations or financial condition.

Further, the development of liquefaction facilities takes a substantial amount of time, requires significant capital investment, may be delayed by unforeseen and uncontrollable factors and is dependent on our financial viability and ability to market LNG internationally.

***Competition in the LNG industry is intense, and some of our competitors have greater financial, technological and other resources.***

We plan to operate in the highly competitive area of LNG production and face intense competition from independent, technology-driven companies as well as from both major and other independent oil and natural gas companies and utilities.

Many competing companies have secured access to, or are pursuing development or acquisition of, LNG facilities in North America. We may face competition from major energy companies and others in pursuing our proposed business strategy to provide liquefaction and export products and services at the Terminal. In addition, competitors have and are developing LNG terminals in other markets, which will compete with U.S. LNG facilities. Some of these competitors have longer operating histories, more development experience, greater name recognition, superior tax incentives, more employees and substantially greater financial, technical and marketing resources than we currently possess. The superior resources that some of these competitors have available for deployment could allow them to compete successfully against us, which could have a material adverse effect on our business, results of operations, financial condition, liquidity and prospects.

***There may be shortages of LNG vessels worldwide, which could have a material adverse effect on our business, results of operations, financial condition, liquidity and prospects.***

The construction and delivery of LNG vessels requires significant capital and long construction lead times, and the availability of the vessels could be delayed to the detriment of our business and customers due to the following:

- an inadequate number of shipyards constructing LNG vessels and a backlog of orders at these shipyards;
- political or economic disturbances in the countries where the vessels are being constructed;
- changes in governmental regulations or maritime self-regulatory organizations;
- work stoppages or other labor disturbances at the shipyards;
- bankruptcies or other financial crises of shipbuilders;
- quality or engineering problems;
- weather interference or catastrophic events, such as a major earthquake, tsunami, or fire; or
- shortages of or delays in the receipt of necessary construction materials.

***We will rely on third-party engineers to estimate the future capacity ratings and performance capabilities of the Terminal, and these estimates may prove to be inaccurate.***

We will rely on third parties for the design and engineering services underlying our estimates of the future capacity ratings and performance capabilities of the Terminal. Any of our LNG facilities, when constructed, may not have the capacity ratings and performance capabilities that we intend or estimate. Failure of any of our facilities to achieve our intended capacity ratings and performance capabilities could prevent us from achieving the commercial start dates under our future LNG sale and purchase agreements and could have a material adverse effect on our business, contracts, financial condition, operating results, cash flow, liquidity and prospects.

***Terrorist attacks, including cyberterrorism, or military campaigns involving us or the Terminal could result in delays in, or cancellation of, construction or closure of the Project.***

A terrorist or military incident involving the Terminal may result in delays in, or cancellation of, construction of the Terminal, which would increase our costs and prevent us from obtaining expected cash flows. A terrorist incident could also result in temporary or permanent closure of the Terminal, which could increase costs and decrease cash flows, depending on the duration of the closure. Operations at the Terminal could also become subject to increased governmental scrutiny that may result in additional security measures at a significant incremental cost. In addition, the threat of terrorism and the impact of military campaigns may lead to continued volatility in prices for natural gas that could adversely affect our business and customers, including the ability of our suppliers or customers to satisfy their respective obligations under our commercial agreements. Instability in the financial markets as a result of terrorism, including cyberterrorism, or war could also materially adversely affect our ability to raise capital. The continuation of these developments may subject our construction and operations to increased risks, as well as increased costs, and, depending on their ultimate magnitude, could have a material adverse effect on our business, contracts, financial condition, operating results, cash flow, liquidity and prospects.

***The operation of the Terminal may be subject to significant operating hazards and uninsured risks, one or more of which may create significant liabilities and losses that could have a material adverse effect on our business, results of operations, financial condition, liquidity and prospects.***

The plan of operations for the Terminal is subject to the inherent risks associated with LNG operations, including explosions, pollution, release of toxic substances, fires, hurricanes and other adverse weather conditions, and other hazards, each of which could result in significant delays in commencement or interruptions of operations and/or result in damage to or destruction of the Terminal and assets or damage to persons and property.

We do not, nor do we intend to, maintain insurance against all these risks and losses. We may not be able to maintain desired or required insurance in the future at rates that we consider reasonable. The occurrence of a significant event not fully insured or indemnified against could have a material adverse effect on our business, contracts, financial condition, operating results, cash flow, liquidity and prospects.



***We are dependent on a limited number of customers for the purchase of LNG.***

The number of potential customers is limited. Some potential purchasers of the LNG to be produced from the Terminal are new to the LNG business and have limited experience in the industry. We will be reliant upon the ability of these customers to enter into satisfactory downstream arrangements in their home markets for the licenses to import and sell re-gasified LNG. Some of these jurisdictions are heavily regulated and dominated by state entities. In certain instances, customers may require credit enhancement measures in order to satisfy project-financing requirements.

***Our U.S. competitors have acquired significant property tax incentives, and we may not be able to acquire or may not have acquired similar incentives from applicable taxing entities.***

Due to the size of the Terminal's capital investment, property taxes represent large operating costs for the Terminal. The principal taxing entities are the Point Isabel Independent School District ("PIISD") and Cameron County (the "County"). Due to local opposition supported by national environmental interest groups, PIISD did not initially accept our application for a value limitation agreement pursuant to the State of Texas tax code provisions for economic development. We intend to resubmit the application for consideration, but there is no guaranty that it will be accepted and approved. Approval of these tax incentives is an important component of the Terminal's competitiveness. Failure to gain approval of tax incentives by PIISD and other applicable tax authorities on comparable terms with competitors could materially impact the Terminal's competitiveness.

On October 3, 2017, we executed four tax abatement agreements with the County; however, there is no assurance that the terms of such tax abatement agreements are competitive with other Gulf Coast liquefaction projects.

***Objections from local communities can delay the Terminal.***

Some local communities could perceive the proposed construction and operation of the Terminal as negatively impacting the environment, wildlife, cultural heritage sites or the public health of residents. Objections from local communities could cause delays, limit access to or increase the cost of construction capital, cause reputational damage and impede us in obtaining or renewing permits.

***The Terminal will be dependent on the availability of gas supply at the Agua Dulce supply area.***

The Pipeline is expected to collect and transport natural gas to the Terminal. The proposed Pipeline route passes through Jim Wells, Kleberg, Kenedy, Willacy, and Cameron Counties in Texas. The header system at the upstream end of the Pipeline is intended to have multiple interconnects to the existing natural gas pipeline grid located in the Agua Dulce supply area (the "Agua Dulce Hub"). The Agua Dulce Hub includes deliveries from, but not limited to, ConocoPhillip's 1,100-mile South Texas intrastate and gas gathering pipeline system and ExxonMobil's 925 MMcf/d King Ranch processing facility. As the Pipeline system interconnects are expected to be relatively close to the Agua Dulce Hub, it is expected that gas will be available for purchase in large volumes at commercially acceptable prices. Nonetheless, disruptions in upstream supply sources or increased market demand could impact the availability of gas supply to the Pipeline header system, which would result in curtailments at the Terminal.

Each liquefaction train for the Terminal is expected to involve the transportation and liquefaction of approximately 0.75 Bcf/day of natural gas, for a total of 4.5 Bcf/day for six liquefaction trains at full build-out. Gas sales agreements for the supply of these volumes could entail negotiations with multiple parties for firm and interruptible gas supply and transportation services to the Pipeline header system, as well as pipeline interconnects and ancillary operational agreements in time for operational start-up as early as 2023. Delays caused by third parties in the course of negotiating agreements and constructing the required interconnects could delay the start of commercial operations for the Terminal.

***Unethical conduct and non-compliance with applicable laws could have a significant adverse effect on our business.***

Incidents of unethical behavior, fraudulent activity, corruption or non-compliance with applicable laws and regulations could be damaging to our operations and reputation and may subject us to criminal and civil penalties or loss of operating licenses. We have implemented an anti-corruption policy which applies to all employees and contractors without exception and we are a member of TRACE International, an internationally recognized anti-bribery compliance organization. Our legal team screens potential partners, agents and advisors in multiple databases to which it has access and regularly conducts due diligence interviews with potential counterparties. Due to the global nature of the LNG business and the diversity of jurisdictions in which our customers operate, it is possible that a prospective counterparty could be accused of behavior that falls short of our expectations in this regard, leading to reputational damage and potential legal liabilities, notwithstanding our best efforts to prevent such behaviors.

***Our common stock could be delisted from Nasdaq.***

Our common stock is currently listed on Nasdaq. However, we cannot assure you that we will be able to comply with the continued listing standards of Nasdaq. If we fail to comply with the continued listing standards of Nasdaq, our common stock may become subject to delisting. If Nasdaq delists our common stock from trading on its exchange for failure to meet the continued listing standards, we and our stockholders could face significant material adverse consequences including:

- a limited availability of market quotations for our securities;
- a limited amount of analyst coverage; and
- a decreased ability for us to issue additional securities or obtain additional financing in the future.

***The market price of our common stock has fluctuated in the past and is likely to fluctuate in the future. Holders of our common stock could lose all or part of their investment.***

The securities markets in general and our common stock have experienced significant price and volume volatility. The market price and trading volume of our common stock may continue to experience significant fluctuations due not only to general stock market conditions but also to a change in sentiment in the market regarding our operations, business prospects or those of companies in our industry. In addition to the other risk factors discussed in this section, the price and volume volatility of our common stock may be affected by:

- domestic and worldwide supply of and demand for natural gas and corresponding fluctuations in the price of natural gas;
- fluctuations in our quarterly or annual financial results or those of other companies in our industry;
- issuance of additional equity securities which causes further dilution to stockholders;
- sales of a high volume of shares of our common stock by our stockholders;
- operating and stock price performance of companies that investors deem comparable to us;
- events affecting other companies that the market deems comparable to us;
- changes in government regulation or proposals applicable to us;
- actual or potential non-performance by any customer or a counterparty under any agreement;
- announcements made by us or our competitors of significant contracts;
- changes in accounting standards, policies, guidance, interpretations or principles;
- general conditions in the industries in which we operate;
- general economic conditions; and
- the failure of securities analysts to cover our common stock or changes in financial or other estimates by analysts.

The stock prices of companies in the LNG industry have experienced wide fluctuations that have often been unrelated to the operating performance of these companies. Following periods of volatility in the market price of a company's securities, securities class action litigation often has been initiated against a company. If any class action litigation is initiated against us, we may incur substantial costs and our management's attention may be diverted from our operations, which could materially adversely affect our business and financial condition.

***Raising additional capital may cause dilution to existing stockholders, restrict our operations or require us to relinquish rights. Additionally, sales of a substantial number of shares of our common stock or other securities in the public market could cause our stock price to fall.***

We may seek the additional capital necessary to fund our operations through public or private equity offerings and debt financings. To the extent that we raise additional capital through the sale of equity or convertible debt securities, existing stockholders' ownership interests will be diluted, and the terms may include liquidation or other preferences that adversely affect their rights as a stockholder. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions such as incurring additional debt, making capital expenditures or declaring dividends. In addition, sales of a substantial number of shares of our common stock or other securities in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock.

***Our Second Amended and Restated Certificate of Incorporation grants our board of directors the power to designate and issue additional shares of common and/or preferred stock.***

Our authorized capital consists of 480,000,000 shares of common stock and 1,000,000 shares of preferred stock. Our preferred stock may be designated into series pursuant to authority granted by our Second Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation"), and on approval from our board of directors. 166,364 shares of preferred stock have been designated as Series A Convertible Preferred Stock, par value \$0.0001 per share (the "Series A Preferred Stock"), and 166,364 shares of preferred stock have been designated as Series B Convertible Preferred Stock, par value \$0.0001 per share (the "Series B Preferred Stock" and together with the Series A Preferred Stock, the "Convertible Preferred Stock"), in each case which are convertible into shares of common stock upon the occurrence of certain events. The board of directors, without any action by our stockholders, may designate and issue additional shares of preferred stock in such classes or series as it deems appropriate and establish the rights, preferences and privileges of such shares, including dividends, liquidation and voting rights. The rights of holders of other classes or series of stock that may be issued could be superior to the rights of holders of our common stock. The designation and issuance of shares of capital stock having preferential rights could adversely affect other rights appurtenant to shares of our common stock.

***The dividend, liquidation, and redemption rights of the holders of the Convertible Preferred Stock may adversely affect our financial position and the rights of the holders of our common stock.***

At December 31, 2019, we had 58,197 shares of Series A Preferred Stock and 55,645 shares of Series B Preferred Stock outstanding. The shares of Convertible Preferred Stock bear dividends at a rate of 12% per annum, which are cumulative and accrue daily from the date of issuance on the \$1,000 stated value. Such dividends are payable quarterly and may be paid in cash or in-kind. No dividends may be paid to holders of our common stock while accumulated dividends remain unpaid on the Convertible Preferred Stock.

Further, we are required, on the earlier of (i) ten (10) business days following a FID Event (as defined in the certificates of designations of the Convertible Preferred Stock) and (ii) the date that is the tenth (10th) anniversary of the closings of the issuances of the Convertible Preferred Stock, as applicable, to convert all of the Convertible Preferred Stock into shares of Company common stock at a strike price of \$7.34 per share of Company common stock. The conversion of the Convertible Preferred Stock would directly dilute the holders of our common stock. In the event we are liquidated while shares of Convertible Preferred Stock are outstanding, holders of Convertible Preferred Stock will be entitled to receive a preferred liquidation distribution, plus any accumulated and unpaid dividends, before holders of our common stock receive any distributions.

***Holders of the Convertible Preferred Stock have certain voting and other rights that may adversely affect holders of our common stock, and the holders of Convertible Preferred Stock may have different interests from and vote their shares in a manner deemed adverse to, holders of our common stock.***

The holders of Convertible Preferred Stock vote on an "as-converted" basis with the holders of our common stock on all matters brought before the holders of our common stock. In addition, prior to the conversion of the Convertible Preferred Stock, the consent of the holders of at least a majority of each of the Series A Preferred Stock and the Series B Preferred Stock then outstanding, in each case voting together as a single class, will be required for the Company to take certain actions, including, among others, (i) authorizing, creating or approving the issuance of any shares, or of any security convertible into, or convertible or exchangeable for shares of, senior to the Convertible Preferred Stock; (ii) authorizing, creating or approving the issuance of any shares of, or of any security convertible into, or convertible or exchangeable for shares of, Parity Stock (as defined in the certificates of designations of the Convertible Preferred Stock), subject to certain exceptions; (iii) adversely affecting the rights, preferences or privileges of the Convertible Preferred Stock, as applicable, subject to certain exceptions; (iv) amending, altering or repealing any of the provisions of the Certificate of Incorporation in a manner that would adversely affect the powers, designations, preferences or rights of the Convertible Preferred Stock, as applicable; or (v) amending, altering or repealing any of the provisions of the certificates of designations of the Convertible Preferred Stock, as applicable.

The holders of Convertible Preferred Stock may have different interests from the holders of our common stock and could vote their shares in a manner deemed adverse to the holders of our common stock.

***Exercise of warrants may have a dilutive effect on our common stock.***

As of December 31, 2019, outstanding IPO Warrants to purchase an aggregate of 12,081,895 shares of our common stock were exercisable in accordance with the terms of the warrant agreement governing such warrants. These warrants will expire at 5:00 p.m., New York time, on July 24, 2022 or earlier upon redemption or liquidation. The exercise price of these warrants is \$11.50 per one full share of our common stock, subject to certain adjustments.

In addition, we issued warrants together with the Series A Preferred Stock and the Series B Preferred Stock. The warrants issued together with the Series A Preferred Stock (the “Series A Warrants”) represent the right to acquire in the aggregate a number of shares of common stock equal to approximately 71 basis points (0.71%) of all outstanding shares of Company common stock, measured on a fully diluted basis, on the exercise date with a strike price of \$0.01 per share. The warrants issued together with the Series B Preferred Stock (the “Series B Warrants”) and, together with the Series A Warrants, the “Common Stock Warrants”) represent the right to acquire in the aggregate a number of shares of common stock equal to approximately 71 basis points (0.71%) of all outstanding shares of Company common stock, measured on a fully diluted basis, on the exercise date with a strike price of \$0.01 per share.

The Common Stock Warrants have a fixed three-year term commencing on the closings of the issuances of the associated Convertible Preferred Stock. The Common Stock Warrants may only be exercised by holders of the Common Stock Warrants at the expiration of such three-year term, except that the Company can force the exercise of the Common Stock Warrants prior to expiration of such term if the volume weighted average trading price of shares of common stock for each trading day during any 60 of the prior 90 trading days is equal to or greater than 175% of the conversion price of the applicable Convertible Preferred Stock and, with respect to the Series B Warrants, the Company simultaneously elects to force a mandatory exercise of all other warrants then outstanding and un-exercised and held by any holder of parity stock.

To the extent the IPO Warrants are exercised, or the warrants issued together with the Convertible Preferred Stock are exercised, additional shares of our common stock will be issued, which will result in dilution to the holders of our common stock and increase the number of shares eligible for resale in the public market. Sales of substantial numbers of such shares in the public market or the fact that such warrants may be exercised could adversely affect the market price of our common stock.

***Provisions of our charter documents or Delaware law could discourage, delay or prevent us from being acquired even if being acquired would be beneficial to our stockholders and could make it more difficult to change management.***

Provisions of the Certificate of Incorporation and our Amended and Restated Bylaws (the “Bylaws”) may discourage, delay or prevent a merger, acquisition or other change in control that stockholders might otherwise consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. In addition, these provisions may frustrate or prevent any attempt by our stockholders to replace or remove our current management by making it more difficult to replace or remove our board of directors. Among other things, these provisions include:

- elimination of our stockholders’ ability to call special meetings of stockholders;
- elimination of our stockholders’ ability to act by written consent;
- an advance notice requirement for stockholder proposals and nominations for members of our board of directors;
- a classified board of directors, the members of which serve staggered three-year terms;
- the express authority of our board of directors to make, alter or repeal the Bylaws;
- the authority of our board of directors to determine the number of director seats on our board of directors; and
- the authority of our board of directors to issue preferred stock with such terms as it may determine.

In addition, the Certificate of Incorporation provides, subject to limited exceptions, that the Court of Chancery of the State of Delaware will, to the fullest extent permitted by law, be the sole and exclusive forum for any claims, including (i) any derivative actions or proceedings brought on our behalf, (ii) any action asserting a claim of a breach of a fiduciary duty owed by, or any wrongdoing by, a director, officer or employee or (iii) any action asserting a claim pursuant to any provision of the Delaware General Corporation Law, the Certificate of Incorporation or the Bylaws, (iv) any action to interpret, apply, enforce or determine the validity of the Certificate of Incorporation or the Bylaws or (v) any action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and to have consented to the provisions described above. This choice of forum provision may limit a stockholder’s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers, other employees or stockholders which may discourage lawsuits with respect to such claims. Alternatively, if a court were to find the choice of forum provision that is contained in the Certificate of Incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could adversely affect our business, operating results and financial condition.

**Item 1B. Unresolved Staff Comments**

None.

**Item 2. Properties**

We currently lease approximately 38,300 square feet of office space for general and administrative purposes in Houston, Texas under a lease agreement that expires on September 30, 2020.

In January 2017, NextDecade LLC executed surface lease agreements with the City of Texas City and the State of Texas for a 994-acre site for the Galveston Bay Terminal (collectively, the "Galveston Bay Leases"). The Galveston Bay Leases expire on December 31, 2020.

On March 6, 2019, we entered into the Rio Grande Site Lease.

We do not own or lease any other real property that is materially important to our business. We believe that our current properties are adequate for our current needs and that additional space will be available when and as needed.

**Item 3. Legal Proceedings**

None.

**Item 4. Mine Safety Disclosures**

Not applicable.

## PART II

**Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities****Market Information, Holders and Dividends**

Our common stock trades on Nasdaq under the symbol “NEXT.” The IPO Warrants traded on the OTC Pink Market under the symbol “NEXTW.”

As of February 28, 2020, we had 120.8 million shares of Company common stock outstanding held by approximately 69 record owners. All shares of Company common stock held in street name are recorded in our stock register as being held by one stockholder.

We currently intend to retain earnings to finance the growth and development of our business and do not anticipate paying any cash dividends on Company common stock in the foreseeable future. Any future change in our dividend policy will be made at the discretion of our board of directors in light of our financial condition, capital requirements, earnings, prospects and any restrictions under any financing agreements, as well as other factors it deems relevant.

**Purchase of Equity Securities by the Issuer**

The following table summarizes stock repurchases for the three months ended December 31, 2019:

Period	Total Number of Shares Purchased (1)	Average Price Paid Per Share (2)	Total Number of Shares Purchased as a Part of Publicly Announced Plans	Maximum Number of Units That May Yet Be Purchased Under the Plans
October 2019	—	\$ —	—	—
November 2019	79	\$ 6.34	—	—
December 2019	—	\$ —	—	—

(1) Represents shares of Company common stock surrendered to us by participants in our 2017 Omnibus Incentive Plan (the “2017 Plan”) to settle the participants’ personal tax liabilities that resulted from the lapsing of restrictions on shares awarded to the participants under the 2017 Plan.

(2) The price paid per share of Company common stock was based on the closing trading price of Company common stock on the dates on which we repurchased shares of Company common stock from the participants under the 2017 Plan.

**Item 6. Selected Financial Data**

We are a smaller reporting company as defined by Rule 12b-2 of the Securities Exchange Act of 1934 and are not required to provide the information under this item.

## **Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations.**

### **Introduction**

The following discussion and analysis presents management’s view of our business, financial condition and overall performance and should be read in conjunction with our Consolidated Financial Statements and the accompanying notes in “Financial Statements and Supplementary Data.” This information is intended to provide investors with an understanding of our past performance, current financial condition and outlook for the future. Our discussion and analysis include the following subjects:

- Overview of Business
- Overview of Significant Events
- Liquidity and Capital Resources
- Contractual Obligations
- Results of Operations
- Off-Balance Sheet Arrangements
- Summary of Critical Accounting Estimates
- Recent Accounting Standards

### **Overview of Business**

We are a LNG development company focused on LNG export projects in the State of Texas. We have focused and continue to focus our development activities on the Terminal and have undertaken and continue to undertake various initiatives to evaluate, design and engineer the Terminal that we expect will result in demand for contracted capacity at the Terminal, which would allow us to seek construction financing to develop the Terminal. We believe the Terminal possesses competitive advantages in several important areas, including, engineering, commercial, regulatory, and gas supply. We submitted a pre-filing request for the Terminal and the Pipeline (as described below) to the FERC in March 2015 and filed a formal application with the FERC in May 2016. In November 2019, the FERC issued an order authorizing the siting, construction and operation of the Terminal and the Pipeline. We also believe we have robust commercial offtake and gas supply strategies in place and we estimate that the Terminal could commence commercial operations as early as 2023.

### **Overview of Significant Events**

#### *LNG Sale and Purchase Agreement*

In March 2019, we entered into the SPA with Shell for the supply of two million tonnes per annum of liquefied natural gas from the Terminal. Pursuant to the SPA, Shell will purchase LNG on a free-on-board basis starting from the commercial operation date of the Terminal, currently expected in 2023, with approximately three-quarters of the purchased LNG volume indexed to Brent and the remaining volume indexed to domestic United States gas indices, including Henry Hub.

The Shell SPA becomes effective upon the satisfaction of certain conditions precedent, which include a positive FID in the Terminal.

#### *Rio Grande Site Lease*

On March 6, 2019, Rio Grande entered into the Rio Grande Site Lease with BND pursuant to which we have agreed to lease the Leased Premises for the purposes of constructing, operating and maintaining the Terminal and gas treatment and gas pipeline facilities. The initial term of the Rio Grande Site Lease is for 30 years, which will commence on the date specified in a written notice by us to BND. We have the option to renew and extend the term of the Rio Grande Site Lease beyond the Primary Term for up to two consecutive renewal periods of ten years each provided that it has not caused an event of default under the Rio Grande Site Lease.



*Engineering, Procurement, and Construction Contract*

During the third quarter of 2018, we initiated a competitive engineering, procurement and construction (“EPC”) bid process. We received expressions of interest (the “EOIs”) from multiple EPC contractors to participate in the EPC process. We reviewed the EOIs against a series of selection criteria and issued formal invitations to bid to Bechtel Oil, Gas and Chemicals, Inc. (“Bechtel”), Fluor Enterprises, Inc. (“Fluor”) and McDermott International, Inc. In December 2018, each of the EPC bidders provided us with an endorsement of the Terminal’s front-end engineering and design (“FEED”), which indicates the bidders’ confirmation that the Terminal is technically feasible and can be further designed, engineered, permitted, constructed, commissioned and safely placed into operations.

On April 22, 2019, we received EPC bid packages from each of Bechtel and Fluor, two of the global LNG market’s leading EPC contractors. The technical and commercial bid packages, which were received on-schedule, were for fully wrapped lump-sum separated turnkey (“LSTK”) EPC contracts for the Terminal.

On May 24, 2019, Rio Grande entered into two LSTK EPC agreements with Bechtel for the construction of (i) two LNG trains with expected aggregate production capacity up to approximately 11.74 million tonnes per annum (“mtpa”), two 180,000m<sup>3</sup> full containment LNG tanks, one marine loading berth, related utilities and facilities, and all related appurtenances thereto, together with certain additional work options (the “Trains 1 and 2 EPC Agreement”) and (ii) an LNG train with expected production capacity of up to approximately 5.87 mtpa, related utilities and facilities, and all related appurtenances thereto (the “Train 3 EPC Agreement” and together with the Trains 1 and 2 EPC Agreement, the “EPC Agreements”). We agreed to pay to Bechtel a contract price of \$7.042 billion for the work under the Trains 1 and 2 EPC Agreement and a contract price of \$2.323 billion for the work under the Train 3 EPC Agreement. During 2019, we issued two limited notices to proceed to Bechtel under the Trains 1 and 2 EPC Agreement.

On October 1, 2019, we issued 2,119,728 shares of Company common stock to BDC Oil and Gas Holdings, LLC, an affiliate of Bechtel. The shares of Company common stock were issued in lieu of a cash payment of \$15 million for amounts invoiced by Bechtel pursuant to the Trains 1 and 2 EPC Agreement.

*Series B Convertible Preferred Stock Offering*

On May 24, 2019, we sold an aggregate of 20,945 shares of Series B Preferred Stock at \$1,000.00 per share for an aggregate purchase price of \$20.945 million to (i) York Tactical Energy Fund, L.P. and York Tactical Energy Fund PIV-AN, L.P. (the “York Tactical Funds”), (ii) First Series of HDML Fund I, LLC, Bardin Hill Event Driven Master Fund, LP, and HCN LP (the “Bardin Hill Funds”), (iii) Valinor Capital Partners, L.P. and Valinor Capital Partners Offshore Master Fund, L.P. (the “Valinor Funds”) and (iv) HGC NEXT INV LLC (“HGC”) and issued Series B Warrants.

*Receipt of Final Environmental Impact Statement*

On April 26, 2019, we received our final environmental impact statement (“FEIS”) from the FERC for the Terminal and the Pipeline. The FEIS was prepared in compliance with the requirements of the National Environmental Policy Act (“NEPA”), the Council on Environmental Quality regulations for implementing NEPA, and FERC regulations.

*U.S. Fish and Wildlife Service Final Biological Opinion*

On October 1, 2019, the U.S. Fish and Wildlife Service issued the final biological opinion to the FERC, concluding that the construction of the Terminal will not likely jeopardize the continued existence of the ocelot or the Gulf coast jaguarundi.

*Common stock Offering*

On October 24, 2019, we sold an aggregate of 7,974,482 shares of Company common stock at \$6.27 per share for an aggregate purchase price of \$50.0 million to Ninteenth Investment Company LLC, an affiliate of Mubadala Investment Company PJSC (“Mubadala”).

*FERC Order for Rio Grande LNG Terminal and Pipeline*

On November 22, 2019, FERC issued an order authorizing the siting, construction and operation of the Terminal. Following receipt of the Final Order from FERC two requests for re-hearing were filed. One of those requests for rehearing also requested that the FERC stay its Final Order. On January 22, 2020, the FERC issued an order extending the time by which it would respond to these requests for rehearing. On January 23, 2020, the FERC issued its Order on Rehearing and Stay, by which FERC denied all re-hearings and requests for stay.

*Export of LNG to Non-FTA countries*

On September 7, 2016, Rio Grande obtained an authorization for export of LNG to countries with which the U.S. has a FTA on our own behalf and as an agent for others for a term of 30 years. On February 10, 2020, the DOE issued an order granting authorization to export LNG from the Terminal to non-FTA countries.

*Definitive Agreement Regarding Rio Bravo*

On February 13, 2020, NextDecade LLC entered into an Omnibus Agreement (the “Omnibus Agreement”) with Spectra Energy Transmission II, LLC, a wholly owned subsidiary of Enbridge Inc. (“Buyer”), pursuant to which NextDecade LLC agreed to sell, and Buyer agreed to purchase, one hundred percent of the equity interests (the “Equity Interests”) in Rio Bravo. The purchase price for the Equity Interests (the “Purchase Price”) will be the sum of (i) approximately \$17.4 million plus (ii) the amount of direct and indirect costs incurred by Rio Bravo, the Company or any of its other affiliates in respect of the Pipeline from October 1, 2019 through closing of the sale of the Equity Interests (the “Closing”), provided, however, that the Purchase Price may not exceed \$25 million. At the Closing, Buyer will pay NextDecade LLC \$15 million of the Purchase Price. The remainder of the Purchase Price is to be paid within five business days after the date that Rio Grande has received, after a final positive investment decision, the initial funding for the development, construction and operation of the Terminal. Additionally, the Omnibus Agreement provides that at the Closing, Rio Bravo and an indirect wholly owned subsidiary of the Company will enter into a precedent agreement in a form negotiated by Buyer and NextDecade LLC pursuant to which the Company will retain its rights to the natural gas firm transportation capacity on the Pipeline for a term of at least twenty years and Rio Bravo will provide firm pipeline transportation service to the Company in order to supply natural gas to the Terminal.

On March 2, 2020, Closing occurred and NextDecade LLC received proceeds of \$15 million and Buyer received the Equity Interests in Rio Bravo. In addition, Rio Grande LNG Gas Supply LLC (“Rio Grande Gas Supply”), an indirect wholly owned subsidiary of the Company, entered into precedent agreements with Rio Bravo and Valley Crossing Pipeline, LLC (“VCP”), pursuant to which Rio Grande Gas Supply will retain its rights to the natural gas firm transportation capacity on the Pipeline for a term of at least twenty years and Rio Bravo and VCP, will provide firm pipeline transportation service to Rio Grande Gas Supply in order to supply natural gas to the Terminal. VCP and, as of the Closing, Rio Bravo are wholly owned subsidiaries of Enbridge, Inc.

**Liquidity and Capital Resources***Capital Resources*

We have funded and continue to fund the development of the Terminal and general working capital needs through our cash on hand and proceeds from the issuances of equity and equity-based securities. Since January 2018, capital raising events have included the following:

In August 2018, we sold an aggregate of 50,000 shares of Series A Preferred Stock at \$1,000.00 per share for an aggregate purchase price of \$50 million and we issued an additional 1,000 shares of Series A Preferred Stock in aggregate as origination fees to (i) York Capital Management Global Advisors, LLC, severally on behalf of certain funds or accounts managed by it or its affiliates (“York”), (ii) Valinor Management, L.P., severally on behalf of certain funds or accounts for which it is investment manager (“Valinor”), (iii) Bardin Hill Investment Partners LP (formerly known as Halcyon Capital Management LP), severally on behalf of certain funds or accounts managed by it or its affiliates (“Bardin Hill,” and together with York and Valinor, the “Fund Purchasers”) and (iv) HGC. Series A Warrants were issued together with such shares of Series A Preferred Stock.

In September 2018, we sold an aggregate of 29,055 shares of Series B Preferred Stock at \$1,000.00 per share for an aggregate purchase price of \$29.055 million and issued an additional 581 shares of Series B Preferred Stock in aggregate as origination fees to certain funds managed by BlackRock. Series B Warrants were issued together with such shares of Series B Preferred Stock.

In May 2019, we sold an aggregate of 20,945 shares of Series B Preferred Stock at \$1,000.00 per share for an aggregate purchase price of \$20.945 million to the York Funds, the Bardin Hill Funds, the Valinor Funds and HGC. Series B Warrants were issued together with such shares of Series B Preferred Stock.

In October 2019, we sold an aggregate of 7,974,482 shares of Company common stock at \$6.27 per share for an aggregate purchase price of \$50.0 million to Mubadala.

*Sources and Uses of Cash*

The following table summarizes the sources and uses of our cash for the periods presented (in thousands):

	<b>Year Ended December 31,</b>	
	<b>2019</b>	<b>2018</b>
Operating cash flows	\$ (40,700)	\$ (23,285)
Investing cash flows	(16,693)	(86,161)
Financing cash flows	69,960	76,912
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>12,567</b>	<b>(32,534)</b>
Cash and cash equivalents – beginning of period	3,169	35,703
<b>Cash and cash equivalents – end of period</b>	<b>\$ 15,736</b>	<b>\$ 3,169</b>

*Operating Cash Flows*

Operating cash outflows during the years ended December 31, 2019 and 2018 were \$40.7 million and \$23.3 million, respectively. The increase in operating cash outflows in 2019 compared to 2018 was primarily related to additional employees and travel costs, invitation to bid contract costs, increased professional fees and increased marketing and conference sponsorship costs.

*Investing Cash Flows*

Investing cash outflows during the years ended December 31, 2019 and 2018 were \$16.7 million and \$86.2 million, respectively. The investing cash outflows in 2019 were the result of cash used in the development of the Terminal and the Pipeline of \$27.2 million and a net redemption of \$10.5 million in investment securities. The investing cash outflows in 2018 were the result of cash used in the development of the Terminal and the Pipeline of \$18.7 million and a net investment of \$67.5 million in investment securities.

*Financing Cash Flows*

Financing cash inflows during the years ended December 31, 2019 and 2018 were \$70.0 million and \$76.9 million, respectively. Financing cash inflows in 2019 was the result of \$70.9 million of proceeds from the issuance of preferred equity offset by \$0.3 million of equity issuance costs and \$0.7 million of shares repurchased related to share based compensation. Financing cash inflows in 2018 was the result of \$79.1 million of proceeds from the issuance of common stock and preferred equity offset by \$2.1 million of equity issuance costs.

*Capital Development Activities*

We are primarily engaged in developing the Terminal, which may require additional capital to support further project development, engineering, regulatory approvals and compliance, and commercial activities in advance of a FID made to finance and construct the Terminal. Even if successfully completed, the Terminal will not begin to operate and generate significant cash flows until at least several years from now, which management currently estimates being as early as 2023. Construction of the Terminal would not begin until, among other requirements for project financing, all required federal, state and local permits have been obtained. We estimate that we will receive all regulatory approvals and begin construction to support the commencement of commercial operations as early as 2023. As a result, our business success will depend, to a significant extent, upon our ability to obtain the funding necessary to construct the Terminal, to bring it into operation on a commercially viable basis and to finance our staffing, operating and expansion costs during that process.

We have engaged Macquarie Capital (USA) Inc. to advise and assist us in raising capital for post-FID construction activities.

We currently expect that the long-term capital requirements for the Terminal will be financed predominately through project financing and proceeds from future debt and equity offerings by us. There can be no assurance that we will succeed in securing additional debt and/or equity financing in the future to complete the Terminal or, if successful, that the capital we raise will not be expensive or dilutive to stockholders. Additionally, if these types of financing are not available, we will be required to seek alternative sources of financing, which may not be available on terms acceptable to us, if at all.

**Contractual Obligations**

We are committed to make cash payments in the future pursuant to certain of our contracts. The following table summarizes certain contractual obligations (in thousands) in place as of December 31, 2019:

	Total	2020	2021-2022	2023-2024	Thereafter
Operating lease obligations	\$ 3,045	\$ 3,045	\$ —	\$ —	\$ —
Permitting costs	5,513	5,513	—	—	—
Other	118	43	75	—	—
Total	<u>\$ 8,676</u>	<u>\$ 8,601</u>	<u>\$ 75</u>	<u>\$ —</u>	<u>\$ —</u>

Operating lease obligations primarily relate to our Rio Grande Site Lease and office space in Houston, Texas.

A discussion of these obligations can be found at — [Note 6 – Leases](#) and [Note 13 – Commitments and Contingencies](#) of our Notes to Consolidated Financial Statements.

**Results of Operations**

The following table summarizes costs, expenses and other income for the year ended December 31, 2019 and 2018 (in thousands):

	Year Ended December 31,		
	2019	2018	Change
Revenues	\$ —	\$ —	\$ —
General and administrative expenses	22,548	35,182	(12,634)
Invitation to Bid Contract Costs	10,163	6,563	3,600
Land option and lease expenses	2,039	1,099	940
Depreciation expense	251	171	80
Operating loss	<u>(35,001)</u>	<u>(43,015)</u>	8,014
(Loss) gain on Common Stock Warrant Liabilities	(2,657)	164	(2,821)
Interest income, net	1,718	1,019	699
Other	69	(128)	197
Net loss attributable to NextDecade Corporation	<u>(35,871)</u>	<u>(41,960)</u>	6,089
Preferred stock dividends	(11,164)	(724)	(10,440)
Deemed dividends on Series A Convertible Preferred Stock	(1,517)	(822)	(695)
Net loss attributable to common stockholders	<u>\$ (48,552)</u>	<u>\$ (43,506)</u>	<u>\$ (5,046)</u>

Our consolidated net loss was \$35.9 million, or \$0.45 per common share (basic and diluted), for the year ended December 31, 2019 compared to a net loss of \$42.0 million, or \$0.41 per common share (basic and diluted), for the year ended December 31, 2018. This \$6.1 million decrease in net loss was primarily a result of decreased general and administrative expenses and increased interest income partially offset by an increase in invitation to bid contract costs and increased land option and lease expense discussed separately below.

General and administrative expenses during the year ended December 31, 2019 decreased \$12.6 million compared to the year ended December 31, 2018, due primarily to (i) a decrease in share-based compensation expense of \$26.5 million partially offset by, (ii) an increase in the number of employees which resulted in increased salaries and employee benefits, office expenses, travel, and professional fees of \$9.2 million, (iii) increased marketing and promotion costs, insurance, taxes and license fees of \$2.1 million, and (iv) an increase in information technology and communication costs of \$2.6 million. The decrease in share-based compensation expense is primarily a result of forfeitures of restricted stock during the year ended December 31, 2019.

As of December 31, 2019, we incurred approximately \$10.2 million of invitation to bid contract costs compared to approximately \$6.6 million incurred during the year ended December 31, 2018. The increase in invitation to bid contract costs is primarily due to the conclusion of the competitive EPC bid process and submission of lump-sum EPC prices by Bechtel and Fluor.

Land option and lease expenses during the year ended December 31, 2019 increased \$0.9 million compared to the year ended December 31, 2018, due primarily to new leases entered into for our corporate headquarters in September 2018 and June 2019, resulting in additional expense in 2019.

The loss on Common Stock Warrant Liabilities of approximately \$2.8 million in 2019 was primarily due to an increase in the number of shares of common stock outstanding and an increase in the price of common stock from \$5.40 per share at December 31, 2018 to \$6.14 per share at December 31, 2019.

Interest income, net during the year ended December 31, 2019 increased \$0.7 million compared to the year ended December 31, 2018 due to increased yield and higher average balances maintained in our cash accounts and investment securities.

Preferred stock dividends of \$11.2 million in 2019 were paid-in-kind with the issuance of an additional 11,164 shares of Series A Preferred Stock compared to preferred stock dividends of \$0.7 million in 2018 that were paid-in-kind with the issuance of an additional 720 shares of Series A Preferred.

Deemed dividends on the Series A Preferred Stock for the year ended December 31, 2019 and December 31, 2018 represents the accretion of the beneficial conversion feature associated with the Series A Preferred Stock issued in 2018. Due to the price of our common stock as of the closing date of the Series B Preferred Stock, the Series B Preferred Stock does not have a beneficial conversion feature.

## Off-Balance Sheet Arrangements

We did not have any off-balance sheet arrangements as of December 31, 2019.

## Summary of Critical Accounting Estimates

The preparation of our Condensed Consolidated Financial Statements in conformity with accounting principles generally accepted in the United States of America (“GAAP”) requires management to make certain estimates and assumptions that affect the amounts reported in the Consolidated Financial Statements and the accompanying notes. Management evaluates its estimates and related assumptions regularly, including those related to the value of properties, plant, and equipment, share-based compensation, Common Stock Warrant liabilities, and income taxes. Changes in facts and circumstances or additional information may result in revised estimates, and actual results may differ from these estimates. Management considers the following to be its most critical accounting estimates that involve significant judgment.

### *Impairment of Long-Lived Assets*

A long-lived asset, including an intangible asset, is evaluated for potential impairment whenever events or changes in circumstances indicate that its carrying value may not be recoverable. Recoverability generally is determined by comparing the carrying value of the asset to the expected undiscounted future cash flows of the asset. If the carrying value of the asset is not recoverable, the amount of impairment loss is measured as the excess, if any, of the carrying value of the asset over its estimated fair value. We use a variety of fair value measurement techniques when market information for the same or similar assets does not exist. Projections of future operating results and cash flows may vary significantly from results. Management reviews its estimates of cash flows on an ongoing basis using historical experience and other factors, including the current economic and commodity price environment.

### *Share-based Compensation*

The assumptions used in calculating the fair value of share-based payment awards represent our best estimates, but these estimates involve inherent uncertainties and the application of management’s judgment. As a result, if factors change and we use different assumptions, our share-based compensation expense could be materially different in the future.

For additional information regarding our share-based compensation, see [Note 11 – Share-based Compensation](#) of our Notes to Consolidated Financial Statements.

### *Valuation of Common Stock Warrant Liabilities*

The fair value of Common Stock Warrant liabilities is determined using a Monte Carlo valuation model. Determining the appropriate fair value model and calculating the fair value of Common Stock Warrant requires considerable judgment. Any change in the estimates used may cause the value to be higher or lower than that reported. The estimated volatility of our common stock at the date of issuance, and at each subsequent reporting period, is based on our historical volatility. The risk-free interest rate is based on rates published by the government for bonds with maturity similar to the expected remaining life of the Common Stock Warrants at the valuation date. The expected life of the Common Stock Warrants is assumed to be equivalent to their remaining contractual term.

The Common Stock Warrants are not traded in an active market and the fair value is determined using valuation techniques. The estimates may be significantly different from those recorded in the consolidated financial statements because of the use of judgment and the inherent uncertainty in estimating the fair value of these instruments that are not quoted in an active market. All changes in the fair value are recorded in the consolidated statement of operations each reporting period.

For additional information regarding the valuation of Common Stock Warrant liabilities, see [Note 9 – Preferred Stock and Common Stock Warrants](#) of our Notes to Consolidated Financial Statements.

### *Income Taxes*

Provisions for income taxes are based on taxes payable or refundable for the current year and deferred taxes on temporary differences between the tax basis of assets and liabilities and their reported amounts in the Consolidated Financial Statements. Deferred tax assets and liabilities are included in the Consolidated Financial Statements at currently enacted income tax rates applicable to the period in which the deferred tax assets and liabilities are expected to be realized or settled. As changes in tax laws or rates are enacted, deferred tax assets and liabilities are adjusted through the current period’s provision for income taxes. We routinely assess our deferred tax assets and reduce such assets by a valuation allowance if we deem it is more likely than not that some portion or all of the deferred tax assets will not be realized. This assessment requires significant judgment and is based upon our assessment of our ability to generate future taxable income among other factors.

### *Recent Accounting Standards*

For descriptions of recently issued accounting standards, see [Note 14 – Recent Accounting Pronouncements](#) of our Notes to Consolidated Financial Statements.

## Item 7A. Quantitative and Qualitative Disclosures About Market Risk

We are a smaller reporting company as defined by Rule 12b-2 of the Securities Exchange Act of 1934, as amended, and are not required to provide the information under this item.

**Item 8. Financial Statements and Supplementary Data**

**Index to Consolidated Financial Statements**

**NextDecade Corporation and Subsidiaries**

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders

NextDecade Corporation

**Opinion on the financial statements**

We have audited the accompanying consolidated balance sheets of NextDecade Corporation (a Delaware corporation) and subsidiaries (the "Company") as of December 31, 2019 and 2018, the related consolidated statements of operations, stockholders' equity, series A and series B convertible preferred stock, and cash flows for the years then ended, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

**Change in accounting principle**

As discussed in Note 6 to the consolidated financial statements, the Company has changed its method of accounting for leases as of January 1, 2019 due to the adoption of Accounting Standards Codification Topic 842, Leases.

**Basis for opinion**

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provides a reasonable basis for our opinion.

/s/ GRANT THORNTON LLP

We have served as the Company's auditor since 2018.

Houston, Texas  
March 3, 2020

**NextDecade Corporation and Subsidiaries**  
**Consolidated Balance Sheets**  
(in thousands, except share data)

Assets	December 31, 2019	December 31, 2018
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$ 15,736	\$ 3,169
Investment securities	62,207	72,453
Prepaid expenses and other current assets	859	1,310
Total current assets	78,802	76,932
Property, plant and equipment, net	134,591	92,070
Operating lease right-of-use assets, net	1,054	—
Other non current assets	6,748	—
Total assets	\$ 221,195	\$ 169,002
<b>Liabilities, Series A and Series B Convertible Preferred Stock and Stockholders' Equity</b>		
Current liabilities		
Accounts payable	\$ 11,912	\$ 719
Share-based compensation liability	182	3,018
Accrued liabilities and other current liabilities	8,751	8,353
Current operating lease liabilities	698	—
Total current liabilities	21,543	12,090
Non-current Common Stock Warrant liabilities	12,034	7,441
Non-current operating lease liabilities	3	—
Total liabilities	33,580	19,531
<b>Commitments and contingencies (Note 13)</b>		
Series A Convertible Preferred Stock, \$1,000 per share liquidation preference, Issued and outstanding: 58,197 shares and 51,720 shares at December 31, 2019 and December 31, 2018, respectively	48,084	40,091
Series B Convertible Preferred Stock, \$1,000 per share liquidation preference, Issued and outstanding: 55,645 shares and 29,636 shares at December 31, 2019 and December 31, 2018, respectively	49,814	26,159
<b>Stockholders' equity</b>		
Common stock, \$0.0001 par value Authorized: 480.0 million shares at December 31, 2019 and December 31, 2018, Issued and outstanding: 117.3 million shares and 106.9 million shares at December 31, 2019 and December 31, 2018, respectively	12	11
Treasury stock: 137,860 shares and 6,425 shares at December 31, 2019 and December 31, 2018, respectively, at cost	(685)	(35)
Preferred stock, \$0.0001 par value Authorized: 0.9 million, after designation of the Series A and Series B Convertible Preferred Stock, Issued and outstanding: none at December 31, 2019 and December 31, 2018, respectively	—	—
Additional paid-in-capital	224,091	180,862
Accumulated deficit	(133,701)	(97,617)
Total stockholders' equity	89,717	83,221
Total liabilities, Series A and Series B Convertible Preferred Stock and stockholders' equity	\$ 221,195	\$ 169,002

The accompanying notes are an integral part of these Consolidated Financial Statements.

**NextDecade Corporation and Subsidiaries**  
**Consolidated Statements of Operations**  
**(in thousands, except per share data)**

	<b>Year Ended December 31,</b>	
	<b>2019</b>	<b>2018</b>
Revenues	\$ —	\$ —
Operating Expenses		
General and administrative expenses	22,548	35,182
Invitation to Bid Contract Costs	10,163	6,563
Land option and lease expenses	2,039	1,099
Depreciation expense	251	171
Total operating expenses	35,001	43,015
Total operating loss	(35,001)	(43,015)
Other income (expense)		
(Loss) gain on Common Stock Warrant liabilities	(2,657)	164
Interest income, net	1,718	1,019
Other	69	(128)
Total other income	(870)	1,055
Net loss attributable to NextDecade Corporation	(35,871)	(41,960)
Preferred stock dividends	(11,164)	(724)
Deemed dividends on Series A Convertible Preferred Stock	(1,517)	(822)
Net loss attributable to common stockholders	\$ (48,552)	\$ (43,506)
Net loss per common share - basic and diluted	\$ (0.45)	\$ (0.41)
Weighted average shares outstanding - basic and diluted	109,057	106,564

The accompanying notes are an integral part of these Consolidated Financial Statements.



**NextDecade Corporation and Subsidiaries**  
**Consolidated Statements of Stockholders' Equity, Series A and Series B Convertible Preferred Stock**  
(in thousands)

	Common Stock		Treasury Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity	Series A Convertible Preferred Stock	Series B Convertible Preferred Stock
	Shares	Par Value Amount	Shares	Amount						
Balance at January 1, 2018	106,275	\$ 11	—	\$ —	\$ 158,738	\$ (55,617)	\$ (40)	\$ 103,092	\$ —	\$ —
Adoption of ASU 2016-01	—	—	—	—	—	(40)	40	—	—	—
Share-based compensation	—	—	—	—	19,032	—	—	19,032	—	—
Restricted stock vesting	173	—	—	—	—	—	—	—	—	—
Shares repurchased related to share-based compensation	(6)	—	6	(35)	—	—	—	(35)	—	—
Issuance of Series A preferred stock	414	—	—	—	4,638	—	—	4,638	38,549	—
Issuance of Series B preferred stock	—	—	—	—	—	—	—	—	—	26,159
Preferred stock dividends	—	—	—	—	(724)	—	—	(724)	720	—
Deemed dividends - accretion of beneficial conversion feature	—	—	—	—	(822)	—	—	(822)	822	—
Net loss	—	—	—	—	—	(41,960)	—	(41,960)	—	—
Balance at December 31, 2018	106,856	\$ 11	6	\$ (35)	\$ 180,862	\$ (97,617)	\$ —	\$ 83,221	\$ 40,091	\$ 26,159
Adoption of ASC Topic 842	—	—	—	—	—	(213)	—	(213)	—	—
Adoption of ASU 2018-07	—	—	—	—	2,116	—	—	2,116	—	—
Share-based compensation	—	—	—	—	(8,525)	—	—	(8,525)	—	—
Restricted stock vesting	510	—	—	—	495	—	—	495	—	—
Issuance of common stock net of equity issuance costs	10,094	1	—	—	61,824	—	—	61,825	—	—
Shares repurchased related to share-based compensation	(131)	—	131	(650)	—	—	—	(650)	—	—
Issuance of Series B preferred stock	—	—	—	—	—	—	—	—	—	19,009
Preferred stock dividends	—	—	—	—	(11,164)	—	—	(11,164)	6,476	4,646
Deemed dividends - accretion of beneficial conversion feature	—	—	—	—	(1,517)	—	—	(1,517)	1,517	—
Net Loss	—	—	—	—	—	(35,871)	—	(35,871)	—	—
Balance at December 31, 2019	117,329	\$ 12	137	\$ (685)	\$ 224,091	\$ (133,701)	\$ —	\$ 89,717	\$ 48,084	\$ 49,814

The accompanying notes are an integral part of these Consolidated Financial Statements.

**NextDecade Corporation and Subsidiaries**  
**Consolidated Statements of Cash Flows**  
(in thousands)

	Year Ended December 31,	
	2019	2018
<b>Operating activities:</b>		
Net loss attributable to NextDecade Corporation	\$ (35,871)	\$ (41,960)
Adjustment to reconcile net loss to net cash used in operating activities		
Depreciation	251	171
Share-based compensation expense	(9,646)	16,840
Loss (gain) on Common Stock Warrant liabilities	2,657	(164)
(Gain) loss on investment securities	(100)	114
Realized gain on investment securities	(138)	—
Amortization of right-of-use assets	955	—
Amortization of other non-current assets	127	—
Changes in operating assets and liabilities:		
Prepaid expenses	573	440
Other current assets	—	349
Accounts payable	207	124
Operating lease liabilities	(1,624)	—
Accrued expenses and other liabilities	1,909	801
Net cash used in operating activities	(40,700)	(23,285)
<b>Investing activities:</b>		
Acquisition of property, plant and equipment	(20,303)	(18,658)
Proceeds from sale of investment securities	77,000	17,113
Purchase of investment securities	(66,515)	(84,616)
Acquisition of other non-current assets	(6,875)	—
Net cash used in investing activities	(16,693)	(86,161)
<b>Financing activities:</b>		
Proceeds from equity issuance	70,945	79,055
Preferred stock dividends	(42)	(4)
Equity issuance costs	(293)	(2,104)
Shares repurchased related to share-based compensation	(650)	(35)
Net cash provided by financing activities	69,960	76,912
Net increase (decrease) in cash and cash equivalents	12,567	(32,534)
Cash and cash equivalents – beginning of period	3,169	35,703
Cash and cash equivalents – end of period	\$ 15,736	\$ 3,169
<b>Non-cash investing activities:</b>		
Accounts payable for acquisition of property, plant and equipment	\$ 11,351	\$ 367
Accrued liabilities for acquisition of property, plant and equipment	2,503	4,014
Common stock issued in lieu of cash	12,082	—
<b>Non-cash financing activities:</b>		
Paid-in-kind dividends on Series A Convertible Preferred Stock	11,122	720
Accretion of deemed dividends on Series A Convertible Preferred Stock	1,517	822

The accompanying notes are an integral part of these Consolidated Financial Statements.

**NextDecade Corporation and Subsidiaries**  
**Notes to Consolidated Financial Statements**

**Note 1 — Background and Basis of Presentation**

NextDecade Corporation engages in development activities related to the liquefaction and sale of liquefied natural gas (“LNG”). We have focused and continue to focus our development activities on the Rio Grande LNG terminal facility at the Port of Brownsville in southern Texas (the “Terminal”) and an associated 137-mile Rio Bravo pipeline to supply natural gas to the Terminal (the “Pipeline”). We also lease a 994-acre site near Texas City, Texas for another potential LNG terminal (the “Galveston Bay Terminal”) that expires December 31, 2020.

Our Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”). All intercompany accounts and transactions have been eliminated in consolidation.

Certain reclassifications have been made to conform prior period information to the current presentation. The reclassifications did not have a material effect on our consolidated financial position, results of operations or cash flows.

**Note 2 — Summary of Significant Accounting Policies**

**Use of Estimates**

The preparation of Consolidated Financial Statements in conformity with GAAP requires management to make certain estimates and assumptions that affect the amounts reported in the Consolidated Financial Statements and the accompanying notes. Management evaluates its estimates and related assumptions regularly, including those related to the value of property, plant and equipment, income taxes including valuation allowances for net deferred tax assets, share-based compensation and fair value measurements. Changes in facts and circumstances or additional information may result in revised estimates, and actual results may differ from these estimates.

**Concentrations of Credit Risk**

Financial instruments that potentially subject us to a concentration of credit risk consist principally of cash and cash equivalents. We maintain cash balances with a single financial institution, which may at times be in excess of federally insured levels. We have not incurred losses related to these cash and cash equivalent balances to date.

## Cash Equivalents

We consider all highly liquid investments with an original maturity of three months or less when purchased to be cash equivalents.

## Investment Securities

We define investment securities as investments in marketable securities that can be readily converted to cash. We determine the appropriate classification of investment securities at the time of purchase and reevaluate such classification at each balance sheet date. Investment securities are initially recorded at cost and remeasured to fair value, with changes presented in other income in our Consolidated Statements of Operations.

## Property, Plant and Equipment

Generally, we begin to capitalize the costs of our development projects once construction of the individual project is probable. This assessment includes the following criteria:

- funding for design and permitting has been identified and is expected in the near-term;
- key vendors for development activities have been identified, and we expect to engage them at commercially reasonable terms;
- we have committed to commencing development activities;
- regulatory approval is probable;
- construction financing is expected to be available at the time of a final investment decision ("FID");
- prospective customers have been identified and the FID is probable; and
- receipt of customary local tax incentives, as needed for project viability, is probable.

Prior to meeting the criteria above, costs associated with a project are expensed as incurred. Expenditures for normal repairs and maintenance are expensed as incurred.

When assets are retired or disposed, the cost and accumulated depreciation are eliminated from the accounts and any gain or loss is reflected in our Consolidated Statements of Operations.

Property, plant and equipment is carried at historical cost and depreciated using the straight-line method over their estimated useful lives.

Leasehold improvements are depreciated over the lesser of the economic life of the leasehold improvement or the term of the lease, without regard to extension/renewal rights.

Management tests property, plant and equipment for impairment whenever events or changes in circumstances have indicated that the carrying amount of property, plant and equipment might not be recoverable. Assets are grouped at the lowest level for which there are identifiable cash flows that are largely independent of the cash flows of other groups of assets for purposes of assessing recoverability. Recoverability generally is determined by comparing the carrying value of the asset to the expected undiscounted future cash flows of the asset. If the carrying value of the asset is not recoverable, the amount of impairment loss is measured as the excess, if any, of the carrying value of the asset over its estimated fair value.

## Warrants

The Company determines the accounting classification of warrants that are issued, as either liability or equity, by first assessing whether the warrants meet liability classification in accordance with Accounting Standards Codification (“ASC”) 480 *Distinguishing Liabilities from Equity* (“ASC 480”), and then in accordance with ASC 815-40, *Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company’s Own Stock* (“ASC 815-40”). Under ASC 480, warrants are considered liability classified if the warrants are mandatorily redeemable, obligate the issuer to settle the warrants or the underlying shares by paying cash or other assets, or warrants that must or may require settlement by issuing a variable number of shares.

If warrants do not meet liability classification under ASC 480, the Company assesses the requirements under ASC 815-40, which states that contracts that require or may require the issuer to settle the contract for cash or a variable number of shares are liabilities recorded at fair value, irrespective of the likelihood of the transaction occurring that triggers the net cash settlement feature. If the warrants do not require liability classification under ASC 815-40, in order to conclude equity classification, the Company assesses whether the warrants are indexed to our common stock and whether the warrants are classified as equity under ASC 815-40 or other applicable GAAP. After all relevant assessments are made, the Company concludes whether the warrants are classified as liability or equity. Liability classified warrants are required to be accounted for at fair value both on the date of issuance and on subsequent accounting period ending dates, with all changes in fair value after the issuance date recorded in the statements of operations as a gain or loss. Equity classified warrants are accounted for at fair value on the issuance date with no changes in fair value recognized after the issuance date.

## Fair Value of Financial Instruments

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. Hierarchy Levels 1, 2 and 3 are terms for the priority of inputs to valuation techniques used to measure fair value. Hierarchy Level 1 inputs are quoted prices in active markets for identical assets or liabilities. Hierarchy Level 2 inputs are inputs other than quoted prices included within Level 1 that are directly or indirectly observable for the asset or liability. Hierarchy Level 3 inputs are inputs that are not observable in the market. In determining fair value, we use observable market data when available, or models that incorporate observable market data. In addition to market information, we incorporate transaction-specific details that, in management’s judgment, market participants would take into account in measuring fair value. We maximize the use of observable inputs and minimize our use of unobservable inputs in arriving at fair value estimates. Recurring fair-value measurements are performed for investment securities as disclosed in [Note 4 – Investment Securities](#) and for Common Stock Warrant liabilities as disclosed in [Note 9 – Preferred Stock and Common Stock Warrants](#). The carrying amount of cash and cash equivalents and accounts payable reported on the Consolidated Balance Sheets approximates fair value due to their short-term maturities.

## Treasury Stock

Treasury stock is recorded at cost. Issuance of treasury stock is accounted for on a weighted average cost basis. Differences between the cost of treasury stock and the re-issuance proceeds are charged to additional paid-in capital.

## Net Loss Per Share

Net loss per share (“EPS”) is computed in accordance with GAAP. Basic EPS excludes dilution and is computed by dividing net income (loss) by the weighted average number of common shares outstanding during the period. Diluted EPS reflects potential dilution and is computed by dividing net income (loss) by the weighted average number of common shares outstanding during the period increased by the number of additional common shares that would have been outstanding if the potential common shares had been issued and were dilutive. The dilutive effect of unvested stock and warrants is calculated using the treasury-stock method and the dilutive effect of convertible securities is calculated using the if-converted method. Basic and diluted EPS for all periods presented are the same since the effect of our potentially dilutive securities are anti-dilutive to our net loss per share, as disclosed in [Note 10 – Net Loss Per Share Attributable to Common Stockholders](#).

## Share-based Compensation

We recognize share-based compensation at fair value on the date of grant. The fair value is recognized as expense (net of any capitalization) over the requisite service period. For equity-classified share-based compensation awards, compensation cost is recognized based on the grant-date fair value using the quoted market price of our common stock and not subsequently remeasured. The fair value is recognized as expense, net of any capitalization, using the straight-line basis for awards that vest based on service conditions and using the graded-vesting attribution method for awards that vest based on performance conditions. We estimate the service periods for performance awards utilizing a probability assessment based on when we expect to achieve the performance conditions. For liability classified share-based compensation awards, compensation cost is initially recognized on the grant date using estimated payout levels. Compensation cost is subsequently adjusted quarterly to reflect the updated estimated payout levels based on the changes in our stock price. We account for forfeitures as they occur.

## **Income Taxes**

Provisions for income taxes are based on taxes payable or refundable for the current year and deferred taxes on temporary differences between the tax basis of assets and liabilities and their reported amounts in the Consolidated Financial Statements. Deferred tax assets and liabilities are included in the Consolidated Financial Statements at currently enacted income tax rates applicable to the period in which the deferred tax assets and liabilities are expected to be realized or settled. As changes in tax laws or rates are enacted, deferred tax assets and liabilities are adjusted through the current period's provision for income taxes. A valuation allowance is recorded to reduce the carrying value of our net deferred tax assets when it is more likely than not that a portion or all of the deferred tax assets will expire before realization of the benefit or future deductibility is not probable. We recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the tax position.

## **Emerging Growth Company and Smaller Reporting Company**

The Company is an "emerging growth company," as defined in Section 2(a) of the Securities Act of 1933, as amended (the "Securities Act"), as modified by the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). An "emerging growth company" may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We may take advantage of these reporting exemptions until we are no longer an emerging growth company.

Further, section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until such time as those standards apply to private companies. The Company has elected to "opt-out" of this exemption and, therefore, will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

Additionally, under Rule 12b-2 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Company qualifies as a "smaller reporting company" because the value of its common stock held by non-affiliates as of the end of its most recently completed second fiscal quarter was less than \$250 million. For as long as the Company remains a smaller reporting company, it may take advantage of certain exemptions from the SEC's reporting requirements that are otherwise applicable to public companies that are not smaller reporting companies.

**Note 3 — Prepaid Expenses and Other Current Assets**

Prepaid expenses and other current assets consisted of the following (in thousands):

	December 31, 2019	December 31, 2018
Rio Grande LNG site option	\$ —	\$ 486
Prepaid subscriptions	161	—
Prepaid insurance	292	233
Prepaid marketing and sponsorships	25	242
Other	381	349
Total prepaid expenses and other current assets	<u>\$ 859</u>	<u>\$ 1,310</u>

During the years ended December 31, 2019 and 2018, we recognized \$486 thousand and \$572 thousand, respectively, of lease option expense related to the Rio Grande LNG site option which expired November 5, 2019.

**Note 4 — Investment Securities**

We have invested in Class L shares of the JPMorgan Managed Income Fund. The JPMorgan Managed Income Fund has an average maturity of approximately one year, duration of approximately six months, and approximately 24% of such fund's holdings are AAA-rated with 0% non-investment grade rated.

Investment securities are included in Level 1 of the fair value hierarchy and consisted of the following (in thousands):

	December 31, 2019		December 31, 2018	
	Fair value	Cost	Fair value	Cost
JPMorgan Managed Income Fund	\$ 62,207	\$ 62,178	\$ 72,453	\$ 72,567

**Note 5 — Property, Plant and Equipment**

Property, plant and equipment consisted of the following (in thousands):

	December 31, 2019	December 31, 2018
Fixed Assets		
Computers	\$ 487	\$ 164
Furniture, fixtures, and equipment	471	316
Leasehold improvements	547	420
Total fixed assets	1,505	900
Less: accumulated depreciation	(793)	(542)
Total fixed assets, net	712	358
Terminal and Pipeline assets (not placed in service)		
Terminal	121,081	80,407
Pipeline	12,798	11,305
Total Terminal and Pipeline assets	133,879	91,712
Total property, plant and equipment, net	<u>\$ 134,591</u>	<u>\$ 92,070</u>

Depreciation expense for the years ended December 31, 2019 and 2018 was \$251 thousand and \$171 thousand, respectively.

**Note 6 — Leases**

We currently lease approximately 38,300 square feet of office space for general and administrative purposes in Houston, Texas under a lease agreement that expires on September 30, 2020.

In January 2017, NextDecade LLC executed surface lease agreements with the City of Texas City and the State of Texas for a 994-acre site for the Galveston Bay Terminal (collectively, the “Galveston Bay Leases”). The term of the Galveston Bay Leases is 36 months with an option to extend for an additional 12 months. Such option was included in the measurement of Operating lease right-of-use assets and Operating lease liabilities and was exercised in the fourth quarter of 2019.

On March 6, 2019, Rio Grande entered into a lease agreement (the “Rio Grande Site Lease”) with the Brownsville Navigation District of Cameron County, Texas (“BND”) pursuant to which it has agreed to lease approximately 984 acres of land situated in Brownsville, Cameron County, Texas for the purposes of constructing, operating, and maintaining the Terminal and gas treatment and gas pipeline facilities.

The initial term of the Rio Grande Site Lease is for 30 years (the “Primary Term”), which will commence on the date specified in a written notice by Rio Grande to BND (the “Effective Date Notice”), if given, confirming that Rio Grande or a Rio Grande affiliate has made a positive FID for the first phase of the Terminal. Under the Rio Grande Site Lease, the Effective Date Notice was to be delivered no later than November 6, 2019 (the “Outside Effective Date”) unless Rio Grande was unable to deliver the Effective Date Notice prior to the Outside Effective Date due to reasons unrelated to its own acts or omissions or its inability to secure one or more of the required permits for the Terminal. In such a case, the Outside Effective Date would be automatically extended on a month-to-month basis (the “Effective Date Notice Extension Period”). Rio Grande has the option to renew and extend the term of the Rio Grande Site Lease beyond the Primary Term for up to two consecutive renewal periods of ten years each provided that Rio Grande has not caused an event of default under the Rio Grande Site Lease. Rio Grande did not deliver the Effective Date Notice prior to the Outside Effective Date due to not having obtained the required permits for the Terminal prior to the Outside Effective Date and, therefore, the Outside Effective Date has been automatically extended on a month-to-month basis.

In adopting Topic 842, the Company has elected the “package of practical expedients,” which permits it not to reassess under the new standard its prior conclusions about lease identification, lease classification and initial direct costs. The Company also elected the use-of-hindsight and the practical expedient pertaining to land easements. The Company elected not to apply Topic 842 to arrangements with original lease terms of 12 months or less. At lease commencement date, the Company estimated the lease liability and the right-of-use assets at present value, at inception, of \$2.3 million. On January 1, 2019, upon adoption of Topic 842, the Company recorded right-of-use assets of \$1.6 million, lease liabilities of \$1.9 million, eliminated deferred rent of \$0.1 million and recorded a cumulative-effect adjustment of \$0.2 million.

The Company determines if a contractual arrangement represents or contains a lease at inception. Operating leases with lease terms greater than twelve months are included in Operating lease right-of-use assets and Operating lease liabilities in the Consolidated Balance Sheets.

Operating lease right-of-use assets and lease liabilities are recognized at the commencement date based on the present value of the future lease payments over the lease term. The Company utilizes its incremental borrowing rate in determining the present value of the future lease payments. The incremental borrowing rate is derived from information available at the lease commencement date and represents the rate of interest that the Company would have to pay to borrow on a collateralized basis over a similar term and amount equal to the lease payments in a similar economic environment. The right-of-use assets and lease liabilities may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. The Company has lease arrangements that include both lease and non-lease components. The Company accounts for non-lease components separately from the lease component.

Operating lease right-of-use assets as of December 31, 2019 are as follows (in thousands):

Office leases	\$	610
Land leases		444
<b>Total operating lease right-of-use assets, net</b>	<b>\$</b>	<b>1,054</b>

Operating lease liabilities as of December 31, 2019 are as follows (in thousands):

Office leases	\$	698
Land leases		—
<b>Total current lease liabilities</b>	<b>—</b>	<b>698</b>
Non-current office leases		3
Non-current land leases		—
<b>Total lease liabilities</b>	<b>\$</b>	<b>701</b>

Operating lease expense for the year ended December 31, 2019 is as follows (in thousands):

Office leases	\$	719
Land leases		456
<b>Total operating lease expense</b>	<b>—</b>	<b>1,175</b>
Short-term lease expense		321
Land option expense		543
<b>Total land option and lease expense</b>	<b>\$</b>	<b>2,039</b>

Maturity of operating lease liabilities as of December 31, 2019 are as follows (in thousands):

2020	\$	744
2021		3
2022		—
2023		—
2024		—
Thereafter		—
<b>Total undiscounted lease payments</b>	<b>—</b>	<b>747</b>
Discount to present value		(46)
<b>Present value of lease liabilities</b>	<b>\$</b>	<b>701</b>

Other information related to our operating leases as of December 31, 2019 is as follows (in thousands):

Cash paid for amounts included in the measurement of operating lease liabilities:		
Cash flows from operating activities	\$	1,844
Noncash right-of-use assets recorded for operating lease liabilities:		
Adoption of Topic 842		1,562
In exchange for new operating lease liabilities during the period		443



**Note 7 — Other Non-Current Assets**

Other non-current assets consisted of the following (in thousands):

	December 31, 2019	December 31, 2018
Permitting costs <sup>(1)</sup>	\$ 2,621	\$ —
Enterprise resource planning system	3,181	—
Rio Grande Site Lease initial direct costs	946	—
Total other non-current assets	<u>\$ 6,748</u>	<u>\$ —</u>

(1) Permitting costs primarily represent costs incurred in connection with our permit applications to the United States Army Corps of Engineers and the U.S. Fish and Wildlife Service for wetlands and habitat mitigation measures that may be caused by the construction of the Terminal and the Pipeline.

**Note 8 — Accrued Liabilities and Other Current Liabilities**

Accrued expenses and other current liabilities consisted of the following (in thousands):

	December 31, 2019	December 31, 2018
Employee compensation expense	\$ 4,221	\$ 3,130
Terminal and Pipeline asset costs	2,503	2,014
Valve installation incentive <sup>(1)</sup>	—	2,000
Accrued legal services	1,060	313
Other accrued liabilities	967	896
Total accrued liabilities and other current liabilities	<u>\$ 8,751</u>	<u>\$ 8,353</u>

(1) In April 2018, we entered into an agreement with an intrastate pipeline company with assets near the Terminal which incentivizes the pipeline company to procure, permit and install a valve on an intrastate pipeline near the Terminal. We agreed that, upon the later of (i) March 31, 2019 and (ii) thirty days after the date on which the valve was installed, we would reimburse the pipeline company a cash amount equal to 50% of the costs incurred in connection with the valve, up to a maximum payment of \$2.0 million. Such valve was installed in 2018 and we reimbursed the pipeline company \$2.0 million in the first quarter of 2019.

## Note 9 — Preferred Stock and Common Stock Warrants

### Preferred Stock

In August 2018, we sold an aggregate of 50,000 shares of Series A Convertible Preferred Stock, par value \$0.0001 per share (the “Series A Preferred Stock”), at \$1,000 per share for an aggregate purchase price of \$50 million and we issued an additional 1,000 shares of Series A Preferred Stock in aggregate as origination fees to (i) York Capital Management Global Advisors, LLC, severally on behalf of certain funds or accounts managed by it or its affiliates (“York”), (ii) Valinor Management, L.P., severally on behalf of certain funds or accounts for which it is investment manager (“Valinor”), (iii) Bardin Hill Investment Partners LP (formerly known as Halcyon Capital Management LP), severally on behalf of certain funds or accounts managed by it or its affiliates (“Bardin Hill,” and together with York and Valinor, the “Fund Purchasers”) and (iv) HGC NEXT INV LLC (“HGC” and, together with the Fund Purchasers, the “Series A Preferred Stock Purchasers”). Warrants were issued together with the shares of Series A Preferred Stock (the “Series A Warrants”).

In connection with the issuance of Series A Preferred Stock and pursuant to backstop commitment agreements with the Fund Purchasers dated April 11, 2018, as subsequently amended on August 3, 2018 (as amended, the “Backstop Agreements”), we also issued a total of 413,658 shares of Company common stock as fees to the Fund Purchasers. Each Fund Purchaser is a Company stockholder and, pursuant to that certain Agreement and Plan of Merger, dated as of April 17, 2017, by and among the Company, each Fund Purchaser and/or one or more of its affiliates, and the other parties named therein, three individuals, two individuals, and one individual from York, Valinor, and Bardin Hill, respectively, were appointed to the Company’s board of directors.

In September 2018, we sold an aggregate of 29,055 shares of Series B Convertible Preferred Stock, par value \$0.0001 per share (the “Series B Preferred Stock” and, together with the Series A Preferred Stock, the “Convertible Preferred Stock”), at \$1,000 per share for an aggregate purchase price of \$29.055 million and we issued an additional 581 shares of Series B Preferred Stock in aggregate as origination fees to certain funds managed by BlackRock (“BlackRock”).

In May 2019, we sold an aggregate of 20,945 shares of Series B Preferred Stock, at \$1,000 per share for an aggregate purchase price of \$20.945 million and we issued an additional 418 shares of Series B Preferred Stock in aggregate as origination fees to York Tactical Energy Fund, L.P. and York Tactical Energy Fund PIV-AN, L.P. (the “York Tactical Funds” and, together with BlackRock, Bardin Hill, Valinor and HGC, the “Series B Preferred Stock Purchasers”), (ii) Bardin Hill, (iii) Valinor and (iv) HGC. Warrants were issued together with the shares of Series B Preferred Stock (the “Series B Warrants” and, together with the Series A Warrants, the “Common Stock Warrants”).

The Company has the option to convert all, but not less than all, of the Convertible Preferred Stock into shares of Company common stock at a strike price of \$7.34 per share of Company common stock (the “Conversion Price”) on any date on which the volume weighted average trading price of shares of Company common stock for each trading day during any 60 of the prior 90 trading days is equal to or greater than 175% of the Conversion Price, in each case subject to certain terms and conditions. Furthermore, the Company must convert all of the Convertible Preferred Stock into shares of Company common stock at the Conversion Price on the earlier of (i) ten (10) business days following a FID Event (as defined in the certificates of designations of the Convertible Preferred Stock) and (ii) the date that is the tenth (10th) anniversary of the closings of the issuances of the Convertible Preferred Stock, as applicable.

The shares of Convertible Preferred Stock bear dividends at a rate of 12% per annum, which are cumulative and accrue daily from the date of issuance on the \$1,000 stated value. Such dividends are payable quarterly and may be paid in cash or in-kind. During 2019, the Company paid-in-kind \$11.2 million of dividends to holders of the Convertible Preferred Stock. On January 9, 2020, the Company declared dividends to holders of the Convertible Preferred Stock as of the close of business on December 15, 2019. On January 15, 2020, the Company paid-in-kind \$3.4 million of dividends to holders of the Convertible Preferred Stock.

The holders of Convertible Preferred Stock vote on an “as-converted” basis with the holders of the Company common stock on all matters brought before the holders of Company common stock. In addition, the holders of Convertible Preferred Stock have separate class voting rights with respect to certain matters affecting their rights.

The Convertible Preferred Stock do not qualify as liability instruments under ASC 480, because they are not mandatorily redeemable. However, as SEC Regulation S-X, Rule 5-02-27 does not permit a probability assessment for a change of control provision, the Convertible Preferred Stock must be presented as mezzanine equity between liabilities and stockholders’ equity in our Consolidated Balance Sheets because a change of control event, although not considered probable, could force the Company to redeem the Convertible Preferred Stock for cash or assets of the Company. At each balance sheet date, we must re-evaluate whether the Convertible Preferred Stock continue to qualify for equity classification.

## Common Stock Warrants

The Series A Warrants issued to the Series A Preferred Stock Purchasers represent the right to acquire in the aggregate a number of shares of common stock equal to approximately 71 basis points (0.71%) of all outstanding shares of Company common stock, measured on a fully-diluted basis, on the exercise date with a strike price of \$0.01 per share. The Series B Warrants issued to the Series B Preferred Stock Purchasers represent the right to acquire in the aggregate a number of shares of common stock equal to approximately 71 basis points (0.71%) of all outstanding shares of Company common stock, measured on a fully diluted basis on the exercise date with a strike price of \$0.01 per share.

The Common Stock Warrants have a fixed three-year term commencing on the closings of the issuances of the associated Convertible Preferred Stock. The Common Stock Warrants may only be exercised by holders of the Common Stock Warrants at the expiration of such three-year term, except that the Company can force the exercise of the Common Stock Warrants prior to expiration of such term if the volume weighted average trading price of shares of Common Stock for each trading day during any 60 of the prior 90 trading days is equal to or greater than 175% of the of the applicable Convertible Preferred Stock conversion price and, with respect to the Series B Warrants, the Company simultaneously elects to force a mandatory exercise of all other warrants then outstanding and un-exercised and held by any holder of parity stock. Pursuant to ASC 815-40, the fair value of the Common Stock Warrants was recorded as a non-current liability on our Consolidated Balance Sheet on the issuance dates. The Company revalues the Common Stock Warrants at each balance sheet date and recognized a loss of \$2.7 million and a gain of \$0.2 million as of December 31, 2019 and 2018, respectively. The Common Stock Warrant liabilities are included in Level 3 of the fair value hierarchy.

The assumptions used in the Monte Carlo simulation to estimate the fair value of the Common Stock Warrants as of December 31, 2019 are as follows:

	December 31, 2019		December 31, 2018	
Stock price	\$	6.14	\$	5.40
Exercise price	\$	0.01	\$	0.01
Risk-free rate		1.6%		2.5%
Volatility		27.6%		33.1%
Term (years)		1.8		2.7

## Initial Fair Value Allocation

Net proceeds in 2019 were allocated on a fair value basis to the Series B Warrants and on a relative fair value basis to the Series B Preferred Stock. The allocation of net cash proceeds from the sale of Series B Preferred Stock in 2019 is as follows (in thousands):

		Year Ended December 31, 2019	
		Series B Warrants	Series B Convertible Preferred
Gross proceeds	\$	20,945	
Equity issuance costs		—	
Net proceeds - Initial Fair Value Allocation	\$	20,945	\$ 1,936
Per balance sheet upon issuance			\$ 1,936

Net cash proceeds in 2018 were allocated on a fair value basis to the Series A Warrants and the Series B Warrants and on a relative fair value basis to the Company common stock, the Series A Preferred Stock and the Series B Preferred Stock. As described below, \$2.5 million of the \$41.1 million allocated to the Series A Preferred Stock was allocated to additional paid-in capital to give effect to the intrinsic value of a beneficial conversion feature ("BCF"). The allocation of net cash proceeds from the sale of Series A Preferred Stock and Series B Preferred Stock in 2018 is as follows (in thousands):

		Year Ended December 31, 2018					
		Series A Warrants	Series B Warrants	Series A Convertible Preferred	Series B Convertible Preferred	Additional Paid-in Capital	
						Common Stock	Beneficial Conversion Feature
Gross proceeds	\$	79,055					
Equity issuance costs		(2,104)					
Net proceeds - Initial Fair Value Allocation	\$	76,951	\$ 4,859	\$ 2,746	\$ 41,079	\$ 26,159	\$ 2,108
Allocation to BCF		—	—	(2,530)	—	—	2,530
Per balance sheet upon issuance	\$	4,859	\$ 2,746	\$ 38,549	\$ 26,159	\$ 2,108	\$ 2,530

## Beneficial Conversion Feature

ASC 470-20-20 – *Debt – Debt with conversion and Other Options* ("ASC 470-20") defines a BCF as a nondetachable conversion feature that is in the money at the issuance date. The Company was required by ASC 470-20 to allocate a portion of the proceeds from the Series A Preferred Stock equal to the intrinsic value of the BCF to additional paid-in capital. The intrinsic value of the BCF is calculated at the issuance date as the difference between the "accounting conversion price" and the market price of shares of Company common stock multiplied by the number of shares of Company common stock into which the Series A Preferred Stock is convertible. The accounting conversion prices of \$5.58 per share and \$6.24 per share for the Fund Purchasers and HGC, respectively, is different than the initial conversion price of \$7.50 per share. The "accounting conversion price" is derived by dividing the proceeds allocated to the Series A Preferred Stock by the number of shares of Company common stock into which the Series A Preferred Stock is convertible. We are recording the accretion of the \$2.5 million Series A Preferred Stock discount attributable to the BCF as a deemed dividend using the effective yield method over the period prior to the expected conversion date.

**Note 10 — Net Loss Per Share Attributable to Common Stockholders**

The following table (in thousands, except for loss per share) reconciles basic and diluted weighted average common shares outstanding for the years ended December 31, 2019 and 2018:

	<b>Year Ended December 31,</b>	
	<b>2019</b>	<b>2018</b>
Weighted average common shares outstanding:		
Basic	109,057	106,564
Dilutive unvested stock, convertible preferred stock, Common Stock Warrants and IPO Warrants	—	—
Diluted	109,057	106,564
Basic and diluted net loss per share attributable to common stockholders	\$ (0.45)	\$ (0.41)

Potentially dilutive securities that were not included in the diluted net loss per share computations because their effect would have been anti-dilutive were as follows (in thousands):

	<b>Year Ended December 31,</b>	
	<b>2019</b>	<b>2018</b>
Unvested stock (1)	861	498
Convertible preferred stock	13,697	3,552
Common Stock Warrants	1,662	454
IPO Warrants(2)	12,082	12,082
Total potentially dilutive common shares	28,302	16,586

(1) Does not include 3.6 million shares and 10.8 million shares of unvested stock for the year ended December 31, 2019 and 2018 because the performance conditions had not yet been satisfied as of December 31, 2019 and 2018, respectively.

(2) The IPO Warrants are exercisable at a price of \$11.50 per share and expire July 24, 2022. The Company may redeem the Warrants at a price of \$0.01 per IPO Warrant upon 30 days' notice only if the last sale price of our common stock is at least \$17.50 per share for any 20 trading days within a 30-trading day period. If the Company redeems the IPO Warrants in this manner, the Company will have the option to do so on a cashless basis with the issuance of an economically equivalent number of shares of Company common stock.

**Note 11 — Share-based Compensation**

We have granted shares of Company common stock and restricted stock to employees, consultants and non-employee directors under our 2017 Omnibus Incentive Plan (the “2017 Plan”) and in connection with the special meeting of stockholders on July 24, 2017.

Total share-based compensation consisted of the following (in thousands):

	Year Ended December 31,	
	2019	2018
Share-based compensation:		
Equity awards	\$ (8,525)	\$ 19,032
Liability awards	—	(2,400)
Total share-based compensation	(8,525)	16,632
Capitalized share-based compensation	(1,121)	208
Total share-based compensation expense	<u>\$ (9,646)</u>	<u>\$ 16,840</u>

On January 1, 2019, we adopted Accounting Standards Update (“ASU”) 2018-07, Compensation-Stock Compensation (“ASU 2018-07”). This standard simplifies aspects of share-based compensation issued to non-employees by making the guidance consistent with accounting for employee share-based compensation. Upon adoption of this standard, we reclassified \$2.1 million from Share-based compensation liability to Additional paid-in-capital in our Consolidated Balance Sheets.

Certain employee contracts provided for cash bonuses upon a positive FID in the Terminal (the “FID Bonus”). In January 2018, the Compensation Committee (formerly the Nominating, Corporate Governance and Compensation Committee) of the board of directors approved, and certain employees party to such contracts accepted, an amendment to such contracts whereby the FID Bonuses would be settled in shares of Company common stock equal to 110% of the FID Bonus. The associated liability for FID Bonuses to be settled in shares of Company common stock of \$0.2 million and \$0.4 million is included in share-based compensation liability in our Consolidated Balance Sheets at December 31, 2019 and 2018 respectively.

The total unrecognized compensation costs at December 31, 2019 relating to equity-classified awards were \$7.3 million, which is expected to be recognized over a weighted average period of 0.9 years.

Restricted stock awards are awards of Company common stock that are subject to restrictions on transfer and to a risk of forfeiture if the recipient’s employment with the Company is terminated prior to the lapse of the restrictions. Restricted stock awards vest based on service conditions and/or performance conditions. The amortization of the value of restricted stock grants is accounted for as a charge to compensation expense, or capitalized, depending on the nature of the services provided by the employee, with a corresponding increase to additional-paid-in-capital over the requisite service period.

Grants of restricted stock to employees, non-employees and non-employee directors that vest based on service and/or performance conditions are measured at the closing quoted market price of our common stock on the grant date.

The table below provides a summary of our restricted stock outstanding as of December 31, 2019 and changes during the year ended December 31, 2019 (in thousands, except for per share information):

	Shares	Weighted Average Grant Date Fair Value Per Share	
		Shares	Share
Non-vested at January 1, 2019	7,131	\$	9.44
Granted	1,878		5.72
Vested	(510)		7.70
Forfeited	(3,727)		9.67
Non-vested at December 31, 2019	<u>4,772</u>	<u>\$</u>	<u>7.95</u>

**Note 12 — Income Taxes**

The reconciliation of the federal statutory income tax rate to our effective income tax rate is as follows:

	Year Ended December 31,	
	2019	2018
U.S. federal statutory rate, beginning of year	21%	21%
Officers' compensation	7	(5)
Other	(2)	(1)
Valuation allowance	(26)	(15)
Effective tax rate as reported	<u>—%</u>	<u>—%</u>

Significant components of our deferred tax assets and liabilities at December 31, 2019 and 2018 are as follows (in thousands):

	Year Ended December 31,	
	2019	2018
<b>Deferred tax assets</b>		
Net operating loss carryforwards and credits	\$ 15,064	\$ 5,302
Share-based compensation expense	3,441	3,548
Property, plant and equipment	1,025	1,399
Common stock warrant liabilities	524	—
Operating lease liabilities	147	—
Other	21	51
Less: valuation allowance	(19,802)	(10,300)
Total deferred tax assets	<u>420</u>	<u>—</u>
<b>Deferred tax liabilities</b>		
Operating lease right-of-use assets	(420)	—
Total deferred tax liabilities	<u>(420)</u>	<u>—</u>
Net deferred tax assets (liabilities)	<u>\$ —</u>	<u>\$ —</u>

The federal deferred tax assets presented above do not include the state tax benefits as our net deferred state tax assets are offset with a full valuation allowance.

At December 31, 2019, we had federal net operating loss (“NOL”) carryforwards of approximately \$71.7 million. Approximately \$7.9 million of these NOL carryforwards will expire between 2034 and 2037.

Due to our history of NOLs, current year NOLs and significant risk factors related to our ability to generate taxable income, we have established a valuation allowance to offset our deferred tax assets as of December 31, 2019 and 2018. We will continue to evaluate our ability to release the valuation allowance in the future. Due to our full valuation allowance, we have not recorded a provision for federal or state income taxes during the years ended December 31, 2019 or 2018. Deferred tax assets and deferred tax liabilities are classified as non-current in our Consolidated Balance Sheets.

The Tax Reform Act of 1986 (as amended) contains provisions that limit the utilization of NOL and tax credit carryforwards if there has been a change in ownership as described in Section 382 of the Internal Revenue Code (“Section 382”). Substantial changes in the Company’s ownership have occurred that may limit or reduce the amount of NOL carryforwards that the Company could utilize in the future to offset taxable income. The Company has not completed a detailed Section 382 study at this time to determine what impact, if any, that ownership changes may have had on its NOL carryforwards. In each period since its inception, the Company has recorded a valuation allowance for the full amount of its deferred tax assets, as the realization of the deferred tax asset is uncertain. As a result, the Company has not recognized any federal or state income tax benefit in its Consolidated Statement of Operations.

We remain subject to periodic audits and reviews by taxing authorities; however, we did not have any open income tax audits as of December 31, 2019. The federal tax returns for the years beginning 2015 remain open for examination.

**Note 13 — Commitments and Contingencies**

**Other Commitments**

During the third quarter of 2019, we entered into agreements with third parties for wetland and habitat mitigation measures. In connection with the wetland and habitat mitigation measures, we are committed to spend approximately \$5.5 million in 2020.

**Legal Proceedings**

From time to time the Company may be subject to various claims and legal actions that arise in the ordinary course of business. We regularly analyze current information and, as necessary, provide accruals for liabilities we deem probable and estimable.

As of December 31, 2019, management was not aware of any claims or legal actions that, separately or in the aggregate, are likely to have a material adverse effect on the Company's financial position, results of operations or cash flows, although the Company cannot guarantee that a material adverse event will not occur.

**Note 14 — Recent Accounting Pronouncements**

The following table provides a brief description of recent accounting standards that were adopted by the Company during the reporting period:

<b>Standard</b>	<b>Description</b>	<b>Date of Adoption</b>	<b>Effect on our Consolidated Financial Statements or Other Significant Matters</b>
ASU 2016-02, <i>Leases</i> (Topic 842)	This standard requires a lessee to recognize leases on its balance sheet by recording a lease liability representing the obligation to make future lease payments and a right-of-use asset representing the right to use the underlying asset for the lease term. A lessee is permitted to make an election not to recognize lease assets and liabilities for leases with a term of 12 months or less. The standard also modifies the definition of a lease and requires expanded disclosures. This standard may be early adopted, and must be adopted using a modified retrospective approach with certain available practical expedients.	January 1, 2019	We have adopted this accounting standard using a prospective transition approach, which applies the provisions of the new guidance at the effective date without adjusting the comparative periods presented. Upon adoption of this standard, we recognized operating lease right-of use assets of \$1.6 million and operating lease liabilities of \$1.9 million. See <a href="#">Note 6 - Leases</a> of our Notes to Consolidated Financial Statements for additional details.
ASU 2018-07, <i>Compensation-Stock Compensation</i> (Topic 718)	This standard simplifies aspects of share-based compensation issued to non-employees by making the guidance consistent with accounting for employee share-based compensation. The amendments specify that Topic 718 applies to all share-based payment transactions in which a grantor acquires goods or services to be used or consumed in a grantor's own operations by issuing share-based payment awards. This standard may be early adopted, and must be adopted using a modified retrospective approach.	January 1, 2019	Upon adoption of this standard, we reclassified \$2.1 million from Share-based compensation liability to Additional paid-in-capital in our Consolidated Balance Sheets. The fair value of share based compensation awards to non-employees will not be remeasured subsequent to December 31, 2018.
ASU 2018-15, <i>Intangibles, Goodwill and Other Internal Use Software</i> (Subtopic 350-40)	The amendments in this update align the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software (and hosting arrangements that include an internal-use software license). The accounting for the service element of a hosting arrangement that is a service contract is not affected by the amendments in this update. Accordingly, the amendments in this update require an entity (customer) in a hosting arrangement that is a service contract to follow the guidance in Subtopic 350-40 to determine which implementation costs to capitalize as an asset related to the service contract and which costs to expense. These amendments may be early adopted and are required to be applied retrospectively or prospectively to all implementation costs incurred after the date of adoption.	July 1, 2019	Upon adoption of this standard, we capitalized approximately \$1.9 million of implementation costs incurred for our Enterprise Resource Planning system. The capitalized costs will be amortized over the hosting period.



**Note 15 — Subsequent Events**

On February 13, 2020, NextDecade LLC entered into an Omnibus Agreement (the “Omnibus Agreement”) with Spectra Energy Transmission II, LLC, a wholly owned subsidiary of Enbridge Inc. (“Buyer”), pursuant to which NextDecade LLC agreed to sell, and Buyer agreed to purchase, one hundred percent of the equity interests (the “Equity Interests”) in Rio Bravo. The purchase price for the Equity Interests (the “Purchase Price”) will be the sum of (i) approximately \$17.4 million plus (ii) the amount of direct and indirect costs incurred by Rio Bravo, the Company or any of its other affiliates in respect of the Pipeline from October 1, 2019 through closing of the sale of the Equity Interests (the “Closing”), provided, however, that the Purchase Price may not exceed \$25 million. At the Closing, Buyer will pay NextDecade LLC \$15 million of the Purchase Price. The carrying value of such Equity Interests was \$12.6 million at December 31, 2019. The remainder of the Purchase Price is to be paid within five business days after the date that Rio Grande has received, after a final positive investment decision, the initial funding for the development, construction and operation of the Terminal. Additionally, the Omnibus Agreement provides that at the Closing, Rio Bravo and an indirect wholly owned subsidiary of the Company, will enter into a precedent agreement in a form negotiated by Buyer and NextDecade LLC pursuant to which the Company will retain its rights to the natural gas firm transportation capacity on the Pipeline for a term of at least twenty years and Rio Bravo will provide firm pipeline transportation service to the Company in order to supply natural gas to the Terminal.

On March 2, 2020, the Closing occurred and NextDecade LLC received proceeds of \$15 million and Buyer received the Equity Interests in Rio Bravo. In addition, Rio Grande LNG Gas Supply LLC (“Rio Grande Gas Supply”), an indirect wholly owned subsidiary of the Company, entered into precedent agreements with Rio Bravo and Valley Crossing Pipeline, LLC (“VCP”), pursuant to which Rio Grande Gas Supply will retain its rights to the natural gas firm transportation capacity on the Pipeline for a term of at least twenty years and Rio Bravo and VCP will provide firm pipeline transportation service to Rio Grande Gas Supply in order to supply natural gas to the Terminal. VCP and, as of the Closing, Rio Bravo are wholly owned subsidiaries of Enbridge, Inc.

As a result of the sale of the Equity Interests, our commitment with respect to wetland and habitat mitigation measures, as disclosed in [Note 13 - Commitments and Contingencies](#), is reduced from \$5.5 million to \$4.0 million.

We have evaluated subsequent events through March 3, 2020, the date the financial statements were issued. Any material subsequent events that occurred during this time have been properly recognized and/or disclosed in these financial statements.

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**NextDecade Corporation and Subsidiaries**  
**Supplemental Information to Consolidated Financial Statements**  
**Summarized Quarterly Financial Data**  
**(unaudited)**

**Summarized Quarterly Financial Data – (in thousands, except per share amounts)**

	<b>First Quarter</b>	<b>Second Quarter</b>	<b>Third Quarter</b>	<b>Fourth Quarter</b>
<b>Year ended December 31, 2019:</b>				
Revenues	\$ —	\$ —	\$ —	\$ —
Total operating loss	(12,488)	(5,582)	(4,412)	(12,519)
Net loss attributable to common stockholders	(17,566)	(7,207)	(6,362)	(17,417)
Basic and diluted loss per share <sup>(1)</sup>	(0.16)	(0.07)	(0.06)	(0.16)
<b>Year ended December 31, 2018:</b>				
Revenues	\$ —	\$ —	\$ —	\$ —
Total operating loss	(16,280)	(3,616)	(10,979)	(12,140)
Net loss attributable to common stockholders	(16,200)	(3,482)	(10,951)	(12,873)
Basic and diluted loss per share <sup>(1)</sup>	(0.15)	(0.03)	(0.10)	(0.12)

<sup>(1)</sup> The sum of the quarterly basic and diluted loss per share may not equal the full year amount as the computation of the weighted average common shares outstanding for basic and diluted shares outstanding for each quarter and the full year are performed independently.

**Item 9. Changes in and Disagreements with Accountants**

None.

**Item 9A. Controls and Procedures**

**Evaluation of Disclosure Controls and Procedures**

Disclosure controls and procedures are designed to ensure that information required to be disclosed by us in our Exchange Act reports is recorded, processed, summarized, and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of "our disclosure controls and procedures," as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of the end of the fiscal year ended December 31, 2019. Based on this evaluation, our principal executive officer and principal financial officer have concluded that, as of December 31, 2019, our disclosure controls and procedures were effective.

**Management's Report on Internal Controls Over Financial Reporting**

As management, we are responsible for establishing and maintaining adequate internal control over financial reporting for the Company. In order to evaluate the effectiveness of internal control over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act of 2002, we have conducted an assessment, including testing using the criteria in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). The Company's system of internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements and, even when determined to be effective, can only provide reasonable assurance with respect to financial statement preparation and presentation.

Based on our assessment, we have concluded that the Company maintained effective internal control over financial reporting as of December 31, 2019, based on criteria in *Internal Control—Integrated Framework (2013)* issued by the COSO.

The JOBS Act permits an emerging growth company such as us to take advantage of specified reduced reporting and other requirements that are otherwise generally applicable to public companies. Among these provisions is an exemption from the auditor attestation requirement under Section 404 of the Sarbanes-Oxley Act of 2002 in the assessment of the emerging growth company's internal control over financial reporting. We have elected to rely on this exemption and are not providing such an attestation from our auditors.

**Changes in Internal Control over Financial Reporting**

During the most recent fiscal quarter, there were no changes in internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Item 9B. Other Information**

None.

**Part III**

Pursuant to paragraph 3 of General Instruction G to Form 10-K, the information required by Items 10 through 14 of Part III of this Report is incorporated by reference from NextDecade's definitive proxy statement, which is to be filed pursuant to Regulation 14A of the Exchange Act within 120 days after the end of NextDecade's fiscal year ended December 31, 2019.

**Part IV****Item 15. Exhibits and Financial Statement Schedules**

## (a) Financial Statements, Schedules and Exhibits

## (1) Financial Statements – NextDecade Corporation and Subsidiaries:

<a href="#">Report of Independent Registered Public Accounting Firm</a>	29
<a href="#">Consolidated Balance Sheets</a>	30
<a href="#">Consolidated Statements of Operations</a>	31
<a href="#">Consolidated Statements of Stockholders' Equity</a>	32
<a href="#">Consolidated Statements of Cash Flows</a>	33
<a href="#">Notes to Consolidated Financial Statements</a>	34
<a href="#">Supplemental Information to Consolidated Financial Statements – Summarized Quarterly Financial Data</a>	48

## (2) Financial Statement Schedules:

All schedules are omitted because they are not applicable or the required information is shown in the financial statements or the notes thereto.

## (3) Exhibits:

<b>Exhibit No.</b>	<b>Description</b>
3.1(1)	<a href="#">Second Amended and Restated Certificate of Incorporation of NextDecade Corporation, dated July 24, 2017</a>
3.2(2)	<a href="#">Amended and Restated Bylaws of NextDecade Corporation, dated July 24, 2017</a>
3.3(3)	<a href="#">Certificate of Designations of Series A Convertible Preferred Stock, dated August 9, 2018</a>
3.4(4)	<a href="#">Certificate of Designations of Series B Convertible Preferred Stock, dated September 28, 2018</a>
3.5(5)	<a href="#">Certificate of Amendment to Certificate of Designations of Series A Convertible Preferred Stock, dated July 12, 2019</a>
3.6(6)	<a href="#">Certificate of Amendment to Certificate of Designations of Series B Convertible Preferred Stock, dated July 12, 2019</a>
3.7(7)	<a href="#">Certificate of Increase to Certificate of Designations of Series A Convertible Preferred Stock of NextDecade Corporation, dated July 15, 2019</a>
3.8(8)	<a href="#">Certificate of Increase to Certificate of Designations of Series A Convertible Preferred Stock of NextDecade Corporation, dated July 15, 2019</a>
4.1*	<a href="#">Specimen Common Share Certificate</a>
4.2(9)	<a href="#">Specimen IPO Warrant Certificate</a>
4.3(10)	<a href="#">Form of Warrant Agreement between Harmony Merger Corp. and Continental Stock Transfer &amp; Trust Company</a>
4.4(11)	<a href="#">Form of Warrant Agreement for the Series A Warrants</a>
4.5(12)	<a href="#">Form of Warrant Agreement for the Series B Warrants</a>
4.6*	<a href="#">Description of Common Stock of NextDecade Corporation Registered Pursuant to Section 12 of the Securities Exchange Act of 1934</a>

10.1(13)†	<a href="#">Employment Agreement, dated September 8, 2017, between NextDecade Corporation and Matthew K. Schatzman</a>
10.2(14)†	<a href="#">NextDecade Corporation 2017 Omnibus Incentive Plan</a>
10.3(15)†	<a href="#">Form of Restricted Stock Award Agreement for Non-Executive Employees and Contractors</a>
10.4(16)	<a href="#">Form of Registration Rights Agreement</a>
10.5(17)	<a href="#">Purchaser Rights Agreement by and between NextDecade Corporation and HGC NEXT INV LLC</a>
10.6(18)	<a href="#">Form of Registration Rights Agreement</a>
10.7(19)	<a href="#">Form of Purchaser Rights Agreement</a>
10.8(20)	<a href="#">Amendment No. 1 to Registration Rights Agreement, effective as of December 7, 2018, by and between NextDecade Corporation and York Capital Management Global Advisors, LLC, severally on behalf of certain funds or advised by it or its affiliates</a>
10.9(21)	<a href="#">Amendment No. 1 to Registration Rights Agreement, effective as of December 7, 2018, by and between NextDecade Corporation and Valinor Management L.P., severally on behalf of certain funds or accounts for which it is investment manager</a>
10.10(22)	<a href="#">Amendment No. 1 to Registration Rights Agreement, effective as of December 7, 2018, by and between NextDecade Corporation and Bardin Hill Investment Partners LP (formerly Halcyon Capital Management LP), on behalf of the accounts it manages</a>
10.11(23)	<a href="#">Amendment No. 1 to Employment Agreement, effective January 1, 2019, by and between NextDecade Corporation and Matthew K. Schatzman</a>
10.12(24)+	<a href="#">Lease Agreement, made and entered into March 6, 2019, by and between Brownsville Navigation District of Cameron County, Texas and Rio Grande LNG, LLC</a>
10.13(25)	<a href="#">Series B Convertible Preferred Stock Purchase Agreement, dated as of May 17, 2019, entered into by and between NextDecade Corporation and York Tactical Energy Fund, L.P.</a>
10.14(26)	<a href="#">Series B Convertible Preferred Stock Purchase Agreement, dated as of May 17, 2019, entered into by and between NextDecade Corporation and the Valinor Funds</a>
10.15(27)	<a href="#">Series B Convertible Preferred Stock Purchase Agreement, dated as of May 17, 2019, entered into by and between NextDecade Corporation and the Bardin Hill Funds</a>
10.16(28)	<a href="#">Series B Convertible Preferred Stock Purchase Agreement, dated as of May 17, 2019, entered into by and between NextDecade Corporation and HGC NEXT INV LLC</a>
10.17(29)	<a href="#">Form of Registration Rights Agreement</a>
10.18(30)	<a href="#">Form of Purchaser Rights Agreement</a>
10.19(31)+	<a href="#">Fixed Price Turnkey Agreement for the Engineering, Procurement and Construction of Trains 1 and 2 of the Rio Grande Natural Gas Liquefaction Facility by and between Rio Grande LNG, LLC as Owner and Bechtel Oil, Gas and Chemicals, Inc. as Contractor, dated as of May 24, 2019</a>
10.20(32)+	<a href="#">Fixed Price Turnkey Agreement for the Engineering, Procurement and Construction of Train 3 of the Rio Grande Natural Gas Liquefaction Facility by and between Rio Grande LNG, LLC as Owner and Bechtel Oil, Gas and Chemicals, Inc. as Contractor, dated as of May 24, 2019</a>
10.21(33)†	<a href="#">Form of Non-Affiliate Director Restricted Stock Award Agreement</a>
10.22*+	<a href="#">Common Stock Purchase Agreement, dated October 24, 2019, by and between NextDecade Corporation and Ninteenth Investment Company</a>
10.23*	<a href="#">Purchaser Rights Agreement, dated October 28, 2019, by and between NextDecade Corporation and Ninteenth Investment Company</a>
10.24*	<a href="#">Registration Rights Agreement, dated October 28, 2019, by and between NextDecade Corporation and Ninteenth Investment Company</a>
10.25*	<a href="#">Lock-Up Agreement, dated October 28, 2019, by and between NextDecade Corporation and Ninteenth Investment Company</a>
10.26*	<a href="#">Director Compensation Policy</a>

21.1*	<a href="#">Subsidiaries of the Company</a>
23.1*	<a href="#">Consent of Grant Thornton LLP</a>
31.1*	<a href="#">Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
31.2*	<a href="#">Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
32.1**	<a href="#">Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
32.2**	<a href="#">Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
101.INS*	XBRL Instance Document.
101.SCH*	XBRL Taxonomy Extension Schema Document.
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document.
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document.
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document.

- (1) Incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K, filed July 28, 2017.
- (2) Incorporated by reference to Exhibit 3.2 of the Company's Current Report on Form 8-K, filed July 28, 2017.
- (3) Incorporated by reference to Exhibit 4.3 of the Company's Registration Statement on Form S-3, filed December 20, 2018.
- (4) Incorporated by reference to Exhibit 3.4 of the Company's Quarterly Report on Form 10-Q, filed November 9, 2018.
- (5) Incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K, filed July 15, 2019.
- (6) Incorporated by reference to Exhibit 3.2 of the Company's Current Report on Form 8-K, filed July 15, 2019.
- (7) Incorporated by reference to Exhibit 3.7 of the Company's Quarterly Report on Form 10-Q, filed August 6, 2019.
- (8) Incorporated by reference to Exhibit 3.7 of the Company's Quarterly Report on Form 10-Q, filed August 6, 2019.
- (9) Incorporated by reference to Exhibit 4.3 of the Amendment No. 7 to the Company's Registration Statement on Form S-1, filed March 13, 2015.
- (10) Incorporated by reference to Exhibit 4.4 of the Amendment No. 7 to the Company's Registration Statement on Form S-1, filed March 13, 2015.
- (11) Incorporated by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K, filed August 7, 2018.
- (12) Incorporated by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K, filed August 24, 2018
- (13) Incorporated by reference to Exhibit 10.1 of the Company's Form 8-K, filed September 11, 2017.
- (14) Incorporated by reference to Exhibit 10.1 of the Company's Registration Statement on Form S-8, filed December 15, 2017.
- (15) Incorporated by reference to Exhibit 10.2 of the Company's Form 8-K, filed December 20, 2017.
- (16) Incorporated by reference to Exhibit 10.5 of the Company's Form 8-K, filed August 7, 2018.
- (17) Incorporated by reference to Exhibit 10.6 of the Company's Form 8-K, filed August 7, 2018.
- (18) Incorporated by reference to Exhibit 10.2 of the Company's Form 8-K, filed August 24, 2018.
- (19) Incorporated by reference to Exhibit 10.3 of the Company's Form 8-K, filed August 24, 2018.
- (20) Incorporated by reference to Exhibit 10.28 of the Company's Annual Report on Form 10-K, filed March 6, 2019.
- (21) Incorporated by reference to Exhibit 10.29 of the Company's Annual Report on Form 10-K, filed March 6, 2019.
- (22) Incorporated by reference to Exhibit 10.30 of the Company's Annual Report on Form 10-K, filed March 6, 2019.
- (23) Incorporated by reference to Exhibit 10.31 of the Company's Annual Report on Form 10-K, filed March 6, 2019.
- (24) Incorporated by reference to Exhibit 10.1 of the Company's Quarterly Report on Form 10-Q, filed May 7, 2019.
- (25) Incorporated by reference to Exhibit 10.1 of the Company's Form 8-K, filed May 20, 2019.
- (26) Incorporated by reference to Exhibit 10.2 of the Company's Form 8-K, filed May 20, 2019.
- (27) Incorporated by reference to Exhibit 10.3 of the Company's Form 8-K, filed May 20, 2019.
- (28) Incorporated by reference to Exhibit 10.4 of the Company's Form 8-K, filed May 20, 2019.
- (29) Incorporated by reference to Exhibit 10.5 of the Company's Form 8-K, filed May 20, 2019.
- (30) Incorporated by reference to Exhibit 10.6 of the Company's Form 8-K, filed May 20, 2019.
- (31) Incorporated by reference to Exhibit 10.7 of the Company's Quarterly Report on Form 10-Q, filed August 6, 2019.
- (32) Incorporated by reference to Exhibit 10.8 of the Company's Quarterly Report on Form 10-Q, filed August 6, 2019.
- (33) Incorporated by reference to Exhibit 10.2 of the Company's Quarterly Report on Form 10-Q, filed November 5, 2019.

- \* Filed herewith.
- \*\* Furnished herewith.
- † Indicates management contract or compensatory plan.
- + Certain portions of this exhibit have been omitted.

**Item 16. Form 10-K Summary**

None.





NUMBER  
NEXT

SHARES



INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

SEE REVERSE FOR CERTAIN DEFINITIONS

COMMON STOCK

CUSIP 65342K 10 5

This Certifies That:  
  
IS THE OWNER OF

FULLY PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK OF \$0.0001 PAR VALUE EACH OF

**NEXTDECADE CORPORATION**

transferable on the books of the Corporation in person or by attorney upon surrender of this certificate duly endorsed or assigned. This certificate and the shares represented hereby are subject to the laws of the State of Delaware, and to the Second Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws of the Corporation, as now or hereafter amended. This certificate is not valid until countersigned by the Transfer Agent.

WITNESS the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.

Dated:



COUNTERSIGNED:  
CONTINENTAL STOCK TRANSFER & TRUST COMPANY  
NEW YORK, NY  
TRANSFER AGENT

BY:

*[Signature]*  
GENERAL COUNSEL & SECRETARY

*[Signature]*  
CHIEF EXECUTIVE OFFICER

AUTHORIZED OFFICER

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common	UNIF GIFT MIN ACT - ..... Custodian.....
TEN ENT - as tenants by the entireties	(Cust) (Minor)
JT TEN - as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts to Minors Act ..... (State)

Additional abbreviations may also be used though not in the above list.

For Value Received, \_\_\_\_\_ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

[Empty box for Social Security or other identifying number]

(PLEASE PRINT OR TYPE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Shares  
of the stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

\_\_\_\_\_ Attorney  
to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated \_\_\_\_\_

**NOTICE:** THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

Signature(s) Guaranteed

By \_\_\_\_\_  
The Signature(s) must be guaranteed by an eligible guarantor institution (Banks, Stockbrokers, Savings and Loan Associations and Credit Unions with membership in an approved Signature Guarantee Medallion Program), pursuant to SEC Rule 17Ad-15.

THE CORPORATION WILL FURNISH TO ANY STOCKHOLDER, UPON REQUEST AND WITHOUT CHARGE, A FULL STATEMENT OF THE DESIGNATIONS, RELATIVE RIGHTS, PREFERENCES AND LIMITATIONS OF THE SHARES OF EACH CLASS AND SERIES AUTHORIZED TO BE ISSUED, SO FAR AS THE SAME HAVE BEEN DETERMINED, AND OF THE AUTHORITY, IF ANY, OF THE BOARD TO DIVIDE THE SHARES INTO CLASSES OR SERIES AND TO DETERMINE AND CHANGE THE RELATIVE RIGHTS, PREFERENCES AND LIMITATIONS OF ANY CLASS OR SERIES. SUCH REQUEST MAY BE MADE TO THE SECRETARY OF THE CORPORATION OR TO THE TRANSFER AGENT NAMED ON THIS CERTIFICATE.

DESCRIPTION OF COMMON STOCK OF NEXTDECADE CORPORATION  
REGISTERED PURSUANT TO SECTION 12  
OF THE SECURITIES EXCHANGE ACT OF 1934

The following information is a summary of information concerning the common stock, par value \$0.0001 per share (the "Common Stock"), of NextDecade Corporation (the "Company") and does not purport to be complete. It is subject to and qualified in its entirety by reference to the Company's Second Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") and Amended and Restated Bylaws (the "Bylaws"), each of which are incorporated by reference as an exhibit to the Annual Report on Form 10-K of which this Exhibit 4.6 is a part (the "Form 10-K").

**Common Stock***Authorized and Outstanding Shares of Common Stock*

The Certificate of Incorporation authorizes the issuance of 480,000,000 shares of Common Stock.

*Voting Power*

Except as otherwise required by law or as otherwise provided in the certificate of designations for the Company's series of preferred stock, the holders of Common Stock possess all voting power for the election of Company directors and all other matters requiring stockholder action and will at all times vote together as one class on all matters submitted to a vote of the Company's stockholders. Holders of shares of Common Stock are entitled to one vote per share on matters to be voted on by stockholders.

*Dividends*

Subject to the prior rights of all classes or series of stock at the time outstanding having prior rights as to dividends or other distributions, the holders of Common Stock are entitled to receive such dividends and other distributions, if any, as may be declared from time to time by the Company's board of directors in its discretion out of funds legally available therefor and shall share equally on a per share basis in such dividends and distributions.

*Liquidation, Dissolution and Winding Up*

In the event of the voluntary or involuntary liquidation, dissolution, or winding-up of the Company, the holders of Common Stock are entitled to receive their ratable and proportionate share of the remaining assets of the Company, after the rights of the holders of the preferred stock have been satisfied.

*Election of Directors*

The Company's board of directors is currently divided into three classes, Class A, Class B and Class C, with only one class of directors being elected in each year and each class serving a three-year term. There is no cumulative voting with respect to the election of directors.

**Dividends**

The Company has not paid any cash dividends on shares of Common Stock to date. The payment of cash dividends in the future will be dependent upon the Company's revenues and earnings, if any, capital requirements, and general financial condition. The payment of any dividends will be within the discretion of the Company's board of directors.

## **Certain Anti-Takeover Provisions of Delaware Law**

### *Staggered Board of Directors*

The Certificate of Incorporation provides that the Company's board of directors will be classified into three classes of directors of approximately equal size. As a result, in most circumstances, a person can gain control of the Company's board of directors only by successfully engaging in a proxy contest at two or more annual meetings.

### *Special Meeting of Stockholders; Action by Written Consent*

The Bylaws provide that special meetings of the Company's stockholders may be called only by a majority vote of the Company's board of directors. Additionally, the Certificate of Incorporation and Bylaws provide that stockholder action can be taken only at an annual or special meeting of stockholders and cannot be taken by written consent in lieu of a meeting.

### *Advance Notice Requirements for Stockholder Proposals and Director Nominations*

The Bylaws provide that stockholders seeking to bring business before an annual meeting of stockholders or to nominate candidates for election as directors at an annual meeting of stockholders must provide timely notice of their intent in writing. To be timely, a stockholder's notice must be delivered to or mailed and received at the Company's principal executive offices not less than 60 days nor more than 90 days prior to the meeting. In the event that less than 70 days' notice or prior public disclosure of the date of the annual meeting of stockholders is given or made to stockholders, a stockholder's notice shall be timely if received at the Company's principal executive offices no later than the close of business on the 10th day following the day on which such notice of the date of the annual meeting was mailed or such public was made, whichever first occurs. The Bylaws also specify certain requirements as to the form and content of a stockholders meeting. These provisions may preclude Company stockholders from bringing matters before an annual meeting of stockholders or from making nominations for directors at an annual meeting of stockholders.

### *Authorized but Unissued Shares*

The Company's authorized but unissued shares of Common Stock and preferred stock are available for future issuances without stockholder approval, subject to any limitations imposed by the Nasdaq Listing Rules. Such additional shares could be utilized for a variety of corporate purposes, including future offerings to raise additional capital, acquisitions and employee benefit plans. The existence of authorized but unissued and unreserved shares of Common Stock and preferred stock could render more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger or otherwise.

### *Exclusive Forum Selection*

The Certificate of Incorporation requires, to the fullest extent permitted by law, that derivative actions brought in Company's name, actions against directors, officers and employees for breach of fiduciary duty and other certain actions be brought only in the Court of Chancery in the State of Delaware. Although Company believes this provision benefits it by providing increased consistency in the application of Delaware law in the types of lawsuits to which it applies, the provision may have the effect of discouraging lawsuits against Company's directors and officers. However, the exclusive forum provision in the Certificate of Incorporation does not apply to suits brought to enforce any duty or liability created by the Securities Exchange Act of 1934, as amended, or the Securities Act of 1933, as amended, or any claim with respect to which the federal courts have exclusive jurisdiction.

### **Transfer Agent and Registrar**

The transfer agent and registrar for the Common Stock is Continental Stock Transfer & Trust Company, One State Street Plaza, 30th Floor, New York, NY 10004-1561.

### **Securities Exchange**

The Common Stock is traded on the Nasdaq Capital Market under the symbol "NEXT."



CERTAIN INFORMATION OF THIS DOCUMENT HAS BEEN REDACTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM IF PUBLICLY DISCLOSED. INFORMATION THAT WAS OMITTED HAS BEEN NOTED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK “[\*\*\*].”

### COMMON STOCK PURCHASE AGREEMENT

This COMMON STOCK PURCHASE AGREEMENT (this “Agreement”), dated as of October 24, 2019, is entered into by and between NextDecade Corporation, a Delaware corporation (“NextDecade” or the “Company”), and Ninteenth Investment Company LLC, a limited liability company organized under the laws of the United Arab Emirates (the “Purchaser”). NextDecade and the Purchaser are referred to herein individually as a “Party,” and collectively as the “Parties.”

#### RECITALS:

WHEREAS, the Purchaser has indicated its interest to the Company in participating in an offering (the “Common Stock Equity Offering”) by the Company of shares of Common Stock (as defined herein); and

WHEREAS, the Company desires to sell to the Purchaser, and the Purchaser desires to purchase from the Company, Common Stock as more fully set forth herein.

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

Section 1. **DEFINITIONS.** As used in this Agreement, the following terms shall have the following meanings:

“Addendum” has the meaning assigned to it in Section 10.9.

“Affiliate” means (i) with respect to any Person other than the Purchaser, any other Person which directly or indirectly controls or is controlled by or is under common control with such Person, and (ii) solely with respect to the Purchaser, Mubadala Investment Company PJSC and its Subsidiaries. As used in this definition, “control” (including its correlative meanings, “controlled by” and “under common control with”) shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise); provided, however, the term Affiliate shall not include (a) direct or indirect portfolio companies of the Purchaser or an Affiliate of the Purchaser or (b) any third-party investment manager with discretionary authority to trade on behalf of the Purchaser or an Affiliate of the Purchaser, so long as in each of clauses (a) and (b), such Person excepted from the definition has not been provided by such Purchaser with confidential information regarding the Company obtained in its capacity as the Purchaser (it being understood and agreed that, (i) confidential information regarding the Company will presumptively not be deemed to have been shared if such Person is restricted from accessing such information through compliance with standard practices and procedures restricting the flow of information and (ii) the disclosure of such confidential information to a director, officer or employee of the Purchaser or an Affiliate thereof does not, in and of itself, constitute disclosure to a Person described in clause (a) above of which such director, officer or employee is also a director, officer or employee).

“Agreement” has the meaning assigned to it in the preamble hereto; it includes the Exhibits and Schedules hereto.

“Assumption Agreement” has the meaning assigned to it in Section 10.9.

“Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in the City of New York.

“Brownsville Leases” means (i) that certain Lease Agreement by and between Brownsville Navigation District of Cameron County, Texas and Rio Grande LNG, LLC dated March 6, 2019 and (ii) that certain Lease Agreement by and between the Brownsville Navigation District of Cameron County, Texas and NextDecade, LLC dated March 8, 2017.

“CFIUS” means the Committee on Foreign Investment in the United States or any successor entity, and any member agency thereof acting in such capacity.

“CFIUS Clearance” means the Parties shall have received (a) a written notice issued by CFIUS stating that CFIUS has concluded that the Common Stock Equity Offering is not a “covered transaction” and not subject to review under applicable law, (b) a written notice issued by CFIUS that it has determined that there are no unresolved national security concerns with respect to the Common Stock Equity Offering, and has concluded all action under the DPA or (c) either (i) the President of the United States shall have determined not to use his powers pursuant to the DPA to unwind, suspend, condition or prohibit the consummation of the Common Stock Equity Offering or (ii) the period allotted for presidential action under the DPA shall have passed without any determination by the President.

“CFIUS Cooperation Actions” shall mean each Party to this Agreement shall promptly inform the other, unless prohibited by applicable law, of any communication from CFIUS or its member agencies regarding any of the transactions contemplated by this Agreement in connection with any CFIUS filing. In connection with and without limiting the foregoing, to the extent reasonably practicable and unless prohibited by applicable law, each Party shall (i) give each other reasonable advance notice of all meetings with CFIUS or its member agencies relating to the transaction contemplated hereby, (ii) give each other an opportunity to participate in each of such meetings, (iii) keep such other Party reasonably apprised with respect to any oral communications with CFIUS regarding the transaction contemplated hereby, (iv) cooperate in the filing of any joint CFIUS notice and any presentations related thereto, (v) provide each other with a reasonable advance opportunity to review and comment upon, and consider in good faith the views of the other with respect to, all written communications with CFIUS, except for those that may include confidential business information or involve personal identifier information and (vi) provide each other (or counsel of each Party, as appropriate) with copies of all written communications to or from CFIUS, except for those excluded above. Any such disclosures, rights to participate or provisions of information by one Party to the other may be made on a counsel-only basis to the extent required under applicable law or as appropriate to protect confidential business information.

“CFIUS Filing Actions” shall mean the Parties to this Agreement submit or cause to be submitted (i) if required, promptly after the date of this Agreement, a joint draft notice and other appropriate documents to CFIUS within the meaning of 31 C.F.R. §800.401(f) to obtain a CFIUS Clearance, (ii) as soon as possible after the joint draft notice referenced in clause (i) has been updated per CFIUS’s comments (if a draft notice was required), a formal voluntary notice of the transaction to CFIUS within the meaning of 31 C.F.R. §800.402 to obtain a CFIUS Clearance, and (iii) as soon as possible (and in any event in accordance with pertinent regulatory requirements) any other submissions that are formally requested by CFIUS to be made, or which the Parties mutually agree should be made, in each case in connection with this Agreement and the transaction contemplated hereby.

“Charter Documents” means, collectively, the certificate of incorporation, articles of incorporation, bylaws, certificate of designations or board resolutions establishing the terms of any security, certificate of formation, operating agreement, limited liability company agreement and similar formation or organizational documents of any entity.

“Closing” has the meaning assigned to it in Section 2.3.

“Closing Actions” has the meaning assigned to it in Section 2.4.

“Closing Date” has the meaning assigned to it in Section 2.3.

“Closing Shares” has the meaning assigned to it in Section 2.1.

“Code” means the Internal Revenue Code of 1986.

“Common Stock” means the common stock of the Company, \$0.0001 par value.

“Common Stock Equity Offering” has the meaning assigned to it in the Recitals hereto.

“Company” has the meaning assigned to it in the preamble hereto.

“Company Benefit Plan” means each (i) “employee benefit plan” within the meaning of Section 3(3) of ERISA, (ii) other benefit and compensation plan, contract, policy, program, practice, arrangement or agreement, including, but not limited to, pension, profit-sharing, savings, termination, executive compensation, phantom stock, change-in-control, retention, salary continuation, vacation, sick leave, disability, death benefit, insurance, hospitalization, medical, dental, life (including all individual life insurance policies as to which the Company or its Subsidiaries are the owners, the beneficiaries, or both), employee loan, educational assistance, fringe benefit, deferred compensation, retirement or post-retirement, severance, equity or equity-based, incentive and bonus plan, contract, policy, program, practice, arrangement or agreement, and (iii) other employment, consulting or other individual agreement, plan, practice, policy, contract, program, and arrangement, in each case, (x) which is sponsored or maintained by the Company or any of its ERISA Affiliates in respect of any current or former employees, directors, independent contractors, consultants or leased employees of the Company or any of its Subsidiaries or (y) with respect to which the Company or any of its Subsidiaries has any actual or potential liability.



“Control” (including the terms “control” “controlled by” and “under common control with”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs, policies or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract, credit arrangement or otherwise.

“Counsel VDR” means that certain virtual data room maintained by the Company and made available to the Purchaser’s counsel on September 19, 2019 and until the Closing Date.

“DPA” means Section 721 of the U.S. Defense Production Act of 1950, as amended, including the implementing regulations thereof, codified at 31 C.F.R. Parts 800 and 801.

“Encumbrance” means any security interest, pledge, mortgage, lien, claim, option, charge, restriction or encumbrance.

“Environmental Claim” means any claim, action, cause of action, suit, proceeding, investigation, Order, demand or notice by any Person alleging liability (including liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, attorneys’ fees, consultants’ fees, fines or penalties) arising out of, based on, resulting from or relating to (a) the presence or Release of, or exposure to, any Hazardous Materials; (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law; or (c) any other matters covered or regulated by, or for which liability is imposed under, Environmental Laws.

“Environmental Laws” means all applicable Laws relating to pollution, the protection, restoration or remediation of or prevention of harm to the environment or natural resources (including plant and animal species), or the protection of human health and safety, including Laws relating to: (i) the exposure to, or Releases or threatened Releases of, Hazardous Materials; (ii) the generation, manufacture, processing, distribution, use, treatment, containment, disposal, storage, transport or handling of Hazardous Materials; or (iii) recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any Person (whether or not incorporated) that together with the Company or any of its Subsidiaries is treated as a single employer within the meaning of Section 414 of the Code.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated thereunder, or any successor statute.

“Final Order” means a final, nonappealable Order of a court of competent jurisdiction.

“FID” means the board of directors of the Company has affirmatively voted or consented to undertake construction of the liquefied natural gas liquefaction and export facility to be located on the U.S. Gulf Coast known as the Rio Grande LNG Project and the Company has given a full notice to proceed under a fixed price, date certain engineering, procurement and construction contract with respect to the construction of such facility.

“Fundamental Representations” means (i) with respect to the Company, those representations and warranties of the Company set forth in Sections 3.1 (Organization and Qualification; Subsidiaries), 3.2 (Authorization; Enforcement; Validity), 3.3 (No Conflicts), 3.4 (Consents and Approvals), 3.5 (Capitalization) and 3.6 (Valid Issuance), and (ii) with respect to the Purchaser, those representations and warranties of the Purchaser set forth in Sections 4.1 (Organization and Qualification), 4.2 (Authorization; Enforcement; Validity), 4.3 (No Conflicts) and 4.4 (Consents and Approvals).

“Governmental Authority” means any federal, national, supranational, foreign, state, provincial, local, county, municipal or other government, any governmental, regulatory or administrative authority, agency, department, bureau, board, commission or official or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority, or any court, tribunal, judicial or arbitral body, or any Self-Regulatory Organization.

“Hazardous Materials” means: (a) any pollutants, contaminants, hazardous materials, hazardous wastes, hazardous substances, toxic wastes, solid wastes, and toxic substances as those or similar terms are defined under any Environmental Laws; (b) any asbestos or asbestos containing material; (c) polychlorinated biphenyls (“PCBs”); or PCB containing materials or fluids; (d) per- and polyfluoroalkyl substances; (e) radon; (f) any petroleum, petroleum hydrocarbons, petroleum products, crude oil and any fractions or derivatives thereof; (g) any radioactive materials, substances or wastes; and (h) any other substance, material, chemical, waste, pollutant, or contaminant that is subject to regulation or could give rise to liability under any Laws relating to pollution, waste, human health and safety, or the environment.

“Indebtedness” means with respect to any Person, without duplication: (a) any obligations for borrowed money or obligations issued or incurred in substitution or exchange for obligations for borrowed money; (b) any obligations evidenced by bonds, notes, debentures, mortgages, letters of credit or other debt instruments or securities; (c) any obligations owing as deferred purchase price of property, services, securities or other assets (including all seller notes and “earn-out” payments); (d) all obligations as lessee under any leases which are required to be capitalized in accordance with GAAP; (e) any net cash payment obligations in respect of interest rate, currency or commodity swaps, collars, caps, hedges, futures contract, forward contract, option or other derivative instruments or arrangements that will be payable upon termination thereof (assuming they were terminated on the date of determination); (f) all obligations requiring the reimbursement of any obligor under any performance bond, letter of credit or similar credit transaction; (g) all indebtedness of others secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Encumbrance on property owed or acquired by any such Person; (h) all obligations of any such Person under conditional sale or other title retention agreements relating to property or assets purchased by any such Person; (i) any accrued interest, premiums, penalties, breakages, “make whole amounts” and other obligations relating to the foregoing that would be payable in connection with the repayment of the foregoing; and (j) any obligations to guarantee any of the foregoing types of obligations on behalf of a Person.

“Indemnified Party” means the Purchaser, its Affiliates, and each of their respective directors, managers, officers, principals, partners, members, equity holders (regardless of whether such interests are held directly or indirectly), trustees, controlling persons, predecessors, successors and assigns, Subsidiaries, employees, agents, advisors, attorneys and representatives.

“Insolvency Event” means, with respect to any Person, the occurrence of any of the following:

(a) such Person shall (A) (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, Sections 101 et. seq. (the “Bankruptcy Code”) or any other federal, state or foreign bankruptcy, insolvency, liquidation or similar Law, (ii) consent to the institution of, or fail to contravene in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for such Person or for a substantial part of its property or assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing or (B) such Person shall become unable, admit in writing its inability or fail generally to pay its debts as they become due; or

(b) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (A) relief in respect of such Person or of a substantial part of the property or assets of such Person, under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar Law, (B) the appointment of a receiver, trustee, custodian, sequestrator or similar official for such Person or for a substantial part of the property of such Person or (C) the winding-up or liquidation of such Person; and such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall have been entered.

“Intellectual Property” means the following intellectual property rights, both statutory and common law rights, if applicable: (a) copyrights and registrations and applications for registration thereof, (b) trademarks, service marks, trade names, slogans, domain names, logos, trade dress, and registrations and applications for registrations thereof, (c) patents, as well as any reissued and reexamined patents and extensions thereto, and any patent applications, continuations, continuations in part and divisional applications and patents issuing therefrom, and (d) trade secrets and confidential information, including ideas, designs, concepts, compilations of information, methods, techniques, procedures, processes and other know-how, whether or not patentable.

“JVN” has the meaning assigned to it in Section 5.7.

“Knowledge” means with respect to the Company, the actual knowledge after due inquiry of the persons set forth on Schedule 1.1(a).

“Law” means any federal, national, supranational, foreign, state, provincial, local, county, municipal or similar statute, law, common law, guideline, policy, ordinance, regulation, rule, code, constitution, treaty, requirement, judgment or judicial or administrative doctrines enacted, promulgated, issued, enforced or entered by any Governmental Authority.

“Material Adverse Effect” means any effect, change, event, occurrence, development, or state of facts that, individually or in the aggregate with all other such effects, changes, events, occurrences, developments, or states of fact, (A) has had, or would reasonably be expected to have, a material adverse effect on the business, assets, liabilities, condition (financial or otherwise), or results of operations of the Company and its Subsidiaries, taken as a whole, or (B) would, or would reasonably be expected to, prevent or materially impair the ability of the Company to consummate the transactions contemplated by this Agreement, *but expressly excluding* in the case of the foregoing clause (A) any such effect, change, event, occurrence, development, or state of facts, either alone or in combination, to the extent arising out of or resulting from:

(a) the execution or delivery of this Agreement, the consummation of the transactions contemplated by this Agreement or the public announcement or other publicity with respect to any of the foregoing; *provided, however*, that the exception set forth in this clause (a) shall not apply to the representations and warranties set forth in clauses (b) and (c) of Section 3.3 or to the representations and warranties set forth in Section 3.4;

(b) general economic conditions (or changes in such conditions) in the United States or conditions in the global economy generally that do not affect the Company and its Subsidiaries, taken as a whole, disproportionately as compared to other similarly situated participants in the liquefied natural gas export industry (in which case only such disproportionate impact shall be considered);

(c) changes in the trading price or trading volume of the Common Stock;

(d) conditions (or changes in such conditions) generally affecting the liquefied natural gas export industry that do not affect the Company and its Subsidiaries, taken as a whole, disproportionately as compared to other similarly situated participants in the liquefied natural gas export industry (in which case only such disproportionate impact shall be considered);

(e) conditions (or changes in such conditions) in the financial markets, credit markets or capital markets in the United States or any other country or region, including (i) changes in interest rates in the United States or any other country and changes in exchange rates for the currencies of any countries or (ii) any suspension of trading in securities (whether equity, debt, derivative or hybrid securities) generally (other than a suspension of the trading of the Company’s Common Stock, which constitutes a Material Adverse Effect, provided such suspension is not part of a broader suspension of securities) on any securities exchange or over-the-counter market operating in the United States or any other country or region in each case, that do not affect the Company as a whole disproportionately as compared to other similarly situated participants in the liquefied natural gas export industry (in which case only such disproportionate impact shall be considered);

(f) any actions taken or omitted to be taken at the written request or with the written consent of the Purchaser; or

(g) any changes in any Laws or any accounting regulations or principles that do not affect the Company, taken as a whole, disproportionately as compared to other similarly situated participants in the liquefied natural gas export industry (in which case only such disproportionate impact shall be considered).

Notwithstanding any provision of the preceding sentence to the contrary, the occurrence of an Insolvency Event in respect of the Company or any Subsidiary of the Company shall be deemed to constitute a Material Adverse Effect.

“Material Contracts” means (i) all “material contracts” of the Company within the meaning of Item 601 of Regulation S-K of the SEC, as well as (ii) all contracts, agreements, indentures, notes, bonds, loans, leases, subleases, conditional sales contracts, mortgages, licenses, sublicenses, obligations, promises, undertakings, commitments or other binding arrangements (in each case, whether written or oral) of the Company and its Subsidiaries, which, solely in the case of sub-clause (ii) of this definition, shall be limited to any of the items listed in (ii) that either the Company or any Subsidiary party thereto would, pursuant to the terms thereof, (A) recognize future revenues in excess of One Million Dollars (\$1,000,000), (B) incur liabilities or obligations in excess of One Million Dollars (\$1,000,000), (C) would reasonably be likely to suffer damages or losses in excess of One Million Dollars (\$1,000,000) by reason of the breach or termination thereof or (D) have any material restrictions on the business of the Company or its Subsidiaries.

“NASDAQ” means NASDAQ, Inc.

“NextDecade” has the meaning assigned to it in the preamble hereto.

“OFAC” means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Order” means any order, writ, judgment, injunction, decree, ruling, directive, stipulation, determination or award made, issued or entered by or with any Governmental Authority, whether preliminary, interlocutory or final.

“Party” or “Parties” has the meaning assigned to it in the preamble hereto.

“Person” means any individual, partnership, firm, corporation, limited liability company, association, joint venture, trust, Governmental Authority, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

“Permits” means all permits, consents, approvals, registrations, licenses, authorizations, qualifications and filings with and under all federal, state, local or foreign Laws and Governmental Authorities.

“Purchase Price” has the meaning assigned to it in [Section 2.2](#).

“Purchaser” has the meaning assigned to it in the preamble hereto.

“Purchaser Default” means the failure by the Purchaser to deliver and pay the Purchase Price to be paid pursuant to this Agreement.

“Purchaser Material Adverse Effect” means any event, circumstance, development, change or effect that, individually or in the aggregate with all other events, circumstances, developments, changes or effects, has or would reasonably be expected to prevent, materially delay or materially impair the ability of the Purchaser to consummate the transactions contemplated hereby.

“Purchaser Rights Agreement” means the Purchaser Rights Agreement, in substantially the form attached hereto as Exhibit E.

“Purchaser Termination” means the termination of this Agreement by the Purchaser.

“Purchaser Termination Event” has the meaning assigned to it in Section 8(a).

“Registration Rights Agreement” means the Registration Rights Agreement, in substantially the form attached hereto as Exhibit D.

“Release” means any release, spill, emission, discharge, leaking, pouring, dumping, emptying, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including, without limitation, soil, sediment, ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

“[\*\*\*]” has the meaning assigned to it in Section 2.4(j).

“Sanctioned Person” means any Person that is the target of Sanctions, including, (a) any Person listed in any Sanctions related list of designated Persons maintained by OFAC or the U.S. Department of State, by the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom, (b) any Person located, organized or resident in a Sanctioned Territory, or (c) any Person directly or indirectly owned or controlled by any such Person or Persons described in the foregoing clauses (a) and (b).

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by relevant Governmental Authorities, including, but not limited to those administered by the U.S. government through OFAC or the U.S. Department of State, the United Nations Security Council, the European Union and enforced by its member states, the United Nations or Her Majesty’s Treasury of the United Kingdom.

“SEC” has the meaning assigned to it in Section 3.7(a).

“SEC Reports” has the meaning assigned to it in Section 3.7(a).

“Securities Act” means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder, or any successor statute.

“Self-Regulatory Organization” means any securities exchange, futures exchange, contract market, any other exchange or corporation or similar self-regulatory body or organization applicable to a Party to this Agreement.

“Subsidiary” means, with respect to any Person, any other Person of which the first Person owns, directly or indirectly, securities or other ownership interests having voting power to elect a majority of the board of directors or other Persons performing similar functions for such Person (or, if there are no such voting interests, more than 50% of the equity interests allowing for effective control of the second Person).

“Survival Period” has the meaning assigned to it in Section 10.3.

“Tax” (and, with correlative meaning, “Taxes” and “Taxable”) means: (a) any taxes, customs, duties, charges, fees, levies, penalties or other assessments, fees and other governmental charges imposed by any Governmental Authority, including, but not limited to, income, profits, gross receipts, net proceeds, windfall profit, severance, property, personal property (tangible and intangible), production, sales, use, leasing or lease, license, excise, duty, franchise, capital stock, net worth, employment, occupation, payroll, withholding, social security (or similar), unemployment, disability, payroll, fuel, excess profits, occupational, premium, severance, estimated, alternative or add-on minimum, ad valorem, value added, turnover, transfer, stamp or environmental tax, or any other tax, custom, duty, fee, levy or other like assessment or charge of any kind whatsoever, together with any interest, penalty, addition to tax, or additional amount attributable thereto; and (b) any liability for the payment of amounts with respect to payment of a type described in clause (a), including (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, (ii) as a result of succeeding to such liability as a result of merger, conversion or asset transfer or (iii) as a result of any obligation under any Tax sharing, Tax allocation, Tax indemnity, or similar agreement or arrangement.

“Tax Representations” means those representations and warranties of the Company set forth in Section 3.18.

“Tax Returns” means any return, report, statement, information return or other document (including any amendments thereto and any related or supporting information) filed or required to be filed with any Governmental Authority in connection with the determination, assessment, collection or administration of any Taxes or the administration of any laws, regulations or administrative requirements relating to any Taxes.

“Transaction Documents” means this Agreement and any other documents or exhibits related hereto or contemplated hereby.

“Treasury Regulations” means the regulations promulgated under the Code, by the United States Department of the Treasury, as such regulations may be amended from time to time. All references herein to specific sections of the regulations shall be deemed also to refer to any corresponding provisions of succeeding regulations, and any reference to temporary regulations shall be deemed also to refer to any corresponding provisions of final regulations.

“USRPHC” has the meaning assigned to it in Section 3.18(e).

“VDR” means that certain virtual data room maintained by Donnelley Financial Solutions hosted by the Company with the project name “Project Mariner” made available to the Purchaser on September 11, 2019 and until the Closing Date.

Section 2. **AGREEMENT TO SELL AND PURCHASE.**

2.1 **Sale and Purchase of Shares.** Subject to the terms of this Agreement, at the Closing, the Company hereby agrees to issue and sell to the Purchaser, and the Purchaser hereby agrees, to purchase from the Company, 7,974,482 shares of Common Stock (the "**Closing Shares**") free and clear of all Encumbrances (except for any restriction on transfer under the Securities Act or applicable "blue sky" laws).

2.2 **Purchase Price.** The purchase price for the Common Stock to be purchased by the Purchaser hereby shall be \$6.27 per share such that the aggregate purchase price to be paid by the Purchaser shall be \$50,000,000.00 (the "**Purchase Price**").

2.3 **Closing.** Subject to the terms of this Agreement, the closing of the transactions contemplated hereby (the "**Closing**") will occur on the first Business Day following the satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transactions or such other date as may be agreed by the mutual consent of the Parties (the "**Closing Date**"). The Closing shall take place at the offices of NextDecade Corporation, 1000 Louisiana Street, Suite 3900, Houston, Texas 77002 or such other place as the Parties mutually agree. The Parties agree that the Closing may occur via delivery of facsimiles or photocopies of the applicable Transaction Documents. Unless otherwise provided herein, all proceedings to be taken and all documents to be executed and delivered by all Parties at the Closing will be deemed to have been taken and executed simultaneously, and no proceedings will be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.

2.4 **Actions at the Closing.** At the Closing, the Purchaser and the Company (as applicable) shall take or cause to be taken the following actions ("**Closing Actions**"):

(a) **Payment of the Purchase Price.** The Purchaser shall pay the Purchase Price in respect of the shares purchased by the Purchaser pursuant to **Section 2.1** to the Company by wire transfer of immediately available funds to the account specified by the Company to the Purchaser in writing not less than five (5) Business Days prior to the Closing.



(b) Issuance of Common Stock. The Company shall deliver to the Purchaser a true, correct and complete certificate representing the shares of Common Stock registered in the name of the Purchaser (or evidence of the Purchased Shares issued in book-entry form with a notation in the Company's stock transfer records), containing the restrictive legend set forth in Section 4.9, purchased by the Purchaser pursuant to this Section 2, duly authorized by all requisite corporate action on the part of the Company.

(c) Purchaser Rights Agreement. The Purchaser and the Company shall execute and deliver the Purchaser Rights Agreement.

(d) Registration Rights Agreement. The Purchaser and the Company shall execute and deliver the Registration Rights Agreement.

(e) Good Standing Certificate. The Company shall deliver a certificate of the Secretary of State of the State of Delaware, dated as of a recent date, to the effect that the Company is in good standing.

(f) Company Officer's Certificate. The Company shall deliver an officer's certificate, dated as of the Closing Date, substantially in the form attached to this Agreement as Exhibit G.

(g) Company Secretary's Certificate. The Company shall deliver a certificate of the Secretary of the Company, dated the Closing Date, substantially in the form attached to this Agreement as Exhibit H, certifying as to (i) the certificate of incorporation of the Company, (ii) board resolutions authorizing the execution and delivery of the Transaction Documents and the consummation of the transactions contemplated thereby, and (iii) the incumbent officers authorized to execute the Transaction Documents, setting forth the name and title and bearing the signatures of such officers.

(h) Legal Opinion. The Purchaser shall have received a written opinion of K&L Gates LLP dated as of the Closing Date, substantially in the form attached to this Agreement as Exhibit I.

(i) Cross Receipt. The Purchaser and the Company shall deliver a cross receipt, dated the Closing Date, executed by (1) the Company confirming that the Company has received the Purchase Price and (2) the Purchaser confirming that the Purchaser has received the shares of Common Stock as and in the manner contemplated by clause (b) above.

(j) [\*\*\*].

(k) [\*\*\*].

(l) [\*\*\*].

(m) Lock Up Letter. The Purchaser shall deliver a lock up letter substantially in the form attached to this Agreement as Exhibit M.

(n) Form W-8 BEN. The Purchaser shall deliver a validly completed and executed Internal Revenue Service Form W-8 BEN establishing the Purchaser's exemption from U.S. withholding Tax.

(o) Additional Documents. The Company shall have delivered such other documents relating to the transactions contemplated by this Agreement as the Purchasers or their counsel may reasonably request.

2.5 Transfer Taxes. All of the Common Stock issued to the Purchaser pursuant to this Agreement will be delivered with any and all issue, stamp, transfer or similar Taxes or duties payable in connection with such delivery duly paid by the Company.

2.6 Additional Stock Issuances. In addition to the Closing Shares, the Company shall issue shares of Common Stock to the Purchaser upon the occurrence of the following, without any further consideration being payable by the Purchaser:

(a) If (i) FID does not occur on or before January 1, 2021 and (ii) the Purchaser has not disposed of or transferred any of the Closing Shares prior to such date, the Company shall, on the first Business Day following such date, issue to the Purchaser 398,725 shares of Common Stock (subject to adjustment for any subdivision, split, combination or other reclassification occurring after the date hereof).

(b) If (i) FID does not occur on or before July 1, 2021 and (ii) the Purchaser has not disposed of or transferred any of the Closing Shares or any shares of Common Stock issued pursuant to Section 2.6(a) prior to such date, the Company shall, on the first Business Day following such date, issue to the Purchaser 398,725 shares of Common Stock (subject to adjustment for any subdivision, split, combination or other reclassification occurring after the date hereof). This issuance shall be in addition to the issuance referenced in Section 2.6(a) above.

### Section 3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company hereby represents and warrants to the Purchaser as of the date hereof (except for representations and warranties that are made as of a specific date, which are made only as of such date), on behalf of itself and not any other Party, as follows:

3.1 Organization and Qualification; Subsidiaries. The Company and each of its Subsidiaries has been duly organized and is validly existing and is in good standing under the laws of its jurisdictions of organization, with the requisite power and authority to own and lease its properties and conduct its business as it is being conducted on the date of this Agreement. The Company has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties, or conducts any business so as to require such qualification.

3.2 Authorization; Enforcement; Validity. The Company has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder, including the issuance to the Purchaser of the Common Stock pursuant to Section 2.1 of this Agreement. The execution and delivery by the Company of this Agreement and the performance by the Company of its obligations hereunder, have been duly authorized by all requisite action on the part of the Company, and no other action on the part of the Company or any of its Subsidiaries is necessary to authorize the execution and delivery by the Company of this Agreement or the consummation of the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by the Company, and assuming due authorization, execution and delivery by the Purchaser, this Agreement constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and subject to general principles of equity.

3.3 No Conflicts. Assuming that all consents, approvals, authorizations and other actions described in Section 3.4 have been obtained, and except as may result from any facts or circumstances relating solely to the Purchaser, the execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby do not and will not: (a) violate, conflict with or result in the breach of the Charter Documents of the Company or any of its Subsidiaries; (b) conflict with or violate any Law or Order applicable to the Company or any of its Subsidiaries, or any of its or their respective assets or properties; or (c) violate, conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any note, bond, mortgage or indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which the Company or any of its Subsidiaries is a party or to which any of their respective assets or properties are subject, or result in the creation of any Encumbrance on any of their respective assets or properties.

3.4 Consents and Approvals. Except as set forth in Schedule 3.4, the execution, delivery and performance by the Company of this Agreement do not require any material consent, approval, authorization or other Order of, action by, filing with or notification to, any Governmental Authority or any other Person under any of the terms, conditions or provisions of any Law or Order applicable to the Company or any of its Subsidiaries or by which any of its or their assets or properties may be bound, any contract or agreement to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries may be bound.

3.5 Capitalization.

(a) As of the date of this Agreement, and immediately prior to the issuance and sale of the Common Stock, the capitalization of the Company and each of its Subsidiaries is set forth in Schedule 3.5(a).

(b) Except as set forth in Schedule 3.5(b), there are no outstanding options, warrants, "phantom" stock rights, claims, calls, puts, commitments, stock appreciation rights, convertible or exchangeable securities, including any convertible debt securities, or other contracts or rights of any nature obligating the Company or any of its Subsidiaries to issue, return, redeem, repurchase, transfer, deliver or sell equity interests or other securities or ownership interests in the Company or any of its Subsidiaries, and no Person is entitled to any preemptive or similar right with respect to the issuance of securities or other equity interests in the Company or any of its Subsidiaries.

(c) Except as set forth in Schedule 3.5(c), (x) to the Knowledge of the Company, there are no voting agreements, voting trusts, shareholder agreements, proxies or other similar agreements or understandings with respect to the equity interests of the Company or any of its Subsidiaries or that restrict or grant any right, preference or privilege with respect to the transfer of such equity interests, and (y) there are no contracts to declare, make or pay any dividends or distributions, whether current or accumulated, or due or payable, on the equity interests of the Company or any of its Subsidiaries.

(d) Except for the shares of preferred stock, par value \$0.0001 per share, authorized by its Charter Documents and outstanding shares of Series A Convertible Preferred Stock and the Series B Convertible Preferred Stock, the Company has no authorized or outstanding class of equity securities ranking as to dividends, redemption or distribution of assets upon a liquidation senior to or *pari passu* with the Common Stock.

3.6 Valid Issuance.

(a) Upon payment of the Purchase Price and the occurrence of the Closing, the Purchaser will be the owner, of record and beneficially, of 7,974,482 duly and validly issued, fully paid, and non-assessable shares of Common Stock. The Purchaser shall have good and valid title to such shares of Common Stock, free and clear of any Encumbrances (except for any restriction on transfer under the Securities Act or applicable "blue sky" laws).

(b) Assuming the accuracy of the Purchaser's representations and warranties set forth herein, the offer, sale and issuance of such Common Stock as contemplated hereby are exempt from the registration and qualification of the Securities Act, and will be issued in compliance with all applicable federal and state securities and blue sky laws. Neither the Company nor any Person acting on behalf of the Company has taken any action that would cause the loss of such exemption.

3.7 SEC Reports; Financial Statements.

(a) The Company has filed or furnished with the Securities and Exchange Commission ("SEC") all forms, reports, schedules, proxy statements (collectively, and in each case including all exhibits and schedules thereto and documents incorporated by reference therein and including all registration statements and prospectuses filed with the SEC, the "SEC Reports") required to be filed or furnished by the Company under the Exchange Act or the Securities Act during the 12 months preceding the date hereof. As of its date of filing or furnishing, each SEC Report complied in all material respects with the requirements of the Exchange Act or the Securities Act, and none of such SEC Reports (including any audited or unaudited financial statements and any notes thereto or schedules included therein) contained when filed or furnished (except to the extent revised or superseded by a subsequent filing with the SEC that is publicly available prior to the date hereof) any untrue statement of a material fact or omitted or omits to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(b) Each of the consolidated financial statements (including the notes thereto) included in the SEC Reports (i) complied as to form required by published rules and regulations of the SEC related thereto as of its date of filing with the SEC, (ii) complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, (iii) was prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or otherwise permitted by the SEC on Form 10-Q or any successor form under the Exchange Act) and (iv) presents fairly in all material respects the consolidated financial position of Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended, subject (in the case of unaudited financial statements) to normal year-end adjustments and any other adjustments described therein or in the notes or schedules thereto or the absence of footnotes (none of which are material).

(c) The unaudited balance sheet and the related unaudited statement of operations, unaudited statement of stockholders' equity and unaudited statement of cash flows for the Company's most recently filed Quarterly Report on Form 10-Q as of the date of this Agreement (i) present fairly in all material respects the financial condition of the Company as of such date and the results of operations for the three (3) month period then ended and (ii) were prepared on a basis consistent with the Company's past practice, subject to normal year-end adjustments and the absence of footnotes.

3.8 Undisclosed Liabilities. Except as set forth in Schedule 3.8, and except for liabilities included or reserved for in the unaudited consolidated balance sheet of the Company or disclosed in the notes thereto included in the Company's most recently filed Quarterly Report on Form 10-Q, as of the date of this Agreement, neither the Company nor any of its Subsidiaries has incurred liabilities, including contingent liabilities, or any other obligations of a nature required to be disclosed on a consolidated balance sheet or in the notes thereto, except liabilities that are not material and were incurred in the ordinary course of business subsequent to the date of the consolidated balance sheet contained in the Company's most recently filed Quarterly Report on Form 10-Q as of the date of this Agreement.

3.9 Contracts. Except as set forth in Schedule 3.9, neither the Company nor any of its Subsidiaries is, or to the Knowledge of the Company, is alleged to be (nor, to the Company's Knowledge, is any other party to any Material Contract) in material default under, or in material breach or material violation of, any Material Contract, and no event has occurred which, with the giving of notice or passage of time or both, would constitute a material default by the Company or any other party under any Material Contract. Neither the Company nor any of its Subsidiaries is aware of any circumstances whereby any party could give notice of its intention to terminate any Material Contract, and, to the Knowledge of the Company, no party has sought to repudiate, disclaim or vary any Material Contract to the detriment of the Company or any of its Subsidiaries. Other than Material Contracts which have terminated or expired in accordance with their terms, each of the Material Contracts is in full force and effect and is a legal, valid and binding obligation of the Company and, to the Knowledge of the Company, the other parties thereto enforceable against the Company and, to the Knowledge of the Company, such other parties in accordance with its terms (subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at law)). Schedule 3.9 lists all of the Material Contracts. A complete and accurate copy of each Material Contract has been made available to Purchaser or its counsel in the VDR or in the Counsel VDR at least two (2) Business Days prior to the date hereof. Schedule 3.9 provides a true and correct list, organized by borrower, of all Indebtedness of the Company and its Subsidiaries. Except as set forth on Schedule 3.9, neither the Company nor any of its Subsidiaries has any liabilities arising under any other Indebtedness.

3.10 Affiliate Transactions. Except as set forth in Schedule 3.10 or otherwise disclosed in the SEC Reports, there are no transactions between the Company, on the one hand, and any (A) officer or director of the Company or any of its Subsidiaries, (B) to the Knowledge of the Company, record or beneficial owner of five (5) percent or more of the voting securities of the Company or (C) Affiliate or family member of any such officer or director or, to the Knowledge of the Company, record or beneficial owner, on the other hand, except employee benefit plans, executive compensation or director compensation, employment agreements, consulting agreements, indemnification agreements and similar transactions. Neither the Company nor any of its Subsidiaries is a guarantor or indemnitor of any indebtedness of any of the persons set forth in the foregoing clause (A) or, to the Knowledge of the Company, clauses (B) through (C).

3.11 Title. The Company and each of its Subsidiaries has good and marketable title to their respective owned properties, real estate and assets, and good leasehold title to their respective leasehold estates in leased properties, real estate and assets (including the Brownsville Leases, as applicable), in each case, subject to no Encumbrances, other than Encumbrances that would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect. The Company and each of its Subsidiaries is the sole lessee with respect to their respective leased real estate, including the Brownsville Leases, as applicable. Except as set forth in Schedule 3.11, there are no notices, disputes, claims, demands or accommodations relating to or in respect of the Company's and each of its Subsidiaries' owned and leased real estate, and such real estate is not subject to any legal suits, actions, disputes, claims or demands arising from the acquisition, alienation or use of such real estate.

3.12 Compliance with Law; Permits.

(a) Neither the Company nor any of its Subsidiaries (i) is in material violation or default of the Charter Documents of the Company or any of its Subsidiaries, (ii) is in material violation or default of any Order or any Law or (iii) except as disclosed in Schedule 3.12, has received any written notice of, and to the Knowledge of the Company, no investigation or review is in process or threatened by any Governmental Authority with respect to, any violation or alleged violation of any Order or Law.

(b) The Company and its Subsidiaries hold all material Permits necessary for the lawful conduct of their respective businesses as they are presently being conducted. All material Permits are in full force and effect. The Company and its Subsidiaries are in compliance with the terms of all material Permits. There are no pending or, to the Knowledge of the Company, threatened, modifications, amendments, cancellations, suspensions, limitations, nonrenewals or revocations of any material Permit. There has occurred no event which (whether with notice or lapse of time or both) could reasonably be expected to result in or constitute the basis for such a modification, amendment, cancellation, suspension, limitation, nonrenewal or revocation thereof. Copies of all material Permits that have been obtained by the Company or any of its Subsidiaries and copies of applications for material Permits made by the Company or any of its Subsidiaries have been made available in the VDR or in the Counsel VDR at least two (2) Business Days prior to the date hereof.

3.13 Litigation. Except as set forth in Schedule 3.13, no action, suit, claim, demand, hearing, investigation or other proceeding is pending against the Company or any of its Subsidiaries, or, to the Knowledge of the Company, any officer, director, manager, member, shareholder or employee of any such Person, and none of the Company or any of its Subsidiaries, or, to the Knowledge of the Company, any officer, director, manager, member, shareholder or employee of any such Person, is subject to any outstanding injunction, judgment, order, decree, ruling or charge or, to the Knowledge of the Company, is threatened with being made a party to any action, suit, proceeding, hearing or investigation of, in, or before any Governmental Authority or before any arbitrator. The Company does not believe that any of the legal proceedings set forth on Schedule 3.13 will, individually or in the aggregate, result in a Material Adverse Effect. There are no legal or governmental actions, suits or proceedings pending, threatened or contemplated that are required to be disclosed in the SEC Reports and are not so disclosed.

3.14 Intellectual Property. Except as set forth in Schedule 3.14, the Company and its Subsidiaries own or have obtained valid and enforceable licenses for, or other legal and valid rights to use, all Intellectual Property necessary for the conduct of the business of the Company and its Subsidiaries as currently conducted and as presently proposed to be conducted. To the Knowledge of the Company, the Intellectual Property owned by or exclusively licensed to the Company and its Subsidiaries is valid and enforceable, and there have been no and there are not currently any proceedings, claims, lawsuits, office actions or other matters challenging the validity, enforceability or ownership of the same. The Company's Intellectual Property, and the conduct of the businesses of the Company and its Subsidiaries, has not violated, infringed or misappropriated, and do not violate, infringe or misappropriate any Intellectual Property of any third party. Neither the Company nor any of its Subsidiaries has received from any third party a claim in writing that the Company or any of its Subsidiaries is infringing the Intellectual Property rights of any third party. The Company and its Subsidiaries have taken all reasonable measures consistent with industry practice to (i) protect and preserve the confidentiality of all trade secrets and confidential information owned, used or held by the Company and its Subsidiaries, and (ii) protect and maintain its rights in all Intellectual Property created or developed by, for or on behalf of the Company and its Subsidiaries.

3.15 Environmental Matters.

(a) The Company and its Subsidiaries are and have at all times been in compliance in all material respects with all Environmental Laws.

(b) (i) The Company and its Subsidiaries hold all Permits required pursuant to Environmental Law ("Environmental Permits") to conduct their operations and occupy and use their real properties as they are currently operated, occupied and used, (ii) all such Environmental Permits are in full force and effect, (iii) the Company and its Subsidiaries are and have at all times been in compliance in all material respects with all Environmental Permits, (iv) there are no pending or, to the Knowledge of the Company, threatened, modifications, amendments, cancellations, suspensions, limitations, nonrenewals or revocations of any Environmental Permit, and (v) there has occurred no event which (whether with notice or lapse of time or both) could reasonably be expected to result in or constitute the basis for such a modification, amendment, cancellation, suspension, limitation, nonrenewal or revocation thereof.

(c) The Company and its Subsidiaries have not Released any Hazardous Materials in, on, at, or under any real property that require any investigation, remediation, cleanup, removal, or corrective or remedial action pursuant to Environmental Law or that would reasonably be expected to result in a liability of the Company or any of its Subsidiaries.

(d) To the Knowledge of the Company, there are no locations or premises where Hazardous Materials have been Released such that (A) the Company or any of its Subsidiaries would reasonably be expected to be obligated to investigate, remove, remediate, clean up or otherwise respond to pursuant to any Environmental Laws or (B) would reasonably be expected to result in a liability of the Company or any of its Subsidiaries.

(e) There are no Environmental Claims pending, or to the Knowledge of the Company threatened against the Company or any of its Subsidiaries, and there no actions, activities, circumstances, facts, conditions, events or incidents, including the presence or Release of, or exposure to, any Hazardous Material, which would be reasonably likely to form the basis of any such Environmental Claim.

3.16 Company Benefits Plans.

(a) Schedule 3.16 lists each material Company Benefit Plan.

(b) Neither the Company nor any of its ERISA Affiliates has ever maintained, sponsored, contributed to, or had an obligation to maintain, sponsor or contribute to, or has any liability under or with respect to (i) a “defined benefit plan,” as defined in Section 3(35) of ERISA, (ii) a pension plan subject to the minimum funding standards of Section 302 of ERISA or Section 412 of the Code, (iii) a “multiemployer plan,” as defined in Section 3(37) of ERISA, (iv) a “multiple employer plan” (within the meaning of Section 413 of the Code), (v) a “voluntary employees’ beneficiary association” (within the meaning of Section 501(c)(9) of the Code), (vi) an organization or trust described in Sections 501(c)(17) or 501(c)(20) of the Code or (vii) a “welfare benefits fund” described in Section 419(e) of the Code. No current or former employee, officer, director, consultant or other service provider of the Company or any of its Subsidiaries is or may become entitled under any Company Benefit Plan to receive health, life insurance or other welfare benefits (whether or not insured), beyond their retirement or other termination of service, other than health continuation coverage as required by Section 4980B of the Code.

(c) Each Company Benefit Plan has been administered in all material respects in accordance with its terms and applicable Law. Each Company Benefit Plan intended to be qualified under Section 401(a) of the Code has either received a favorable determination letter from the IRS or may rely on a favorable opinion letter issued by the IRS, and, to the Knowledge of the Company, nothing has occurred since the date of such determination or opinion letter that would reasonably be expected to adversely affect such qualification.

(d) Except as would not be reasonably likely to result in a Material Adverse Effect, there are no actions, suits, audits or investigations by any Governmental Authority or other claims (except for routine claims for benefits) pending or, to the Knowledge of the Company, threatened, against or involving any Company Benefit Plan.

(e) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby will (whether alone or upon the occurrence of any additional or further acts or events) (i) result in any payment becoming due to any current or former employee, officer, director or independent contractor of the Company or any Subsidiary thereof or satisfy any prerequisite (whether exclusive or non-exclusive) to any payment or benefit to any current or former employee, director or independent contractor of the Company or any Subsidiary thereof, (ii) increase any benefits under any Company Benefit Plan, (iii) result in the acceleration of the time of payment, vesting or funding of any such benefits under any Company Benefit Plan, or (iv) result in the forgiveness of any indebtedness of any current or former employee, officer, director or independent contractor of the Company or any Subsidiary thereof.

3.17 Labor.

(a) Neither the Company nor any of its Subsidiaries is a party to any labor or collective bargaining agreement.

(b) There are no (i) strikes, work stoppages, work slowdowns or lockouts pending or, to the Knowledge of the Company, threatened against or involving the Company or any of its Subsidiaries, (ii) demands for recognition, representation proceedings, petitions seeking representation, or union organizing or decertification activity pending or, to the Knowledge of the Company, threatened involving any employees of the Company or any of its Subsidiaries, or (iii) unfair labor practice charges, grievances or complaints pending or, to the Knowledge of the Company, threatened by or on behalf of any employee or group of employees of the Company or any of its Subsidiaries, except in each case as would not have a Material Adverse Effect.

(c) The Company and its Subsidiaries are in compliance in all material respects with all applicable Laws respecting labor, employment and employment practices, including (A) hiring, termination, terms and conditions of employment, wages and hours, equal opportunity, classification of employees and contractors, including as exempt and non-exempt, and as employees and independent contractors, background checks, and legal authorization to work in the United States, (B) unfair labor practices, (C) collective bargaining, and (D) the Worker Adjustment and Retraining Notification Act of 1998, as amended, or any similar applicable state, local or foreign Law.



3.18 Tax Matters. Except as set forth in Schedule 3.18:

(a) As of the date of this Agreement, the Company has timely filed all material Tax Returns required to be filed (after giving effect to any extensions that have been requested by and granted to such party by the applicable Governmental Authority) and has paid or caused to be paid on its behalf all Taxes due and owing, other than those (i) that are being contested in good faith and for which adequate reserves have been established in accordance with GAAP or (ii) that, if not paid, would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such Tax Returns are true, correct and complete in all material respects. There are no past, current, pending or, to the Knowledge of the Company, threatened audits, claims, disputes, or proceedings by any Governmental Authority relating to Taxes. The Company has not waived any statutes of limitation or agreed to any extension of time with respect to any Tax assessment or deficiency. The Company has not received written notice from any Governmental Authority in a jurisdiction where it does not file Tax Returns claiming that it is subject to Tax in that jurisdiction. There are no liens for Taxes against the property of the Company or the Project except for Taxes not yet due and payable.

(b) The Company has complied with all Laws relating to the withholding and collection of Taxes relating to the Company. The Company has not engaged in any reportable transaction within the meaning of Treasury Regulations Section 1.6011-4(b).

(c) Neither the Company nor any of its Subsidiaries has made an election under Section 965(h) of the Code.

(d) The Company (A) has not entered into any agreement with any Governmental Authority that would impact the amount of Taxes due by it, (B) has never been a member of an affiliated, combined, consolidated or unitary group for purposes of filing any Tax Return or has any liability for the Taxes of any other Person (1) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), or (2) as a transferee or successor, by Contract, or otherwise, or (C) is not a party to, or has any liability under, any Tax sharing, Tax allocation, Tax indemnity, or similar agreement or arrangement.

(e) The Company is not a United States real property holding company (“USRPHC”) within the meaning of Section 897 of the Code.

3.19 Investment Company Act. The Company is not and, after giving effect to the transactions contemplated by this Agreement will not be, an “investment company” as that term is defined in, nor is the Company otherwise subject to registration or regulation under, the Investment Company Act of 1940.

3.20 OFAC and Related Matters. None of the transactions contemplated hereby will violate (i) any Sanctions, or (ii) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107-56 (October 26, 2001). The Company is in compliance with Sanctions in all material respects. There are no pending or threatened claims or legal actions, or investigations by any Governmental Authority, of or against the Company, nor are there any judgments imposed (or threatened to be imposed) upon the Company by or before any Governmental Authority, in each case, in connection with any alleged violation of Sanctions. Neither the Purchase Price nor any other proceeds received by the Company hereunder will be used in any dealings or transactions with any Sanctioned Person or in any manner that will result in a violation of Sanctions. The Company has not violated any provision of the U.S. Foreign Corrupt Practices Act of 1977 or the U.K. Bribery Act 2010. None of the Company nor any of its Subsidiaries, nor, to the Knowledge of the Company, any director, officer, agent, employee, Affiliate or Person acting on behalf of the Company or its Subsidiaries is a Sanctioned Person or has done business on behalf of the Company or its Subsidiaries with or for the benefit of any Sanctioned Person or otherwise violated Sanctions. The Company will not directly or indirectly use the proceeds of the sale of the Common Stock, or lend, contribute or otherwise make available such proceeds to any Subsidiary or other Person, for the purpose of transacting business with or financing the activities of any Sanctioned Person or otherwise in violation of Sanctions. There have been no false or fictitious entries made in the books or records of the Company or any of its Subsidiaries relating to any payment that the Sanctions prohibits, and neither the Company nor any of its Subsidiaries has established or maintained a secret or unrecorded fund for use in making any such payments.

3.21 Broker; Fees. Neither the Company nor any of its Subsidiaries has employed any broker or finder, or incurred any liability for any brokerage or finders' fees or any similar fees or commissions in connection with the transactions contemplated by this Agreement for which the Purchaser is liable.

3.22 Insurance.

(a) Schedule 3.22 lists all material insurance policies maintained by, or for the benefit of, the Company or any of its Subsidiaries. Complete and accurate copies of each insurance policy listed on Schedule 3.22 have been made available in the VDR or in the Counsel VDR at least two (2) Business Days prior to the date hereof. All such policies are in full force and effect and none are void or voidable.

(b) The Company and all of its Subsidiaries have maintained all material insurance that is required by applicable Law.

(c) No claim of ten million U.S. Dollars (U.S. \$10,000,000) or more has been made by the Company or any of its Subsidiaries under any policy of insurance and no claim of one million U.S. Dollars (U.S. \$1,000,000) or more under any such policy is outstanding.

(d) All premiums due in respect of such insurance policies have been paid when due.

3.23 Securities Law Compliance. Neither the Company nor any of its Affiliates, nor any person acting at its or their instruction, has conducted any general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) in connection with Common Stock Equity Offering. Neither the Company nor any of its Affiliates, nor any person acting at its or their instruction, has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any security, under circumstances that would require registration under the Securities Act of the Common Stock Equity Offering as contemplated hereby.

3.24 Reporting Company; Form S-3. The Company is, and will be immediately after the consummation of the transactions contemplated hereby, eligible to register the shares of Common Stock sold in the Common Stock Equity Offering on a registration statement on Form S-3 under the Securities Act.

3.25 Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to terminate, or reasonably likely to have the effect of terminating, the registration of the Common Stock under the Exchange Act nor has the Company received any notification in writing that the SEC is contemplating terminating such registration. Except as described in Schedule 3.25, the Company has not, in the two years preceding the date hereof, received notice from the NASDAQ in writing to the effect that the Company is not in compliance with the listing or maintenance requirements of such exchange.

3.26 Disclosure Controls and Procedures. The Company has established and maintains and evaluates “disclosure controls and procedures” (as such term is defined in Rules 13a-15 and 15d-15 under the Exchange Act) and “internal control over financial reporting” (as such term is defined in Rules 13a-15 and 15d-15 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company, including its consolidated Subsidiaries, is made known to the Company’s Chief Executive Officer and its Chief Financial Officer by others within those entities, and such disclosure controls and procedures are effective to perform the functions for which they were established; the Company’s independent auditors and the Audit Committee of the Board have been advised of: (i) all significant deficiencies, if any, in the design or operation of internal controls which could adversely affect the Company’s ability to record, process, summarize and report financial data; and (ii) all fraud, if any, whether or not material, that involves management or other employees who have a role in the Company’s internal controls; all material weaknesses, if any, in internal controls have been identified to the Company’s independent auditors; since the date of the most recent evaluation of such disclosure controls and procedures and internal controls, there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses; the principal executive officers (or their equivalents) and principal financial officers (or their equivalents) of the Company have made all certifications required by the Sarbanes-Oxley Act and any related rules and regulations promulgated by the SEC, and the statements contained in each such certification are complete and correct.

3.27 Compliance with the Sarbanes-Oxley Act. The Company, its Subsidiaries and the Company's directors and officers are each in compliance in all material respects with all applicable effective provisions of the Sarbanes-Oxley Act and the rules and regulations of the SEC and the NASDAQ promulgated thereunder.

Section 4. **REPRESENTATIONS AND WARRANTIES OF THE PURCHASER.**

The Purchaser represents and warrants to the Company as of the date hereof (except for representations and warranties that are made as of a specific date, which are made only as of such date), as follows:

4.1 Organization and Qualification. The Purchaser has been duly organized and is validly existing and is in good standing (to the extent such concept exists) under the laws of its jurisdiction of organization, with the requisite power and authority to own its properties and conduct its business as currently conducted.

4.2 Authorization; Enforcement; Validity. The Purchaser has all necessary corporate, limited liability company or equivalent power and authority to enter into this Agreement and to carry out, or cause to be carried out, its obligations hereunder in accordance with the terms hereof. The execution and delivery by the Purchaser of this Agreement and the performance by the Purchaser of its obligations hereunder have been duly authorized by all requisite action on the part of the Purchaser, and no other action on the part of the Purchaser is necessary to authorize the execution and delivery by the Purchaser of this Agreement or the consummation of the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by the Purchaser, and assuming due authorization, execution and delivery by the Company, this Agreement constitutes the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and subject to general principles of equity.

4.3 No Conflicts. The execution, delivery, and performance by the Purchaser of this Agreement do not and will not (a) violate any provision of the organizational documents of the Purchaser; (b) conflict with or violate any Law or Order applicable to the Purchaser or any of its respective assets or properties; or (c) violate, conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any note, bond, mortgage or indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which the Purchaser is a party or to which any of its assets or properties are subject, or result in the creation of any Encumbrance on any of its assets or properties, except, in the case of clauses (b) and (c), for any such conflict, violation, breach or default that would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

4.4 Consents and Approvals. The execution, delivery and performance by the Purchaser of this Agreement do not require the Purchaser to obtain any consent, approval, authorization or other Order of, action by, filing with or notification to, any Governmental Authority or any other Person under any of the terms, conditions or provisions of any Law or Order applicable to the Purchaser or by which any of its assets or properties may be bound, any contract to which the Purchaser is a party or by which the Purchaser may be bound, except for any consent, approval, authorization or other Order of, action by, filing with or notification to, any Governmental Authority or any other Person under any of the terms, conditions or provisions of any Law or Order applicable to the Purchaser that, if not made or obtained, would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect with respect to the Purchaser.

4.5 Purchaser Representation. (i) The Purchaser is either (A) a qualified institutional buyer as defined in Rule 144A of the Securities Act, (B) an accredited investor as defined in Rule 501(a)(1), (2), (3), (7) or (8) under the Securities Act, (C) a non-U.S. person under Regulation S under the Securities Act, or (D) the foreign equivalent of (A) or (B) above, and (ii) any securities of the Company acquired by the Purchaser under this Agreement will have been acquired for investment and not with a view to distribution or resale in violation of the Securities Act.

4.6 Sufficient Funds. The Purchaser has sufficient assets (or the ability to call sufficient capital from its equityholders) and the financial capacity to perform all of its obligations under this Agreement, including the ability to fully fund the Purchase Price at the Closing.

4.7 Reliance on Exemptions. The Purchaser understands that the shares of Common Stock are being offered and sold to it in reliance upon specific exemptions from the registration requirements of United States federal and state securities Laws and that the Company is relying upon the truth and accuracy of, and the Purchaser's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of the Purchaser to acquire the Common Stock offered hereunder.

4.8 Restricted Securities. The Purchaser understands that the shares of Common Stock offered hereunder have not been registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act. The Purchaser understands that such shares of Common Stock are characterized as "restricted securities" under applicable U.S. federal and state securities Laws and that, pursuant to these Laws, the Purchaser must hold the shares of Common Stock indefinitely unless such shares are subsequently registered with the SEC and qualified by state authorities, or an exemption from such registration and qualification requirements is available.

4.9 Restrictive Legend. The Purchaser understands that certificates evidencing the Securities may bear the following or substantially similar legends, reflecting the restricted nature of the Securities to which the Purchaser has agreed in this Agreement:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF UNLESS (I) SOLD PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT, (II) SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR 144A OF SAID ACT, OR (III) AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT IS PROVIDED TO THE COMPANY. THE SECURITIES REPRESENTED HEREBY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY SUCH SECURITIES.

4.10 Broker; Fees. The Purchaser has not employed any broker or finder or incurred any liability for any brokerage or finders' fees or any similar fees or commissions in connection with the transactions contemplated by this Agreement for which the Company or any of its Subsidiaries is liable.

4.11 Confidentiality. Except as set forth on Schedule 4.11, the Purchaser has not disclosed the fact that the Parties contemplated the transactions contemplated by this Agreement nor any of the terms of this Agreement to anyone other than the Purchaser's attorneys, advisors and consultants who had a need to know and who have assisted the Purchaser in connection with the transactions contemplated by this Agreement.

Section 5. **ADDITIONAL COVENANTS**.

5.1 Commercially Reasonable Efforts. Each of the Company and the Purchaser hereby agrees to use its commercially reasonable efforts to timely satisfy (if applicable) each of the conditions applicable to such Party under Sections 6 and Z, respectively, of this Agreement.

5.2 Further Assurances. Each Party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other Party may reasonably request to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

5.3 Use of Proceeds. The Company shall use the proceeds from the transactions contemplated hereby solely as provided for in Exhibit C to this Agreement.

5.4 Expenses. Each Party shall bear all of its own expenses in connection with the execution, delivery and performance of this Agreement and the transactions contemplated hereby, including without limitation all fees and expenses of its agents, representatives, counsel and accountants.

5.5 Conduct of the Business of Company. From the date hereof until the Closing Date, except (a) as expressly permitted by this Agreement, (b) as required by Law, or (c) with the written consent of the Purchaser (such consent not to be unreasonably withheld, conditioned or delayed), the Company shall conduct its business and operations in the ordinary course of business consistent with past practice and use commercially reasonable efforts to (i) preserve intact its present business organization; (ii) maintain good relationships with its vendors, suppliers, and others having material business relationships with it; and (iii) manage its working capital in the ordinary course of business consistent with past practice. Without limiting the generality of the foregoing, and, except as contemplated in this Agreement or as described in Schedule 5.5, during the period from the date of this Agreement through the Closing Date, without the prior written consent of the Purchaser (which consent shall not be unreasonably withheld or delayed), the Company shall not, and shall not permit any of its Subsidiaries to:

(a) amend any of its Charter Documents;

(b) split, combine, subdivide or reclassify any of its equity securities;

(c) authorize, sell, issue or grant any equity securities or sell, issue or grant any option, warrant or right to acquire any equity securities or sell, issue or grant any security convertible into or exchangeable for equity securities, or sell, transfer or dispose of, or grant or permit any Encumbrance on, any equity interest, except (i) with respect to shares of the Company's Series A Convertible Preferred Stock and Series B Convertible Preferred Stock or (ii) upon the exercise or conversion of any equity securities or any option, warrant or right to acquire any equity securities outstanding as of the date hereof;

(d) except as required pursuant to applicable Law or the terms of any Company Benefit Plan in existence as of the date hereof, (A) make or grant any increases in the compensation or fringe benefits of any current or former employee or service provider of the Company or its Subsidiaries except in the ordinary course of business consistent with past practice (x) for current employees whose annual base salary or annual fee is less than \$150,000 or (y) in respect of fringe benefits, increases in fringe benefits that do not result in a material increase in cost to the Company or its Subsidiaries; (B) take any action to accelerate the vesting or payment of any compensation or benefits under any Company Benefit Plan or any action to fund or secure the payment of compensation or benefits under any Company Benefit Plan; (C) amend, adopt or terminate any Company Benefit Plan other than in connection with routine, immaterial or ministerial amendments to health and welfare plans that do not materially increase benefits or result in a material increase in administrative costs; or (D) enter into, modify or terminate any collective bargaining agreement or other agreement or arrangement with any labor union, works council, labor organization or other employee-representative body.

(e) declare, set aside for payment or pay any dividend on, or make any other distribution in respect of its equity interests or otherwise make any payments to any holder of such interests in its capacity as such, except with respect to shares of the Company's Series A Convertible Preferred Stock and Series B Convertible Preferred Stock;

(f) take or fail to take any action the result of which would cause the creation of an Encumbrance on any of its equity interests;

(g) make any material change to its financial reporting and accounting methods other than as required by a change in GAAP;

- (h) make any material change in its Tax reporting or Tax accounting methods, including making or changing any material Tax elections except as required by applicable Law;
- (i) change its entity classification for Tax purposes;
- (j) acquire any Person or other business organization, division or business by merger, consolidation, purchase of an equity interest or assets, or by any other manner;
- (k) take any action to liquidate, dissolve, or wind up its business; or
- (l) commit itself to do any of the foregoing.

5.6 Public Announcements. No press release or other public announcement related to this Agreement or the transactions contemplated herein shall be issued or made without the joint prior written consent and approval of the Company and the Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), unless such release or announcement is required by law or the rules of any securities exchange on which securities of the Company are traded (including, for the avoidance of doubt, any Current Report on Form 8-K required to be filed by the Company with the SEC describing this Agreement or the transactions contemplated herein), in which case the Purchaser shall be afforded a reasonable opportunity to review such public announcement prior to publication.

5.7 Joint Voluntary Notification. The Parties agree to consult and determine in good faith as expeditiously as possible whether a Joint Voluntary Notification (“JVN”) of the transactions contemplated by the Transaction Documents to CFIUS under the DPA is desirable and should be filed prior to the Closing. If either of the Parties determines in its sole discretion that such a JVN should be filed, the Parties shall use commercially reasonable efforts to (i) take the CFIUS Filing Actions and the CFIUS Cooperation Actions, (ii) obtain the CFIUS Clearance as promptly as practicable, (iii) comply at the earliest practicable date with any request for information or documentary material received by the Purchaser or any of their Affiliates from any governmental, regulatory or stock exchange authority, and (iv) avoid the entry of any governmental order whether temporary, preliminary or permanent, with respect to CFIUS Clearance, that would have the effect of prohibiting, preventing or restricting consummation of the transactions contemplated hereby, *provided* that for the avoidance of doubt, commercially reasonable efforts under clauses (i) to (iv) shall not require the Purchaser to accept any proposed mitigation agreement that would have an adverse economic impact on the Purchaser or unduly limit the Purchaser’s governance rights in the Company. The Purchaser shall pay the cost of all fees payable to a governmental, regulatory or stock exchange authority in connection with filings in connection with obtaining CFIUS Clearance.

5.8 Entity Classification. The Company shall not take any action that would cause it to be treated other than as a corporation for U.S. federal income tax purposes.



Section 6. **CONDITIONS TO THE PURCHASER'S OBLIGATIONS.** The obligations of the Purchaser to consummate the transactions contemplated hereby pursuant to this Agreement on the Closing Date shall be subject to the satisfaction at or prior to the Closing Date of each of the following conditions, any one or more of which may be waived in writing by the Purchaser:

6.1 **Representations and Warranties.** All of the representations and warranties made by the Company in this Agreement shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date (except to the extent such representations and warranties expressly speak as of an earlier date, in which case such representations and warranties shall be true and correct as of such date).

6.2 **Performance of Closing Actions.** The Company shall have performed each of the Closing Actions required to be performed by them at the Closing.

6.3 **No Legal Impediment to Issuance; No Material Adverse Effect.** No Law or Order shall have become effective or been enacted, adopted or issued by any Governmental Authority that prohibits the implementation of this Agreement or the transactions contemplated herein, and no Material Adverse Effect shall have occurred.

6.4 [\*\*\*].

6.5 **CFIUS Matters.** The Parties shall have received the CFIUS Clearance or shall have otherwise determined to each of their reasonable satisfaction that CFIUS Clearance is not required under applicable law.

Section 7. **CONDITIONS TO THE COMPANY'S OBLIGATIONS.** The obligations of the Company to issue and sell to the Purchaser the Common Stock pursuant to this Agreement shall be subject to the satisfaction at or prior to the Closing Date of each of the following conditions, any one or more of which may be waived in writing by the Company:

7.1 **Representations and Warranties.** All of the representations and warranties made by the Purchaser in this Agreement shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date (except to the extent such representations and warranties expressly speak as of an earlier date, in which case such representations and warranties shall be true and correct as of such date).

7.2 **Performance of Closing Actions.** The Purchaser shall have performed each of the Closing Actions required to be performed by it at the Closing.

7.3 **No Legal Impediment to Issuance.** No Law or Order shall have become effective or been enacted, adopted or issued by any Governmental Authority that prohibits the implementation of this Agreement or the transactions contemplated by this Agreement.

7.4 **CFIUS Matters.** The Parties shall have received the CFIUS Clearance or shall have otherwise determined to each of their reasonable satisfaction that CFIUS Clearance is not required under applicable law.

Section 8. **TERMINATION.**

(a) **Termination by the Purchaser.** This Agreement may be terminated at any time prior to the Closing by the Purchaser following the occurrence of any of the following events (each a "**Purchaser Termination Event**") immediately upon delivery of written notice to the Company; *provided, however* that the Purchaser shall not be permitted to terminate this Agreement if at the time of such termination the Purchaser is in breach of any representation, warranty or covenant applicable to it in any material respect under this Agreement:

(i) the Closing does not occur on or before the Closing Date;

(ii) the failure of any of the conditions set forth in **Section 6** hereof to be satisfied, which failure cannot be cured or is not cured before the earlier of (A) fifteen (15) Business Days after receipt of written notice thereof by the Company from the Purchaser and (B) the Closing Date;

(iii) the Company breaches any representation or warranty in any material respect or breaches any covenant applicable to it in any material respect under this Agreement and if such breach is curable, it is not cured before the earlier of (A) fifteen (15) Business Days after receipt of written notice by the Company from the Purchaser and (B) the Closing Date; or

(iv) any Governmental Authority of competent jurisdiction, enters a Final Order declaring this Agreement or any material portion hereof to be unenforceable.

(b) **Termination by the Company.** This Agreement may be terminated at any time prior to the Closing by the Company following the occurrence of any of the following events immediately upon delivery of written notice to the Parties except as set forth below; *provided, however* that the Company shall not be permitted to terminate this Agreement if, at the time of such termination, the Company is in breach of any representation, warranty or covenant applicable to it in any material respect under this Agreement:

(i) the failure of any of the conditions set forth in **Section 7** hereof to be satisfied, which failure cannot be cured or is not cured before the earlier of (A) fifteen (15) Business Days after receipt of written notice thereof by the Purchaser from the Company and (B) the Closing Date;

(ii) the Purchaser breaches any representation or warranty in any material respect or breaches any covenant applicable to it in any material respect under this Agreement and if such breach is curable, it is not cured before the earlier of (A) fifteen (15) Business Days after receipt of written notice by the Purchaser from the Company and (B) the Closing Date;

(iii) any Governmental Authority of competent jurisdiction, enters a Final Order declaring this Agreement or any material portion hereof to be unenforceable; or

(iv) the Closing does not occur on or before the Closing Date.

(c) Purchaser Default. Subject to Section 10.18, the Purchaser agrees that, in the event of a Purchaser Default, the Company shall be entitled to all remedies available at law and at equity, including to enforce rights of damages and/or specific performance pursuant to Section 10.17.

(d) Mutual Termination. This Agreement may be terminated by the mutual written consent of the Company and the Purchaser.

(e) Effect of Purchaser Termination. Upon a termination of this Agreement in accordance with Section 8(a), the Purchaser shall have no continuing liability or obligation to the Company and the provisions of this Agreement shall have no further force or effect with respect to the Purchaser, except for the provisions in Sections 8, 9, and 10, each of which shall survive termination of this Agreement; *provided, however*, that no such termination shall relieve the Purchaser from liability for its breach or non-performance of its obligations hereunder prior to the date of such termination and the rights of the Company as it relates to such breach or non-performance by the Purchaser shall be preserved in the event of the occurrence of such breach or non-performance.

(f) Effect of Company Termination. Upon a termination of this Agreement in accordance with Section 8(b), the Company shall have no continuing liability or obligation to the Purchaser and the provisions of this Agreement shall have no further force or effect with respect to the Company, except for the provisions in Sections 8, 9, and 10, each of which shall survive termination of this Agreement; *provided, however*, that no such termination shall relieve the Company from liability for its breach or non-performance of its obligations hereunder prior to the date of such termination and the rights of the Purchaser as it relates to such breach or non-performance by the Company shall be preserved in the event of the occurrence of such breach or non-performance.

(g) Effect of Mutual Termination. Upon a termination of this Agreement in accordance with Section 8(d), neither Party shall have any continuing liability or obligation to the other Party hereunder and the provisions of this Agreement shall have no further force or effect, except for the provisions in Sections 8, 9, and 10, each of which shall survive termination of this Agreement; *provided, however*, that no such termination shall relieve either Party from liability for its breach or non-performance of its obligations hereunder prior to the date of such termination and the rights of the other Party as it relates to such breach or non-performance by such Party shall be preserved in the event of the occurrence of such breach or non-performance.

Section 9. **INDEMNIFICATION.** The Company agrees to indemnify, defend and hold harmless the Indemnified Parties from and against any and all claims, damages, losses, liabilities, actions, suits, proceedings and expenses (including, without limitation, fees and disbursements of counsel), that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of this Agreement (including as a result of any breach or inaccuracy of any representation, warranty or covenant of the Company herein), the other Transaction Documents, or the transactions contemplated hereby or thereby, any use made or proposed to be made by the Company with the proceeds of the Common Stock Equity Offering, or any claim, litigation, investigation, inquiry or proceeding relating to any of the foregoing, regardless of whether any Indemnified Party is a party thereto, and the Company shall reimburse each Indemnified Party upon demand for reasonable and documented fees and expenses of counsel (which, so long as there are no conflicts among such Indemnified Parties, shall be limited to one law firm serving as counsel for the Indemnified Parties) and other expenses incurred by it in connection with investigating, preparing to defend or defending, or providing evidence in or preparing to serve or serving as a witness with respect to, any lawsuit, investigation, claim or other proceeding relating to any of the foregoing, irrespective of whether the transactions contemplated hereby are consummated, except to the extent such claim, damage, loss, liability, or expense is found in a Final Order to have resulted from such Indemnified Party's bad faith, actual fraud, gross negligence, or willful misconduct. No Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Company, for or in connection with the transactions contemplated hereby, except to the extent such liability is found in a final, non-appealable order of a court of competent jurisdiction to have resulted from such Indemnified Party's bad faith, actual fraud, gross negligence or willful misconduct. In no event, however, shall the Company or any Indemnified Party be liable on any theory of liability for any special, indirect, consequential or punitive damages. Without the prior written consent of the Indemnified Parties, the Company agrees that it will not enter into any settlement of any lawsuit, claim or other proceeding arising out of this Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby, unless such settlement (i) includes an explicit and unconditional release from the party bringing such lawsuit, claim or other proceeding of all Indemnified Parties and (ii) does not include a statement as to or an admission of fault, culpability, or a failure to act by or on behalf of any Indemnified Party. No Indemnified Party shall be liable for any damages arising from the use by unauthorized persons of any information made available to the Indemnified Parties by the Company or representatives through electronic, telecommunications or other information transmission systems that is intercepted by such persons. No Indemnified Party shall settle any lawsuit, claim, or other proceeding arising out of this Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed). Notwithstanding the foregoing, an Indemnified Party shall be entitled to no indemnification by the Company for any claim, damage, loss, liability, or expense incurred by or asserted or awarded against such Indemnified Party for (x) any violation of Law by such Indemnified Party, or (y) to the extent that a claim, damage, loss, liability or expense is attributable to the Purchaser's breach of any of the representations, warranties, covenants or agreements made by the Purchaser in this Agreement or in the other Transaction Documents.

Section 10. **MISCELLANEOUS.**

10.1 **Payments.** All payments made by or on behalf of the Company or any of their Affiliates to the Purchaser or its assigns, successors or designees pursuant to this Agreement shall be without withholding, set-off, counterclaim or deduction of any kind.

10.2 **Arm's Length Transaction.** The Company acknowledges and agrees that (i) the Common Stock Equity Offering and any other transactions described in this Agreement are an arm's-length commercial transaction between the Parties and (ii) the Purchaser has not assumed nor will it assume an advisory or fiduciary responsibility in the Company's favor with respect to any of the transactions contemplated by this Agreement or the process leading thereto, and the Purchaser has no obligation to the Company with respect to the transactions contemplated by this Agreement except those obligations expressly set forth in this Agreement or the Transaction Documents to which it is a party.

10.3 **Survival.** The representations, warranties, covenants, agreements and obligations of the Parties shall survive the Closing as follows (each such survival period, a "**Survival Period**"): (i) except for Fundamental Representations and the Tax Representations, the representations and warranties made by each Party in this Agreement shall survive the Closing until the first anniversary of the Closing; (ii) Fundamental Representations shall survive the Closing until the fifth anniversary of the Closing, (iii) Tax Representations shall survive the Closing for the full period of all applicable statutes of limitations related thereto (after giving effect to any waiver or extension thereof), and (iv) the covenants, agreements, obligations and other undertakings of the Parties shall survive the Closing until fully performed in accordance with their terms. All liability of the Indemnifying Parties with respect to the representations, warranties, covenants, agreements and obligations hereunder shall be extinguished at the end of the applicable Survival Period, except to the extent that notice of an alleged breach of such representations, warranties, covenants, agreements or obligations has been provided before such date; provided that if notice is given prior to the expiration of the applicable Survival Period, the claim with respect to such representation, warranty, covenant, agreement or obligation shall continue indefinitely until finally resolved.

10.4 **No Waiver of Rights.** All waivers hereunder must be made in writing, and the failure of any Party at any time to require another Party's performance of any obligation under this Agreement shall not affect the right subsequently to require performance of that obligation. Any waiver of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision or a waiver or modification of any other provision.

10.5 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by an internationally recognized overnight courier service, by email or registered or certified mail (postage prepaid, return receipt requested) to the respective Parties at the following addresses (or at such other address for any Party as shall be specified by such Party in a notice given in accordance with this Section 10.5).

(a) If to the Company, to:

NextDecade Corporation  
1000 Louisiana Street, Suite 3900  
Houston, Texas 77002  
Attention: Krysta De Lima, General Counsel  
kdelima@next-decade.com

With a copy (which shall not constitute notice to the Company) to:

K&L Gates LLP  
214 North Tryon Street, 47<sup>th</sup> Floor  
Charlotte, North Carolina 28202  
Attention: Sean M. Jones  
Sean.Jones@klgates.com

(b) If to the Purchaser, to the address set forth on Exhibit E.

Any of the foregoing addresses may be changed by giving notice of such change in the foregoing manner, except that notices for changes of address shall be effective only upon receipt.

10.6 Headings. The section and subsection headings in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

10.7 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

10.8 Entire Agreement. This Agreement and the agreements and documents referenced herein constitute the entire agreement of the Parties with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, between the Parties with respect to the subject matter hereof.

10.9 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Except as set forth below, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party (whether by operation of law or otherwise) without the prior written consent of the other Party. Notwithstanding the foregoing, the rights, obligations and interests hereunder may be assigned, delegated or transferred, in whole or in part, by the Purchaser to (i) any Affiliate of the Purchaser upon notice to but without the consent of the Company or (ii) one or more other third parties with the consent of the Company, which consent shall not be unreasonably withheld or delayed; *provided, however*, that any such transferee, as a condition precedent to such transfer, becomes a Party to this Agreement and assumes the obligations of the Purchaser with respect to the transferred shares under this Agreement by executing an addendum substantially in the form set forth in Exhibit A (the "Addendum") and an assumption agreement in substantially the form set forth in Exhibit B hereto (the "Assumption Agreement") and deliver the same to the Company in accordance with Section 10.5, and *provided, further*, that (a) with respect to a transfer to an Affiliate of the Purchaser, the Purchaser either (i) shall have provided an adequate equity support letter or a guarantee of such Affiliate-transferee's obligations, in form and substance reasonably acceptable to the Company or (ii) shall remain fully obligated to fund the Purchase Price, and (b) with respect to a transfer to a third party, the Company, acting in good faith, shall have consented in writing to such transfer (which consent shall not be unreasonably withheld, conditioned or delayed) and shall have determined, in its reasonable discretion, after due inquiry and investigation, that such transferee is reasonably capable of fulfilling such obligations, or, absent such a determination, the proposed transferee shall have deposited with an agent of the Company or into an escrow account under arrangements satisfactory to the Company funds sufficient, in the reasonable determination of the Company, to satisfy such proposed transferee's obligations; and *provided, further*, that in no event shall the Purchaser make an assignment of any of its rights, obligations or interests under this Agreement that, to the Purchaser's actual knowledge, would violate applicable Law. Any transfer that is made in violation of the immediately preceding sentence shall be null and void ab initio, and the Company shall have the right to enforce the voiding of such transfer.

10.10 No Third-Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the Parties and their respective successors and permitted assigns and, except as expressly set forth in Section 9, nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever.

10.11 Amendment. This Agreement may not be altered, amended, or modified except by a written instrument executed by or on behalf of the Company and the Purchaser.

10.12 Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Delaware, without regard to the conflicts of law principles thereof.

10.13 Consent to Jurisdiction. Each of the Parties (a) irrevocably and unconditionally agrees that any actions, suits or proceedings, at law or equity, arising out of or relating to this Agreement or any agreements or transactions contemplated hereby shall be heard and determined by the federal or state courts located in the State of Delaware; (b) irrevocably submits to the jurisdiction of such courts in any such action, suit or proceeding; (c) consents that any such action, suit or proceeding may be brought in such courts and waives any objection that such Party may now or hereafter have to the venue or jurisdiction of such courts or that such action or proceeding was brought in an inconvenient forum; and (d) agrees that service of process in any such action, suit or proceeding may be effected by providing a copy thereof by any of the methods of delivery permitted by Section 10.5 to such Party at its address as provided in Section 10.5 (provided that nothing herein shall affect the right to effect service of process in any other manner permitted by Law).

10.14 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH OF THE PARTIES HERETO HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.14.

10.15 Currency. Unless otherwise specified in this Agreement, all references to currency, monetary values and dollars set forth herein shall mean United States (U.S.) dollars and all payments hereunder shall be made in United States dollars.



10.16 Counterparts. This Agreement may be executed and delivered (including by facsimile or electronic transmission) in one or more counterparts, and by the different Parties in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Signatures of the Parties transmitted by electronic mail shall be deemed to be their original signatures for all purposes.

10.17 Specific Performance. Each Party acknowledges that, in view of the uniqueness of the securities referenced herein and the transactions contemplated by this Agreement, the other Party would not have an adequate remedy at law for money damages in the event that this Agreement has not been performed in accordance with its terms, and therefore agrees that the other Party shall be entitled to specific performance and injunctive or other equitable relief, without the necessity of proving the inadequacy of monetary damages as a remedy.

10.18 Waiver of Consequential Damages. Notwithstanding any provision in this Agreement to the contrary, in no event shall any Party or its Affiliates, or their respective managers, members, shareholders or representatives, be liable hereunder at any time for punitive, incidental, consequential special or indirect damages, including loss of future profits, revenue or income, or loss of business reputation of any other Party or any of its Affiliates, whether in contract, tort (including negligence), strict liability or otherwise, and each Party hereby expressly releases each other Party, its Affiliates, and their respective managers, members, shareholders, partners, consultants, representatives, successors and assigns therefrom.

10.19 Rules of Construction. The Parties and their respective legal counsel participated in the preparation of this Agreement, and therefore, this Agreement shall be construed neither against nor in favor of any of the Parties, but rather in accordance with the fair meaning thereof. All definitions set forth in this Agreement are deemed applicable whether the words defined are used in this Agreement in the singular or in the plural, and correlative forms of defined terms have corresponding meanings. The term "including" is not limiting and means "including without limitation." The term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection, clause, schedule, annex and exhibit references are to this Agreement unless otherwise specified. Any reference to this Agreement shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, and supplements thereto and thereof, as applicable. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter forms.

*[No further text appears; signature pages follow]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

NEXTDECADE CORPORATION

By:     /s/ Matthew Schatzman    

Name: Matthew Schatzman

Title: Chief Executive Officer

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PURCHASER  
NINETEENTH INVESTMENT COMPANY LLC

By: /s/ Robert Murphy  
Name: Robert Murphy  
Title: Senior Vice President, M&A

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**PURCHASER RIGHTS AGREEMENT**

This PURCHASER RIGHTS AGREEMENT (this "Agreement"), dated as of October 28, 2019, is entered into by and between NextDecade Corporation, a Delaware corporation ("NextDecade" or the "Company"), and Nineteenth Investment Company LLC, a limited liability company organized under the laws of the United Arab Emirates (the "Purchaser"). Each of NextDecade and the Purchaser are referred to herein as a "Party" and collectively as the "Parties."

**RECITALS:**

WHEREAS, the Purchaser is purchasing shares of the Company's Common Stock in an offering (the "Common Stock Equity Offering") by the Company pursuant to the Common Stock Purchase Agreement (as defined herein); and

WHEREAS, in connection with the purchase of the Common Stock, the Purchaser was granted the additional rights set forth in this Agreement.

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

**Section 1. DEFINITIONS.** As used in this Agreement, the following terms shall have the following meanings:

"Affiliate" means (i) with respect to any Person other than the Purchaser, any other Person which directly or indirectly controls or is controlled by or is under common control with such Person, and (ii) solely with respect to the Purchaser, Mubadala Investment Company PJSC and its Subsidiaries. As used in this definition, "control" (including its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise); provided, however, the term Affiliate shall not include (a) direct or indirect portfolio companies of the Purchaser or an Affiliate of the Purchaser or (b) any third-party investment manager with discretionary authority to trade on behalf of the Purchaser or an Affiliate of the Purchaser, so long as in each of clauses (a) and (b), such Person excepted from the definition has not been provided by such Purchaser with confidential information regarding the Company obtained in its capacity as the Purchaser (it being understood and agreed that, (i) confidential information regarding the Company will presumptively not be deemed to have been shared if such Person is restricted from accessing such information through compliance with standard practices and procedures restricting the flow of information and (ii) the disclosure of such confidential information to a director, officer or employee of the Purchaser or an Affiliate thereof does not, in and of itself, constitute disclosure to a Person described in clause (a) above of which such director, officer or employee is also a director, officer or employee).

“Agreement” has the meaning assigned to it in the preamble hereto.

“Board” means the board of directors of the Company.

“Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in the City of New York.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the common stock of the Company, \$0.0001 par value.

“Common Stock Equity Offering” has the meaning assigned to it in the Recitals hereto.

“Common Stock Purchase Price” means the aggregate purchase price to be paid by the Purchaser pursuant to the Common Stock Purchase Agreement in respect of all shares of Common Stock that the Purchaser has purchased pursuant thereto.

“Common Stock Purchase Agreement” means that certain Common Stock Purchase Agreement, dated as of October 24, 2019, by and between the Company and the Purchaser.

“Company” has the meaning assigned to it in the preamble hereto.

“Designated Director” has the meaning set forth in Section 3(a) of this Agreement.

“EPC Contract” means a fixed price, date certain engineering, procurement and construction contract with respect to the Project.

“FID” means the Board has affirmatively voted or consented to undertake construction of the Project and the Company has given a full notice to proceed under an EPC Contract.

“FID Capital Notice” has the meaning set forth in Section 2(a) of this Agreement.

“FID Capital Securities” means the FID Debt Securities and the FID Equity Securities.

“FID Debt Securities” means any commercial and syndicated senior secured bank loans.

“FID Equity” means capital or funds raised by the Company or any of its Affiliates on or after FID in order to finance the development, construction, commissioning and/or operation of the Project.

“FID Equity Securities” means any equity or equity-linked securities (including, without limitation, limited liability company interests, profit interests, profit-sharing interests, preferred equity, combinations of equity and/or any other instruments or forms of equity capital, as well as warrants, options, purchase rights, and other securities that are exercisable or exchangeable for or convertible into, equity securities of the Company or its Affiliates), as well as debentures, bonds, notes and loans (other than any such loans that otherwise constitute FID Debt Securities), and any non-participating preferred equity that has the indicia of indebtedness issued by the Company or any of its Affiliates, whether offered and sold in a private placement or as part of a public offering, to the extent such securities or other instruments are issued in exchange for FID Equity.

“FID ROFR” has the meaning set forth in Section 2(b) of this Agreement.

“Governmental Authority” means any federal, national, supranational, foreign, state, provincial, local, county, municipal or other government, any governmental, regulatory or administrative authority, agency, department, bureau, board, commission or official or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority, or any court, tribunal, judicial or arbitral body, or any Self-Regulatory Organization.

“Law” means any federal, national, supranational, foreign, state, provincial, local, county, municipal or similar statute, law, common law, guideline, policy, ordinance, regulation, rule, code, constitution, treaty, requirement, judgment or judicial or administrative doctrines enacted, promulgated, issued, enforced or entered by any Governmental Authority.

“LNG” means liquefied natural gas.

“NextDecade” has the meaning assigned to it in the preamble hereto.

“Party” or “Parties” has the meaning assigned to it in the preamble hereto.

“Person” means any individual, partnership, firm, corporation, limited liability company, association, joint venture, trust, Governmental Authority, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

“Project” means the LNG liquefaction and export facility to be located on the U.S. Gulf Coast known as the Rio Grande LNG Project.

“Purchaser” has the meaning assigned to it in the preamble hereto.

“Purchaser FID Capital Preference Amount” means an aggregate purchase amount of FID Equity Securities equal to One Hundred Sixteen Million Eight Hundred Twelve Thousand Seven Hundred and Ninety-Five Dollars (\$116,812,795), plus any FID ROFR amount and type to which the Purchaser may otherwise be entitled as of the date hereof.

“Purchaser Rights Agreement” means this Agreement.

“Resignation Event” means (i) that the Designated Director, as determined by the Board in good faith following compliance with the procedures set forth below in this definition when applicable, (A) ceases to be an employee of the Purchaser or any of its Affiliates; (B) is prohibited or disqualified from serving as a director of the Company under any rule or regulation of the Commission, a Self-Regulatory Organization or by applicable Law; (C) has engaged in acts or omissions constituting a breach of the Designated Director’s duty of loyalty to the Company or its stockholders, following a good faith determination by the Board after consultation with independent Delaware counsel; (D) has engaged in acts or omissions which involve intentional criminal misconduct or an intentional violation of Law; (E) has engaged in any transaction involving the Company from which the Designated Director derived an improper personal benefit, following a good faith determination by the Board after consultation with independent Delaware counsel, or (ii) a Termination Event. Prior to making a determination that any Resignation Event described in clause (i)(B) through (E) above has occurred, the Board shall provide the Designated Director with proper notice of a meeting of the Board to discuss and, if applicable, to dispute the proposed determination. At such duly called and held Board meeting, the Board shall provide the Designated Director with an opportunity to be heard and to present information relevant to the Board’s determination. The Board may make a determination that a Resignation Event has occurred only following its consideration in good faith of any such information presented by the Designated Director.

“Self-Regulatory Organization” means any securities exchange, futures exchange, contract market, any other exchange or corporation or similar self-regulatory body or organization applicable to a Party to this Agreement.

“Termination Event” means the occurrence at any time of the Purchaser’s and its Affiliates’ aggregate ownership interest in the Company falling below fifty percent (50%) of such aggregate ownership as of the date of Closing (as defined in the Common Stock Purchase Agreement).

**Section 2. FID CAPITAL RIGHT OF FIRST REFUSAL.** As an inducement for the Purchaser to enter into the transactions contemplated by the Common Stock Purchase Agreement, the Company agrees, effective upon the Purchaser’s funding the Common Stock Purchase Price in full, as follows:

(a) If at any time the Company proposes to consummate the issuance and sale of FID Capital Securities, then the Company shall give written notice (a “FID Capital Notice”) to the Purchaser of the proposed issuance and sale of all such FID Capital Securities. The FID Capital Notice shall provide information consistent with the notices to other third party prospective investors, as determined by the Company with its financial advisor.

(b) The Purchaser shall have the right, but not the obligation, to participate in the process to raise FID Capital Securities by the Company and its advisors (“FID ROFR”). The Purchaser shall be required to reasonably comply with the syndication process as established by the Company’s advisors. The Purchaser will have access to information consistent with the information provided to other third party prospective investors. Provided that the Purchaser gives notice to the Company consistent with the syndication process, the Purchaser shall have the right, but not the obligation, to purchase up to the Purchaser FID Capital Preference Amount of FID Capital Securities, in each case (x) with respect to governance rights, on the same terms and conditions as other investors who purchase a comparable amount of FID Capital Securities under the same FID Capital Notice and (y) with respect to investment economics (including but not limited to coupon rates, original issue premium, warrants, put, call or redemption features, discounts, amortization, prepayment penalties and sharing of profits or excess revenues), on terms and conditions no worse than any other investor purchasing FID Capital Securities under the same FID Capital Notice.

(c) To the extent that the Purchaser does not exercise its right, pursuant to Section 2(b), to purchase the applicable Purchaser FID Capital Preference Amount of FID Capital Securities, then the Company shall be free to issue the FID Capital Securities originally offered to the Purchaser for which exercise was not made by the Purchaser; provided, however, that if the terms of such FID Capital Securities allocated for sale to third parties are more favorable than the terms originally offered to the Purchaser, the Company shall be obligated to offer those same, improved, terms to the Purchaser and the Purchaser shall be allowed another opportunity to accept or reject such improved terms as provided herein. If the Purchaser elects to purchase any FID Capital Securities pursuant to Section 2(b), then the Company shall sell to the Purchaser, and the Purchaser shall purchase from the Company, for the consideration and on the terms as established by the syndication process, the FID Capital Securities that the Purchaser has duly elected to purchase pursuant to Section 2(b) and the Company may issue the remaining FID Capital Securities it proposed to issue in such FID Capital Notice in accordance with this Section 2(c).

(d) If the sale of the FID Capital Securities is not completed within six (6) months of the date on which the FID Capital Notice is given, then the Company shall not thereafter sell FID Capital Securities without complying anew with the procedures described in this Section 2.

(e) Upon the reasonable advice of its financial advisor, the Company may modify the process and timing of the transactions described in this Section 2, provided, however, that such modification shall not result in any reduction of the Purchaser FID Capital Preference Amount.

### **Section 3. PURCHASER DESIGNATED DIRECTOR**

(a) Concurrently with the issuance of the Common Stock to the Purchaser or its Affiliate, the Board shall (i) increase the number of natural persons that constitute the whole Board by at least one (1) person and (ii) fill one such vacancy created by virtue of such increase in the size of the Board with an individual designated by the Purchaser (the “Designated Director”); provided, however, that the Designated Director shall, in the reasonable judgment of the Company, (A) have the requisite skill and experience to serve as a director of a publicly traded company, (B) not be prohibited or disqualified from serving as a director of the Company pursuant to any rule or regulation of the Commission, any Self-Regulatory Organization, or by applicable Law, or be subject to any “Bad Actor” disqualification set forth in Rule 506(d) under the Securities Act of 1934, as amended, and (C) otherwise be reasonably acceptable to the Company. The Company shall use reasonable efforts to ensure that the Designated Director is assigned as a “Class B” director in accordance with the Second Amended and Restated Certificate of Incorporation of the Company. The Company covenants to indemnify the Designated Director and, prior to the appointment of the Designated Director, agrees to execute an indemnification agreement substantially in the form attached hereto as Exhibit A. The Purchaser and the Designated Director agree to provide the Company with accurate and complete information relating to the Purchaser and the Designated Director that may be required to be disclosed by Company under the Securities and Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder. In addition, at the Company’s request, the Purchaser shall cause the Designated Director to complete and execute the Company’s Standard Director and Officer Questionnaire prior to being admitted to the Board or standing for reelection at an annual meeting of stockholders or at such other time as may be requested by the Company.

(b) Until a Termination Event, and subject to the conditions of Section 3(a), the Company shall nominate the Designated Director for re-election to the Board at each annual meeting of stockholders at which the Designated Director is up for re-election. The Designated Director will hold office until his or her term expires in accordance with the bylaws of the Company and such Designated Director’s successor has been duly elected and qualified or until such Designated Director’s earlier death, resignation or removal.

(c) Prior to a Termination Event:

(i) in connection with each annual meeting of stockholders, and subject to the conditions of Section 3(a), the Board shall unanimously recommend that the stockholders of the Company vote “FOR” the election of the Designated Director and shall use all commercially reasonable efforts to cause the election of the Designated Director to the Board, including soliciting proxies in favor of his or her election;

(ii) any Designated Director may be removed by the Purchaser at any time in the Purchaser’s sole discretion, and any vacancy created by such removal shall be filled by the Board with an individual designated by the Purchaser who, subject to the conditions of Section 3(a), shall become the Designated Director; and

(iii) upon written notice from the Company to the Purchaser that a Resignation Event has occurred, which notice shall set forth in reasonable detail the facts and circumstances constituting the Resignation Event, the Purchaser will cause the Designated Director then serving as a member of the Board to resign as a member of the Board within two (2) Business Days of such written notice, and any vacancy created by such resignation shall be filled by the Board with an individual designated by the Purchaser who, subject to the conditions of Section 3(a), shall become the Designated Director.



(d) Any action by the Purchaser to designate or replace the Designated Director shall be evidenced in writing furnished to the Company and shall be signed by or on behalf of the Purchaser.

(e) Prior to designating a Designated Director, the Purchaser shall enter into a written agreement with the Designated Director whereby such Designated Director agrees to resign as a member of the Board upon a Resignation Event. The Purchaser acknowledges and agrees that such an agreement is in the best interest of the Company and the Purchaser, and that the Company shall be a third party beneficiary of the terms and conditions of such an agreement, and the Company shall have the right to enforce such an agreement to the same extent as the parties thereto.

(f) The Company shall not take any action that would lessen, restrict, prevent or otherwise have an adverse effect upon the foregoing rights of the Purchaser to Board representation; provided, however, that the Company shall not be prohibited from taking such action that the Board determines may be necessary to (A) comply with any rule or regulation of the Commission or any Self-Regulatory Organization or (B) comply with applicable Law.

(g) Except as the Purchaser may otherwise agree in writing, the Purchaser and its Affiliates shall have the right to (i) engage, directly or indirectly, in the same or similar business activities or lines of business as the Company and (ii) do business with any client, competitor or customer of the Company, with the result that the Company shall have no right in or to such activities or any proceeds or benefits therefrom, and except as otherwise provided in this Agreement, neither the Purchaser nor any of its Affiliates shall be liable to the Company or its stockholders for breach of any fiduciary duty by reason of any such activities of the Purchaser or its Affiliates participation therein. If the Purchaser acquires knowledge of a potential transaction or matter that may be a corporate opportunity for both the Company and the Purchaser or its Affiliates, then the Purchaser and its Affiliates shall have no duty to communicate or present such corporate opportunity to the Company and the Company hereby renounces any interest or expectancy it may have in such corporate opportunity, with the result that neither the Purchaser nor any of its Affiliates shall be liable to the Company or its stockholders for breach of any fiduciary duty, including for breach of any fiduciary duty as a stockholder of the Company by reason of the fact that the Purchaser pursues or acquires such corporate opportunity for itself, directs such corporate opportunity to another Person, or does not present such corporate opportunity to the Company. The Company shall indemnify the Purchaser and its Affiliates against any losses resulting from any breach of fiduciary duty or other claim brought by or through the Company or any stockholder of the Company with respect to the matters contemplated by this Section 3(g). Notwithstanding the foregoing, if the Purchaser acquires knowledge of a potential transaction or matter that may be a corporate opportunity for both the Company, on the one hand, and the Purchaser or its Affiliates, on the other, as a result of information shared by the Company to with members of the Board, including the Designated Director, then such corporate opportunity belongs to the Company, and the Purchaser shall be liable to the Company and its stockholders for breach of any fiduciary duty, including for breach of any fiduciary duty as a stockholder of the Company by reason of the fact that the Purchaser or its Affiliates usurps such corporate opportunity for itself, or directs such corporate opportunity to another Person.

#### **Section 4. MISCELLANEOUS.**

4.1 Representations and Warranties. The Company hereby represents to the Purchaser that (i) it has full organizational power and authority to execute and deliver this Agreement and to comply with its obligations hereunder; (ii) the execution and delivery of this Agreement by it have been duly and validly authorized by all necessary organizational action on its part; and (iii) this Agreement has been duly and validly executed and delivered by it and the provisions of this Agreement constitute valid and binding obligations of it, enforceable against it in accordance with the terms hereof, except that such enforceability (x) may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to the enforcement of creditors' rights generally, and (y) is subject to general principles of equity and the discretion of the court before which any proceedings seeking injunctive relief or specific performance may be brought. The Company further represents to the Purchaser that each holder of a right of first refusal exercisable with respect to the FID Capital Securities, whether FID Equity Securities or FID Debt Securities, holds such right of first refusal either *pari passu* with or junior to the Purchaser's set of rights as described in Section 2.

4.2 Payments. All payments made by or on behalf of the Company or any of their Affiliates to the Purchaser or its respective assigns, successors or designees pursuant to this Agreement shall be without withholding, set-off, counterclaim or deduction of any kind.

4.3 Tax Cooperation. The Company will use commercially reasonable efforts to structure the issuance of FID Capital Securities in order to minimize the direct and indirect U.S. federal and state income tax liability of the Purchaser arising from its acquisition and ownership of such FID Capital Securities (including, without limitation, establishment of one or more blocker corporations through the Purchaser and other investors would acquire FID Equity Securities issued by any Affiliate of the Company that is treated as a partnership for U.S. federal income tax purposes).

4.4 Arm's Length Transaction. The Company acknowledges and agrees that (i) the Common Stock Equity Offering and any other transactions described in this Agreement are an arm's-length commercial transaction between the Parties and (ii) the Purchaser has not assumed nor will it assume an advisory or fiduciary responsibility in the Company's favor with respect to any of the transactions contemplated by this Agreement or the process leading thereto, and the Purchaser has no obligation to the Company with respect to the transactions contemplated by this Agreement except those obligations expressly set forth in this Agreement or the Offering Documents to which it is a party.

4.5 No Waiver of Rights. All waivers hereunder must be made in writing, and the failure of any Party at any time to require another Party's performance of any obligation under this Agreement shall not affect the right subsequently to require performance of that obligation. Any waiver of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision or a waiver or modification of any other provision.

4.6 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by an internationally recognized overnight courier service, by email or registered or certified mail (postage prepaid, return receipt requested) to the respective Parties at the following addresses (or at such other address for any Party as shall be specified by such Party in a notice given in accordance with this Section 4.6).

(a) If to the Company, to:

NextDecade Corporation  
1000 Louisiana Street, Suite 3900  
Houston, Texas 77002

Attention: Krysta De Lima, General Counsel  
kdelima@next-decade.com

With a copy (which shall not constitute notice to the Company) to:

K&L Gates LLP  
214 North Tryon Street, 47<sup>th</sup> Floor  
Charlotte, North Carolina 28202  
Fax: (704) 353-3106  
Attention: Sean M. Jones  
Sean.Jones@klgates.com

(b) If to the Purchaser to the notice address set forth in the Common Stock Purchase Agreement.

Any of the foregoing addresses may be changed by giving notice of such change in the foregoing manner, except that notices for changes of address shall be effective only upon receipt.

4.7 Headings. The section and subsection headings in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

4.8 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

4.9 Entire Agreement. This Agreement and the agreements and documents referenced herein constitute the entire agreement of the Parties with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, between the Parties with respect to the subject matter hereof.

4.10 Successors and Assigns.

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

(b) The Purchaser may assign the rights, interests or obligations under this Agreement to any Affiliate upon written notice to the Company.

(c) The Purchaser may not transfer any FID ROFR rights without the prior written consent of the Company or the Board, which such consent shall not be unreasonably withheld, delayed or conditioned. No FID ROFR rights may be transferred unless such transfer includes at least fifty percent (50%) of the Purchaser's FID ROFR rights with respect to FID Equity Securities held as of the date hereof or at least fifty percent (50%) of the Purchaser's FID ROFR rights with respect to FID Debt Securities held as of the date hereof. For avoidance of doubt, in the event the Purchaser transfers only fifty percent (50%) of its FID ROFR rights with respect to either its FID Equity Securities or FID Debt Securities, the Purchaser shall retain the right to transfer the remaining fifty percent (50%) of such FID Equity Securities or FID Debt Securities, as applicable, subject to the terms of this Section 4.10(c). The Purchaser shall have the right to transfer its FID ROFR rights with respect to FID Equity Securities and FID Debt Securities independently of each other. Following the Purchaser's being provided the opportunity to exercise its FID ROFR rights pursuant to a FID Capital Notice with respect to the Company's first two liquefaction units to be constructed as part of the Project, and provided that an FID has in fact occurred in respect of such first two liquefaction units, the Purchaser shall be entitled to transfer all of its remaining FID ROFR rights with respect to each of its FID Equity Securities and its FID Debt Securities to a single transferee even if such remaining FID ROFR rights are less than the fifty percent (50%) of the Purchaser's FID ROFR rights with respect to FID Equity Securities held as of the date hereof or are less than fifty percent (50%) of the Purchaser's FID ROFR rights with respect to FID Debt Securities held as of the date hereof. The Purchaser and the transferee of any such FID ROFR rights shall determine the terms of conditions of the transfer of such FID ROFR rights. The Purchaser shall retain any FID ROFR rights not so transferred until either exercised or transferred.

(d) This Section 4.10 shall not preclude, impede or restrict the Purchaser's ability to sell, transfer, assign or dispose of its shares of Common Stock. The Purchaser may transfer its FID ROFR rights independently of the sale of any shares of Common Stock, and may sell shares of Common Stock without transferring any of its FID ROFR rights.

(e) Except as set forth in this Section 4.10 or as otherwise agreed by the Parties in writing, neither this Agreement nor any of the rights, interests or obligations under this Agreement (including the Purchaser's right to appoint a Designated Director pursuant to Section 3 hereof) may be assigned by either Party (whether by operation of law or otherwise) without the prior written consent of the other Party.

4.11 No Third-Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever.

4.12 Amendment. This Agreement may not be altered, amended, or modified except by a written instrument executed by or on behalf of the Company and the Purchaser.

4.13 Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Delaware, without regard to the conflicts of law principles thereof.

4.14 Consent to Jurisdiction. Each of the Parties (a) irrevocably and unconditionally agrees that any actions, suits or proceedings, at law or equity, arising out of or relating to this Agreement or any agreements or transactions contemplated hereby shall be heard and determined by the federal or state courts located in the State of Delaware; (b) irrevocably submits to the jurisdiction of such courts in any such action, suit or proceeding; (c) consents that any such action, suit or proceeding may be brought in such courts and waives any objection that such Party may now or hereafter have to the venue or jurisdiction of such courts or that such action or proceeding was brought in an inconvenient forum; and (d) agrees that service of process in any such action, suit or proceeding may be effected by providing a copy thereof by any of the methods of delivery permitted by Section 4.6 to such Party at its address as provided in Section 4.6 (provided that nothing herein shall affect the right to effect service of process in any other manner permitted by Law).

4.15 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH OF THE PARTIES HERETO HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 4.15.

4.16 Counterparts. This Agreement may be executed and delivered (including by facsimile or electronic transmission) in one or more counterparts, and by the different Parties in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Signatures of the Parties transmitted by electronic mail shall be deemed to be their original signatures for all purposes.

4.17 Specific Performance. Each Party acknowledges that, in view of the uniqueness of the securities referenced herein and the transactions contemplated by this Agreement, the other Party would not have an adequate remedy at law for money damages in the event that this Agreement has not been performed in accordance with its terms, and therefore agrees that the other Party shall be entitled to specific performance and injunctive or other equitable relief, without the necessity of proving the inadequacy of monetary damages as a remedy.

4.18 Amendment of Company Documents. Neither the Company nor the Board shall (a) permit the bylaws or certificate of incorporation of the Company to be amended in any manner that would eliminate or have any negative impact on any of the provisions hereof or the rights conveyed to the Purchaser hereunder or (b) enter into any agreement, instrument or other arrangement that conflicts with the rights and provisions of this Agreement.

4.19 Waiver of Consequential Damages. In no event shall any Party or its Affiliates, or their respective managers, members, shareholders or representatives, be liable hereunder at any time for punitive, incidental, consequential special or indirect damages, including loss of future profits, revenue or income, or loss of business reputation of any other Party or any of its Affiliates, whether in contract, tort (including negligence), strict liability or otherwise, and each Party hereby expressly releases each other Party, its Affiliates, and their respective managers, members, shareholders, partners, consultants, representatives, successors and assigns therefrom.

4.20 Rules of Construction. The Parties and their respective legal counsel participated in the preparation of this Agreement, and therefore, this Agreement shall be construed neither against nor in favor of any of the Parties, but rather in accordance with the fair meaning thereof. All definitions set forth in this Agreement are deemed applicable whether the words defined are used in this Agreement in the singular or in the plural, and correlative forms of defined terms have corresponding meanings. The term "including" is not limiting and means "including without limitation." The term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection, clause, schedule, annex and exhibit references are to this Agreement unless otherwise specified. Any reference to this Agreement shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, and supplements thereto and thereof, as applicable. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter forms.

*[Signature pages follow]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

NEXTDECADE CORPORATION

By: /s/ Matthew Schatzman  
Name: Matthew Schatzman  
Title: Chief Executive Officer

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**PURCHASER:**

NINETEENTH INVESTMENT COMPANY LLC

By:  /s/ Robert Murphy

Name: Robert Murphy

Title: Senior Vice President, M&A

**REGISTRATION RIGHTS AGREEMENT**

This REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of October 28, 2019, is made and entered into by and among NextDecade Corporation, a Delaware corporation (the "Company"), and certain entities listed on Schedule I (the "Holders") attached hereto. Capitalized terms used but not otherwise defined in this Agreement shall have the meaning ascribed to such term in the Purchase Agreement (as defined below).

**RECITALS:**

WHEREAS, reference is made to that certain Common Stock Purchase Agreement, dated as of October 24, 2019 (the "Purchase Agreement"), by and between the Company and the Purchaser party thereto (the "Purchaser");

WHEREAS, pursuant to Section 2 of the Purchase Agreement, the Company issued 7,974,482 shares of Common Stock (as defined herein) to the Purchaser;

WHEREAS, the Company and the Holders wish to determine registration rights with respect to the Common Shares.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

IT IS AGREED as follows:

**Section 1. DEFINITIONS.** As used in this Agreement, the following terms shall have the following meanings:

"Agreement" shall have the meaning set forth in the introductory paragraph hereof.

"Board" shall mean the Board of Directors of the Company.

"Business Day" shall mean any Monday, Tuesday, Wednesday, Thursday, or Friday that is not a day on which banking institutions in New York or other applicable places where such act is to occur are authorized or obligated by applicable law, regulation or executive order to close.

"Commission" shall mean the United States Securities and Exchange Commission.

"Common Shares" shall mean the shares of Common Stock issued pursuant to the Purchase Agreement and any other shares of Common Stock held by the Holders.

"Common Stock" shall mean the common stock of the Company, par value \$0.0001 per share.

"Company" shall have the meaning set forth in the introductory paragraph hereof.



“Controlling Person” shall have the meaning set forth in Section 5(a) of this Agreement.

“Demand Notice” shall have the meaning set forth in Section 2(a)(i) of this Agreement.

“Demand Registration” shall have the meaning set forth in Section 2(b)(i) of this Agreement.

“Demand Registration Statement” shall have the meaning set forth in Section 2(b)(i) of this Agreement.

“Depository” shall mean The Depository Trust Company, or any other depository appointed by the Company.

“Effectiveness Deadline” shall have the meaning set forth in Section 2(a) of this Agreement.

“End of Suspension Notice” shall have the meaning set forth in Section 3(b) of this Agreement.

“Equity Securities” means (a) any capital stock, partnership, membership, joint venture or other ownership or equity interest, participation or securities in or of any Person (whether voting or non-voting, whether preferred, common or otherwise, and including any stock appreciation, contingent interest or similar right), and (b) any option, warrant, security or other right (including debt securities) directly or indirectly convertible into or exercisable or exchangeable for, or otherwise to acquire directly or indirectly, any stock, interest, participation or security described in clause (a) above.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended (or any corresponding provision of succeeding law), and the rules and regulations thereunder.

“FINRA” shall mean the Financial Industry Regulatory Authority.

“Holder” shall mean each holder of Equity Securities of the Company, listed in Schedule I attached hereto, in its capacity as a holder of Registrable Securities, and its direct and indirect transferees. For purposes of this Agreement, the Company may deem and treat the registered holder of a Registrable Security as the Holder and absolute owner thereof, unless notified to the contrary in writing by the registered Holder thereof.

“Holdings’ Minimum Amount” shall have the meaning set forth in Section 2(c) of this Agreement.

“Legal Proceeding” shall mean any action, suit, hearing, claim, lawsuit, litigation, investigation (formal or informal), inquiry, arbitration or proceeding (in each case, whether civil, criminal or administrative or at law or in equity) by or before a governmental or legal entity.

“Liabilities” shall have the meaning set forth in Section 5(a)(i) of this Agreement.

“Majority” means more than half of the Registrable Securities.

“Person” shall mean any individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization or other governmental or legal entity.

“Piggyback Registration” shall have the meaning set forth in Section 2(c)(i) of this Agreement.

“Prospectus” means the prospectus or prospectuses included in any Registration Statement (including without limitation, any prospectus subject to completion and a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act and any term sheet filed pursuant to Rule 434 under the Securities Act), as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference or deemed to be incorporated by reference in such prospectus or prospectuses.

“Purchase Agreement” shall have the meaning set forth in the Recitals hereof.

“Purchaser” shall have the meaning set forth in the Recitals hereof.

“Registrable Securities” with respect to any Holder, shall mean at any time all of the Common Shares together with any class of equity securities of the Company or of a successor to the entire business of the Company which are issued in exchange for the Common Shares; provided, however, that such Registrable Securities shall cease to be Registrable Securities with respect to any Holder upon the earliest to occur of (a) the date on which a Registration Statement with respect to the sale of such Holder’s Common Shares shall have been declared effective under the Securities Act and all of such Holder’s Common Shares shall have been sold, transferred, disposed of or exchanged in accordance with such Registration Statement and (b) the date on which such Holder’s Common Shares shall have ceased to be outstanding; provided that during the continuance of any period in which such Holder’s Common Shares may be sold pursuant to Rule 144 without restriction (including volume restrictions) within a 90-day period, such Common Shares shall not constitute Registrable Securities so long as such period is continuing.

“Registration Expenses” shall mean (a) the fees and disbursements of counsel and independent public accountants for the Company incurred in connection with the Company’s performance of or compliance with this Agreement, including the expenses of any special audits or “comfort” letters required by or incident to such performance and compliance, and any premiums and other costs of policies of insurance obtained by the Company against liabilities arising out of the sale of any securities, (b) all registration, filing and stock exchange fees, all fees and expenses of complying with securities or “blue sky” laws, all fees and expenses of custodians, transfer agents and registrars, all printing expenses, messenger and delivery expenses and fees and disbursements of Selling Holders’ Counsel, (c) expenses relating to any analyst or investor presentations or any “road shows” undertaken in connection with the registration, marketing or selling of the Registrable Securities, (d) fees and expenses in connection with any review by FINRA of the underwriting arrangements or other terms of the offering, and all fees and expenses of any “qualified independent underwriter,” including the reasonable fees and expenses of any counsel thereto, (e) costs of printing and producing any agreements among underwriters, underwriting agreements, any “blue sky” or legal investment memoranda and any selling agreements and other documents in connection with the offering, sale or delivery of the Registrable Securities; provided, however, that “Registration Expenses” shall not include any out-of-pocket expenses of the Holders (other than as set forth in clause (b) above), transfer taxes, underwriting or brokerage commissions or discounts associated with effecting any sales of Registrable Securities that may be offered, which expenses shall be borne by each Holder of Registrable Securities on a pro rata basis with respect to the Registrable Securities so sold.

“Registration Statement” means any registration statement of the Company filed with the Commission under the Securities Act which covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all materials incorporated by reference or deemed to be incorporated by reference in such Registration Statement.

“Sale Expenses” shall mean other than in connection with a Registration Statement, (a) the fees and disbursements of counsel and independent public accountants for the Company incurred in connection with the Company’s performance of or compliance with this Agreement, including the expenses of any special audits or “comfort” letters required by or incident to such performance and compliance, and any premiums and other costs of policies of insurance obtained by the Company against liabilities arising out of the sale of any securities and (b) all registration, filing and stock exchange fees, all fees and expenses of complying with securities or “blue sky” laws, all fees and expenses of custodians, transfer agents and registrars, all printing expenses, messenger and delivery expenses and any fees and disbursements of one common counsel retained by a Majority of the Registrable Securities; provided, however, that “Sale Expenses” shall not include any out-of-pocket expenses of the Holders (other than as set forth in clause (b) above), transfer taxes, underwriting or brokerage commissions or discounts associated with effecting any sales of Registrable Securities that may be offered, which expenses shall be borne by each Holder of Registrable Securities on a pro rata basis with respect to the Registrable Securities so sold.

“Securities Act” shall mean the Securities Act of 1933, as amended (or any corresponding provision of succeeding law), and the rules and regulations thereunder.

“Selling Holders’ Counsel” shall mean counsel for the Holders that is selected by the Holders holding a Majority of the Registrable Securities included in a Registration Statement and that is reasonably acceptable to the Company.

“Shelf Registration Statement” shall have the meaning set forth in Section 2(a)(i) of this Agreement.

“Suspension Event” shall have the meaning set forth in Section 3(b) of this Agreement.

“Suspension Notice” shall have the meaning set forth in Section 3(a) of this Agreement.

“Underwritten Demand Holders” shall have the meaning set forth in Section 2(a)(iii) of this Agreement.

“Underwritten Offering” shall mean a sale of securities of the Company to an underwriter or underwriters for reoffering to the public.

“Withdrawn Demand Registration” shall have the meaning set forth in Section 2(b)(iv) of this Agreement.

**Section 2. SHELF REGISTRATIONS, DEMAND REGISTRATIONS AND PIGGYBACK REGISTRATIONS.**

(a) Shelf Registration.

(i) Filing. The Company shall, as soon as practicable after the date of this Agreement, but in any event within forty-five (45) days after the date of this Agreement, file a Registration Statement under the Securities Act to permit the public resale of all the Registrable Securities held by the Holders from time to time as permitted by Rule 415 under the Securities Act (or any successor or similar provision adopted by the Commission then in effect) (the "Shelf Registration Statement") on the terms and conditions specified in this Section 2(a) and shall use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective as soon as practicable after the filing thereof, but in any event no later than the earlier of (i) sixty (60) days (or ninety (90) days if the Commission notifies the Company that it will "review" the Shelf Registration Statement) after the date that is forty-five (45) days from the date of this Agreement and (ii) the tenth (10th) business day after the date the Company is notified (orally or in writing, whichever is earlier) by the Commission that such Shelf Registration Statement will not be "reviewed" or will not be subject to further review (such earlier date, the "Effectiveness Deadline"). The Shelf Registration Statement filed with the Commission pursuant to this Section 2(a) shall be on Form S-3 or, if Form S-3 is not then available to the Company, on Form S-1 or such other form of registration statement as is then available to effect a registration for resale of such Registrable Securities, covering such Registrable Securities, and shall contain a prospectus in such form as to permit any Holder to sell such Registrable Securities pursuant to Rule 415 under the Securities Act (or any successor or similar provision adopted by the Commission then in effect) at any time beginning on the effective date for such Shelf Registration Statement. A Shelf Registration Statement filed pursuant to this Section 2(a) shall provide for the resale pursuant to any method or combination of methods legally available to, and requested by, the Holders. As soon as practicable following the effective date of a Shelf Registration Statement filed pursuant to this Section 2(a), but in any event within three (3) business days of such date, the Company shall notify the Holders of the effectiveness of such Registration Statement. When effective, a Shelf Registration Statement filed pursuant to this Section 2(a) (including the documents incorporated therein by reference) will comply as to form in all material respects with all applicable requirements of the Securities Act and the Exchange Act and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of any prospectus contained in such Shelf Registration Statement, in the light of the circumstances under which such statement is made).

(ii) Continued Effectiveness. The Company shall use its reasonable best efforts to cause the Shelf Registration Statement to remain effective and to be supplemented and amended to the extent necessary to ensure that such Shelf Registration Statement is available or, if not available, that another registration statement is available, for the resale of all the Registrable Securities held by the Holders until the earliest of (A) the date all such Registrable Securities have ceased to be Registrable Securities and (B) the date all such Registrable Securities covered by such Shelf Registration Statement can be sold publicly without restriction or limitation under Rule 144 under the Securities Act and without the requirement to be in compliance with Rule 144(c)(1) under the Securities Act.

(iii) Underwritten Offering and Selection of Underwriters. If the Holders of at least 20.0% of the then outstanding number of Registrable Securities held by the Holders (the "Underwritten Demand Holders") elect to dispose of Registrable Securities under a Shelf Registration Statement or other Registration Statement pursuant to an Underwritten Offering of all or part of such Registrable Securities that are registered by such Shelf Registration Statement or other Registration Statement and reasonably expect aggregate gross proceeds in excess of \$10,000,000 (the "Holders' Minimum Amount") from such Underwritten Offering, then the Company shall, upon the written demand of such Underwritten Demand Holder(s), enter into an underwriting agreement in a form as is customary in Underwritten Offerings of securities by the Company with the managing underwriter or underwriters selected by the Underwritten Demand Holders and shall take all such other reasonable actions as are requested by the managing underwriter or underwriters in order to expedite or facilitate the disposition of such Registrable Securities; provided, however, that the Company shall have no obligation to facilitate or participate in more than two (2) Underwritten Offerings in any twelve (12)-month period pursuant to this Section 2(a) or Section 2(b). In connection with any Underwritten Offering contemplated by this Section 2(a) or Section 2(b), the underwriting agreement into which each Holder and the Company shall enter shall contain such representations, covenants, indemnities and other rights and obligations as are customary in underwritten offerings of securities by the Company. No Holder shall be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding such Holder's authority to enter into such underwriting agreement and to sell, and its ownership of, the securities being registered on its behalf, its intended method of distribution, the accuracy of information provided by a Holder specifically for use in the Registration Statement or Prospectus, and any other representation required by law; provided, that each Holder other than the Underwritten Demand Holders shall be afforded five (5) Business Days to decide to include in any such Underwritten Offering up to its pro rata share of Registrable Securities based on the percentage of Registrable Securities owned by the Underwritten Demand Holders that are included in such Underwritten Offering; provided further, that to the extent such other Holders wish to include additional Registrable Securities held by such Holders in an Underwritten Offering in excess of their allotted proportion, such other Holders may request, within the same five (5) Business Day notice period outlined above, that the Underwritten Demand Holders consider including such additional shares as Registrable Securities. Upon receipt of such notice, and subject to Section 2(d)(i), the Underwritten Demand Holders may elect to include or exclude such additional Registrable Securities from the Underwritten Offering in their sole and absolute discretion.

(b) Demand Registrations.

(i) Right to Request Registration. So long as the Company does not have an effective Shelf Registration Statement with respect to the Registrable Securities following the Effectiveness Deadline, the Holders of at least twenty percent (20%) of the then-outstanding number of Registrable Securities (the "Demand Holders") may request registration under the Securities Act of all or part of their Registrable Securities with an anticipated aggregate offering price of at least \$10,000,000 at any time and from time to time ("Demand Registration").

Within seven (7) Business Days after receipt of any such request for Demand Registration, the Company shall give written notice of such request to each other Holder of Registrable Securities, if any, and shall, subject to the provisions of Section 2(d)(i) hereof, include in such registration up to the pro rata share Registrable Securities of each such Holder based on the percentage Registrable Securities owned by the Demand Holders that are to be included in the Demand Registration and with respect to which the Company has received written requests for inclusion therein within five (5) Business Days after the receipt of the Company's notice; provided, that to the extent such other Holders wish to include additional Registrable Securities held by such Holders in the Demand Registration in excess of their allotted proportion, such other Holders may request, within the same five (5) Business Day notice period outlined above, that the Demand Holders consider including such additional shares as Registrable Securities. Upon receipt of such notice, and subject to Section 2(d)(i), the Demand Holders may elect to include or exclude such additional Registrable Securities from the Demand Registration in their sole and absolute discretion. The Company shall use its reasonable best efforts to file with the Commission following receipt of any such request for Demand Registration (but in no event more than thirty (30) days following receipt of such request) one or more registration statements with respect to all such Registrable Securities with respect to which the Company has received written requests for inclusion therein in accordance with this paragraph under the Securities Act (the "Demand Registration Statement"). The Company shall use its reasonable best efforts to cause such Demand Registration Statement to be declared effective by the Commission as soon as practicable after the filing thereof. The Demand Registration Statement shall be on an appropriate form and the Registration Statement and any form of Prospectus included therein (or Prospectus supplement relating thereto) shall reflect the plan of distribution or method of sale as the Holders of shares registered on such Registration Statement may from time to time notify the Company. Subject to the foregoing and to Section 2(d)(i), following the receipt by the Company of any request for Demand Registration, all of the Registrable Securities of any Holder electing to register Registrable Securities in accordance with this paragraph shall be included in the Demand Registration Statement without any further action by any Holder. The Demand Holders who have requested a Demand Registration may cause the Company to postpone or withdraw the filing or the effectiveness of such Demand Registration at any time in their sole discretion.

(ii) Restrictions on Demand Registrations. The Company shall not be obligated to effect any Demand Registration within ninety (90) days after the effective date of (A) a previous Demand Registration or (B) a previous registration under which any Holder or Holders had piggyback rights pursuant to Section 2(c) hereof and in which the Holders exercising such piggyback rights were permitted to register, and sold, at least fifty percent (50%) of the Registrable Securities requested to be included therein. In addition, the Company shall not be obligated to effect any Demand Registration after the Company has effected two (2) Demand Registrations in any twelve (12)-month period if all such registrations effected by the Company have been declared and ordered effective.

(iii) Underwritten Offering and Selection of Underwriters. If the Underwritten Demand Holders elect to dispose of Registrable Securities under a Demand Registration pursuant to an Underwritten Offering, then each other Holder shall be afforded the right to include in any such Underwritten Offering up to its pro rata share of Registrable Securities based on the percentage of Registrable Securities owned by the Underwritten Demand Holders that are included in such Underwritten Offering. If any of the Registrable Securities covered by a Demand Registration hereof are to be sold in an Underwritten Offering, then the Underwritten Demand Holders shall have the right to select the managing underwriter or underwriters to administer any such Underwritten Offering.

(iv) Effective Period of Demand Registrations. After any Demand Registration Statement filed pursuant to this Agreement has become effective, the Company shall use its reasonable best efforts to keep such Demand Registration Statement effective for a period equal to one hundred eighty (180) days from the date on which the Commission declares such Demand Registration Statement effective (or if such Demand Registration Statement is not effective during any period within such one hundred eighty (180) days, such 180-day period shall be extended by the number of days during such period when such Demand Registration Statement is not effective), or such shorter period that shall terminate when all of the Registrable Securities covered by such Demand Registration Statement have been sold pursuant to such Demand Registration. If the Company shall withdraw or reduce the number of shares of Registrable Securities that is subject to any Demand Registration pursuant to Section 2(d)(i) (a "Withdrawn Demand Registration"), the Demand Holders of the Registrable Securities remaining unsold and originally covered by such Withdrawn Demand Registration shall be entitled to a replacement Demand Registration that (subject to the provisions of this Section 2(b)) the Company shall use its reasonable best efforts to keep effective for a period commencing on the effective date of such Demand Registration and ending on the earlier to occur of the date (i) that is one hundred eighty (180) days from the effective date of such Demand Registration and (ii) on which all of the Registrable Securities covered by such Demand Registration have been sold. Such additional Demand Registration otherwise shall be subject to all of the provisions of this Agreement.

(c) Piggyback Registrations.

(i) Right to Piggyback. Whenever the Company proposes to register any of its Common Stock under the Securities Act (other than a registration statement on Form S-8 or on Form S-4 or any similar successor forms thereto), whether for its own account or for the account of one or more stockholders of the Company, and the registration form to be used may be used for any registration of Registrable Securities (a "Piggyback Registration"), the Company shall give prompt (but in no event less than ten (10) days before the anticipated filing date of such registration statement) written notice to all Holders of its intention to effect such a registration, which notice shall (A) describe the amount and type of securities to be included in such offering, the intended method of distribution, and the name of the proposed managing underwriter, if any, in such offering, and (B) offer to all Holders of Registrable Securities the opportunity to register the same of such number of Registrable Securities as such Holders may request in writing within five (5) Business Days after receipt of such written notice from the Company. The Company shall, subject to Sections 2(d)(ii) and 2(d)(iii), include in such registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein within five (5) Business Days after the receipt of the Company's notice. The Company may postpone or withdraw the filing or the effectiveness of a Piggyback Registration at any time in its sole discretion upon reasonable notice to any participating Holders.

(ii) Withdrawal. Any Holder may elect to withdraw such Holder's request for inclusion of Registrable Securities in any Piggyback Registration by giving written notice to the Company of such request to withdraw prior to the effectiveness of the Registration Statement. The Company (whether on its own determination or as the result of a withdrawal by Persons making a demand pursuant to written contractual obligations) may withdraw a Registration Statement at any time prior to the effectiveness of the Registration Statement without thereby incurring any liability to the Holders of Registrable Securities. Notwithstanding any such withdrawal, the Company shall pay all expenses incurred by the Holders in connection with such Piggyback Registration as provided in Section 8(d).

(iii) Selection of Underwriters. If any of the Registrable Securities of the Holders covered by a Piggyback Registration hereof are to be sold in an Underwritten Offering, then the Company shall have the right to select the managing underwriter or underwriters to administer any such offering.

(d) Priority.

(i) Priority on Shelf and Demand Registrations. If the managing underwriters of a requested Demand Registration or an Underwritten Offering under a Shelf Registration Statement advise the Company in writing that, in their opinion, the number of Registrable Securities requested to be included in such Demand Registration Statement or Shelf Registration Statement exceeds the number that can be sold in such offering and/or that the number of Registrable Securities proposed to be included in any such registration would adversely affect the price per share of the Company's equity securities to be sold in such offering (such maximum number of securities or Registrable Securities, as applicable, the "Maximum Threshold"), the underwriting shall be allocated among the Company and all Holders as follows: (A) first, the shares comprised of Registrable Securities, as to which registration has been requested and is required pursuant to the registration rights hereof, based on the amount of such Registrable Securities initially requested to be registered by such Holders that can be sold without exceeding the Maximum Threshold; (B) second, to the extent that the Maximum Threshold has not been reached under the foregoing clause (A), the shares of Common Stock or other securities that the Company desires to sell that can be sold without exceeding the Maximum Threshold; and (C) third, to the extent the Maximum Threshold has not been reached under the foregoing clauses (A) and (B), any additional Registrable Securities of Holders other than the Demand Holders or Underwritten Demand Holders as to which registration has been requested and that the Demand Holders or Underwritten Demand Holders, as applicable, determine, in their sole discretion, can be sold.

(ii) Priority on Primary Registrations. If a Piggyback Registration is an underwritten primary registration on behalf of the Company, and the managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the Maximum Threshold, the underwriting shall be allocated among the Company and all Holders as follows: (A) first, the shares of Common Stock or other securities that the Company desires to sell that can be sold without exceeding the Maximum Threshold; and (B) second, to the extent that the Maximum Threshold has not been reached under the foregoing clause (A), the shares comprised of Registrable Securities, as to which registration has been requested pursuant to the registration rights hereof, based on the amount of such Registrable Securities initially requested to be registered by such Holders that can be sold without exceeding the Maximum Threshold.

(iii) Underwritten Block Trades. Notwithstanding the foregoing, if the Holders of at least twenty percent (20%) of the then-outstanding number of Registrable Securities wish to engage in an underwritten block trade off of an effective Shelf Registration Statement, Demand Registration Statement or Piggyback Registration, such Holders may notify the Company of the block trade offering on the day such offering is to commence and the Company shall as expeditiously as possible use its reasonable best efforts to facilitate such offering (which may close as early as three (3) Business Days after the date it commences); provided that in the case of such underwritten block trade, only such Holders shall have a right to notice of and to participate in such offering.



### Section 3. BLACK-OUT PERIODS.

(a) Notwithstanding Section 2, and subject to the provisions of this Section 3, the Company shall be permitted, in limited circumstances, to suspend the use, from time to time, of the Prospectus that is part of a Shelf Registration Statement (and therefore suspend sales of the Registrable Securities under such Shelf Registration Statement), by providing written notice (a "Suspension Notice") to the Selling Holders' Counsel, if any, and the Holders, for such times as the Company reasonably may determine is necessary and advisable (but in no event for more than an aggregate of ninety (90) days in any rolling twelve (12)-month period commencing on the date of this Agreement or more than forty-five (45) consecutive days, except as a result of a refusal by the Commission to declare any post-effective amendment to the Shelf Registration Statement effective after the Company has used all reasonable best efforts to cause the post-effective amendment to be declared effective by the Commission, in which case, the Company must terminate the black-out period immediately following the effective date of the post-effective amendment) if either of the following events shall occur: (i) a majority of the Board determines in good faith that (A) the offer or sale of any Registrable Securities would materially impede, delay or interfere with any proposed financing, offer or sale of securities, acquisition, corporate reorganization or other material transaction involving the Company, (B) after the advice of counsel, the sale of Registrable Securities pursuant to the Shelf Registration Statement would require disclosure of non-public material information not otherwise required to be disclosed under applicable law, and (C) (x) the Company has a bona fide business purpose for preserving the confidentiality of such transaction, (y) disclosure would have a material adverse effect on the Company or the Company's ability to consummate such transaction, or (z) such transaction renders the Company unable to comply with Commission requirements, in each case under circumstances that would make it impractical or inadvisable to cause the Shelf Registration Statement (or such filings) to become effective or to promptly amend or supplement the Shelf Registration Statement on a post-effective basis, as applicable; or (ii) a majority of the Board determines in good faith, upon the advice of counsel, that it is in the Company's best interest or it is required by law, rule or regulation to supplement the Shelf Registration Statement or file a post-effective amendment to the Shelf Registration Statement in order to ensure that the Prospectus included in the Shelf Registration Statement (1) contains the information required under Section 10(a)(3) of the Securities Act; (2) discloses any facts or events arising after the effective date of the Shelf Registration Statement (or of the most recent post-effective amendment) that, individually or in the aggregate, represents a fundamental change in the information set forth therein; or (3) discloses any material information with respect to the plan of distribution that was not disclosed in the Shelf Registration Statement or any material change to such information. Upon the occurrence of any such suspension, the Company shall use its reasonable best efforts to cause the Shelf Registration Statement to become effective or to promptly amend or supplement the Shelf Registration Statement on a post-effective basis or to take such action as is necessary to make resumed use of the Shelf Registration Statement as soon as possible.

(b) In the case of an event that causes the Company to suspend the use of a Shelf Registration Statement as set forth in paragraph (a) above (a "Suspension Event"), the Company shall give a Suspension Notice to the Selling Holders' Counsel, if any, and the Holders to suspend sales of the Registrable Securities and such Suspension Notice shall state generally the basis for the notice and that such suspension shall continue only for so long as the Suspension Event or its effect is continuing and the Company is using its reasonable best efforts and taking all reasonable steps to terminate suspension of the use of the Shelf Registration Statement as promptly as possible. A Holder shall not effect any sales of the Registrable Securities pursuant to such Shelf Registration Statement (or such filings) at any time after it has received a Suspension Notice from the Company and prior to receipt of an End of Suspension Notice (as defined below). If so directed by the Company, each Holder will deliver to the Company (at the expense of the Company) all copies other than permanent file copies then in such Holder's possession of the Prospectus covering the Registrable Securities at the time of receipt of the Suspension Notice. The Holders may recommence effecting sales of the Registrable Securities pursuant to the Shelf Registration Statement (or such filings) following further written notice to such effect (an "End of Suspension Notice") from the Company, which End of Suspension Notice shall be given by the Company to the Holders and to the Selling Holders' Counsel, if any, promptly following the conclusion of any Suspension Event and its effect.

(c) Notwithstanding any provision herein to the contrary, if the Company shall give a Suspension Notice with respect to any Shelf Registration Statement pursuant to this Section 3, the Company agrees that it shall extend the period of time during which such Shelf Registration Statement shall be maintained effective pursuant to this Agreement by the number of days during the period from the date of receipt by the Holders of the Suspension Notice to and including the date of receipt by the Holders of the End of Suspension Notice and provide copies of the supplemented or amended Prospectus necessary to resume sales, with respect to each Suspension Event; provided that such period of time shall not be extended beyond the date that Common Stock covered by such Shelf Registration Statement are no longer Registrable Securities.

**Section 4. REGISTRATION PROCEDURES.**

(a) In connection with the filing of any Registration Statement or sale of Registrable Securities as provided in this Agreement, the Company shall use its reasonable best efforts to, as expeditiously as reasonably practicable:

(i) prepare and file with the Commission the Registration Statement, within the relevant time period specified in Section 2, on the appropriate form under the Securities Act, which form, subject to Section 2, (1) shall be selected by the Company, (2) shall be available for the registration and sale of the Registrable Securities by the selling Holders thereof, (3) shall comply as to form in all material respects with the requirements of the applicable form and include or incorporate by reference all financial statements required by the Commission to be filed therewith or incorporated by reference therein, and (4) shall comply in all respects with the requirements of Regulation S-T under the Securities Act, and otherwise comply with its obligations under Section 2 hereof;

(ii) prepare and file with the Commission such amendments and post-effective amendments to each Registration Statement as may be necessary under applicable law to keep such Registration Statement effective for the applicable period; and cause each Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provision then in force) under the Securities Act and comply with the provisions of the Securities Act, the Exchange Act and the rules and regulations thereunder applicable to them with respect to the disposition of all securities covered by each Registration Statement during the applicable period in accordance with the intended method or methods of distribution by the selling Holders thereof;

(iii) (1) notify each Holder of Registrable Securities, at least five (5) Business Days after filing, that a Registration Statement with respect to the Registrable Securities has been filed and advise such Holders that the distribution of Registrable Securities will be made in accordance with any method or combination of methods legally available by the Holders of any and all Registrable Securities; (2) furnish to each Holder of Registrable Securities and to each underwriter of an Underwritten Offering of Registrable Securities, if any, without charge, as many copies of each Prospectus, including each preliminary Prospectus, and any amendment or supplement thereto and such other documents as such Holder or underwriter may reasonably request, including financial statements and schedules contained therein, in order to facilitate the public sale or other disposition of the Registrable Securities; and (3) hereby consent to the use of the Prospectus or any amendment or supplement thereto by each of the selling Holders of Registrable Securities in connection with the offering and sale of the Registrable Securities covered by the Prospectus or any amendment or supplement thereto;

(iv) use its reasonable best efforts to register or qualify the Registrable Securities under all applicable state securities or "blue sky" laws of such jurisdictions as any Holder of Registrable Securities covered by a Registration Statement and each underwriter of an Underwritten Offering of Registrable Securities shall reasonably request by the time the applicable Registration Statement is declared effective by the Commission, and do any and all other acts and things which may be reasonably necessary or advisable to enable each such Holder and underwriter to consummate the disposition in each such jurisdiction of such Registrable Securities owned by such Holder; provided, however, that the Company shall not be required to (1) qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to qualify but for this Section 4(a)(iv), or (2) take any action which would subject it to general service of process or taxation in any such jurisdiction where it is not then so subject;

(v) promptly notify each Holder of Registrable Securities under a Registration Statement and, if requested by such Holder, confirm such notice in writing promptly at the address determined in accordance with Section 8(f) of this Agreement (1) when a Registration Statement has become effective and when any post-effective amendments and supplements thereto become effective, (2) of any request by the Commission or any state securities authority for post-effective amendments and supplements to a Registration Statement and Prospectus or for additional information after the Registration Statement has become effective, (3) of the issuance by the Commission or any state securities authority of any stop order suspending the effectiveness of a Registration Statement or the initiation of any proceedings for that purpose, (4) if, between the effective date of a Registration Statement and the closing of any sale of Registrable Securities covered thereby, the representations and warranties of the Company contained in any underwriting agreement, securities sales agreement or other similar agreement, if any, relating to the offering cease to be true and correct in all material respects, (5) of the happening of any event or the discovery of any facts during the period a Registration Statement is effective as a result of which such Registration Statement or any document incorporated by reference therein contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading or, in the case of the Prospectus, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (which information shall be accompanied by an instruction to suspend the use of the Registration Statement and the Prospectus (such instruction to be provided in the same manner as a Suspension Notice) until the requisite changes have been made, at which time notice of the end of suspension shall be delivered in the same manner as an End of Suspension Notice), (6) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities, for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose and (7) of the filing of a post-effective amendment to such Registration Statement;

(vi) furnish Selling Holders' Counsel, if any, copies of any comment letters relating to the selling Holders received from the Commission or any other request by the Commission or any state securities authority for amendments or supplements to a Registration Statement and Prospectus or for additional information relating to the selling Holders;

(vii) make every reasonable effort to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement at the earliest possible moment;

(viii) furnish to each Holder of Registrable Securities, and each underwriter, if any, without charge, at least one conformed copy of each Registration Statement and any post-effective amendment thereto, including financial statements and schedules contained therein (without documents incorporated therein by reference and all exhibits thereto, unless requested);

(ix) cooperate with the selling Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends; and enable such Registrable Securities to be in such denominations and registered in such names as the selling Holders or the underwriters, if any, may reasonably request at least two (2) Business Days prior to the closing of any sale of Registrable Securities;

(x) upon the occurrence of any event or the discovery of any facts, as contemplated by Sections 4(a)(v)(5) and 4(a)(v)(6) hereof, as promptly as practicable after the occurrence of such an event, use its reasonable best efforts to prepare a supplement or post-effective amendment to the Registration Statement or the related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Securities, such Prospectus will not contain at the time of such delivery any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or will remain so qualified, as applicable. At such time as such public disclosure is otherwise made or the Company determines that such disclosure is not necessary, in each case to correct any misstatement of a material fact or to include any omitted material fact, the Company agrees promptly to notify each Holder of such determination and to furnish each Holder such number of copies of the Prospectus as amended or supplemented, as such Holder may reasonably request;

(xi) within a reasonable time prior to the filing of any Registration Statement, any Prospectus, any amendment to a Registration Statement or amendment or supplement to a Prospectus, provide copies of such document to the Selling Holders' Counsel, if any, on behalf of such Holders, and make representatives of the Company as shall be reasonably requested by the Holders of Registrable Securities available for discussion of such document;

(xii) obtain a CUSIP number for the Registrable Securities not later than the effective date of a Registration Statement, and provide the Company's transfer agent with printed certificates for the Registrable Securities, in a form eligible for deposit with the Depository, in each case, to the extent necessary or applicable;

(xiii) enter into agreements (including underwriting agreements) and take all other customary appropriate actions in order to expedite or facilitate the disposition of such Registrable Securities whether or not an underwriting agreement is entered into and whether or not the registration is an underwritten registration:

1. make such representations and warranties to the Holders of such Registrable Securities and the underwriters, if any, in form, substance and scope as are customarily made by issuers to underwriters in similar Underwritten Offerings as may be reasonably requested by them;

2. obtain opinions of counsel to the Company and updates thereof (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to any managing underwriter(s) and their counsel) addressed to the underwriters, if any (and in the case of an underwritten registration, each selling Holder), covering the matters customarily covered in opinions requested in Underwritten Offerings and such other matters as may be reasonably requested by the underwriter(s);

3. obtain "comfort" letters and updates thereof from the Company's independent registered public accounting firm (and, if necessary, any other independent certified public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements are, or are required to be, included in the Registration Statement) addressed to the underwriter(s), if any, and use reasonable efforts to have such letter addressed to the selling Holders in the case of an underwritten registration (to the extent consistent with Statement on Auditing Standards No. 72 of the American Institute of Certified Public Accounts), such letters to be in customary form and covering matters of the type customarily covered in "comfort" letters to underwriters in connection with similar Underwritten Offerings;

4. enter into a securities sales agreement with the Holders and an agent of the Holders providing for, among other things, the appointment of such agent for the selling Holders for the purpose of soliciting purchases of Registrable Securities, which agreement shall be in form, substance and scope customary for similar offerings;

5. if an underwriting agreement is entered into, cause the same to set forth indemnification provisions and procedures substantially equivalent to the indemnification provisions and procedures set forth in Section 5 hereof with respect to the underwriters and all other parties to be indemnified pursuant to said Section or, at the request of any underwriters, in the form customarily provided to such underwriters in similar types of transactions; and

6. deliver such documents and certificates as may be reasonably requested and as are customarily delivered in similar offerings to the Holders of a Majority of the Registrable Securities being sold, and the managing underwriters, if any;

(xiv) make available for inspection by any underwriter participating in any disposition pursuant to a Registration Statement, Selling Holders' Counsel and any accountant retained by a Majority of the Registrable Securities being sold, all financial and other records, pertinent corporate documents and properties or assets of the Company reasonably requested by any such Persons, and cause the respective officers, directors, employees, and any other agents of the Company to supply all information reasonably requested by any such representative, underwriter, counsel or accountant in connection with a Registration Statement, and make such representatives of the Company available for discussion of such documents as shall be reasonably requested by the Company; provided, however, that the Selling Holders' Counsel, if any, and the representatives of any underwriters will use its reasonable best efforts, to the extent reasonably practicable, to coordinate the foregoing inspection and information gathering and to not materially disrupt the Company's business operations;

(xv) a reasonable time prior to filing any Registration Statement, any Prospectus forming a part thereof, any amendment to such Registration Statement, or amendment or supplement to such Prospectus, provide copies of such document to the underwriter(s) of an Underwritten Offering of Registrable Securities; within five (5) Business Days after the filing of any Registration Statement, provide copies of such Registration Statement to Selling Holders' Counsel; make such changes in any of the foregoing documents prior to the filing thereof, or in the case of changes received from Selling Holders' Counsel by filing an amendment or supplement thereto, as the underwriter or underwriters, or in the case of changes received from Selling Holders' Counsel relating to the selling Holders or the plan of distribution of Registrable Securities, as Selling Holders' Counsel, reasonably requests; not file any such document in a form to which any underwriter shall not have previously been advised and furnished a copy of or to which the Selling Holders' Counsel, if any, on behalf of the Holders of Registrable Securities, or any underwriter shall reasonably object; not include in any amendment or supplement to such documents any information about the selling Holders or any change to the plan of distribution of Registrable Securities that would limit the method of distribution of the Registrable Securities unless Selling Holders' Counsel has been advised in advance and has approved such information or change; and make the representatives of the Company available for discussion of such document as shall be reasonably requested by the Selling Holders' Counsel, if any, on behalf of such Holders, Selling Holders' Counsel or any underwriter;

(xvi) use its reasonable best efforts to cause all Registrable Securities to be listed or quoted on any national securities exchange on which the Company's Common Stock is then listed or quoted;

(xvii) otherwise comply with all applicable rules and regulations of the Commission and make available to its security holders, as soon as reasonably practicable, an earnings statement covering at least twelve (12) months which shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder;

(xviii) cooperate and assist in any filings required to be made with the FINRA and in the performance of any due diligence investigation by any underwriter and its counsel (including any "qualified independent underwriter" that is required to be retained in accordance with the rules and regulations of the FINRA);

(xix) if Registrable Securities are to be sold in an Underwritten Offering, to include in the registration statement, or in the case of a Shelf Registration, a Prospectus supplement, to be used all such information as may be reasonably requested by the underwriters for the marketing and sale of such Registrable Securities;

(xx) cause the appropriate officers of the Company to (i) prepare and make presentations at any “road shows” and before analysts and rating agencies, as the case may be, (ii) take other actions to obtain ratings for any Registrable Securities and (iii) use their reasonable best efforts to cooperate as reasonably requested by the underwriters in the offering, marketing or selling of the Registrable Securities.

(b) The Company may (as a condition to a Holder’s participation in a Shelf Registration, Demand Registration or Piggyback Registration) require each Holder of Registrable Securities to furnish to the Company such information regarding the Holder and the proposed distribution by such Holder of such Registrable Securities as the Company may from time to time reasonably request in writing.

(c) Each Holder agrees that, upon receipt of any notice from the Company of the happening of any event or the discovery of any facts of the type described in Section 4(a)(v) hereof, such Holder will forthwith discontinue disposition of Registrable Securities pursuant to a Registration Statement relating to such Registrable Securities until such Holder’s receipt of the copies of the supplemented or amended Prospectus contemplated by Section 4(a)(v) hereof, and, if so directed by the Company, such Holder will deliver to the Company (at the Company’s expense) all copies in such Holder’s possession, other than permanent file copies then in such Holder’s possession, of the Prospectus covering such Registrable Securities current at the time of receipt of such notice.

#### **Section 5. INDEMNIFICATION.**

(a) Indemnification by the Company. The Company agrees to indemnify and hold harmless each Holder, and the respective officers, directors, partners, employees, representatives and agents of any such Person, and each Person (a “Controlling Person”), if any, who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) any of the foregoing Persons, as follows:

(i) against any and all loss, penalty, liability, claim, damage, judgment, suit, action, other liabilities and expenses whatsoever (“Liabilities”), as incurred, arising out of or based on any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement (including any final, preliminary or summary Prospectus contained therein or any amendment or supplement thereto) pursuant to which Registrable Securities were registered under the Securities Act, including all documents incorporated therein by reference, or any other disclosure document produced by or on behalf of the Company or any of its subsidiaries including reports and other documents filed under the Exchange Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of or based on any untrue statement or alleged untrue statement of a material fact contained in any Prospectus (or any amendment or supplement thereto) or the omission or alleged omission therefrom at such date of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all Liabilities, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 5(d) below) any such settlement is effected with the written consent of the Company, which consent shall not be unreasonably withheld; and

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by any indemnified party), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever arising out of or based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under subparagraph (i) or (ii) above; provided, however, that this indemnity agreement shall not apply to any Liabilities to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by the Holder expressly for use in a Registration Statement (or any amendment thereto) or any Prospectus (or any amendment or supplement thereto).

The indemnity in this Section 5(a) shall be in addition to any liability the Company may otherwise have. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Holder or any indemnified party and shall survive any transfer of such securities by such Holder. The Company shall also indemnify underwriters, selling brokers, dealer managers and similar securities industry professionals participating in the offering, their officers and directors and each Person who controls such Persons (within the meaning of the Securities Act and the Exchange Act) to the same extent as provided above with respect to the indemnification of the indemnified parties.

(b) Indemnification by the Holders. Each Holder severally, but not jointly, agrees to indemnify and hold harmless the Company and the other selling Holders, and each of their respective officers, directors, partners, employees, representatives and agents, against any and all Liabilities described in the indemnity contained in Section 5(a) hereof, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in a Registration Statement (or any amendment thereto) or any Prospectus included therein (or any amendment or supplement thereto) in reliance upon and in conformity with written information such Holder furnished to the Company by such Holder expressly for use in the Registration Statement (or any amendment thereto) or such Prospectus (or any amendment or supplement thereto) ; provided, however, that no such Holder shall be liable for any claims hereunder in excess of the amount of net proceeds received by such Holder from the sale of Registrable Securities pursuant to such Registration Statement.

(c) Notices of Claims, etc. Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action or proceeding commenced against it in respect of which indemnity may be sought hereunder; provided, however, that failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. An indemnifying party may participate at its own expense in the defense of such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. Other than in the case of any actual or potential conflict that may arise from a single counsel representing more than one indemnified party, the indemnifying party or parties shall not be liable for the fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 5 (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.



(d) Indemnification Payments. If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 5(a)(ii) effected without its written consent if (i) such settlement is entered into more than forty-five (45) days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least thirty (30) days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

(e) Contribution. If the indemnification provided for in this Section 5 is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any Liabilities referred to therein, then each indemnifying party shall contribute to the aggregate amount of such Liabilities incurred by such indemnified party, as incurred, in such proportion as is appropriate to reflect the relative fault of the Company, on the one hand, and the Holders, on the other hand, in connection with the acts, statements or omissions which resulted in such Liabilities, as well as any other relevant equitable considerations.

The relative fault of the Company on the one hand and the Holders on the other hand shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Holders and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Holders agree that it would not be just and equitable if contribution pursuant to this Section 5 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 5. The aggregate amount of Liabilities incurred by an indemnified party and referred to above in this Section 5 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission. Notwithstanding the provisions of this Section 5(e), no Holder shall be liable for any claims hereunder in excess of the amount of net proceeds received by such Holder from the sale of Registrable Securities pursuant to any such Registration Statement.

No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 5, each Person, if any, who controls a Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as a Holder, and each director of the Company, and each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Company.

**Section 6. HOLDBACK AGREEMENT.**

(a) Each Holder agrees not to effect any sale, transfer, or other actual or pecuniary transfer (including heading and similar arrangements) of any Registrable Securities or of any other equity securities of the Company, or any securities convertible into or exchangeable or exercisable for such stock or securities, during the period beginning seven (7) days prior to, and ending sixty (60) days after (or for such shorter period as to which the managing underwriter(s) may agree), subject to written notice thereof having been given by the Company to each such Holder prior to the beginning of any such period, the date of the underwriting agreement of each Underwritten Offering made pursuant to a Registration Statement other than Registrable Securities sold pursuant to such Underwritten Offering, provided that (i) notwithstanding the foregoing, the duration of the foregoing restrictions shall be no longer than the duration of the shortest restriction generally imposed by the underwriters on any of the Company, the officers, directors or any other affiliate of the Company or any other stockholder of the Company on whom a restriction is imposed or with whom the Company has granted registration rights for any of its equity securities; (ii) the Holders shall not be subject to the foregoing restrictions if and to the extent that the managing underwriter(s) agree to waive the restriction set forth in such underwriting agreement for any of the Persons set forth in the immediately preceding clause (i); and (iii) this Section 6(a) shall not apply more than once in any twelve (12) consecutive month period with respect to any Underwritten Offerings in which the Holders are not permitted to participate to the extent of their pro rata holdings of Registrable Securities, so long as such Holders did not reduce or eliminate their participation in any such Underwritten Offerings through their own voluntary decision. Each Holder agrees to enter into any agreements reasonably requested by any managing underwriter reflecting the terms of this Section 6.

(b) The Company agrees not to effect any public sale or distribution of its equity securities (or any securities convertible into or exchangeable or exercisable for such securities) during the seven (7) days prior to and during the sixty (60)-day period beginning on the effective date of any underwritten Demand Registration (or for such shorter period as to which the managing underwriter or underwriters may agree), except as part of such Demand Registration or in connection with any employee benefit or similar plan, any dividend reinvestment plan, or a business acquisition or combination and to use all reasonable efforts to cause each holder of at least five percent (5%) (on a fully diluted basis) of its equity securities (or any securities convertible into or exchangeable or exercisable for such securities) which are or may be purchased from the Company at any time after the date of this Agreement (other than in a registered offering) to agree not to effect any sale or distribution of any such securities during such period (except as part of such Underwritten Offering, if otherwise permitted).

**Section 7. TERMINATION.**

(a) Survival. This Agreement and the rights of each Holder hereunder shall terminate upon the date that all of the Registrable Securities cease to be Registrable Securities. Notwithstanding the foregoing, the obligations of the parties under Section 5 of this Agreement shall remain in full force and effect following such time.

**Section 8. MISCELLANEOUS.**

(a) Covenants Relating To Rule 144. For so long as the Company is subject to the reporting requirements of Section 13 or 15 of the Securities Act, the Company covenants that it will file the reports required to be filed by it under the Securities Act and Section 13(a) or 15(d) of the Exchange Act and the rules and regulations adopted by the Commission thereunder. If the Company ceases to be so required to file such reports, the Company covenants that it will upon the request of any Holder of Registrable Securities (a) make publicly available such information as is necessary to permit sales pursuant to Rule 144 under the Securities Act, (b) deliver such information to a prospective purchaser as is necessary to permit sales pursuant to Rule 144A under the Securities Act and it will take such further action as any Holder of Registrable Securities may reasonably request, and (c) take such further action that is reasonable in the circumstances, in each case, to the extent required, from time to time, to enable such Holder to sell its Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 under the Securities Act, as such Rule may be amended from time to time, (ii) Rule 144A under the Securities Act, as such rule may be amended from time to time, or (iii) any similar rules or regulations hereafter adopted by the Commission. Upon the request of any Holder of Registrable Securities, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements and of the Securities Act and the Exchange Act (at any time after it has become subject to the reporting requirements of the Exchange Act), a copy of the most recent annual and quarterly report(s) of the Company, and such other reports, documents or stockholder communications of the Company, and take such further actions consistent with this Section 8(a), as a Holder may reasonably request in availing itself of any rule or regulation of the Commission allowing a Holder to sell any such Registrable Securities without registration.

(b) Cooperation. The Company shall cooperate with the Holders in any sale and or transfer of Registrable Securities including by means not involving a registration statement.

(c) No Inconsistent Agreements. The Company has not entered into and the Company will not after the date of this Agreement enter into any agreement which is inconsistent with the rights granted to the Holders of Registrable Securities pursuant to this Agreement or otherwise conflicts with the provisions of this Agreement. The rights granted to the Holders hereunder do not and will not for the term of this Agreement in any way conflict with the rights granted to the holders of the Company's other issued and outstanding securities under any such agreements.

(d) Expenses. All Registration Expenses or Sale Expenses of any Holder shall be borne by the Company, whether or not any Registration Statement related thereto becomes effective or other sale takes place.

(e) Amendments and Waivers. The provisions of this Agreement may be amended or waived at any time only by the written agreement of the Company and the Holders of a Majority of the Registrable Securities. Any waiver, permit, consent or approval of any kind or character on the part of any such Holders of any provision or condition of this Agreement must be made in writing and shall be effective only to the extent specifically set forth in writing. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each Holder of Registrable Securities and the Company.

(f) Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, registered first-class mail, facsimile, email or any courier guaranteeing overnight delivery: (a) if to a Holder, at the most current address given by such Holder to the Company by means of a notice given in accordance with the provisions of this Section 8(f); and (b) if to the Company, to NextDecade Corporation, Attention: Krysta De Lima (facsimile: (832) 403-2198; email: Krysta@next-decade.com). All such notices and communications shall be deemed to have been duly given: (i) if personally delivered, at the time delivered by hand; (ii) if by email, on receipt of a read receipt email from the correct address, twenty-four (24) hours from delivery if sent to the correct email address and no notice of delivery failure is received, or on receipt of confirmation of receipt from the recipient; (iii) if mailed, two (2) Business Days after being deposited in the mail, postage prepaid; (iv) if sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party), when receipt is acknowledged; and (v) if by courier guaranteeing overnight delivery, on the next Business Day if timely delivered to an air courier guaranteeing overnight delivery.

(g) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Company. In addition, the Holders may assign their rights hereunder to subsequent Holders. If any transferee of any Holder shall acquire Registrable Securities, in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to all of the terms, and entitled to all of the benefits, of this Agreement, and by taking and holding such Registrable Securities, any such subsequent Holders shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement, including the restrictions on resale set forth in this Agreement, and any such subsequent Holder shall be entitled to receive the benefits hereof.

(h) Obligations Limited to Parties to Agreement. Each of the parties hereto covenants, agrees and acknowledges that no Person other than the Holders and the Company shall have any obligation hereunder and that, notwithstanding that one or more of the Holders may be a corporation, partnership or limited liability company, no recourse under this Agreement or under any documents or instruments delivered in connection herewith or therewith shall be had against any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or affiliate of any Holder or any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or affiliate of any of the foregoing, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or affiliate of any of the Holders or any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or affiliate of any of the foregoing, as such, for any obligations of the Holders under this Agreement or any documents or instruments delivered in connection herewith or therewith or for any claim based on, in respect of or by reason of such obligation or its creation, except in each case for any transferee or assignee of a Holder hereunder.

(i) Specific Enforcement. Without limiting the remedies available to the Holders, the Company acknowledges that any failure by the Company to comply with its obligations under Section 2 hereof may result in material irreparable injury to the Holders for which there is no adequate remedy at law, that it would not be possible to measure damages for such injuries precisely and that, in the event of any such failure, a Holder may obtain such relief as may be required to specifically enforce the Company's obligations under Section 2 hereof.

(j) Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(k) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(l) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAW OF THE STATE OF DELAWARE REGARDLESS OF THE LAW THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAW THEREOF.

(m) Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

(n) Jurisdiction and Venue: *WAIVER OF JURY TRIAL*. The undersigned irrevocably consents to the jurisdiction and venue of the courts of the State of Delaware or the federal courts located in the State of Delaware in connection with any matter based upon or arising out of this Agreement, agrees that process may be served upon it in any manner authorized by the laws of the State of Delaware and waives and covenants not to assert or plead any objection which it might otherwise have to such manner of service of process. The undersigned waives, and shall not assert as a defense in any legal dispute, that (a) it is not personally subject to the jurisdiction of the above named courts for any reason, (b) such Legal Proceeding may not be brought or is not maintainable in such court, (c) its property is exempt or immune from execution, (d) such Legal Proceeding is brought in an inconvenient forum or (e) the venue of such Legal Proceeding is improper. THE UNDERSIGNED UNCONDITIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIMS OR COUNTERCLAIMS ASSERTED IN ANY LEGAL DISPUTE RELATING TO THIS AGREEMENT. IF THE SUBJECT MATTER OF ANY SUCH LEGAL DISPUTE IS ONE IN WHICH THE WAIVER OF JURY TRIAL IS PROHIBITED, THE UNDERSIGNED SHALL NOT ASSERT IN SUCH LEGAL DISPUTE A NONCOMPULSORY COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT. FURTHERMORE, THE UNDERSIGNED SHALL NOT SEEK TO CONSOLIDATE ANY SUCH LEGAL DISPUTE WITH A SEPARATE ACTION OR OTHER LEGAL PROCEEDING IN WHICH A JURY TRIAL CANNOT BE WAIVED.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

NEXTDECADE CORPORATION

By: /s/ Matthew Schatzman  
Name: Matthew Schatzman  
Title: Chief Executive Officer

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

NINETEENTH INVESTMENT COMPANY LLC

By: /s/ Robert Murphy

Name: Robert Murphy

Title: Senior Vice President, M&A

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SCHEDULE I

HOLDERS

Nineteenth Investment Company LLC



October 28, 2019

NextDecade Corporation  
1000 Louisiana Street, Suite 3900  
Houston, Texas 77002

Ladies and Gentlemen:

Reference is made to that certain Common Stock Purchase Agreement by and between NextDecade Corporation ("NEXT") and Ninteenth Investment Company, LLC ("Purchaser") dated as of October 24, 2019 (the "SPA"). Capitalized terms used but not defined in this letter agreement shall have the meanings ascribed to them in the SPA.

Pursuant to the SPA, the undersigned has agreed to purchase 7,974,482 shares (the "Shares") of common stock of NEXT ("NEXT Common Stock"). Purchaser hereby agrees that it will not, and will cause its Affiliates, directors, managers, officers, members, employees, agents, advisors, attorneys and representatives not to, during the period commencing on the date hereof and ending on the date on which is one hundred and eighty (180) days after the Closing Date (the "Restricted Period"), without the prior written consent of NEXT, (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any of the Shares or any Related Securities (as defined below), (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Shares, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of shares of NEXT Common Stock, options or warrants or other rights to acquire shares of NEXT Common Stock, any securities exchangeable or exercisable for or convertible into shares of NEXT Common Stock, in cash or otherwise. The foregoing sentence shall not apply to (i) a disposition, transfer or distribution of the Shares to any of Purchaser's Affiliates, provided that Purchaser provides prior notice to Company of such disposition, transfer or distribution, or (ii) any disposition, sale or transfer of Purchaser's rights of first refusal with respect to securities sold in connection with a FID.

"Related Securities" shall mean any options or warrants or other rights to acquire the Shares or any securities exchangeable or exercisable for or convertible into the Shares, or to acquire other securities or rights ultimately exchangeable or exercisable for, or convertible into, the Shares.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this agreement and that this agreement has been executed and delivered by Purchaser and is a valid and binding agreement of Purchaser. The undersigned further understands that, unless waived by NEXT, this agreement is irrevocable.

Notwithstanding anything herein to the contrary, this agreement shall be of no further force or effect and Purchaser shall be released from all obligations under this agreement upon the first Business Day following the expiration of the Restricted Period.

This agreement shall be legally binding on Purchaser and on Purchaser's successors and permitted assigns and shall be governed by and construed in accordance with the internal law of the State of Delaware regardless of the law that might otherwise govern under applicable principles of conflicts of law thereof.

The undersigned irrevocably and unconditionally agrees that any actions, suits or proceedings, at law or equity, arising out of or relating to this letter agreement or any agreements or transactions contemplated hereby shall be heard and determined by the federal or state courts located in the State of Delaware; (b) irrevocably submits to the jurisdiction of such courts in any such action, suit or proceeding; (c) consents that any such action, suit or proceeding may be brought in such courts and waives any objection that the undersigned may now or hereafter have to the venue or jurisdiction of such courts or that such action or proceeding was brought in an inconvenient forum; and (d) agrees that service of process in any such action, suit or proceeding may be effected by providing a copy thereof by any of the methods of delivery permitted by the SPA at its address as set forth on the signature page hereto (provided that nothing herein shall affect the right to effect service of process in any other manner permitted by law). THE UNDERSIGNED HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LETTER AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). THE UNDERSIGNED HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF NEXT HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT NEXT WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND COMPANY HAVE BEEN INDUCED TO ENTER INTO THIS LETTER AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH.

IN WITNESS WHEREOF, the undersigned has caused this agreement to be executed as of the date first written above.

Very truly yours,

NINETEENTH INVESTMENT COMPANY, LLC

/s/ Robert Murphy\_\_\_\_\_

Name: Robert Murphy

Its: Senior Vice President, M&A

Address

\_\_\_\_\_

\_\_\_\_\_



## NextDecade Corporation

## Director Compensation Policy

(Adopted by the NextDecade Corporation Board of Directors, effective October 14, 2019, as amended December 27, 2019)

Members of the Board of Directors (the “Board”) of NextDecade Corporation (the “Company”) who are not employees of the Company or any subsidiary of the Company and who are not appointed to the Board pursuant to any agreement or arrangement with the Company (“Non-affiliate Directors”) shall be paid the following amounts in consideration for their services on the Board. Each Non-affiliate Director will be solely responsible for any tax obligations incurred by such Non-affiliate Director as a result of the cash and equity payments such Non-affiliate Director receives under this Policy.

Annual Compensation*Cash Compensation*

Annual Cash Retainer for each Non-affiliate Director. Each Non-affiliate Director shall be paid an annual cash retainer of \$80,000 (an “Annual Cash Retainer”). Each Non-affiliate Director may elect to receive all or any portion of the Annual Cash Retainer in the form of shares of restricted stock by delivering written notice to the Corporate Secretary of the Company within five (5) days of the adoption of this Policy, by January 15 of a given calendar year or within five (5) days of such Non-affiliate Director’s appointment to the Board. Such election shall be irrevocable and shall continue for such calendar year. Any portion of the Annual Cash Retainer elected by such Non-affiliate Director to be paid in shares of restricted stock (such payment, an “Elective Stock Award”) shall be awarded pursuant to and in compliance with the Company’s 2017 Omnibus Incentive Plan (as amended from time to time and including any successor thereto, the “Plan”) on the same date(s) (the “Award Grant Date”) as the Stock Award described below. The number of shares of restricted stock subject to an Elective Stock Award shall equal (i) the dollar amount of the Annual Cash Retainer elected by such Non-affiliate Director to be paid in shares of restricted stock divided by (ii) the closing price of the Company’s common stock on the Nasdaq Capital Market (“Nasdaq”) on the Award Grant Date or, if the Award Grant Date is not a trading day, then the last trading day occurring prior to the Award Grant Date.

Additional Annual Cash Compensation Payable for each Non-affiliate Director Committee Chairperson (“Chairperson Cash Compensation”):

- Audit Committee: \$20,000
- Each Other Standing Committee: \$15,000

All Annual Cash Retainers and Chairperson Cash Compensation shall be prorated for partial years of service.

### **Equity Compensation**

Each year, each Non-affiliate Director will be granted, in one or more installments, shares of restricted stock in consideration for such Non-affiliate Director's services on the Board (each, an ("Annual Stock Award") and, together with Elective Stock Awards, "Stock Awards") pursuant to and in compliance with the Plan. The number of shares of restricted stock subject to an Annual Stock Award shall equal (i) \$120,000 divided by (ii) the closing price of the Company's common stock on Nasdaq on the Award Grant Date or, if the Award Grant Date is not a trading day, then the last trading day occurring prior to the Award Grant Date.

Stock Awards shall be prorated based on actual days of service on the Board. The remaining terms and conditions of each Stock Award, including vesting terms and transferability, will be as set forth in the Company's standard award agreement, in the form adopted from time to time by the Board or the Compensation Committee; provided, that all Stock Awards shall vest during the year in which they are granted.

There are no per-meeting attendance fees for Non-affiliate Directors for attending Board meetings.

### **Expense Reimbursement**

Each director of the Company, including Board observers, shall be entitled to receive reimbursement of all reasonable out-of-pocket expenses incurred in connection with attending meetings of the Board. Such reimbursement is in addition to the compensation provided for under this Policy.

### **Section 409A**

This Policy is intended to comply with, or otherwise be exempt from, Section 409A, and, accordingly, to the maximum extent permitted, the Policy shall be interpreted and administered consistent with such intention.

### **Revisions**

The Board may amend, alter, suspend or terminate this Policy at any time and for any reason. No amendment, alteration, suspension or termination of this Policy will materially impair the rights of a member of the Board with respect to compensation that already has been paid or earned, if applicable, unless otherwise mutually agreed between such member and the Company. Termination of this Policy will not affect the Board's or the Compensation Committee's ability to exercise the powers granted to it under the Plan with respect to equity awards granted under the Plan pursuant to this Policy prior to the date of such termination.



## Subsidiaries of NextDecade Corporation

<b>Subsidiary Name</b>	<b>State of Incorporation</b>
NextDecade LNG, LLC	Delaware
Rio Grande LNG, LLC	Texas
Rio Bravo Pipeline Company, LLC	Texas
Galveston Bay LNG, LLC	Texas

## CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated March 3, 2020, with respect to the consolidated financial statements included in the Annual Report of NextDecade Corporation on Form 10-K for the year ended December 31, 2019. We consent to the incorporation by reference of said report in the Registration Statements of NextDecade Corporation on Forms S-8 (File No. 333-234596 and File No. 333-222082) and Forms S-3 (File No. 333-235476, File No. 333-233282, File No. 333-228914, File No. 333-222477, and File No. 333-220263).

/s/ GRANT THORNTON LLP  
Houston, Texas  
March 3, 2020



## CERTIFICATIONS

I, Matthew K. Schatzman, certify that:

1. I have reviewed this Annual Report on Form 10-K of NextDecade Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 3, 2020

/s/ Matthew K. Schatzman

Matthew K. Schatzman  
Chairman of the Board and Chief Executive Officer  
(Principal Executive Officer)

## CERTIFICATIONS

I, Benjamin A. Atkins, certify that:

1. I have reviewed this Annual Report on Form 10-K of NextDecade Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 3, 2020

/s/ Benjamin A. Atkins

Benjamin A. Atkins  
Chief Financial Officer  
(Principal Financial Officer)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Matthew K. Schatzman, President and Chief Executive Officer of NextDecade Corporation (the "Company"), hereby certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Annual Report on Form 10-K of the Company for the fiscal year ended December 31, 2019 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

March 3, 2020

/s/ Matthew K. Schatzman

Matthew K. Schatzman  
Chairman of the Board and Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Benjamin A. Atkins, Chief Financial Officer of NextDecade Corporation (the "Company"), hereby certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Annual Report on Form 10-K of the Company for the fiscal year ended December 31, 2019 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

March 3, 2020

/s/ Benjamin A. Atkins

Benjamin A. Atkins  
Chief Financial Officer  
(Principal Financial Officer)