***[NOTE: THIS IS LIPA’S PREFERRED LEASE AGREEMENT RELATED TO THE ENERGY STORAGE BUILD-OWN-OPERATE-TRANSFER AGREEMENT (“BOOT”) FOR THE 2021 PSEGLI BULK ENERGY STORAGE RFP.  LIPA EXPRESSLY RESERVES THE RIGHT TO MODIFY OR OTHERWISE REVISE THIS DRAFT AS IT MAY DEEM NECESSARY OR ADVISABLE OR AS CIRCUMSTANCES MAY OTHERWISE WARRANT, INCLUDING IN RESPONSE TO QUESTIONS SUBMITTED BY RESPONDENTS.  THIS DRAFT LEASE AGREEMENT SHALL NOT BE CONSTRUED TO CREATE AN OBLIGATION ON THE PART OF PSEG LONG ISLAND OR LIPA TO ENTER INTO ANY CONTRACT ON BEHALF OF LIPA, TO SERVE AS A BASIS FOR ANY CLAIM WHATSOEVER FOR REIMBURSEMENT OF COSTS FOR EFFORTS EXPENDED BY RESPONDENTS OR TO MODIFY THE LIPA PROCUREMENT PROCESS.  RESPONDENTS MAY MODIFY THIS LEASE AGREMENT TO REFLECT RESOURCE SPECIFIC REQUIREMENTS.  RESPONDENTS SHALL PROVIDE A “REDLINE” VERSION OF THIS LEASE AGREEMENT WITH ANY COMMENTS, INSERTIONS, DELETIONS, OR OTHER PROPOSED CHANGES, WHICH MUST INCLUDE PROPOSED ALTERNATIVE TEXT, AS APPLICABLE.  RESPONDENT’S “REDLINES” SHALL BE PROVIDED USING “TRACK CHANGES” IN MICROSOFT WORD.]***

**AGREEMENT OF LEASE BETWEEN**

**Long Island Power Authority, Lessor**

**AND**

**Respondent**

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**List of Schedules and Exhibits**

**Schedule A - Description of the Real Property**

**Exhibit 1 – Site Map & Surveys**

**Exhibit 2 – Title Report**

**Exhibit 3 – Insurance Requirements**

**Exhibit 4 – Assignment by Seller (Section 15.1 of the BOOT Contract)**

**AGREEMENT OF LEASE**

AGREEMENT OF LEASE (“Lease”) made as of the DATE between the [Long Island Power Authority][Long Island Lighting Company] (hereinafter referred to as “Lessor”), a corporate municipal instrumentality of the State of New York, having its headquarters at 333 Earle Ovington Boulevard, Suite 403, Uniondale, New York 11553, and RESPONDENT, a TYPE OF COMPANY (e.g., LLC, CORPORATION), with offices at ADDRESS (hereinafter referred to as "Lessee"). This Lease shall enter into effect in accordance as provided in Article 32.

# ARTICLE I: DEMISED PREMISES

**Section 1.1** In consideration of and subject to the terms, covenants, agreements, provisions, conditions and limitations set forth in this Lease, Lessor has agreed to demise and lease unto Lessee and Lessee has agreed to hire and take from Lessor X parcels of real property located at [ADDRESS], NY, County of and State of New York, as more particularly described on Schedule A annexed hereto and made a part hereof (hereinafter referred to as the "Demised Premises").

Lessee acknowledges and agrees that it shall hire and take the Demised Premises from Lessor subject to all of the following ("Permitted Exceptions"):

1. All covenants, easements, restrictions and conditions of record;
2. The state of facts shown on those certain surveys each dated DATE, prepared by NAME attached hereto as Exhibit 1;
3. Zoning and other governmental regulations that may be applicable;
4. Possible rights or easements, to the extent applicable, now or hereafter acquired by the NAME OF GOVERNMENTAL ENTITY which may be applicable including, without limitation, rights or easements to maintain telephone wires, pipes, power lines, conduits or other facilities which enter or cross the Demised Premises, provided same do not materially interfere with Lessee's use of the Demised Premises as permitted herein;
5. To the extent applicable, present and future zoning laws, ordinances, resolutions and regulations and all present and future ordinances, laws, regulations and orders of all Boards, Bureaus or Commissions and bodies of any Municipal, County, State or Federal sovereign now or hereafter having or acquiring jurisdiction over the Demised Premises and the use and improvements thereof which may be applicable, provided same do not materially interfere with Lessee's use of the Demised Premises as permitted herein;
6. Violations of laws and ordinances that might be disclosed by an examination and inspection or search of the Demised Premises as the same may exist as of the date of this Lease;
7. The condition and state of repair of the Demised Premises as the same may be as of the date of this Lease; and
8. Impositions (as hereinafter defined) which accrue during the term of this Lease.
9. The Permitted Exceptions described in Section 1.3.

**Section 1.2. Definitions; BOOT Contract**

Capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the BOOT Contract, hereinafter defined. For the purposes of this Agreement, the term "BOOT Contract" as used herein shall mean the BULK ENERGY STORAGE BUILD-OWN-OPERATE-TRANSFER AGREEMENT, dated [DATE] by and between Lessor and Lessee, a copy of which has been delivered to Lessee, as such BOOT Contract may be amended, modified and supplemented from time to time, whereby, inter alia Lessee will sell or cause to be sold Products to Lessor.

**Section 1.3.** Lessee acknowledges receipt of title commitment no. - prepared by [Insert name of Title Guaranty Company] (the "Title Report"), to the extent that the Title Report, attached hereto as Exhibit 2, relates to the Demised Premises, and agrees that all title exceptions set forth therein are Permitted Exceptions. In the event liens, encumbrances or other defects or exceptions in or to title to the Demised Premises (other than matters caused by Lessee) are disclosed by a continuation search of title conducted prior to the Commencement Date ("Additional Encumbrances"), all such matters shall be Permitted Exceptions.

**Section 1.4.** To the extent thatLessordoes not currently own the Demised Premises, Lessee acknowledges that Lessor does not currently own fee title to the Demised Premises, but rather will be acquiring same prior to and as a condition of the occurrence of the Commencement Date of this Lease. Lessor shall use commercially reasonable efforts to deliver possession of the Demised Premises to Lessee immediately after Lessor acquires fee title to the Demised Premises. Prior to the Commencement Date, Lessee shall be permitted access to the Demised Premises pursuant to and in accordance with the terms of Article 36 hereof.

**Section 1.5.** Lessor covenants, without the consent of Lessee which consent shall not be unreasonably withheld, (i) not to sell or convey the Demised Premises as long as the BOOT Contract is in effect, except to an Affiliate, and (ii) not to grant any easements, licenses, leases or other property rights or interests with respect to the Demised Premises.

# ARTICLE II: TERM

**Section 2.1.** The term (the “Term”) of the Lease shall commence on the date that is the later of: (i) Lessor acquiring title to or possession of the Demised Premises; (ii) the Effective Date as defined in the Boot Contract; and (iii) approval of this Lease by the New York State Comptroller and filing in his or her office (the "Commencement Date"). The Term shall end on the day preceding the day which is seven (7) years after the Project COD, as defined in the BOOT Contract (the "Expiration Date"), unless such Term shall sooner cease or expire as hereinafter provided. Lessee's obligation to pay Rent, as defined in Section 3.1 hereof, shall commence on the Commencement Date (the "Rent Commencement Date").

A "Lease Year" shall be a period of twelve (12) months. The first Lease Year shall commence on the Commencement Date. Each succeeding Lease Year shall end on the anniversary date of the last day of the preceding Lease Year. For example, if Commencement Date is DATE, then the first Lease Year would commence on DATE and end on DATE, and each succeeding Lease Year would commence on DATE and end on DATE. If the Project COD is DATE, then the last Lease Year would commence on DATE and end on DATE.

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Notwithstanding anything to the contrary contained herein, if the Project COD Target Date (as defined in the BOOT Contract) has not occurred on or before the Project COD Deadline, at any time after such date Lessor may terminate this Lease. In the event the BOOT Contract is extended upon terms agreed by the parties thereto, the Lessor may elect to extend the Term of the Lease on terms to be agreed upon by Lessor and Lessee.

# ARTICLE III: RENT

**Section 3.1.** Lessee covenants to pay to Lessor (a) commencing on the Rent Commencement Date and continuing until the Project COD minimum annual rent as determined by Lessor for fair market value of the Premises at the then prevailing rental rates, at the rate of $AMOUNT per month and (b) commencing on the day after the Project COD and continuing throughout the remainder of the Term, for each Lease Year, Lessee covenants to pay to Lessor rent at the annual rate of $ AMOUNT payable in equal monthly installments of $ AMOUNT (the amounts in (a) and (b) together, "Rent"). The amount of Rent for partial calendar months shall be prorated.

**Section 3.2.** Lessee covenants and agrees to pay Lessor the Rent at the principal office of Lessor, or at such place as Lessor shall from time to time direct in writing. The Rent shall be paid in U.S. Dollars. Lessee shall pay the Rent in equal monthly installments in advance on the first day of each calendar month included in the Term after the Project COD.

**Section 3.3.** Lessor may off set the Rent and Additional Rent (hereinafter defined) due to Lessor from Lessee under this Lease from the payments due from Lessor to Lessee under the BOOT Contract as set forth in SUPPLEMENT 1 – STANDARD CLAUSES FOR LIPA CONTRACTS attached thereto.

**Section 3.4.** In any case in which the Rent or Additional Rent (hereinafter defined) is not paid within fifteen (15) days after written notice of such default, Lessee shall pay a late charge equal to five cents (5¢)for each dollar so due and unpaid. The amount so unpaid together with the late charge shall be due thirty (30) days from the date previously due or on the date next installment of Rent is due, whichever comes first. Lessee further agrees that the late charge imposed herein is fair and reasonable, complies with all laws, regulations and statutes, and constitutes an agreement between Lessor and Lessee as to the estimated compensation for costs and administrative expenses incurred by Lessor due to the late payment of Rent to Lessor by Lessee. Lessee further agrees that the late charge assessed pursuant to this Lease is not interest, and the late charge assessed does not constitute a lender or borrower/creditor relationship between Lessor and Lessee.

**Section 3.5**. Unless another time shall be herein expressly provided, any additional rent or other charges payable by Lessee under this Lease (collectively, "Additional Rent") shall be due and payable on ten (10) days’ demand or together with the next succeeding installment of Rent, whichever shall first occur; and Lessor shall have the same remedies for failure to pay the Additional Rent as for a non-payment of Rent. Unless otherwise specifically instructed by Lessor, all Additional Rent shall be paid in the same currency and, at the same place as is the Rent required to be paid hereunder, and shall be paid without any set-off or deduction by Lessee whatsoever.

**Section 3.6.** If Lessee shall default in making any payment required to be made by Lessee or in performing any obligation of Lessee under this Lease which shall require the expenditure of money and such default shall remain uncured after the expiration of the applicable notice and cure period provided herein for the cure thereof, Lessor may, but shall not be obligated to, make such payment on behalf of Lessee or expend such sum as may be necessary to perform or fulfill such obligation. Any sums so paid by Lessor are Additional Rent and shall be due and payable to Lessor at the time of payment of the next installment Rent.

**Section 3.7.** The Rent shall be in addition to all other payments to be made by Lessee as herein provided. It is the purpose and intent of the parties that the Rent shall be absolutely net to Lessor, so that this Lease shall yield, net to the Lessor, the Rent and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Demised Premises which may arise or become due pursuant to this Lease during the Term of this Lease shall be paid by Lessee and that Lessor shall be indemnified and saved harmless by Lessee from and against the same.

# ARTICLE IV: USE OF DEMISED PREMISES

**Section 4.1.** Lessee shall use the Demised Premises or cause the Demised Premises to be used for constructing, operating and maintaining an energy storage facility as set forth in Sections 3.1.6 (Installation, Operation and Maintenance) and 3.27.1 (Role of Seller) of the BOOT Contract (the "Project", as defined in the BOOT Contract). Any improvements currently located or being constructed on, and repairs, alterations or modifications to the Demised Premises, including the Project, shall be referred to herein as the "Improvements". Lessee may not use the Demised Premises or permit the Demised Premises to be used for any other purposes.

**Section 4.2.** Lessee shall at all times conduct its activities on the Demised Premises in full compliance with: (a) Lessee's obligations as "Seller" under the BOOT Contract and (b) all Legal Requirements relating to or affecting the Demised Premises. The Project to be sited on the Demised Premises by Lessee shall for the Term be owned by Lessee as set forth in Sections 3.18 (Seller as Owner of the Project) and 3.27.1(i) (Role of Seller) of the BOOT Contract and operated and maintained by Lessee in compliance with the provisions set forth in Sections 3.1.6 (Installation, Operation and Maintenance) and 3.27.1 (Role of Seller) of the BOOT Contract.

# ARTICLE V: IMPOSITIONS

**Section 5.1.** The term "Impositions" shall be deemed to mean all real estate taxes, assessments, payments in lieu of taxes, water meter and water charges, sewer rentals (if any), excises, levies, license and permit fees, charges for public utilities or other taxes, charges or burdens assessed, imposed or becoming a lien upon or with respect to the ownership of the Demised Premises or any other taxable interest therein, or upon the Improvements and other improvements erected thereupon; whether any such Impositions are general or special, ordinary or extraordinary, foreseen or unforeseen and whether same are imposed by Federal, State or Local governmental authority or any other taxing authority having jurisdiction over the Demises Premises, but shall not include income, intangible, franchise, capital stock, estate or inheritance taxes (unless the same shall be in lieu of "Impositions" as herein defined by whatever name the tax may be designated). To the extent that any tax, charge or other burden which would have otherwise been deemed an Imposition hereunder is assessed, imposed or becomes a lien upon the Demised Premises as a whole, then for purposes of this Lease only, only Lessee's Proportionate Share (hereinafter defined) of such tax, charge or other burden shall be deemed an "Imposition" hereunder. The term "Lessee's Proportionate Share" shall mean one hundred (100%) percent.

**Section 5.2.** Commencing on the Commencement Date and continuing throughout the Term of this Lease, Lessee shall pay or cause to be paid, as Additional Rent hereunder, to the imposing authority[[1]](#footnote-2), any and all Impositions payable by Lessee hereunder. Simultaneously with the payment of any of such Impositions directly to the imposing authority, Lessee shall send to Lessor written evidence of such timely payment by Lessee. All payments shall be made before any fine, penalty, interest or cost may be added thereto. A copy of the Imposition invoice or demand from the applicable imposing authority shall be sufficient evidence of the amount of the subject Impositions. Lessee shall make all payments in accordance with the applicable authority's requirements regarding the payment thereof. Lessee shall also pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto, when due, any occupancy taxes arising under or in connection with the Lease.

At any time during the Term, Lessor may require Lessee (for all or any portion of the remainder of the Term) to pay to Lessor, in advance, in equal monthly installments, all or some of the Impositions estimated by Lessor to be due for the subsequent Imposition period, such amounts to be held in escrow by Lessor to ensure the full and timely payment of all Impositions thereafter.

**Section 5.3.** Lessor's failure during the Term of this Lease to prepare and deliver any Imposition bill, invoice or demand or Lessor's failure to make a demand for Additional Rent due hereunder shall not in any way waive or cause Lessor to forfeit or surrender its rights to collect any of the foregoing items of Additional Rent which may have become due during the Term of this Lease.

**Section 5.4.** Lessee shall pay to Lessor on demand Lessee's Proportionate Share of any Impositions relating to the Term of this Lease which may have been prepaid by Lessor. With respect to any period during the Term of this Lease which shall constitute a partial tax year, Lessee shall be responsible for the Impositions allocable to such partial tax year and Lessor's tax statement shall apportion the amount of the Additional Rent due hereunder. The obligation of Lessee in respect of such Additional Rent applicable to any portion of the Term of this Lease or part thereof shall survive the expiration of the Term of this Lease.

**Section 5.5.** Lessee shall be permitted to institute or maintain any action, proceeding or application in any court or body or with any governmental authority for the purposes of challenging any Impositions arising during the Term.

# ARTICLE VI: CONSTRUCTION OF IMPROVEMENTS BY LESSEE

**Section 6.1.** Lessee and its Affiliates, as applicable, shall construct, or cause to be constructed, the Project in accordance with Section 3.1.6 (Installation, Operation and Maintenance) of the BOOT Contract.

**Section 6.2.** With respect to Lessor's rights as landlord as expressly set forth in this Lease and except with respect to Lessor's rights as provided below, title to the Improvements and any other improvements made by Lessee shall remain in the name of Lessee. Lessee shall retain all tax depreciation rights, income tax credits and other tax benefits with respect to the Improvements; provided, however, that any Renewable Attributes (as defined in the BOOT Contract) shall be transferred to Lessor as provided in Section 5.1 (Monthly Capacity Payments; Renewable Attributes) of the BOOT Contract. Notwithstanding anything in this Lease to the contrary, Lessor hereby agrees that the Improvements shall not be deemed to constitute (and Lessor hereby covenants and agrees not to assert that the Improvements constitute) fixtures or real property. In the event that Lessor, in exercising its rights as landlord as expressly set forth in this Lease or at law or in equity, obtains title to the Improvements, Lessor shall have all rights of ownership to the Improvements including without limitation tax depreciation rights, income tax credits and other tax benefits. In the event that Lessor, pursuant to exercise of remedies, obtains a judgment or any other award for damages, Lessee's liability therefor shall not be limited to Lessee's interest in the Demised Premises but shall be full recourse obligations of Lessee. In the event that Lessor obtains judgment against Lessee, Lessor shall have rights to pursue any and all remedies, including without limitation executing its rights and remedies against the Improvements, to the fullest extent permissible by law.

**Section 6.3.** It is the intention of the parties that, after the Project COD and during the remaining term of the BOOT Contract, the Project located on the Demised Premises will be operated to provide "Products" (as defined in the BOOT Contract) to Lessor as "Buyer" in accordance with the terms set forth in Sections 3.1 (Delivery and Sale of Products) and 5.1 (Monthly Capacity Payments; Renewable Attributes) of the BOOT Contract. Lessor shall use commercially reasonable efforts to cooperate with Lessee so that, during the term of the BOOT Contract, the Improvements on the Demised Premises will derive similar benefits (including, if available, exemption from local zoning regulations, if any, it being expressly understood that Lessor is making no representation or warranty that any such benefits or exemption is available) that would be derived if Lessor itself constructed and operated such Improvements. All reasonable expenses incurred by Lessor in so cooperating with Lessee shall be borne directly by Lessee.

# ARTICLE VII: REPAIRS AND MAINTENANCE OF THE DEMISED PREMISES

**Section 7.1.** Lessee shall, at its sole cost and expense, take good care of the Demised Premises, including without limitation and to the extent applicable, electrical, water and sewage facilities and drains, drywells, cesspools, pipes, fencing, landscaping, paving, curbing, all alleyways, passageways, vaults, ramps and sidewalks ("Appurtenances") and shall keep same in good order and condition and make all repairs thereto, ordinary and extraordinary, foreseen and unforeseen as and when needed to keep them in good order and condition. Lessor shall have no responsibility and shall not be required to furnish any services, make any repairs or to perform any other maintenance work in or about the Demised Premises, and Lessee hereby assumes the full and sole responsibility, at its sole cost and expense for same, and for the condition of the Demised Premises, including, but not limited to keeping the Demised Premises and Appurtenances, at its own sole cost and expense, in a clean and orderly condition, free of snow, ice, rubbish and obstructions. Lessee acknowledges that Section 3.1.6 (Installation, Operation and Maintenance) of the BOOT Contract specifically states the manner in which the Improvements will be maintained and agrees to comply with the provisions thereof.

**Section 7.2.** In the event (i) Lessee fails to maintain the Demised Premises in accordance with Section 7.1 above and in accordance with "Prudent Utility Practices" and "Legal Requirements" (as such terms are defined in the BOOT Contract) or (ii) repairs to the Demised Premises or Appurtenances are made necessary by reason of the acts, omissions or negligence of Lessee, its agents, affiliates, employees, subtenants, assignees, licensees or invitees, then in any of such event(s), Lessor may give Lessee thirty (30) days’ notice within which to make such repairs, or if such repairs cannot be made within such thirty (30) day period, to commence such repairs within thirty (30) days and diligently pursue them to completion thereafter. In the event Lessee fails timely to make such repairs as notified, Lessor shall be entitled upon reasonable notice to Lessee, but shall not be obligated, to make such repairs at Lessee's expense without incurring any liability to Lessee by reason thereof.

Notwithstanding anything herein to the contrary, if, in Lessor's sole, reasonable discretion, emergency repairs are necessary, Lessor may, if Lessor so elects, to make such repairs at any time without prior notice to Lessee (but Lessor shall give Lessee reasonable subsequent notice), at Lessee's expense.

**Section 7.3.** Lessee shall manage, control, operate and maintain all parts of the Project, its interconnection facilities and other related physical equipment sited on the Demised Premises which are necessary for the production, sale and delivery of the Products to Lessor pursuant to the BOOT Contract in a manner consistent with Prudent Utility Practices, and Legal Requirements and the terms and conditions of the BOOT Contract.

**Section 7.4.** Lessee shall do, or cause others to do, all necessary shoring of foundations, supporting walls and the walls of the Improvements and shall comply with all Legal Requirements with respect thereto and shall do every other act or thing for the safety and preservation of the Demised Premises (including the Improvements and any and all other improvements erected thereon) which may be necessary by reason of any excavation, subsurface construction, remodeling or other building operation upon any adjoining property or street, avenue, alley or passageway so that the Project is capable of operating in accordance with Legal Requirements and Prudent Utility Practices.

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# ARTICLE VIII: LESSEE'S ALTERATION

**Section 8.1.** Except as expressly provided in Sections 3.1.6 (Installation, Operation and Maintenance) and 3.27.1 (Role of Seller) of the BOOT Contract with respect to the construction and maintenance of the Project, Lessee shall not have the right, without Lessor's prior written consent, which shall not be unreasonably withheld or delayed, to make any alterations or modifications to the Improvements. In the event Lessor grants its consent to any alterations or modifications to the Improvements, Lessee agrees that same must comply with Legal Requirements and Prudent Utility Practices and the terms and conditions of the BOOT Contract.

**Section 8.2.** Lessor shall use commercially reasonable efforts to cooperate with Lessee so that alterations, repairs or modifications to the Improvements on the Demised Premises will derive similar benefits (including, if available, exemption from local zoning regulations, if any, it being expressly understood that Lessor is making no representation or warranty that any such benefits or exemption is available), that would be derived if Lessor itself made such alterations, repairs or modifications to such Improvements. All reasonable expenses incurred by Lessor in so cooperating with Lessee shall be borne directly by Lessee.

# ARTICLE IX: UTILITIES

**Section 9.1.** Lessee shall provide, at its own expense, fuel, heat, water, sewer, electricity, telephone and all other utilities or services required in connection with its use of the Demised Premises. Lessee shall be responsible for all deposits required by the respective utilities for service. Lessee shall comply with all requirements of the utilities supplying said service.

# ARTICLE X: REQUIREMENTS OF LAW; ENVIRONMENTAL MATTERS

**Section 10.1.**

(A) Lessee shall promptly comply with each and every Legal Requirement (including those which require structural alterations) applicable to the Demised Premises, including, without limitation, those for the correction, prevention or abatement of nuisances or other grievances in, upon, or connected with the Demised Premises during the Term; and shall also promptly comply with all rules, orders and regulations of the New York Board of Fire Underwriters for the prevention of fires at the Lessee's own cost and expense.

(B) Lessee shall operate the Demised Premises in compliance with each and every Legal Requirement relating to or referring to health, safety of the public, worker safety or the environment ("Environmental Laws") and shall keep and cause the Demised Premises to be kept free of Hazardous Materials (hereinafter defined). Without limiting the foregoing, Lessee shall not cause or permit the Demised Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Environmental Laws, nor shall Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of Lessee or any Lessee Party (as defined below) or any other person, a release of Hazardous Materials onto the Demised Premises or onto any other property. Lessee shall comply with and ensure compliance by all employees, affiliates, agents and contractors of Lessee (each, a "Lessee Party", collectively "Lessee Parties") with all applicable Environmental Laws, and shall obtain and comply with, and ensure that all Lessee Parties obtain and comply with, any and all approvals, registrations or permits required thereunder including, without limitation, air quality, waste water discharge and fuel storage permits. Lessee shall (A) conduct and complete all investigations, studies, samplings, and testing, and all remedial removal, and other actions necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Demised Premises (i) in accordance with all applicable Environmental Laws, and (ii) in accordance with the orders and directives of all federal, state, and local governmental authorities, and (B) defend (with counsel reasonably acceptable to Lessor), indemnify, and hold harmless Lessor, its Affiliates, equity owners, trustees, directors, officers, managers, employees, agents and representatives and their respective heirs, successors and assigns ("Lessor's Indemnified Persons") from and against any and all "Claims" (as defined in the BOOT Contract) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to: (i) Environmental Laws, (ii) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or affecting the soil, water, air, vegetation, buildings, personal property, persons, animals, or otherwise whether same existed in the past, now exist or arise in the future; (iii) any personal injury (including wrongful death) or property damage (real or personal, including, without limitation, damage to natural resources) arising out of or related to such Hazardous Materials; (iv) any lawsuit brought or threatened, settlement reached, or government order or directive relating to Environmental Laws including, without limitation, those relating to Hazardous Materials; and/or (v) any violation of laws, orders, regulations, requirements, or demands of government authorities, in each case relating to or arising from Hazardous Materials on or under the Demised Premises or emanating from the Demised Premises onto other property, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses which arise, are caused, initiated or occur during the Term of this Lease, while this Lease is in effect or while Lessee or its successors or assigns are a tenant or occupant of the Demised Premises.

Lessee's obligations as provided under this Article X shall survive the expiration or earlier termination of this Lease.

Notwithstanding the foregoing provisions of Section 10.1(B), Lessee shall have no liability for Hazardous Materials released onto the Demised Premises by Lessor or its employees, Affiliates, agents or contractors to the extent that such parties are employed directly by and working exclusively for Lessor in connection with such Hazardous Material released onto the Demised Premises at any time.

**Section 10.2.** For purposes of this Article X, "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, asbestos, petroleum, petroleum products or derivatives, PCBs, or related materials regulated pursuant to or defined in any Environmental Law, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 960 I, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), all as amended and in effect from time to time, and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

**Section 10.3.** Lessor shall reasonably cooperate, at no cost to Lessor, whenever Lessee is presented with any issues subject to the provisions of Section 10.1 in order to facilitate a prompt and cost-effective response, as may be required and permitted by law.

# ARTICLE XI: INSURANCE

**Section 11.1.** Lessee, at its sole cost and expense, shall acquire and maintain in full force and effect the types and amounts of insurance coverage described in Exhibit 3. Not less frequently than annually, and upon reasonable request by Lessor, Lessee shall submit to Lessor original insurance certificates or other documents providing evidence of such insurance and that such insurance policies name Lessor as an additional insured to the extent that such insurance policies are required to do so pursuant to Exhibit 3. Failure by Seller to obtain the insurance coverage required by this Section 11.1 shall not relieve Lessee of the insurance requirements set forth or in any way relieve or limit Lessee's obligations and liabilities.

**Section 11.2.** Lessee's insurance certificates or other applicable documents shall provide that underwriters undertake to inform Lessor thirty (30) Days in advance of any cancellation or material change in coverage. Lessee shall promptly notify Lessor in the event of underwriters' cancellation, termination or substantive modification of any of Lessee's insurance coverages required in Exhibit 3.

**Section 11.3.** From time to time, Lessor may require additional insurance coverage or require Lessee to increase the limits of the existing insurance coverage, to those types and amounts of insurance which, in Lessor's reasonable judgment, are appropriate for properties such as the Demised Premises in Nassau or Suffolk County, New York, as the case may be.

# ARTICLE XII: DAMAGE OR DESTRUCTION

**Section 12.1.** No destruction of, or damage to, the Demised Premises or any part thereof by fire or other casualty shall permit Lessee to surrender this Lease or shall relieve Lessee from its liability to pay the Rent and Additional Rent payable under this Lease or from any of its other obligations under this Lease, and Lessee waives any rights now or hereafter conferred upon Lessee by statute or otherwise to quit or surrender this Lease or the Demised Premises or any part thereof, or to any suspension, diminution, abatement or reduction of rent on account of any such destruction or damage. Lessee hereby waives any and all rights granted by Section 227 of the Real Property Law of the State of New York or any other law of like import now or hereafter enacted.

# ARTICLE XIII: MORTGAGES, ASSIGNMENTS, SUBLEASES AND TRANSFERS OF LESSEE'S INTEREST

**Section 13.1.** This Lease and the rights, interests and obligations hereunder may be assigned, conveyed, pledged, transferred or otherwise encumbered by Lessee to the same extent as the Lessee is authorized to do so with respect to its rights and obligations as "Seller" under Section 15.1 (Assignment by Seller) of the BOOT Contract (a copy of which Section 15.1 is attached hereto as Exhibit 4**)**, which is incorporated herein by reference**.**

# ARTICLE XIV: INDEMNIFICATION

**Section 14.l. Indemnity.**

(A) Lessee shall indemnify, defend and hold harmless Lessor's Indemnified Persons from and against any and all Claims asserted or brought by a third party for damage to property, injury to or death of any person (including Lessor's employees), Lessee's employees and their Affiliates' employees, or any other person, to the extent caused wholly or in part (i) by a breach of Lessee's obligations under this Lease; (ii) by any negligent act, omission or intentional misconduct of Lessee, its parent, Affiliates, or successors, or their officers, directors, employees, agents, or subcontractors; or (iii) by virtue of Lessor's status as owner of record of the Demised Premises (other than Claims described in Section 14.1(B) below). Lessee's obligations under this Article XIV shall survive the expiration or earlier termination of this Lease.

(B) Lessor shall indemnify and hold harmless Lessee's Indemnified Persons from and against any and all Claims asserted or brought by a third party for damage to property, injury to or death of any person (including Lessee's employees, Lessor's employees and their Affiliates' employees, or any other person, to the extent caused wholly or in part by (i) a breach of Lessor's obligations under this Lease, (ii) Lessor's activities or operations at the Demised Premises, (iii) with respect to activities and operations conducted outside of the Demised Premises, any negligent act, omission or intentional misconduct of Lessor; and (iv) Lessor's actions as owner of record of the Demised Premises. For purposes of this Section 14.l(B), Lessor shall include Lessor, its parent, Affiliates, or successors, or their trustees, officers, directors, employees, agents, or subcontractors. Lessor's obligations under this Article XIV shall survive the expiration or earlier termination of this Lease.

(C) For the purposes of this Article XIV: (a) the term "Indemnified Party" shall refer generally to Lessor's Indemnified Persons and Lessee's Indemnified Persons; and (b) the term "Indemnifying Party" shall refer to any party required hereunder to indemnify an Indemnified Party.

**Section 14.2. Intentionally Omitted**.

**Section 14.3. Notice of Proceedings.**

An Indemnified Party which becomes entitled to indemnification under this Agreement shall promptly notify the Indemnifying Party of any Claim or proceeding in respect of which it is to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party obligated to give such notice becomes aware of such Claim or proceeding and shall include a complete copy of all notices, pleadings and other papers related thereto. Failure to give such notice shall not excuse an indemnification obligation except to the extent failure to provide notice adversely affects the Indemnifying Party's interests.

**Section 14.4. Conduct of Claim.**

The Indemnifying Party shall have the right to assume the defense of the Claim or proceeding with counsel designated by the Indemnifying Party and reasonably acceptable to the Indemnified Party; provided however, that the Indemnified Party shall have the right to participate fully in any Claim or proceeding and to retain its own counsel, but the fees and expenses of such counsel will be at its own expense unless (i) the Indemnifying Party shall have agreed to the retention of such counsel for both the Indemnifying Party and the Indemnified Party or (ii) the named parties to any action or proceeding include the Indemnifying Party and the Indemnified Party and representation of both such parties has been determined in the reasonable and good faith judgment of either party to be inappropriate under applicable standards of professional conduct due to actual or potential conflicting interests between them. In the event the Indemnifying Party is defending or prosecuting any Claim or proceeding, (a) the Indemnified Party shall not admit any liability with respect to, or settle, compromise or discharge such Claim or proceeding without the Indemnifying Party's prior written consent, and (b) the Indemnified Party will agree to any settlement, compromise or discharge of the suit, action or proceeding which the Indemnifying Party may recommend and which by its terms obligates Lessee to pay the full amount of liability in connection with such Claim or proceeding; provided, however, that without the Indemnified Party's consent, which consent may not be unreasonably withheld or delayed, the Indemnifying Party may only consent to the entry of any judgment or enter into any settlement that does not provide for injunctive or other non-monetary relief affecting the Indemnified Party. If the Indemnifying Party fails to assume the defense of a Claim, the indemnification of which is required under this Lease, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such Claim. Except as otherwise expressly set forth herein, the Indemnifying Party shall not compromise or settle a Claim hereunder without the prior written consent of the Indemnified Party.

# ARTICLE XV. INTENTIONALLY OMITTED

# ARTICLE XVI: RIGHT TO INSPECT

**Section 16.1.** Lessee shall permit Lessor or Lessor's agents to enter the Demised Premises at all reasonable hours for the purpose of: (i) inspecting the same; (ii) confirming that Lessee is complying with terms of (A) this Lease and (B) during the term of the BOOT Contract, of the BOOT Contract; (iii) making repairs which Lessee neglects or refuses to make; (iv) exhibiting the Demised Premises to prospective mortgagees; (v) exhibiting the Demised Premises to brokers and prospective purchasers; and (vi) during the eighteen (18) months preceding the expiration of this Lease, exhibiting the Demised Premises to brokers and prospective lessees, licensees or operators (it being understood that Lessor shall have no obligation to do any of the foregoing acts); provided, however, that, in each and every case, Lessor shall use commercially reasonable efforts not to unreasonably interfere with the conduct of Lessee's business at the Demised Premises. In the event of an emergency, if admission to the Demised Premises for the aforesaid purposes cannot be obtained, Lessor and Lessor's agents shall abide by all of Lessee's reasonable safety rules. Lessor or Lessor's agents may enter the Demised Premises with reasonable force without rendering Lessor or Lessor's agents liable to Lessee for damages by reason thereof.

# ARTICLE XVII: INTENTIONALLY OMITTED

# ARTICLE XVIII: DEFAULT PROVISIONS

**Section 18.1.** If any one or more of the following events (in this Lease sometimes called "Events of Default") shall happen:

(A) The failure by either party to this Lease to pay any amount due under this Lease or any part thereof when same shall become due and payable which continues for a period of ten (10) days after the due date thereof;

(B) The failure by Lessee in keeping, observing or performing any of the terms, covenants, agreements, provisions, conditions or limitations contained in this Lease on Lessee's part to be kept, observed or performed, including without limitation, each and every Legal Requirement applicable to the Demised Premises (other than those referred to in the foregoing subparagraph (A) of this Section), which do not expose Lessor to criminal liability, and such default shall continue for a period of sixty (60) days after written notice thereof from Lessor to Lessee;

(C) If Lessee shall file a voluntary petition in bankruptcy, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Lessee or of all or any substantial part of its properties or of the Demised Premises or of Lessee's interest therein;

(D) If within sixty (60) days after the commencement of any proceeding against Lessee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act of any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed or if, within sixty (60) days after the appointment, without the consent or acquiescence of Lessee, of any trustee, receiver or liquidator of Lessee or of all or any substantial part of its properties or of the Demised Premises or of Lessee's interest therein, such appointment shall not have beenvacated or stayed on appeal or otherwise, or if, within forty­ five (45) days after the expiration of any such stay, such appointment shall not have been vacated;

(E) A "Seller Event of Default" or a "Buyer Event of Default” (each as defined in the BOOT Contract) as applicable, has occurred and is continuing under the BOOT Contract.

**Section 18.2.** Upon actual discovery of an Event of Default, a party claiming the occurrence of such Event of Default must promptly provide the alleged defaulting party with written notice of the Event of Default and any remedy sought ("Notice of Default"). The defaulting party shall either:

* + 1. at its expense (and, if Lessee is the defaulting party, such cost shall not be recoverable from Lessor under Article 7 (Payment) of the BOOT Contract) cure the Event of Default within thirty (30) business days; or
		2. if such Event of Default reasonably requires additional time to cure then such defaulting party will, at its expense (and, if Lessee is the defaulting party, such cost shall not be recoverable from Lessor under Article 7 (Payment) of the BOOT Contract) from the date such party receives the Notice of Default, have ninety (90) business days to cure the Event of Default and the other party shall have no right to terminate this Lease, provided that the defaulting party diligently pursues such cure plan; or
		3. undertake dispute resolution pursuant to Section 18.5.

**Section 18.3.** Any proceeding or action involving bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, above set forth in subdivisions (C) and (D) of Section 18.1 of this Article, shall be grounds for the termination of this Lease pursuant to the terms, covenants, agreements, provisions, conditions and limitations of this Article XVIII, only when such proceeding, action or remedy shall be taken or brought by or against Lessee or any assignee of this Lease, while such Lessee or such assignee is the owner of the Lease.

**Section 18.4.** [INTENTIONALLY OMITTED]

**Section 18.5.** If, within thirty (30) days of the service of a Notice of Default pursuant to Section 18.2, the party alleged to be in default disputes in writing that an Event of Default has occurred, either party may seek resolution of such dispute pursuant to the terms of Article 13 (Dispute Resolution) of the BOOT Contract and this Lease shall not be terminated by the party claiming the occurrence of the Event of Default prior to such resolution of such dispute pursuant to the procedures of Article 13 (Dispute Resolution) of the BOOT Contract. The Parties acknowledge and agree that for purposes of this Lease the terms of Article 13 (Dispute Resolution) of the BOOT Contract shall survive the expiration or termination thereof as set forth in Section 13.1 (Notice) of the BOOT Contract.

**Section 18.6.** This Lease may be terminated by the non-defaulting party effective immediately upon the non-defaulting party providing written notice of termination to the defaulting party if: (i) the defaulting party fails to cure the Event of Default within the cure periods set forth herein, and pursuant to the terms provided under Article XVIII of this Lease and any action for dispute resolution pursuant to Section 18.5 with respect to the alleged Event of Default has been completed; or (ii) through the dispute resolution process set forth in Section 18.5, it is determined that an Event of Default has occurred and the defaulting party, pursuant to terms of this Lease has not (a) cured the default, or (b) diligently pursued the cure plan provided by the defaulting party, as the case may be. Upon termination, the non-defaulting party shall be entitled to such damages as are available at law and equity, subject to the limitations set forth herein and in Article 8 (Limitations, Merchantability and Fitness) of the BOOT Contract.

**Section 18.7.** Whenever any default shall have occurred Lessor shall have the right to:

1. Declare by written notice to Lessee, to be immediately due and payable, whereupon the same shall become immediately due and payable all unpaid Rent and Additional Rent payable under this Lease through and including the date of the transfer of title to the Demised Premises to Lessor.
2. Take any other action at law or in equity that may appear necessary or desirable to collect the payments due hereunder or which may after such default become due and to enforce the obligations, agreements, or covenants of Lessee under this Lease.

No action taken or failure to take action by Lessor pursuant to this Section shall relieve Lessee from its obligation to make all payments required under this Lease.

**Section 18.8.** No termination of the Lease shall relieve Lessee of its liabilities and obligations hereunder, and such liabilities and obligations shall survive any such termination. In the event of any such termination, whether or not the Demised Premises or any part thereof shall have been re-let or Lessor shall have retained an operator to operate the Project, Lessee shall pay to Lessor a sum equal to the Rent and the Additional Rent required to be paid by Lessee up to the time of such expiration or termination of this Lease.

**Section 18.9.** In the event of any breach or threatened breach by Lessee of any of the terms, covenants, agreements, provisions, conditions or limitations contained in this Lease, Lessor shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right or remedy allowed at law or in equity or by statute or otherwise as if entry, re-entry, summary proceedings, and other remedies were not provided in this Lease.

**Section 18.10.** Each right or remedy of Lessor provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or the beginning of the exercise by Lessor of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lessor of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

# ARTICLE XIX: ATTORNEYS' FEES

**Section 19.1.** If at any time there shall occur an Event of Default or either party shall default with regard to its obligations hereunder, and if the non-defaulting party shall institute an action or summary proceedings against the other based upon such Event of Default or default with regard to its obligation hereunder, and the non-defaulting party shall be successful, then the defaulting party shall reimburse the non-defaulting party for the reasonable expenses of attorneys' fees and disbursements incurred by the non-defaulting party. The amount of such expenses payable by Lessee shall be deemed to be "Additional Rent" hereunder and shall be due from Lessee to Lessor on the first day of the month following the incurring of such expenses.

# ARTICLE XX: WAIVER OF REDEMPTION, COUNTERCLAIM, TRIAL BY JURY

**Section 20.1.** Lessee hereby expressly agrees that it shall not interpose any counterclaim in any summary proceeding or any action based on non-payment of Rent or any other payments or charges required to be made by Lessee to Lessor, except that this waiver shall not be deemed to apply to any counterclaim which as a matter of New York law is in the nature of a compulsory counterclaim such that Lessee's failure to assert same would prohibit, bar or estop Lessee from asserting such claim in another proceeding or action. LESSOR AND LESSEE HEREBY WAIVE TRIAL BY JURY in any action, proceeding or counterclaim brought by either of them against the other with respect to any matters arising out of or connected with this Lease, the relationship of Lessor and Lessee, Lessee's use or occupancy of the Demised Premises, and/or any claim of injury or damage and any emergency statutory or any other statutory remedy.

# ARTICLE XXI: NO WAIVER

**Section 21.1**. No act or thing done by Lessor or Lessor's agents during the Term shall be deemed an acceptance of a surrender of the Demised Premises, and no agreement to accept such surrender shall be valid unless in writing signed by Lessor. The failure of Lessor to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease shall not prevent a subsequent act which would have originally constituted a violation, from having all the force and effect of an original violation.

The receipt by Lessor of Rent or Additional Rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived by Lessor unless such waiver be in writing signed by Lessor.

# ARTICLE XXII: END OF TERM

**Section 22.1.** Upon the expiration or earlier termination of the Term of this Lease (for any reason) Lessee shall turn the Project over to the Lessor in accordance with the terms of Section 15.9 (Buyer's Purchase of the Project) of the BOOT Contract and leave the property. In addition, Lessee shall pay to Lessor all amounts due and owing to Lessor under this Lease including without limitation all amounts due and owing or required to be paid under Article XVIII of this Lease.

# ARTICLE XXIII: BROKER

**Section 23.1.** Lessor and Lessee each represent that this Lease was not brought about by any broker and all negotiations with respect to this Lease were conducted exclusively between Lessor and Lessee. Lessor and Lessee agree that if any claim is made for commissions by any broker, by, through or on account of any acts of a party, the party will hold the other party free and harmless from any and all liabilities and expenses in connection therewith, including reasonable attorney's fees.

# ARTICLE XXIV: QUIET ENJOYMENT

**Section 24.1**. Lessor covenants that if and so long as Lessee pays the Rent and Additional Rent and other charges reserved by this Lease, and performs all the terms, covenants and conditions of this Lease on the part of Lessee to be performed, Lessee shall quietly enjoy the Demised Premises subject, however, to the terms of this Lease.

# ARTICLE XXV: NONLIABILITY OF LESSOR

**Section 25.1.**

(A) Lessor and Lessor's agents and employees shall not be liable for, and Lessee waives all claims for, loss or damage to Lessee's business or damage to person or property sustained by Lessee resulting from any accident or occurrence (except to the extent that the said loss or damage was caused by the acts or negligence or the Lessor, Lessor's agent or employees), including, but not limited to, claims for damage resulting from: (i) any equipment or appurtenances becoming out of repair; (ii) injury done or occasioned by wind, rain, fire, storm or other occurrence of nature; (iii) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water, or steam pipes, stairs, porches, railings or walks; (iv) broken glass; (v) the backing up of any sewer pipe or downspout; (vi) the bursting, leaking or running of any tank, tub, washstand, water closet, waste pipe, drain or other pipe or tank in, upon or about the Demised Premises; (vii) the escape of gas, steam or hot water; (viii) water, snow or ice being upon or coming through the roof, skylight, trapdoor, stairs, doorways, windows, walks or any other place upon or near the Demised Premises or otherwise; (ix) the falling of any fixture, plaster, tile or stucco; and (x) any act, omission or negligence of Lessee, any Lessee Party or of any other persons or occupants of the Improvements or of adjoining or contiguous buildings or improvements or of owners of adjacent or contiguous property.

(B) Lessee shall look solely to the equity of Lessor in the land constituting the Demised Premises for the satisfaction of Lessee's remedies, and in no event shall Lessee attempt to secure any personal judgment against Lessor or any principal, partner, employee, trustee or agent of Lessor by reason of a default by Lessor.

(C) The word "Lessor" as used herein means only the owner in fee of the Demised Premises, and in the event of any sale of the Demised Premises, Lessor shall be and hereby is entirely freed and relieved of all covenants and obligations of Lessor hereunder and it shall be deemed and construed without further agreement between the parties or between the parties and the purchaser of the Demised Premises, that such purchaser has assumed and agreed to carry out any and all covenants and obligations of Lessor hereunder.

(D) The word "Lessor'' as used herein means the Lessor named herein and any and all permitted subtenants and/or assignees.

# ARTICLE XXVI: APPLICABLE LAW, InTERPRETATION AND CONSTRUCTION

**Section 26.1.** The laws of the State of New York shall govern the validity, performance and enforcement of this Lease. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision. The submission of this document to Lessee for examination does not constitute an offer to lease, or a reservation of or option to lease, and becomes effective only upon execution and delivery thereof by Lessor and Lessee. All negotiations, considerations, representations and understandings between the parties are incorporated in this Lease. Lessor or Lessor's agents have made no representations or promises with respect to the Demised Premises except as herein expressly set forth. The headings of the several articles and sections contained herein are for convenience only and do not define, limit or construe the contents of such articles or sections. Whenever herein the singular number is used, the same shall include the plural, and the neuter gender shall include the masculine and feminine genders. Neither this Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought. This Lease shall be given a fair and reasonable construction in accordance with the intentions of the parties hereto, and without regard to or aid of canons requiring construction against the party drafting this Lease.

Section 1.2 (Construction) of the BOOT Contract is incorporated herein by reference.

# ARTICLE XXVII. BINDING EFFECT OF LEASE

**Section 27.1.** The covenants, agreements and obligations contained in this Lease shall, except as herein otherwise provided, extend to, bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Each covenant, agreement, obligation or other provision herein contained shall bedeemed and construed as a separate and independent covenant of the party bound by, undertaking or making the same, not dependent on any other provision of this Lease unless otherwise expressly provided.

# ARTICLE XXVIII: NOTICES

**Section 28.1.** All notices to be given hereunder shall be in writing and given by hand delivery, by certified or registered mail, or by recognized overnight courier (e.g., Fed Ex) addressed to either of the parties at the address hereinabove given or at any other subsequent mailing address they may indicate by written notice. Any notice given hereunder by mail shall be deemed delivered upon receipt or rejection of delivery by the addressee. Any notice to be delivered to Lessor hereunder should be directed to the attention of the person(s) indicated below. Any notice to be delivered to Lessee hereunder should be directed to the attention of its General Counsel. In addition, copies of default notices to Lessor shall be delivered to:

Long Island Electric Utility Servco LLC as agent of and acting on behalf of

Long Island Lighting Company d/b/a LIPA

333 Earle Ovington Blvd. Suite 403

Uniondale, New York 11553

Attn: Manager of Power Portfolios

Email: [\_\_\_\_\_\_\_\_\_\_]

Email for invoices only: PMInvoice@pseg.com

Copy to: Long Island Power Authority

333 Earle Ovington Blvd. Suite 403

Uniondale, New York 11553

Attn: General Counsel

Fax: (516) 719-8602

and copies of default notices to Lessee shall be delivered to Lessee c/o NAME.

# ARTICLE XXIX: CONDITION OF THE DEMISED PREMISES

**Section 29.1.** Lessee agrees to accept the Demised Premises in its "as is" condition on the date hereof.

# ARTICLE XXX: ESTOPPEL CERTIFICATE

**Section 30.1.** Lessor shall, upon not less than thirty (30) days prior written request from Lessee, execute and deliver to Lessee a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified) and stating whether there are any defaults under this Lease of which Lessor has actual knowledge and specifying such defaults, if any, and stating such other factual information which Lessee reasonably requests. ·

**Section 30.2.** Lessee shall, upon not less than thirty (30) days prior written request from Lessor, execute and deliver to Lessor a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified) and stating whether there are any defaults under this Lease of which Lessee has actual knowledge and specifying such defaults, if any, and stating such other factual information which Lessor reasonably requests.

# ARTICLE XXXI: CONFIDENTIALITY

**Section 31.1. Claim of Confidentiality.**

Confidential, trade secret or proprietary materials, as defined by the laws of the State of New York, (“Confidential Information”), must be clearly marked and identified as such upon submission. If Lessee intends to seek an exemption from disclosure of these materials under Freedom of Information Law (“FOIL”), Lessee must request the exemption in writing, setting forth the reasons for the claimed exemption, at the time of submission or as required to address requests for materials under Freedom of Information Law. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination shall be made in accordance with statutory procedures. *Nothing in this Agreement is intended or shall be construed to waive Lessee’s right to claim that a communication or document is covered by a legally recognized privilege, including but not limited to the claim of attorney-client privilege.*

**Section 31.2. Compliance with the Freedom of Information Law.**

Lessee hereby expressly acknowledges that Lessor is subject to the requirements of FOIL and must comply therewith. If Lessor is requested by a third party to disclose marked Confidential Information that is has received from Lessee, Lessor will (i) notify Lessee of the request, (ii) provide Lessee the opportunity to provide information regarding the need for confidential treatment, (iii) evaluate the third party's request for disclosure and Lessee's request for confidential treatment, and (iv) determine if the marked Confidential Information is subject to disclosure under FOIL. If Lessor determines that the marked information is subject to disclosure, it will provide prompt written notice of such determination to Lessee so that Lessee may timely seek a protective order or other appropriate remedy. If Lessee does not obtain a protective order or no formal proceeding has been initiated by Lessee within ten (10) business days after Lessor provides notice to Lessee of its intent to disclose the marked confidential information, then Lessor may disclose such information with no liability or further obligation to Lessee.

**Section 31.3. Treatment of Otherwise Publicly Available Documents.**

Notwithstanding anything to the contrary in this Article XXXI, neither party shall be required to hold confidential any information which (i) is already publicly available; (ii) is required to be disclosed by applicable law or by a governmental or judicial order, rule or regulation; (iii) is independently developed by Lessor; or (iv) becomes available to the Lessor without restriction from a third party, whom Lessor has no reason to believe has obtained or is disclosing the Confidential Information improperly. Should Lessor or Lessee receive legal process from a third party seeking disclosure of Confidential Information(by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demands, regulation, statute or otherwise), Lessor or Lessee shall promptly written notice so that the Party claiming confidentiality may seek a protective order or other appropriate remedy.

**Section 31.4. Maintenance of Records**.

Lessee shall, until seven (7) years after termination of Lease, maintain and shall require to be maintained complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under Lease (the "Records") including, but not limited to: [OPTIONAL-- INSERT SUMMARY OF TYPES OF RECORDS TO BE PRESERVED]. Lessee shall make all such Records available to Lessor or its authorized representatives for review and audit at all such reasonable times as the Lessor shall from time to time request.

**Section 31.5. Term of Confidentiality.**

The obligations set forth in this Article XXXI shall survive expiration or termination of this Lease for a period of two (2) years thereafter.

# ARTICLE XXXII: CONDITIONS TO EFFECTIVENESS OF LEASE; REPRESENTATIONS

**Section 32.1.** Notwithstanding anything to the contrary contained in this Lease, this Lease shall not be effective, valid or binding upon Lessor until the Commencement Date.

**Section 32.2.** Notwithstanding anything to the contrary contained in this Lease, this Lease shall not be effective, valid or binding upon Lessor until it has been approved by the New York State Comptroller and filed in his or her office.

**Section 32.3.**  Lessor and Lessee each represents to the other that (i) it has the power and authority to execute and deliver this Lease; (ii) the execution of this Lease will not violate or constitute a default on its part under any agreement to which it is a party or by which it is bound; and (iii) its execution of this Lease does not require the approval of any other party or entity.

# ARTICLE XXXIII: TERMINATION OF BOOT CONTRACT

**Section 33.1.** In the event of termination or expiration of the BOOT Contract for any reason, the Term of this Lease shall simultaneously terminate

# ARTICLE XXXIV: DISPUTE RESOLUTION

**Section 34.1.** Except as otherwise set forth herein, any dispute arising out of or relating to this Lease shall be resolved in accordance with the provisions specified in Article 13 (Dispute Resolution) of the BOOT Contract, which are hereby incorporated by reference and shall constitute the sole and exclusive procedures for the resolution of such disputes.

# ARTICLE XXXV: CONFLICT WITH BOOT CONTRACT

**Section 35.1.** In the event of any conflict between the provisions of this Lease and the provisions of the BOOT Contract, the provisions of the BOOT Contract shall control. Notwithstanding anything to the contrary contained herein, express or implied, by entering this Lease, Lessee shall not be deemed to have waived any (a) rights under the BOOT Contract to be reimbursed by Lessor for payments made by Lessee pursuant to this Lease, or (b) rights under any other agreement between Lessor and Lessee.

# ARTICLE XXXVI: ACCESS PRIOR TO THE COMMENCEMENT DATE

**Section 36.1.** Lessee shall be permitted access to the Demised Premises upon all of the applicable terms and conditions of this Lease or a mutually agreed upon access agreement entered into with the applicable property owner.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement:

Accepted and Agreed to this \_\_ day of \_\_\_\_\_\_\_, 2021

|  |  |
| --- | --- |
| LONG ISLAND POWER AUTHORITY By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | RESPONDENTBy: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Approved as to Form: Approved:

Office of the Attorney General Office of the State Comptroller

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

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

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit 1 – Site Map & Surveys**

**Exhibit 2 – Title Report**

**Exhibit 3 – Insurance Requirements**

**Exhibit 4 – Assignment by Seller (Section 15.1 of the BOOT Contract)**

1. [↑](#footnote-ref-2)