

**ADDENDUM NO. 1: ISSUED JANUARY ~~XX~~16, 2026**

**FORM OF POWER PURCHASE AGREEMENT  
FOR EXISTING PROJECTS IN PJM**

**BETWEEN**

**LONG ISLAND POWER AUTHORITY**

**AND**

**[*Insert name of Seller*]**

**[\_\_\_\_], ~~2025~~2026**

## REVISION HISTORY

Issue Date	Addendum No.	Revised Sections
October 1, 2025	--	Issue Date
<u>January 16<del>XX</del>, 2026</u>	<u>1</u>	<b>Revisions:</b> <u>Cover Page, Definitions (Contract Capacity, Delist, Delisted Contract Capacity, Excused Outage, Export, Exported Contract Capacity, PJM Capacity Exchange, Reinstate, Reinstated Contract Capacity, Relist, Relisted Contract Capacity), 3.2.1, 3.19.1iii, 3.19.1viii, 3.19.1ix, 3.19.1xv, 3.19.2iv, 3.19.2v, 3.19.2xi, 8.1</u>

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**SUPPLEMENTS**

1. SUPPLEMENT 1: STANDARD CLAUSES FOR LIPA'S CONTRACTS

## **FORM OF POWER PURCHASE AGREEMENT**

THIS FORM OF POWER PURCHASE AGREEMENT (“Agreement”), dated as of [REDACTED], 2026, is by and between the Long Island Power Authority, a corporate municipal instrumentality of the State of New York, having its principal place of business at 333 Earle Ovington Boulevard, Uniondale, New York 11553 (“Buyer”) and the [REDACTED], having its principal place of business at [REDACTED] (“Seller”) (collectively, Buyer and Seller are also referred to herein as the “Parties”). This Agreement includes the general terms and conditions set forth herein, all exhibits, schedules and any written supplements hereto.

### **WITNESSETH:**

WHEREAS, the Long Island Lighting Company d/b/a LIPA, is a corporation organized and existing under the laws of the State of New York and a wholly owned subsidiary of Buyer;

WHEREAS, pursuant to the Second Amended and Restated Operation Services Agreement (“A&R OSA”) dated December 15, 2021, as may be restated, amended, modified, or supplemented from time to time, between Long Island Lighting Company d/b/a LIPA and PSEG Long Island, PSEG Long Island through its operating subsidiary, Long Island Electric Utility Servco LLC (“Servco”), assumed the responsibility as Buyer’s service provider, to operate and manage Buyer’s transmission and distribution system and other utility business functions, including Buyer’s power supply planning, and Servco’s affiliate provides certain services to Buyer, such as purchasing power and fuel procurement, related to these responsibilities;

WHEREAS, Seller owns, operates and maintains the [Seller to insert name of facility(ies) proposed to provide Contract Capacity, and Contract Energy (if applicable)] Power Plant(s), an energy generation facility(ies) with a nominal rating (net of auxiliary power consumption and transmission losses) of [REDACTED] MW [Seller to insert facility(ies) MW rating], located in [Seller to insert location of facility(ies)], as further described in **APPENDIX 1**~~**APPENDIX 1:**~~  
**DESCRIPTION AND LOCATION OF THE PROJECT(S)** (the “Project(s)”);

WHEREAS, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase from Seller, the quantities of Product(s) detailed in **APPENDIX 2**~~**APPENDIX 2**~~ and **APPENDIX 3**~~**APPENDIX 3**~~ from the Project(s) in accordance with the provisions of this Agreement;

WHEREAS, Buyer intends to use the Contract Capacity to contribute to meeting NYISO’s Locational Installed Capacity requirements; and

WHEREAS, Buyer intends to use the Contract Energy to help meet reliability needs of Long Island customers.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Buyer and Seller, each intending to be legally bound, agree as follows.

## ARTICLE 1: GENERAL DEFINITIONS

**1.1 Definitions.** In addition to the initially capitalized terms and phrases defined in the preamble of this Agreement, the following initially capitalized terms and phrases as and when used in this Agreement shall have the respective meanings set forth below:

*AC* – means alternating current.

*Act* – means the Long Island power authority act (Public Authorities Law of the State of New York, Article 5, Title 1-a Long Island Power Authority, § 1020 et seq.).

*Affiliate* – means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” includes but is not limited to the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or equity interest.

*Aggrieved Party* – has the meaning set forth in Section 12.1.

*Agreement* – has the meaning set forth in the preamble.

*Available Capacity* – means, for any Month, an amount, in MW, equal to the product of Contract Capacity and the Project Availability Percentage for such Month.

*Availability Damages* – has the meaning set forth in Section 4.2.

*Availability Report* – has the meaning set forth in Section 4.1.

*Bankrupt* – means, with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it which shall remain undismissed or unstayed for a period of sixty (60) days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, and if such appointment is sought by a party other than such entity, the proceeding in which such action is sought shall remain undismissed or unstayed for a period of sixty (60) days, or (iv) is generally not paying its debts as they fall due.

*Bid* – means an offer to sell or bid to purchase Energy that is duly submitted to the NYISO pursuant to NYISO Rules.

*Bidding and Scheduling Instructions* – has the meaning set forth in Section 3.14.

*Business Day* – means any Day except a Saturday, Sunday, or holiday defined by NERC. A Business Day shall open at 0800 and close at 1700 EPT for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

*Buyer* – has the meaning set forth in the preamble.

*Buyer Event of Default* – has the meaning set forth in Section 5.2.

*Buyer's Electric System* – means all equipment and facilities now or hereafter comprising Buyer's system for transmission and/or distribution of electricity.

*Capacity* – means the capability to generate Energy measured in MW.

*Capacity Performance Payment* - shall have the meaning designated in the PJM Rules.

*“CEII”* – means “critical energy infrastructure information” as defined under applicable FERC rules and policies.

*Change in Law* – means the enactment, adoption, promulgation, modification, suspension, repeal, or judicial determination, after the Effective Date, by any Governmental Authority of any Legal Requirement that materially affects the costs associated with a Party’s performance of its obligations hereunder or its ability to perform its obligations hereunder. For the avoidance of doubt, neither of the following shall be considered a Change in Law: (a) a new Legal Requirement imposed on the Project that is not applicable generally to electric generating facilities, or (b) a change in interpretation or enforcement of any existing Legal Requirement.

*“CII”* – means “critical infrastructure information” exempted from disclosure under Article 6 of the Public Officers Law, the New York State Freedom of Information Law (“FOIL”).

*“CIP”* – means “critical infrastructure protection” information, as defined or described under applicable NERC standards and procedures, including, without limitation, information related to Bulk Electric System Cyber System Information as defined by NERC and physical security measures related to any critical physical and/or cyber assets.

*Claiming Party* – has the meaning set forth in Section 13.3.

*Code* – means the Internal Revenue Code of 1986, as amended.

*Confidential Information* – means information regarding a Party or a Party’s Affiliates and Representatives that is (i) disclosed to the other Party by or on behalf of the Disclosing Party or (ii) derived by Receiving Party (defined below) from information described in or through an inspection of property, operations or documents. Confidential Information includes, but is not limited to: business secrets; business information; business plans and practices; financial and pricing information; financial statements and reports; project specifications; projections; schematics and drawings; trade secrets; processes; materials; employee information or data; customer information or data; Personal Information; shareholder information or data; supplier lists; sales volume; territories; markets; current, future, or potential acquisitions; technical, production, operational, marketing, or sales information; and any and all other financial, business, organizational, and technological information related to a Party’s or Affiliates’ or Representatives’ businesses and/or organizations, whether or not such information is specifically marked “Confidential” or with other similar legend. Confidential Information shall also include all information which should reasonably be understood by Receiving Party to be confidential due to

the strategic or sensitive nature of the information. Confidential Information shall include CEII, CII and CIP, whether such information is designated in writing, by label, stamp, or other written communication, as “confidential” or “proprietary,” together with all writings, notes, memoranda, analyses, compilations, data, studies, interpretations, media, or other documents that are based upon or derived from, reflect, or contain, in whole or in part, any such furnished or obtained information. Confidential Information may be in the form of electronic, paper, oral, or visual, including, without limitation, all forms of written, printed and electronic documents; information given or received orally in meetings, informal discussions or telephone conversations; data stored on magnetic or other electronic media or in the memory of a computer; streams of data being transmitted over communications lines; and information in digital, graphic, text, voice or image format.

*Connecting Transmission Owner* – means **[To be provided by Seller]**.

*Consent(s)* – means any material approval, consent, permit, license, decree, certificate or other authorization that is necessary to own, construct, operate, and maintain the Project from any Governmental Authority having jurisdiction in accordance with applicable Legal Requirements, including, without limitation, all material environmental certificates, licenses, permits and approvals.

*Contract Capacity*– means MW of Installed Capacity from the Project(s) within the PJM Control Area that will (i) be eligible to be ~~exported~~ **Exported** at the Contract Capacity Delivery Point into the NYCA **following the Seller obtaining a must offer exemption** in accordance with the PJM Rules and (ii) be eligible to qualify as Long Island Locational Installed Capacity as outlined in the NYISO ICAP Manual for External Installed Capacity Suppliers, as detailed in **APPENDIX 2APPENDIX 2: CAPACITY QUANTITY AND PRICING.**

*Contract Capacity Delivery Point* – means the Project’s point of interconnection with the PJM system defined as Point of Receipt in its agreement Interconnection Agreement-.

*Contract Capacity Monthly Payment* – means the product of the Contract Capacity Price and the Contract Capacity for each Project supplying Contract Capacity that Month.

*Contract Capacity Price* – means the price in \$/kW-month (AC) (US) as specified in **APPENDIX 2APPENDIX 2: CAPACITY QUANTITY AND PRICING.**

*Contract Energy* – means the Energy to be sold by Seller to Buyer pursuant to the terms of this Agreement.

*Contract Energy Delivery Point* – means the PJM Western Hub.

*Contract Energy Monthly Payment* – has the meaning set forth in Section 6.2.1. (if applicable)

*Contract Energy Price* – **[as described by Seller in APPENDIX 3APPENDIX 3: ENERGY QUANTITY AND PRICING]**.



*Contract Year* – means a 12-month period beginning on June 1st and ending on May 31st of the following year.

*Costs* – means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement or entering into new arrangements which replace the terminated Agreement and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of the transactions contemplated by this Agreement.

*Credit Rating* – means, with respect to any Person, the rating by S&P, Moody’s, Fitch or any other rating agency agreed to by the Parties then assigned to such Person’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such Person does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such Person as an issuer rating by S&P, Moody’s, Fitch or any other rating agency agreed by the Parties.

*Credit Requirements* – means, with respect to any Person, that such Person has at least two of the following Credit Ratings: (a) “Baa2” or higher from Moody’s; (b) “BBB” or higher from S&P; and (c) “BBB” or higher from Fitch.

*CRIS Rights or Capacity Resource Interconnection Service Rights* – has the meaning set forth in the NYISO Rules.

*Critical Infrastructure* – means systems, assets, places, or things, whether physical or virtual, so vital to the state that the disruption, incapacitation or destruction of such systems, assets, places, or things could jeopardize the health, safety, welfare or security of the state, its residents or its economy as defined under New York State Public Officers Law section 86.

*Data Security Incident* – means the actual or reasonably suspected: (a) loss or misuse (by any means) of a Disclosing Party’s Confidential Information; (b) inadvertent, unauthorized and/or unlawful Processing, corruption, modification, transfer, sale or rental of a Disclosing Party’s Confidential Information; (c) act or omission that compromises the security, confidentiality, or integrity of a Disclosing Party’s Confidential Information; or (d) breach of any applicable law, rule or regulation or Disclosing Party’s internal requirements and procedures applicable to the Processing of the Disclosing Party’s Confidential Information by the Receiving Party or any current or former Representatives, including (but not limited to) CEII, CII and CIP.

*Day* – means twenty-four (24) consecutive hours commencing with the hour ending 0100 EPT through the hour ending 2400 EPT on any calendar day.

*Defaulting Party* – means (a) with respect to a Seller Event of Default, the Seller and (b) with respect to a Buyer Event of Default, the Buyer.

~~*Delist* – has the meaning set forth in the PJM Rules (PJM Tariff Attachment DD and PJM Manual 18).~~

~~*Delisted Contract Capacity*—means that amount of Contract Capacity for the applicable period that is Delisted in accordance with this Agreement; provided that such amount, when combined with the Relisted Contract Capacity for such period, shall not exceed (in the aggregate) the Contract Capacity.~~

*Delivery Points* – means the Contract Capacity Delivery Point and the Contract Energy Delivery Point.

*Disclosing Party* – means a Party to this Agreement or its Representatives who are authorized to provide Confidential Information to the Receiving Party in accordance with the provisions of this Agreement.

*DMNC* – means the generator output capability test (Dependable Maximum Net Capacity) used to establish the NYISO Installed Capacity of the Project for the NYISO Summer Capability Period and NYISO Winter Capability Period (as applicable) as set forth in the NYISO Rules.

*Early Termination Date* – has the meaning set forth in Section 5.3.

*Effective Date* – means the first date on which all of the following shall have occurred: (1) this Agreement has been executed by both Seller and Buyer; and (2) the executed Agreement has been (a) approved in writing by both (i) the New York State Attorney General (as to form), and (ii) the State Comptroller and filed in the office of the State Comptroller (as provided for in Supplement).

*Energy* – means three-phase, 60-hertz alternating current electric energy, expressed in MWh.

*Energy Monthly Payment* – has the meaning set forth in Section 6.2.

*EPT* – means Eastern Prevailing Time which shall be Eastern Standard Time or Eastern Daylight Savings Time, as applicable, with respect to any given hour.

*Equitable Defenses* – means any defense to an obligation arising under bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally of which may be allowed in the discretion of a court before which such bankruptcy, insolvency or creditors rights proceedings may be pending.

*Excused Outage*—means (i) any Outage of the Project which is the result of a Planned Outage or Maintenance Outage; or (ii) any Outage of the Project which is the result of a Dispatch that is outside of the Operating Limits set forth in APPENDIX 8: OPERATING LIMITS; or (iii) Buyer's breach, inability or unwillingness to accept Contract Capacity at the Delivery Point; or (iv) a Suspension pursuant to Section 5.6, or any curtailment or instruction by any Governmental Authority, transmission owner or operator, to cease, interrupt or reduce operations, receipts or deliveries; provided such action described herein is not the result of Seller's failure to comply with the terms of this Agreement; or (v) a Force Majeure Event to the extent provided in Article 13

provided, none of the foregoing shall be deemed an Excused Outage if and to the extent caused by a Seller Event of Default.

Export – has the meaning set forth in the PJM Rules.

Exported Contract Capacity – means that amount of Contract Capacity for the applicable period that is Exported following Seller obtaining a must offer exemption in accordance with this Agreement; provided that such amount, when combined with the Reinstated Contract Capacity for such period, shall not exceed (in the aggregate) the Contract Capacity.

*Extended Force Majeure Event* – has the meaning set forth in Section 13.4.1.

*FEMA* – means the Federal Emergency Management Agency and its successors.

*FERC* – means the Federal Energy Regulatory Commission and its successors or assigns.

*Firm Transmission Withdrawal Rights (FTWRs)* – has the meaning set forth in the PJM Rules; or, if such rights are no longer recognized under PJM Rules, the equivalent of such rights

*Fitch* – means Fitch Ratings, Ltd., or its successor.

*FOIL* – has the meaning set forth in Section 15.1.5.

*Forced Derate Hour* – means, for any hour (or any portion of any hour) in which the Project was available to produce Energy, but in an amount less than the Contract Capacity of the Project, the product of (a) the ratio of (i) the difference between the Contract Capacity of the Project, minus the actual amount of Energy that the Project was available to produce over (ii) the Contract Capacity of the Project, multiplied by (b) such period of time.

*Forced Outage* – means (i) an Outage of the Project due to an unanticipated failure or unavailability of one or more components of the Project; (ii) NERC Event Types U1, U2 and U3 as set forth in **APPENDIX 9: OUTAGES**, which is not otherwise an Excused Outage; (iii) Maintenance Outage hours in excess of the maximum limits in **APPENDIX 8: OPERATING LIMITS**; (iv) any failure of the Project to provide Energy which failure is not otherwise an Excused Outage; and/or (v) inability of the Project to provide Capacity, Energy or ancillary services within the Operating Limits, which inability is not otherwise an Excused Outage.

*Forced Outage Hour* – means any hour (or any portion of any hour) in which a Forced Outage (as defined in the NYISO Market Administration and Control Area Services Tariff) has occurred and is continuing.

*Force Majeure Event* – has the meaning set forth in **ARTICLE 13: FORCE MAJEURE**.

*Force Majeure Remedy Plan* – has the meaning set forth in Section 13.4.1.

*GAAP* – means generally accepted accounting principles as established from time-to-time by the Financial Accounting Standards Board, consistently applied.

*Governmental Authority* – means (i) any federal, state, local, municipal, or other government, (ii) any governmental, regulatory, or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power (including, for the avoidance of doubt, the NYISO, PJM, FERC, and NERC), and (iii) any court or governmental tribunal; provided that LIPA and its subsidiaries shall not be included in such definition when acting as Buyer pursuant to this Agreement and any related agreement between the Parties hereto.

*Governmental Charges* – has the meaning set forth in Section 9.2.

*Guaranteed Available Capacity* – means, an amount, in MW, equal to: (i) for the NYISO Summer Capability Period, the product of the Contract Capacity and 100%, and (ii) for the NYISO Winter Capability Period, the product of the Contract Capacity and 95%. For the avoidance of doubt, Guaranteed Available Capacity shall be used solely for the purpose of calculating Availability Damages Adjustment pursuant to Section 4.2 and Section 6.2.1 (iii), if applicable.

*Guaranteed Project Availability Percentage* – means the Project Availability Percentage each Project is required to meet under this contract which is 100% for the NYISO Summer Capability Period and 100% for the NYISO Winter Capability Period.

*Guarantor* – means the guarantor, if any, providing a Guaranty in the form of **APPENDIX 11 APPENDIX 11** hereto.

*Guaranty* – means the instrument obligating the Guarantor to unconditionally guarantee the payment obligations of Seller.

*Hazardous Materials* – means all explosive or radioactive substances or wastes and all hazardous or toxic substances, materials or wastes, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, toxic mold, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances, materials or wastes of any nature that are regulated as “hazardous” or “toxic,” or as a “pollutant” or a “contaminant,” pursuant to any applicable environmental law.

*ICAP Manual* – means the procedures that will be followed by the NYISO and its customers with regard to the Installed Capacity markets and auctions administered by the NYISO pursuant to the NYISO Market Administration and Control Area Services Tariff (MST).

*Import* – has the meaning set forth in NYISO Rules.

*Indemnifying Party* – has the meaning set forth in Section 11.3.1.

*Insurance* – means the insurance required to be provided by Seller to Buyer as set forth in **APPENDIX 6 APPENDIX 6: INSURANCE REQUIREMENTS**.

*Installed Capacity (ICAP)* – has the meaning set forth in the NYISO Rules.

*Installed Capacity Supplier* – has the meaning set forth in the NYISO Rules.

*Interest Rate* – means the effective interest rate as established by Section 2880 of the Public Authorities Law of the State of New York, and any successor thereto.

*Legal Requirements* – means (i) all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals or Consents, directives, and requirements of all Governmental Authorities, including Supplement 1 to this Agreement, (ii) NYISO Rules, and (iii) PJM Rules.

*Lender* – means any Person (or any successor in interest, agent, or trustee of such Person) providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Project, whether that financing or refinancing takes the form of private debt, public debt or any other form (including debt financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity and tax investor directly or indirectly providing financing or refinancing for the Project or purchasing equity ownership interests of Seller and/or its Affiliates, any Person providing any interest rate protection agreements to hedge any of the foregoing obligations, any Person providing financing pursuant to a sale lease-back or other lease financing, and any trustee or agent acting on behalf of one or more of the foregoing Persons.

*Letter(s) of Credit* – means one or more irrevocable standby letters of credit governed by the International Standby Practices 1998 (ISP 98) or later edition issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having at all times (i) total shareholders' equity of not less than ten billion dollars, and (ii) a Credit Rating of at least "A-" from S&P or "A3" from Moody's or such lower Credit Rating as is acceptable in accordance with customary market practice at the time of issuance of the letter of credit for standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch for credit support on large-scale infrastructure projects, in a form acceptable to the Party in whose favor the letter of credit is issued, which may be drawn at a location in the City of New York, New York.

*LIPA* – means the Long Island Power Authority, herein referred to as the Buyer and its successors.

*Locational Based Marginal Costs (LBMP)* – has the meaning set forth in the NYISO Rules.

*Long Island Locational Installed Capacity* - means Installed Capacity that the NYISO recognizes as being eligible to supply load located in NYISO Zone K (Long Island) pursuant to NYISO Rules.

*Losses* – means, with respect to a Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement pursuant to Section 5.3, determined by such Non-Defaulting Party in a commercially reasonable manner.

*Market Participant* – means a market participant as such term is defined for purposes of the Market Administration and Control Area Services Tariff of the NYISO, as set forth more particularly in Section 2.13 thereof.

*Maintenance Outage* – means NERC Event Types MO and ME as set forth in attached ~~APPENDIX 9~~APPENDIX-9, involving removal from service of a portion or all of the Capacity of the Project that is scheduled at least seventy-two (72) hours in advance, as more fully described in Section 8.3 and specifically excludes any Forced Outage or Planned Outage.

*Month or Monthly* – means a period commencing with the start of the hour ending 0100 EPT on the first Day of a calendar month and closing at the end of the hour ending 2400 EPT on the last Day of that calendar month.

*Monthly Invoice* – means an invoice delivered after the end of a Month, in accordance with ~~ARTICLE 6:~~ARTICLE-6.

*MW* – means one megawatt (1,000 kilowatts) alternating current of Capacity.

*MWh* – means one megawatt hour (1,000 kilowatt hours) of Energy.

*Moody's* – means Moody's Investor Services, Inc. or its successor.

*NERC* – means the North American Electric Reliability Corporation or any successor thereto.

*Neptune Cable* – means the HVDC transmission cable connecting the converter station in Sayreville, New Jersey with the converter station in New Cassel, New York which is interconnected through an AC cable with the LIPA Newbridge Road Substation in Levittown, New York, including all associated facilities required to allow the cable to function.

*Neptune Point of Receipt* – has the meaning set forth in the PJM Tariff, Schedule 14.

*New York Control Area (NYCA)* – has the meaning set forth in the NYISO Rules.

*Non-Claiming Party* – has the meaning set forth in Section 13.3.

*Non-Defaulting Party* – means the Party that is not the Defaulting Party.

*Noticed Party* – has the meaning set forth in Section 12.1.

*Notional Value* – means the mathematical result (in \$) of the following formula: Contract Capacity (in MW) x Contract Capacity Monthly Payment (in \$/kW-mo.) x 1,000 x Number of Months comprising Service Term.

*NYISO* – means the New York Independent System Operator, Inc. or any successor in interest thereto.

*NYISO Capability Year* – has the meaning set forth in the NYISO Rules, which is currently May 1 to April 30.

*NYISO Information Obligations* – means the following information to be provided by Seller to the NYISO in accordance with NYISO Rules:

- i. Name, location and other project identification data of the Project;
- ii. DMNC test data of the Project as required by the NYISO Rules;
- iii. Documentation that satisfies the maintenance scheduling requirements (as such term is used in the NYISO Rules) relating to the Project; and
- iv. Documentation certifying that Seller has not sold to a Person other than Buyer the same Contract Capacity made available and sold to Buyer.

*NYISO Market Administration and Control Area Services Tariff or MST* – has the meaning set forth in NYISO Rules.

*NYISO Market Participant Service Agreement* - means the agreement between a market participant and NYISO, consistent with the terms of the NYISO Rules.

*NYISO Markets* – means markets administered by the NYISO.

*NYISO Open Access Transmission Tariff* – has the meaning set forth in NYISO Rules.

*NYISO Rules* – means the NYISO Tariff, and all NYISO manuals, rules, procedures, agreements or other documents governing the participation of market participants in the NYISO Markets as in effect from time-to-time.

*NYISO Summer Capability Period* – has the meaning set forth in the NYISO Rules, which is currently May 1 through October 31.

*NYISO Tariff* – means the NYISO Open Access Transmission Tariff and/or the NYISO Market Administration and Control Area Services Tariff or any other tariff applicable to the NYISO, as in effect from time to time.

*NYISO Winter Capability Period* – has the meaning set forth in the NYISO Rules, which is currently November 1 through April 30.

*Outage* – means any reduction in the Capacity of the Project below the Contract Capacity.

*Parties* – has the meaning set forth in the preamble.

*Party* – means either Buyer or Seller.

*Person* – means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.

*PJM* – means PJM Interconnection LLC, and any successor in interest thereto.

*PJM Capacity Exchange* – has the meaning set forth in the PJM Rules.

*PJM Capacity Resource* – has the meaning set forth in the PJM Rules.



*PJM Control Area* – has the meaning as described in the PJM Rules.

*PJM Markets* – means markets administered by PJM.

*PJM Rules* – means the PJM Tariff, Operating Agreement, and all PJM manuals, rules, procedures, agreements or other documents relating to the sale of Capacity, Energy and ancillary services that govern the participation of market participants with respect thereto in the PJM Markets as in effect from time to time.

*PJM Tariff* – means the PJM Open Access Transmission Tariff or any other tariff applicable to PJM.

*PJM Western Hub* – has the meaning set forth in PJM Rules.

*Planned Outage* – means NERC Event Types PO and PE, as set forth in attached **APPENDIX 9** involving the planned removal from service of a portion or all of the Capacity of the Project that is scheduled well in advance for a predetermined duration, with the scheduling of such Outage coordinated with the Buyer and JM and specifically excludes any Maintenance Outage or Forced Outage.

*Processing* – means any operation, action, error, omission, negligent act, or set of operations, actions, errors, omissions, or negligent acts that is performed using or upon Confidential Information, whether it be by physical, automatic or electronic means, including, without limitation, collection, recording, organization, storage, access, adaptation, alteration, publication, release, retrieval, use, transfer, hosting, maintenance, handling, retrieval, consultation, use, disclosure, dissemination, exfiltration, taking, removing, copying, processing, making available, alignment, combination, blocking, deletion, erasure, or destruction.

*Products* – means Contract Capacity and Contract Energy, if applicable.

*Project* – means the generating facility, or part of the generating facility, consisting of one or more generating units connected to the Contract Capacity Delivery Point supplying Products to Buyer in this Agreement.

*Project Availability Percentage* – means, for any Month during the Term, the quotient, expressed as a percentage, the numerator of which is the difference between the total number of hours in such Month and the sum of the total number of Forced Outage Hours and Forced Derate Hours which occurred during such Month, and the denominator of which is the total number of hours in such Month.

*Prudent Utility Practice(s)* – means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the electric power generation industry in the Northeast region and/or NERC) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Legal Requirements, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, good business practices and expedition. Prudent Utility Practice(s) are not intended to be limited to the



optimum practice, method or act to the exclusion of others, but rather to be a spectrum of possible practices, methods or acts.

~~*PJM Western Hub* – has the meaning set forth in PJM Rules.~~

*Real-Time Market* – has the meaning set forth in NYISO Rules.

*Real Time LBMP* – has the meaning set forth in NYISO Rules.

*Receiving Party* – means a Party to this Agreement or its Representatives who are authorized to receive Confidential Information in accordance with the provisions of this Agreement.

*Regulatory Event* – has the meaning set forth in Section 11.9.

*Reinstate*—means reducing all or a portion of the Exported Contract Capacity using the PJM Capacity Exchange as required by PJM Rules to allow such Contract Capacity to be sold by Buyer in PJM administered markets.

*Reinstated Contract Capacity* – means all or part of the Contract Capacity that has been Reinstated as a PJM Capacity Resource in PJM in accordance with (and to the extent permitted by) PJM Rules.

~~*Relist* – has the meaning set forth in PJM Rules~~

~~*Relisted Contract Capacity*—means all or part of the Contract Capacity that has been Delisted to be reinstated as a PJM Capacity Resource in PJM in accordance with (and to the extent permitted by) PJM Rules.~~

~~*Regulatory Event* – has the meaning set forth in Section 11.9.~~

*Representatives* – means, in relation to a Party, its officers, directors, members, partners, trustees, employees, consultants, advisors and Affiliates, and their officers, directors, members, partners, trustees, employees, consultants and advisors.

*S&P* – means the S&P Global Ratings (a division of S&P Global, Inc.) or its successor.

*Schedule Deviation* – means a failure by Seller to cause the Contract Energy to match the Buyer's Energy schedule for the Project as communicated to Seller, except to the extent such failure results directly from an Outage of the Project.

*Seller* – has the meaning set forth in the preamble.

*Seller Event of Default* – has the meaning set forth in Section 5.1.

*Seller Security* – means a Guaranty or Letter of Credit.

*Service Commencement Date* – means June 1, 2030.

*Service End Date* - means May 31<sup>st</sup> of the last Contract Year for which Capacity is supplied under this Agreement as detailed in **APPENDIX 1APPENDIX-1: CAPACITY QUANTITY AND PRICING.**

*Service Term* – mean all Contract Years beginning with the Service Commencement Date as detailed in **APPENDIX 1APPENDIX-1: CAPACITY QUANTITY AND PRICING.**

*Site* – means the Project premises described in **APPENDIX 1APPENDIX-1: DESCRIPTION AND LOCATION OF THE PROJECT(S).**

*SRE Energy* – means Energy associated with Contract Capacity that has been requested from the Project pursuant to a Supplemental Resource Evaluation issued by the NYISO.

*State Comptroller* – means the New York State Office of the State Comptroller.

*Station Service Energy* – means Energy consumed by the Project(s).

*Supplemental Resource Evaluation or SRE* – has the meaning set forth in the NYISO Rules.

*Term* – has the meaning set forth in Section 2.1.

*Termination Payment* – has the meaning set forth in Section 5.3.

*Title* – has the meaning set forth in Section 3.17.

*Transmission Service* – means transmission service pursuant to the PJM Tariff between (i) the Contract Capacity Delivery Point and the Neptune Point of Receipt.

*UDRs* – means unforced capacity deliverability rights, as defined in the NYISO Rules.

*Unforced Capacity (UCAP)* – has the meaning set forth in the NYISO Rules.

*Year* – means a period of 365 consecutive days, or 366 consecutive days if such period includes a February 29.

*Zone K* – means New York Control Area load zone covering Nassau County, Suffolk County and the Rockaways as defined in the NYISO Rules.

**1.2 Construction.** Unless otherwise indicated, (i) defined terms include the plural as well as the singular; (ii) any agreement defined or referred to herein includes each amendment, modification and supplement thereto and waiver, approval and consent in respect thereof as may become effective from time to time and includes references to all Appendices, Exhibits, Schedules and other attachments thereto and instruments, agreements or other documents incorporated therein; (iii) any term defined by reference to any instrument, agreement or other document, has such meaning set forth in such document as of the date hereof and unless expressly amended, such meaning shall remain in effect whether or not such document is subsequently amended, modified or terminated; (iv) a reference to any law or Legal Requirement includes any amendment, modification or successor thereto; (v) a reference to any Person includes its permitted successors and assigns; (vi)

all references to Appendices, Articles, Sections, Schedules and Exhibits shall mean and refer to the respective Appendices, Articles, Sections, Schedules and Exhibits in or attached to this Agreement or any document in which such reference appears; (vii) the words “include,” “includes” and “including” are not limiting and shall be deemed to be followed by the words “without limitation” whether or not in fact followed by such words or words of like import; and (viii) the terms “hereof,” “herein,” “hereunder” and comparable terms refer to this entire Agreement with respect to which such terms are used and not to any particular Article, Section or subdivision hereof; (ix) the word “day” means a “Day” as defined herein and includes each calendar day including Saturdays, Sundays and holidays; and (x) the term “or” shall have the inclusive meaning “or”, unless expressly indicated otherwise or the context so requires.

## ARTICLE 2: TERM

**2.1 Term.** This Agreement shall become effective on the Effective Date. Buyer shall give Seller written notice within fifteen (15) Business Days after the occurrence of the Effective Date. The Term of this Agreement shall begin on the Effective Date and shall remain in effect until the Service End Date, unless terminated earlier in accordance with the terms hereof (the "Term"); provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination and, provided further, that this Agreement and any other documents executed and delivered hereunder shall remain in effect until both Parties have fulfilled all of their obligations hereunder unless such obligations have been terminated as provided herein.

## ARTICLE 3: SELLER AND BUYER OBLIGATIONS

**3.1 Seller Capacity Obligations.** Seller shall (directly or indirectly through contractors or Affiliates) control the operation of the Project(s) in accordance with Legal Requirements, this Agreement and Prudent Utility Practices. Seller shall perform all obligations of an Installed Capacity Supplier, as applicable, set forth in the NYISO Tariff Sections 5.12 and the ICAP Manual Section 4 with respect to the Project(s) and the Project's Contract Capacity. Seller shall also take all actions reasonably requested by Buyer to maintain the qualification of the Contract Capacity of the Project as Installed Capacity.

**3.2 Sale of Contract Capacity.** Beginning on the Service Commencement Date and continuing through the Service Term, Seller shall sell and make available to Buyer at the Contract Capacity Delivery Point the Contract Capacity, and Buyer shall purchase and receive from Seller the Contract Capacity by paying Seller the Contract Capacity Monthly Payment.

~~3.2.1 Delist-Export and RelistReinstate. From time-to-time time-during~~  
~~During~~ the Term, Buyer ~~may-shall~~ instruct Seller to ~~Delist-obtain a must offer exemption in order to Export~~ all or a portion of the Contract Capacity in accordance with PJM Rules. ~~Also from-From~~ time-to-time during the Term, Buyer may instruct Seller to ~~Relist-take all action to Reinstate~~ all or a portion of ~~Delisted-Exported~~ Contract Capacity, in accordance with PJM Rules.

~~3.2.1 Seller shall Delist and Relist as directed by Buyer to the extent permitted by PJM Rules and shall cooperate with Buyer in connection with Buyer's disposition of any such Delisted Contract Capacity and Relisted Contract Capacity.~~

**3.3 Sale of Contract Energy. If applicable.** *[Respondent to please provide details of proposed Contract Energy including structure, schedule, pricing and term. As indicated herein, Contract Energy **must** be made available at the Contract Energy Delivery Point.]*

### 3.4 Response to Supplemental Resource Evaluation (SRE) Request

**3.4.1 Responding to SRE Request.** If the NYISO issues a Supplemental Resource Evaluation (SRE) request for the Project, then except to the extent Seller is unable to respond to the SRE request due to an Outage, due to physical operating limitations affecting

the Project, or due to other operational issues that are outside the Seller's control, as determined by the NYISO, Seller must take the following actions for each hour of the SRE request: (a) provide pertinent operational and availability information to Buyer and Buyer will bid an Import to the New York Control Area at the bid floor in a MW quantity equal to the Contract Capacity sold to the Buyer, subject to potential reductions discussed below in this Section, and (b) ensure that the Project is capable of operating and is available to provide all of the MW that were Bid to be imported into the New York Control Area, up to the Contract Capacity sold to the Buyer, for the entire duration of the SRE request. Seller's obligation to provide the amount of SRE Energy shall be reduced to the extent the Seller already has an Energy schedule in the PJM Day-Ahead Energy Market or is committed in the real-time Energy market in PJM, as applicable, for the requested SRE hours.

If Seller is not able to comply with each of the above requirements, it shall provide to the Buyer, and the Buyer will provide to the NYISO, an explanation of the reasons for its failure or inability to perform, including evidence demonstrating any physical operating limitations or other operational issues that prevented such compliance.

**3.4.2 Compensation for SRE Energy.** If, in any Month, Energy from the Project was scheduled in response to a NYISO SRE request, Buyer will compensate Seller based on Real-Time Market price for the MWh of Energy (i.e., Real-Time LBMP) at the Neptune Cable Proxy Generator Bus for each hour of the SRE call. In addition, Seller is eligible to be compensated for other actual and verified costs it has incurred to respond to the SRE request to the extent such costs exceed its NYISO Real Time LBMP revenue. These costs will include, but are not limited to, incremental costs of generation to supply SRE Energy, the incremental costs incurred by Seller to transmit the SRE Energy to the New York Control Area border, and the opportunity cost associated with lost expected revenue. It is Seller's obligation to document its costs and revenues associated with its response to the SRE call to NYISO's satisfaction. Seller shall provide Buyer such pertinent documentation in accordance with Section 4.1.8 of the NYISO Market Administration and Control Area Services Tariff. Buyer shall provide to NYISO all documentation provided to it by Seller. For the avoidance of doubt, to the extent that the actual net revenue from selling SRE Energy to NYISO exceeds the hypothetical net revenue from selling said Energy to PJM, there shall be no additional compensation by Buyer to Seller for such hours.

**3.5 Securing Transmission Service.** During the Service Term, Buyer shall secure Transmission Service, which is required for the Contract Capacity to be eligible to be exported into the NYCA.

**3.6 Buyer's Resale of Contract Capacity and Contract Energy.** Buyer shall be free to use or resell the Contract Capacity and Contract Energy without restriction.

**3.7 No Encumbrances.** At the time of any conveyance by Seller to Buyer of the Contract Capacity, (i) such Contract Capacity shall be free and clear of any restrictions on transfer (other than those imposed under the NYISO Tariff and the ICAP Manual), taxes, security interests, options, warrants, purchase rights, contracts, commitments, equities, claims, or demands, and (ii) Seller shall not have conveyed such Contract Capacity to any other Person, nor sold any such Contract Capacity for the purpose of meeting the electric generation capacity requirements in the New York Control Area or any External Control Area (as defined in the NYISO Tariff).

**3.8 Maintenance Outages.** Seller will ensure that the Project will not be subject to a scheduled maintenance Outage from May 1 to September 30 during the Term consistent with Prudent Utility Practices.

**3.9 Station Service Energy.** Seller shall have the sole responsibility to obtain and pay for such Station Service Energy as applicable to the Project.

**3.10 Change in Law.** Seller shall be responsible for and pay for all additional costs resulting from a Change in Law affecting Seller's ability to perform its obligations under the Agreement.

**3.11 Buyer's Access to Records.** At Buyer's request, Seller shall make available all records pertaining to (i) the determination of the Project's Installed Capacity and Unforced Capacity, (ii) the calculation of the Project Availability Percentage and (iii) the supply of the Contract Capacity to Buyer.

**3.12 Seller as Owner of the Project.** Seller shall at all times retain title to and be the legal and beneficial owner of the Project and the Project shall remain the property of the Seller or Seller's permitted assigns. The Parties specifically acknowledge and agree that Seller shall be the owner of the Project for federal income tax purposes and, in that connection, shall be entitled to the depreciation deductions associated with the Project as well as any tax credits or other income tax benefits provided under the Code to which the Project may be entitled.

**3.13 Facility Control.** Seller shall be responsible for all costs of maintaining and operating the Project. As required by NYISO ICAP Manual, Section 4.9.1, and also provided in **APPENDIX 7APPENDIX-7: FORM OF LETTER CERTIFYING CONTRACTUAL CONTROL**, the Seller shall complete and sign the Form of Letter Certifying Contractual Control for Buyer's registration of the Facility as a Capacity resource under its NYISO account.

**3.14 Bidding and Scheduling Instructions.** No later than ninety (90) Days prior to the Service Commencement Date, Buyer and Seller shall jointly and cooperatively develop detailed written "Bidding and Scheduling Instructions" setting forth the procedures for the receipt of Contract Capacity, Contract Energy, and for responding to an SRE request, which shall comply with PJM and NYISO Rules. The Bidding and Scheduling Instructions shall also include pertinent contact information for Buyer's and Seller's operating personnel. In the Bidding & Scheduling Instructions, Seller and Buyer shall agree to performance curves detailing the MW capability of the Project over a range of ambient conditions. Such performance curves shall be part of the Operating Limits.

**3.15 NYISO Penalties .** Seller shall be responsible for any and all penalties incurred due to failures by the Seller to fulfill all applicable requirements under NYISO Rules, which include but are not limited to: (i) failure to provide required information to the NYISO in accordance with Section 5.12.12.1 of the NYISO Market Administration and Control Area Services Tariff; (ii) failure to respond to a NYISO request for SRE Energy in accordance with Section 5.12.12.2 of the NYISO Market Administration and Control Area Services Tariff; and (iii) failure to qualify part or all of the Contract Capacity as Installed Capacity in accordance with the rules and requirements set forth in the ICAP Manual. If the NYISO imposes a deficiency charge on Buyer as a result of a Capacity shortfall from the Project pursuant to Section 5.14.2 of the MST, Seller will be responsible for any

such deficiency charge. In the event that NYISO imposes any of the foregoing penalties on Buyer, Seller shall reimburse Buyer for the same.

**3.16 Capacity Performance Charges and Payments.** To the extent the Seller is assessed PJM charges directly, including negative Capacity Performance Payments, the Seller shall be solely responsible for such charges. To the extent a positive Capacity Performance Payment is made to the Seller pursuant to the PJM and/or NYISO Rules, Seller shall inform Buyer of any such payments. Buyer shall be entitled to 50% of any such positive amounts Seller has received. This amount shall be applied by Seller against Buyer's payment obligations under Section 6.2. Buyer shall not be entitled to any such positive Capacity Performance Payments received by Seller on account of Capacity in excess of the Contract Capacity.

**3.17 Title.** Title to and risk of loss to the Products provided under the terms of this Agreement shall pass from Seller to Buyer at the Delivery Points.

**3.18 Schedule Deviation.** Seller shall provide Contract Energy in accordance with PJM Rules for bilateral transactions as scheduled by the Buyer. In the event Seller's failure to comply with the foregoing results in a Schedule Deviation that is an under-delivery, Seller shall reimburse Buyer for any charges for Real-Time Market penalties imposed on Buyer by NYISO with respect to such Schedule Deviation. In the event of a Schedule Deviation that is an over-delivery, Seller shall credit Buyer with its average cost for Contract Energy, which shall be deemed to be the Real-Time Market LBMP for Zone K for all applicable Hours.

### **3.19 Role of the Parties**

3.19.1 Role of Seller. Seller shall, at its sole cost and expense:

- i. Ensure that the Project(s) is maintained and operated in accordance with Prudent Utility Practices, Consents and Legal Requirements and is capable of making available Contract Capacity at the Contract Capacity Delivery Point;
- ii. Use commercially reasonable efforts to enable Buyer to receive Contract Capacity;
- ~~iii. Obtain a must offer exemption in order to Export and take all actions to Reinstate as directed by Buyer to the extent permitted by PJM Rules. Seller shall cooperate with Buyer in connection with Buyer's disposition of any such Exported Contract Capacity and Reinstated Contract Capacity;~~
- ~~iii. Comply with all PJM Rules required for making Product(s) eligible to be exported into the NYCA;~~
- iv. Sell and make Contract Capacity available to Buyer at the Contract Capacity Delivery Point pursuant to the terms and conditions of this Agreement;
- v. Sell and schedule Contract Energy to Buyer at the Contract Energy Delivery point in accordance with PJM Rules and pursuant to the terms and conditions of this Agreement *(if applicable)*;

- vi. Maintain valid interconnection agreement(s) with PJM and the Connecting Transmission Owner for the Project(s) during the Term;
- vii. Maintain a valid Market Participant status with PJM;
- viii. With respect to ~~Delisted~~ Exported Contract Capacity, provide to Buyer and to NYISO information requested in accordance with the NYISO Rules such that the Project(s) can be qualified as an External Capacity resource, including among other things the NYISO Information Obligations;
- ix. Ensure that the Contract Capacity is available (uncommitted) in accordance with PJM Rules such that the Contract Capacity will be available for sale to Buyer by the Service Commencement Date. If the Project(s) currently has a Capacity supply obligation in the PJM Capacity markets for the applicable NYISO Capability Year(s), Seller shall obtain a must offer exemption so that it may successfully ~~Delist Export~~ such Capacity in accordance with PJM Rules and timeline(s) to ensure that the Contract Capacity will be available as required by this Agreement;
- x. Conduct and provide to Buyer and to NYISO results of DMNC tests, or report data from actual operations, in accordance with Section 5.2.18 of the NYISO Tariff and Section 4.2 of the NYISO ICAP Manual to determine and establish the Project's rated capacity during the NYISO Summer and Winter Capability Periods;
- xi. Provide and maintain Seller Security and Insurance;
- xii. Provide all required information to Buyer and to NYISO for registration of the Project(s) with NYISO;
- xiii. Complete all required actions for the Contract Capacity to be qualified as Locational Installed Capacity for Long Island (Zone K) pursuant to NYISO Rules.
- xiv. Respond to a SRE request as required of External Installed Capacity Suppliers in accordance with Sections 4.9.3 and 4.9.4 of the NYISO ICAP Manual, and Section 5.12.1.10 of the NYISO Market Administration and Control Area Services Tariff ("MST");
- ~~xv. Delist and Relist Contract Capacity provided in this Agreement and as instructed by Buyer from time to time, all in accordance with PJM Rules.~~

3.19.2 Role of Buyer. Buyer shall, at its sole cost and expense:

- i. Comply with all PJM and NYISO Rules for the receipt of Contract Capacity at the Contract Capacity Delivery Point;
- ii. If applicable, purchase and receive scheduled Contract Energy at the Contract Energy Delivery Point in accordance with PJM Rules and pursuant to the terms and conditions of this Agreement.



- iii. Purchase and receive Contract Capacity at the Contract Capacity Delivery Point pursuant to the terms and conditions of this Agreement;
- iv. Maintain the required UDRs and CRIS Rights such that the ~~Delisted~~ Exported Contract Capacity qualifies as NYISO Installed Capacity pursuant to NYISO Rules;
- v. Arrange for and maintain Firm Transmission Withdrawal Rights associated with the Neptune Cable as required for the ~~export~~ Export of ~~Delisted-Exported~~ Contract Capacity;
- vi. Maintain a valid Market Participant status with PJM for the purchase of Contract Capacity as required by PJM Rules;
- vii. Maintain a valid NYISO Market Participant Service Agreement as required for the transfer of Contract Capacity and Contract Energy from the PJM Control Area to the NYCA.
- viii. Register the Project(s) as a Capacity resource under its NYISO account in accordance with the applicable NYISO and PJM Rules;
- ix. Comply with Buyer's obligations with regard to responding to a NYISO SRE requests in accordance with Section 3.4;
- x. Arrange for and maintain Transmission Service for the Service Term;
- xi. Provide instructions to Seller to obtain a must offer exemption to Relist Export and take all action to Delist-Reinstate Contract Capacity as provided in this Agreement from time--to--time, all in accordance with PJM Rules.

#### **ARTICLE 4: AVAILABILITY GUARANTEE**

**4.1 Calculation of Project Availability Percentage.** Seller shall, within fifteen (15) Days after the end of each Month, provide to Buyer a report calculating the Project Availability Percentage of the Project(s) over the previous Month (the "Availability Report").

**4.2 Calculation of Availability Damages.** If the Project Availability Percentage in any Month is less than the Guaranteed Project Availability Percentage, then Seller shall pay liquidated damages to Buyer for each Project equal to the product of (i) the Contract Capacity Monthly Payment, multiplied by (ii) the difference between (x) the Guaranteed Project Availability Percentage and (y) the Project Availability Percentage for the applicable Month (the "Availability Damages").

**4.3 Payment of Availability Damages.** Upon determination by the Parties of any Availability Damages owed for any Month, the Availability Damages shall be deducted from the Contract Capacity Monthly Payment on the next invoice issued pursuant to ~~ARTICLE 6:~~**ARTICLE 6.**

**4.4 Availability Damages are Sole Remedy.** Except as set forth in Sections 3.15 and 11.3, the payment of Availability Damages in the circumstances contemplated by and according to

this ~~ARTICLE 4:~~ARTICLE 4 shall be Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for any reduced Project Availability Percentage in a given Month. The Parties acknowledge and agree that the terms, conditions and amounts determined according to this ~~ARTICLE 4:~~ARTICLE 4 for the payment of Availability Damages are reasonable considering the damages that Buyer would be expected to sustain if any event or circumstance described in the immediately preceding sentence occurs. The Parties have agreed upon and established the amounts of the Availability Damages because of the difficulty of ascertaining the exact amount of such damages in such event or circumstance and because otherwise obtaining an adequate remedy would be difficult or inconvenient. The Availability Damages are not penalties and shall be paid in the circumstances contemplated by and according to this ~~ARTICLE 4:~~ARTICLE 4, regardless of the amount of damages that Buyer actually sustains. For the avoidance of doubt, the payment of Availability Damages shall be in addition to any obligations of Seller to reimburse Buyer for any NYISO Penalties as described in Section 3.15.

## **ARTICLE 5: EVENTS OF DEFAULT; REMEDIES**

### **5.1 Default by Seller.**

The occurrence of one or more of the following events shall constitute a "Seller Event of Default":

5.1.1 the failure by Seller to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice from Buyer;

5.1.2 any representation or warranty made by Seller herein or in any certificate delivered to Buyer pursuant to this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

5.1.3 the failure by Seller to perform any material covenant or obligation set forth in this Agreement (except and to the extent such failure constitutes a separate Seller Event of Default) if such failure is not remedied within thirty (30) Business Days after written notice; provided that if such failure is not reasonably capable of being cured within thirty (30) Business Days, and if Seller is exercising diligent efforts to remedy such failure, then such additional period of time, not to exceed ninety (90) additional Business Days, as shall be required to remedy such failure with the exercise of diligent efforts;

5.1.4 Seller becomes Bankrupt;

5.1.5 Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement if such failure is not remedied within sixty (60) Business Days after written notice;

5.1.6 any sale of Contract Capacity during the Term to any entity other than Buyer, unless a Buyer Event of Default is continuing;

5.1.7 the average Project Availability Percentage falls below 70% for any two consecutive Months other than as a direct result of a Force Majeure Event; or

5.1.8 failure to provide or maintain Seller Security in accordance with ~~ARTICLE 8:ARTICLE 8~~ or insurance in accordance with ~~ARTICLE 10:ARTICLE 10~~ if such failure is not cured within ten (10) Business Days.

## **5.2 Default by Buyer.**

The occurrence of any of the following events shall constitute a “Buyer Event of Default”:

5.2.1 the failure by Buyer to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice from Seller;

5.2.2 any representation or warranty made by Buyer herein is false or misleading in any material respect when made or when deemed made or repeated;

5.2.3 the failure by Buyer to perform any material covenant or obligation set forth in this Agreement (except and to the extent such failure constitutes a separate Buyer Event of Default) if such failure is not remedied within thirty (30) Business Days after written notice; provided that if such failure is not reasonably capable of being cured within thirty (30) Business Days, and if Buyer is exercising diligent efforts to remedy such failure, then such additional period of time, not to exceed ninety (90) additional Business Days as shall be required to remedy such failure with the exercise of diligent efforts;

5.2.4 Buyer becomes Bankrupt; or

5.2.5 Buyer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Buyer under this Agreement if such failure is not remedied within sixty (60) Business Days after written notice.

**5.3 Declaration of an Early Termination Date and Calculation of Termination Payment.** If a Seller Event of Default or a Buyer Event of Default shall have occurred and is continuing, the Non-Defaulting Party shall have the right, upon providing written notice to the Defaulting Party (i) to designate a Day, no earlier than the Day such notice is effective and no later than forty-five (45) Days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to determine in a commercially reasonable manner the Non-Defaulting Party’s Losses and Costs, which shall be the termination payment payable by the Defaulting Party hereunder (the “Termination Payment”), and terminate this Agreement, (ii) withhold any payments due to the Defaulting Party under this Agreement, and (iii) suspend performance in accordance with Section 5.6. For the avoidance of doubt, a Defaulting Party shall not be entitled to receive payment of any Termination Payment.

**5.4 Notice of Payment of Termination Payment.** As soon as practicable after an Early Termination Date has been established pursuant to Section 5.3, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount and a calculation of the Termination Payment due to the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the

Defaulting Party to the Non-Defaulting Party within five (5) Business Days after such notice is received by the Defaulting Party.

**5.5 Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Such dispute shall be settled in accordance with the dispute resolution process set forth ~~ARTICLE 12:~~**ARTICLE 12.**

**5.6 Suspension of Performance.** Notwithstanding any other provision of this Agreement, if a Seller Event of Default or a Buyer Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement provided, however, in no event shall any such suspension continue for longer than twenty (20) Business Days unless an early Termination Date shall have been declared and notice thereof given pursuant to Section 5.3, and (ii) to the extent a Seller Event of Default or a Buyer Event of Default, as applicable, shall have occurred and be continuing, to exercise any remedy available at law or in equity.

## **ARTICLE 6: PAYMENT**

**6.1 Billing Period.** Unless otherwise specifically agreed upon by the Parties, the calendar Month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each Month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding Month.

**6.2 Invoices.** All invoices presented by Seller shall be in the form of the sample Monthly Invoice as set forth in ~~APPENDIX 5~~**APPENDIX 5: SAMPLE MONTHLY INVOICE**, which shall be provided by the Seller and backed up with detailed documentation for all charges.

### **6.2.1 Monthly Invoice**

(i) Contract Capacity Monthly Payment. Commencing with the Month in which the Service Commencement Date occurs and continuing throughout the Term, Seller shall prepare and submit to Buyer a Monthly Invoice for the Contract Capacity. Each Monthly Invoice that includes the Contract Capacity Monthly Payment shall be accompanied by the calculation thereof to be provided in ~~APPENDIX 5~~**APPENDIX 5: SAMPLE MONTHLY INVOICE**.

(ii) Contract Energy Monthly Payment. Commencing with the Month in which the Service Commencement Date occurs and continuing throughout the Term, Seller shall prepare and submit to Buyer a Monthly Invoice for the Contract Energy. Each Monthly Invoice that includes the Contract Energy Monthly Payment shall be accompanied by the calculation thereof to be provided in ~~APPENDIX 5~~**APPENDIX 5: SAMPLE MONTHLY INVOICE**. *[Respondent to complete this*

*section consistent with the Proposal Contract Energy structure and pricing. If applicable].*

(iii) Supporting Information for SRE Energy Payment. To the extent that Seller provides SRE Energy during a Month, the Monthly Invoice for such Month shall include pertinent documentation in accordance with Section 4.1.8 of the NYISO Market Administration and Control Area Services Tariff for the SRE Energy Payment in accordance with Section 3.4.2.

(iv) Availability Damages Adjustment. To the extent that any Availability Damages arise as set forth in ARTICLE 4:ARTICLE 4, Seller shall include on the Monthly Invoice to Buyer such credit as a separate line item detailing the nature and amount to be deducted from the Contract Capacity Monthly Payment.

6.2.2 Other Costs. After the Effective Date, each Party shall submit to the other Party an invoice for any amount due and payable to such Party under this Agreement which is not otherwise subject to reimbursement or payment in Section 6.2.1 complete with detailed documentation supporting the costs.

**6.3 Timeliness of Payment.** Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the thirtieth (30th) Day after receipt of the invoice or, if such Day is not a Business Day, then on the next Business Day. For the avoidance of doubt, such thirtieth (30th) Day after receipt of the invoice, or such following Business Day, shall be the date on which the amounts invoiced therein shall be due for all purposes of this Agreement. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

**6.4 Disputes and Adjustments of Invoices.** A Party may, in good faith, dispute the accuracy of any invoice or any adjustment (including any calculation of Availability Damages) to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within six (6) years of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. If an invoice is not rendered within twelve (12) Months after the close of the Month during which performance occurred, the right to payment for such performance is waived.

**6.5 Payment Obligation.** Each Party shall pay the other Party all amounts owed in full when due except for amounts in dispute in accordance with Section 6.4.

## ARTICLE 7: LIMITATIONS

THE PARTIES AGREE THAT THE WARRANTIES GIVEN BY SELLER IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AVAILABLE AT LAW OR IN EQUITY, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF AND SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR THE BREACH OF ANY PROVISION TO WHICH SUCH EXPRESS REMEDY RELATES. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS, AND NOT A PENALTY.

## ARTICLE 8: CREDIT REQUIREMENTS

**8.1 Letter of Credit or Guaranty.** Within twenty (20) Business Days after the receipt of notice of the Effective Date, Seller will provide security to Buyer in the form of a Guaranty (subject to the Credit Requirements) or a Letter of Credit in the amount of ~~thirty-fourteen (30)~~ 14 percent of the Notional Value, (such a Guaranty or Letter of Credit, the “Seller Security”). ~~Commencing with the second Contract Year, Seller Security shall be subject to ratable reductions at the beginning of such second Contract Year and each following Contract Year.~~ The Guaranty must be substantially in the form of **APPENDIX 11: FORM OF SELLER GUARANTY**. The Letter of Credit must be substantially in the form set forth in **APPENDIX 4** ~~APPENDIX 4: BUYER’S FORM OF LETTER OF CREDIT.~~

**8.2 Draw or Demand on Letter of Credit.** Any undisputed amounts due and owing to Buyer by Seller with respect to Seller’s failure to perform any of its obligations under this Agreement that are not paid by the date due may be satisfied by a draw on the Letter of Credit (or demand on Guarantor if all or a portion of the Seller Security is in the form of a Guaranty). Buyer shall return to Seller the original Letter of Credit or Guaranty within thirty (30) Business Days after the Term, provided that Seller has fulfilled all of its obligations under this Agreement.



**8.3 Replenishment.** In the event that Buyer draws down or makes a claim on the Letter of Credit or Guaranty, Seller shall replenish such amount within ten (10) Business Days.

## **ARTICLE 9: GOVERNMENTAL CHARGES**

**9.1 Cooperation.** Each Party shall use commercially reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

**9.2 Governmental Charges.** Seller shall pay or cause to be paid all taxes imposed by any Government Authority (“Governmental Charges”) on or with respect to the Project and the purchase and sale of the Products, including (a) ad valorem, franchise or income taxes which are related to the conveyance of the Contract Capacity and (b) all costs of qualifying Contract Capacity of the Project as Installed Capacity and Unforced Capacity under the NYISO Tariff and the ICAP Manual. In the event Seller is required by Legal Requirements to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Legal Requirements to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under ~~ARTICLE 6:ARTICLE 6~~ of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Legal Requirements. Notwithstanding the foregoing, neither Party shall be required to pay any portion of Governmental Charges arising from the other Party’s failure to perform any obligation under this Agreement.

## **ARTICLE 10: INSURANCE**

**10.1 Insurance Required.** Seller, at its sole cost and expense, shall acquire and maintain (or cause to be acquired and maintained, as applicable) in full force and effect the types and amounts of insurance coverage described in ~~APPENDIX 6APPENDIX—6: INSURANCE REQUIREMENTS~~. Thirty (30) Business Days prior to the Service Commencement Date, Seller shall submit to Buyer insurance certificates or other documents providing evidence of such insurance and that insurance policies name Buyer as an additional insured to the extent that such insurance policies are required to do so pursuant to ~~APPENDIX 6APPENDIX—6: INSURANCE REQUIREMENTS~~. Failure by Seller to obtain the insurance coverage required by this ~~ARTICLE 10:ARTICLE 10~~ shall not relieve Seller of the insurance requirements set forth or in any way relieve or limit Seller’s obligations and liabilities under any other provision of this Agreement.

**10.2 Insurance Notice to Buyer.** Seller shall promptly notify Buyer in the event of underwriters’ cancellation or termination of any of Seller’s insurance coverages required under this ~~ARTICLE 10:ARTICLE 10~~.

## **ARTICLE 11: MISCELLANEOUS**

**11.1 Seller’s Representations and Warranties.**

As of the Effective Date, Seller represents and warrants to Buyer that:

11.1.1 it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

11.1.2 it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, other than any such authorizations and approvals that are not required to be obtained on and as of the Effective Date;

11.1.3 the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate in any material respect any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

11.1.4 this Agreement, constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms, subject to any Equitable Defenses;

11.1.5 it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

11.1.6 there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

11.1.7 no Seller Event of Default has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

11.1.8 it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

11.1.9 it has entered into this Agreement in connection with the conduct of its business and, it will have the capacity or ability (as applicable) to transfer the Contract Capacity; and

11.1.10 with respect to the conveyance or of Contract Capacity, it will be a producer, processor, commercial user or merchant handling the Contract Capacity, and it is entering into this Agreement for purposes related to its business as such.

## **11.2 Buyer's Representations and Warranties.**

As of the Effective Date, Buyer represents and warrants to Seller that:



11.2.1 it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

11.2.2 it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

11.2.3 the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate in any material respect any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

11.2.4 this Agreement, constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms, subject to any Equitable Defenses.

11.2.5 it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

11.2.6 there is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

11.2.7 no Buyer Event of Default has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

11.2.8 it is acting for its own account for its customers as a load-serving entity, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

11.2.9 all acts necessary to the valid execution, delivery and performance of this Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act;

11.2.10 entry into and performance of this Agreement by Buyer are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and Legal Requirements; and

11.2.11 the Term does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and Legal Requirements.

### **11.3 Indemnity**

11.3.1 Each Party (the “Indemnifying Party”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, trustees, officers, employees and agents (collectively, the “Indemnified Party”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees and costs) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, trustees, officers, employees, or agents.

11.3.2 Seller, as Indemnifying Party, agrees to indemnify, defend and hold harmless the Buyer and its Affiliates, directors, trustees, officers, employees and agents (each being an Indemnified Party), from and against all claims, demands, losses, liabilities, sanctions, deficiency damages, penalties, and expenses (including reasonable attorneys’ fees and costs) (i) arising out of or relating to the operation and maintenance of the Project; and (ii) failure to comply with this Agreement or any Seller obligation as an Installed Capacity Supplier pursuant to the NYISO Tariff and the ICAP Manual.

11.3.3 Nothing in this Section 11.3 shall relieve Seller or Buyer of any liability to the other for any breach of this Agreement. This indemnification obligation shall apply notwithstanding the negligence or willful misconduct of the Indemnified Party, but the Indemnifying Party’s liability to pay damages to the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party’s negligence or willful misconduct contributed to the claim giving rise to, or increased the level of, the damages. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

**11.4 Claims.** Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this ~~ARTICLE 11:ARTICLE 11~~ may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer shall pay such costs. The Indemnified Party may not make any admission or offer or accept any settlement or compromise without prior written consent of the Indemnifying Party.

#### **11.5 Additional Seller’s Warranties.**

Additionally, Seller warrants at all times during the Term (except as expressly provided in this Agreement):

11.5.1 Seller has qualified and shall maintain the Project as an Installed Capacity Supplier in accordance with the ICAP Manual.

11.5.2 The Installed Capacity of the Project as calculated in accordance with the ICAP Manual shall be equal to or greater than the Contract Capacity in each Month during the Term.

11.5.3 The Contract Capacity is not sold or committed to any other party for any period during the Term.

**11.6 Governing Law.** THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. THE PARTIES HERETO AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE IN THE SUPREME COURTS OF NEW YORK LOCATED IN NASSAU COUNTY AND SUFFOLK COUNTY NEW YORK, OR THE FEDERAL COURTS IN AND FOR THE EASTERN DISTRICT OF NEW YORK, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE, AND THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING. SERVICE OF PROCESS MAY BE MADE IN ANY MATTER RECOGNIZED BY SUCH COURTS. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

**11.7 Currency.** All references to “dollar(s)”, “US\$” or “\$” in this Agreement shall refer to United States dollars (US\$).

**11.8 Notices.** All notices, requests, statements or payments shall be made as follows:

If to Seller:

[ *Seller to provide* ]

If to Buyer:

Long Island Electric Utility Servco LLC as agent of and acting on behalf  
of Long Island Lighting Company d/b/a LIPA  
175 Old Country Road, Suite 1–16  
Hicksville, NY 11801  
Attn: Manager of Power Portfolios  
Email PowerContractMgmt@psegliny.com

With a copy of legal notices only to:

Long Island Power Authority  
333 Earle Ovington Boulevard, Suite 403  
Uniondale, New York 11553  
Attn: General Counsel  
Email generalcounsel@lipower.org

Unless otherwise specified, where notice is required by this Agreement, such notice shall be in writing and shall be deemed given: (i) upon receipt, when mailed by United States registered or certified mail, postage prepaid, return receipt requested; (ii) upon the next Business Day, when sent by overnight delivery, postage prepaid using a recognized courier service; or (iii) upon receipt, when sent by electronic or facsimile transmission, provided receipt of such electronic or facsimile transmission is confirmed before 1700 EPT and written confirmation of such notice is sent on the same Day in accordance with either subsection (i) or (ii) above. A Party may change its addresses by providing notice of same in accordance herewith.

**11.9 General.** This Agreement (including the appendices, schedules and Supplements 1 hereto), constitutes the entire agreement between the Parties relating to the subject matter. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for six (6) Years. This Agreement shall be binding on each Party’s successors and permitted assigns. References to any Person herein shall include such Person’s permitted successors and assigns.

**11.10 Audit.** Each Party has the right (at its sole expense during normal working hours and provided that such Party has given reasonable prior notice) to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid.

**11.11 Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code (Title 11, United States Code).

**11.12 Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute a single agreement.

**11.13 Amendment.** No amendment or modification to this Agreement shall be enforceable unless reduced to writing, executed by both Parties, and approved by the State Comptroller.

**11.14 Compliance with Legal Requirements, Regulations, NYISO Rules and PJM Rules.** Each Party will comply with applicable Legal Requirements, regulations, NYISO Rules and PJM Rules at all times, provided that failure of a Party to do so shall not constitute a Seller Event of Default or a Buyer Event of Default unless such failure has, or with the passage of time or upon

initiation of enforcement actions by any Governmental Authority is reasonably expected to have, a material adverse impact on the other Party's realization of benefits for which this Agreement provides.

**11.15 Waiver.** The failure of either Party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any of the provisions hereof; shall in no way be construed to be a waiver of such provisions, or in any way to affect the validity of this Agreement or any part hereof or the right of such Party hereafter to enforce every such provision. No modification or waiver of all or any part of this Agreement shall be valid unless it is reduced to a writing, signed by both Parties, that expressly states that the Parties agree to a waiver of modification, as applicable. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

**11.16 Agency.** This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or be an agent or representative of, or to otherwise bind, the other Party.

**11.17 Severability.**

11.17.1 If any term or provision of this Agreement or the application thereof to any Party, or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be effected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Legal Requirements.

11.17.2 If any term or provision of this Agreement or the application thereof to any Party, or circumstance, shall to any extent be invalid or unenforceable and if this results in one Party being materially affected compared to the other Party, or being deprived of a material element of its original bargain, then the Parties shall negotiate in good faith to restore as nearly as possible or rebalance the benefits of this Agreement to those existing prior to the term or provision being determined to be invalid or unenforceable.

**11.18 Negotiated Agreement.** This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against any one Party or the other as a result of the preparation, substitution or other event of negotiation, drafting or execution hereof.

**11.19 Business Continuity Plan.** Seller shall address potential exposure to internal and third-party threats to Seller's supply chain and operations which may adversely impact Seller's performance under this Agreement. Seller shall establish and maintain a current and effective Business Continuity Plan, approved by managers with highest responsibility for overall direction of Seller's business, which demonstrates business continuity management capability, and delineates the prevention of and recovery from events that disrupt or adversely impact Seller's ability to provide Products to Buyer. Prevention efforts may include, but need not be limited to, making standby

arrangements with disaster recovery contractors, establishing risk mitigation inventory processes and/or stock of raw materials or spares/sub-assemblies, or, for critical applications, flow down protective contract provisions in contracts with Seller's subcontractors and third-party providers of goods and services. Seller shall review and update its Business Continuity Plan as circumstances require to assure that Business Continuity Plan is appropriate and adequate for Seller's duties to Buyer under this Agreement and that it meets generally accepted industry standards (such as NFPA 1600 or those promulgated by FEMA, among others). Upon Buyer's request, Seller shall provide Buyer a copy of the most recently updated Business Continuity Plan.

## **ARTICLE 12: DISPUTE RESOLUTION**

**12.1 Notice.** Either Party ("Aggrieved Party") shall have the right to give written notice (via overnight delivery) and email confirmation to the other Party ("Noticed Party") that Noticed Party is not performing in accordance with Aggrieved Party's interpretation of the terms and conditions of this Agreement. Such notice shall describe with specificity the basis for Aggrieved Party's belief and may describe the recommended options to correct the failure.

**12.2 Response.** Noticed Party shall respond to Aggrieved Party's written notice within twenty (20) Days after receipt. If Noticed Party agrees with Aggrieved Party's concern, Noticed Party shall promptly take appropriate action to correct such failure and include in its response a description of the action taken and a good faith estimate of the time necessary to correct the failure. In such circumstance, Noticed Party shall bear all costs incurred by both Parties associated with the corrective action.

**12.3 Resolution of Dispute.** If Noticed Party disagrees with Aggrieved Party's concern, each Party shall designate a member or members of senior management to discuss the matter and attempt to resolve the dispute. The representatives of the Parties shall meet in a location mutually agreed upon by the Parties within twenty (20) Days after Noticed Party's response to Aggrieved Party's notice. The Parties agree to meet promptly (and in any event not more than fifteen (15) Days after such response) and use their commercially reasonable efforts to settle promptly any disputes or claims arising out of or related to this Agreement through their respective representatives, and shall negotiate in good faith to resolve the dispute. All negotiations and discussions pursuant to this Section 12.3 shall be confidential, subject to Legal Requirements, and shall be treated as compromise and settlement negotiations for purposes of Federal Rule of Evidence 408 and applicable state rules of evidence. If at any time at least thirty (30) Days after Noticed Party's response to Aggrieved Party's notice, either Party believes that continued discussions will not result in a resolution of the dispute, then such Party may pursue its rights and remedies at law.

**12.4 Tolling Statute of Limitations.** All applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while the discussions specified in this ~~ARTICLE 12:ARTICLE 12~~ are pending. The Parties will take such action, if any, required to effectuate such tolling. Without prejudice to the procedures specified in this ~~ARTICLE 12:ARTICLE 12~~, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. Notwithstanding such action, the Parties will continue to participate in good faith in the procedures

specified in this ~~ARTICLE 12:~~**ARTICLE 12**, subject, however, to the rights of the Parties under the last sentence of Section 12.3.

## **ARTICLE 13: FORCE MAJEURE EVENTS**

**13.1 Definition of Force Majeure Event.** The term “Force Majeure Event” as used herein, shall mean those events, acts, omissions or circumstances which are outside of the affected Party’s control, which were not reasonably foreseeable, and which could not have been avoided by the affected Party through the employment of Prudent Utility Practices, including any act of God, an act or threatened act of the public enemy, war (imminent, declared or otherwise) blockade, accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to, or adjuncts of, shipping or navigation, perils of the sea, air crash, shipwreck, train wrecks or other failures or delays of transportation, nuclear emergency, radioactive contamination, ionizing radiation, release of hazardous waste or materials, sabotage, terrorist acts, invasion, insurrection, riot, non-site specific industrial disturbance by a union or organized labor (including any non-site specific strike or boycott), fire (not caused by malfunction of the Seller’s equipment), flood, lightning, earthquake, hurricane, tornado, winds of extreme force, extreme accumulation of snow or ice, naturally occurring epidemic, pandemic, explosion or any similar cataclysmic occurrence, acts or restraints of a Governmental Authority other than Buyer (which do not constitute a Change in Law), which temporarily or permanently prevent required performance under this Agreement. Neither Party may claim a Force Majeure Event for any delay or failure to perform or carry out any provision of this Agreement to the extent that such Party has been negligent or has engaged in willful misconduct and such negligence or willful misconduct contributed to that Party’s delay or failure to perform or carry out its duties and obligations under this Agreement. Neither (i) economic hardship of a Party, (ii) Seller’s ability to sell the Contract Capacity at a price greater than that for which such is herein contracted, (iii) Buyer’s ability to purchase Contract Capacity at a price less than that for which such is herein contracted, (iv) inability of a Party to obtain financing, arrange credit support or make payments, (v) inability to obtain or maintain Consents, nor (vi) loss of Seller’s supply including any breakdown of machinery or equipment, which loss is not itself caused by a Force Majeure Event, shall constitute a Force Majeure Event.

**13.2 Force Majeure Event.** Except as specifically provided for in this Agreement, if a Force Majeure Event causes either Party to be wholly or partially unable to perform its obligations under this Agreement, that Party shall be excused from performance (other than payment obligations). The suspension of performance due to a Force Majeure Event shall be of no greater scope (or amount) and of no longer duration than is required by such Force Majeure Event and the Claiming Party (as defined below) shall not be construed to be in default with respect to any obligation hereunder for so long as, but only to the extent that, failure to perform such obligation (or make such payment) is due to a Force Majeure Event. No Force Majeure Event shall extend this Agreement beyond the Term.

**13.3 Due Diligence.** A Party claiming a Force Majeure Event (“Claiming Party”) shall: (a) provide oral notice as promptly as practicable followed by written notice to the other Party (“Non-Claiming Party”) no later than five (5) Business Days after the first day of such Force Majeure Event, giving the Non-Claiming Party a detailed written explanation of the event and an estimate of its expected duration and probable effect on the performance of the Claiming Party’s

obligations hereunder, (b) use commercially reasonable efforts in accordance with Prudent Utility Practices to remedy the condition that prevents performance and to mitigate the effects of same in order to continue to perform its obligations under this Agreement, and (c) keep the Non- Claiming Party informed in writing of all efforts to mitigate and remedy the Force Majeure Event.

### **13.4 Extended Force Majeure Events.**

13.4.1 If the Claiming Party has reason to believe that a Force Majeure Event will prevent it from performing its obligations under this Agreement for one (1) Month or longer (“Extended Force Majeure Event”), it shall notify the Non–Claiming Party in writing within fifteen (15) Days from the beginning of said Force Majeure Event and shall submit a plan to remedy the impact of such Force Majeure Event(s) (a “Force Majeure Remedy Plan”) to the Non–Claiming Party within ten (10) Days of such notification.

13.4.2 While the Force Majeure Remedy Plan is in effect, the Claiming Party shall provide (a) weekly status reports notifying the Non–Claiming Party of the steps which have been taken to remedy the Extended Force Majeure Event, and (b) the expected remaining duration of its inability to perform hereunder.

**13.5 Insurance Proceeds.** In the event Seller obtains insurance proceeds to restore the Project or its related facilities and equipment that has been damaged as a result of a Force Majeure Event, Seller shall apply such proceeds to the restoration of the damaged facility; provided that, (a) such proceeds shall be required to be so applied only if such proceeds alone are sufficient to complete such restoration without the addition of any capital investment beyond such insurance proceeds, (b) the requirements of this Section 13.5 shall be subject and subordinate to the rights of the Lenders under the Seller’s financing or financial arrangements, and (c) if Seller notifies Buyer that it proposes to restore the Project pursuant to this Section 13.5, Buyer’s rights under Section 13.6 to terminate this Agreement as a result of such Force Majeure Event shall be deemed to have been waived and shall be of no force and effect, provided that the restoration does not take longer than six (6) months.

**13.6 Right to Terminate or Discontinue Obligations.** Either Party may terminate this Agreement if the Claiming Party remains unable to perform its material obligations hereunder for (i) six (6) consecutive Months or (ii) the remaining period of the Term, whichever is less, consecutive Months following the date of a Force Majeure Event; provided, that (i) subject to (ii) below, neither Party shall be entitled to terminate this Agreement if the Claiming Party (a) has commenced to remedy the Force Majeure Event and (b) is diligently pursuing such remedy; and (ii) if a Force Majeure Event occurs which is not curable within (6) Months through commercially reasonable efforts of the Claiming Party, the Non–Claiming Party shall have the right to terminate this Agreement immediately upon written notice to the Claiming Party.

**13.7 Liability Following Termination for Force Majeure Event.** Upon termination of this Agreement as provided in Section 13.6 the Parties shall have no further liability or obligation to each other as a consequence of such termination, except for any obligation accruing prior to the occurrence of such Force Majeure Event.



## ARTICLE 14: SALE OF PROJECT

**14.1 Sale of Project.** Seller may not, without the prior written consent of Buyer, transfer its interest in the Project to a third party (other than an Affiliate of Seller that assumes all obligations to perform this Agreement and complies with the requirements of Section 14.1.1) or transfer its interest in the Project to any Person succeeding to all or substantially all of the assets of Seller, and any such consent by Buyer may be conditioned upon such transferee or successor entity assuming all obligations to perform this Agreement and complying with the requirements of Section 14.1.1. For the avoidance of doubt, the foregoing does not restrict in any manner the sale of the equity interests in Seller.

14.1.1 With respect to any transfer of interest in the Project in compliance with Section 14.1 above, the transferee or successor entity shall execute and deliver to Buyer an assignment and assumption of this Agreement pursuant to which it shall assume all of the duties and obligations of Seller under this Agreement and unconditionally assumes and agrees to be bound by all of the terms and conditions of this Agreement as Seller and whereby the transferee or successor entity makes certain additional representations and warranties as appropriate for such transferee or successor entity that are substantially similar to those contained in Section 11.1 and such transferee or successor entity shall deliver evidence of such corporate powers, due authorization and enforceability assurances as Buyer may reasonably request. Upon any permitted transfer by Seller pursuant to Section 14.1, Seller shall be, without further action by Buyer, released and discharged from all obligations under this Agreement arising after the effective date of such transfer. Notwithstanding the foregoing provisions, no transfer by Seller pursuant to this Section 14.1 shall be effective until the State Comptroller has confirmed to Buyer that Seller and/or its transferee has satisfied all relevant requirements for such transfer and assignment, including, but not limited to, submission of a Vendor Responsibility Questionnaire and filing of the assignment and assumption agreement with the State Comptroller.

For the purposes of the Non-Assignment Clause of **Supplement 1: STANDARD CLAUSES FOR LIPA'S CONTRACTS**, the Parties' compliance with the provisions of this Section 14.1.1 with respect to a proposed transfer under this Section 14.1.1, shall be deemed to be written consent to such sale by Buyer. Seller agrees to compensate Buyer for Buyer's reasonable, verifiable and documented costs and expenses incurred by its use of outside attorneys, consultants, accountants and advisors in connection with this Agreement in response to Seller's requests made pursuant to this Section 14.1.1. Buyer shall provide an invoice to Seller for such charges, with appropriate documentation, and Seller shall pay such invoice within thirty (30) Days.

**14.2 New York State Finance Law Section 138.** Notwithstanding any other provision of this ~~ARTICLE 14:ARTICLE 14~~, the provisions set forth in New York State Finance Law Section 138 shall apply.

## ARTICLE 15: CONFIDENTIALITY

### 15.1 Confidential Information.

15.1.1 Exclusions from Definition of Confidential Information. The “Confidential Information” of a Disclosing Party shall not include, and the confidentiality obligations of this Agreement shall not apply to: (a) information that is or becomes public knowledge by acts other than those of the Receiving Party or its Agents or Representatives; (b) information rightfully obtained by the Receiving Party from a third party without a duty of confidentiality; (c) information independently discovered or developed by the Receiving Party without use of or reliance on the Confidential Information of the Disclosing Party, as substantiated by written evidence of the Receiving Party; (d) information rightfully in the Receiving Party’s possession or that was rightfully known to the Receiving Party prior to its receipt from the Disclosing Party, as substantiated by written evidence of the Receiving Party; and (e) information disclosed by the Receiving Party with the Disclosing Party’s prior written approval. Said Exclusions do not apply to any Confidential Information that is CEII, CIP information or CII.

15.1.2 Survival. The obligations in ~~ARTICLE 15:ARTICLE 15~~ will survive for so long as any Confidential Information disclosed in accordance with this Agreement is retained by Receiving Party (in whatever form) and such information continues to be Confidential Information.

15.1.3 Nondisclosure; No Export.

(a) Except as otherwise provided herein, each Receiving Party shall (i) protect and hold all Confidential Information of a Disclosing Party in strict confidence; (ii) shall not disclose, publish, or disseminate to any other Person, or copy, reproduce, photocopy or take photographs of such Confidential Information under any circumstances; and (iii) shall use such Confidential Information only for the purposes of this Agreement.

(b) Each Receiving Party further agrees to access and view a Disclosing Party’s CEII, CII or CIP information, as described in Section 15.1.3(e), in person at a Receiving Party’s office upon providing, at a minimum, 48-hours advance notice to Disclosing Party of such request for information in writing, and not to capture or transmit such information in any fashion (whether to or among its Representatives) for any purpose, at any time. Parties may transmit Confidential Information that does not contain CEII, CII or CIP electronically via secure email, as set forth in Section 15.1.3(e), and/or by other means consistent with the requirements of this Agreement. Disclosing Party shall use its best efforts to mark each document and individual pages as “CONFIDENTIAL,” and to include the word “CONFIDENTIAL” in the subject line of any transmittals, but the failure to mark any document or transmittal as such shall not waive its confidentiality.

(c) Each Receiving Party shall comply with all laws, rules and regulations, including those applicable to Confidential Information constituting CEII, CII or CIP information.

(d) Each Receiving Party shall maintain appropriate and reasonable processes and systems, to protect the security of Disclosing Party’s

Confidential Information consistent with the foregoing and prevent a Data Security Incident, including, without limitation, a breach resulting from or arising out of the Receiving Party's internal use, Processing, or other transmission of the Disclosing Party's Confidential Information between or among the Receiving Party's Representatives. A Receiving Party's information security program is subject to a Disclosing Party's review for best industry practices for the type of Confidential Information to be disclosed by Disclosing Party prior to the disclosure of any such Confidential Information. Each Disclosing Party has the right to withhold Confidential Information if it determines, in its sole discretion, that a Receiving Party does not maintain appropriate and reasonable processes and systems to protect the security of its Confidential Information.

(e) Each Receiving Party and its authorized Representatives shall keep all Confidential Information disclosed to it in the Continental United States (CONUS) and store, access, act upon, and locate it solely in data centers in CONUS. If Receiving Party transmits any Confidential Information, it shall do so in such a way that the Confidential Information will remain in CONUS while in transit and be encrypted, at a minimum, in accordance with the requirements of the New York State Information Technology Encryption Standard, NYS-14-007.

(f) Consistent with the FERC Standards of Conduct, no Receiving Party shall disclose any Confidential Information to any Representative (other than those of its own Representatives to whom disclosure is permitted pursuant to Section 15.1.4), including to any Representative that engages in Marketing Function activities (as defined by 18 CFR Part 358).

(g) No Receiving Party shall disclose any Confidential Information of a Disclosing Party to any other Party or its Representative(s) without the prior written consent of the Disclosing Party.

(h) Promptly upon a Disclosing Party's written request, the Receiving Party shall provide documentation reasonably detailing its confidentiality and security practices.

15.1.4 Permitted Disclosure to Representatives. Notwithstanding the provisions of Section 15.1.3 hereof, each Receiving Party may disclose Confidential Information of a Disclosing Party to those Representatives of such Receiving Party on a "need to know" basis, provided that such persons (i) have a lawful "need to know" such Confidential Information, (ii) have been advised by such Receiving Party of the sensitive/confidential nature of the Confidential Information; and (iii) have agreed or will agree to be bound by the provisions hereof by corporate policy or executing an agreement. Without limiting any direct rights that a Disclosing Party may have against a Receiving Party's Representatives, a Receiving Party shall be responsible to the disclosing Party for any act or omission of the Receiving Party's Representatives that, if committed by the Receiving Party, would constitute a breach of this

Agreement. Each Disclosing Party may require a Receiving Party's Representatives to successfully pass a background screening or present evidence of having passed a NERC-CIP background screening prior to obtaining access to Confidential Information.

A Receiving Party shall not disclose CEII, CII or CIP information to any Person, including its Representatives, without Disclosing Party's written consent. A Receiving Party may make notes of Confidential Information and may perform analyses in reliance on Confidential Information, which notes and analyses shall also be treated as Confidential Information if they contain Confidential Information.

#### 15.1.5 Compelled Disclosure of Confidential Information; FOIL.

(a) In the event that a Receiving Party or any of its Representatives, pursuant to applicable law, regulation, order, judicial order, U.S. stock exchange rule or legal process the response to which shall be governed by Section 15.1.5(b) below, or pursuant to FERC or NERC rules or regulations, is requested to disclose any of the Confidential Information of a Disclosing Party, the Receiving Party shall, to the extent permitted, provide the Disclosing Party with prompt written notice of such request. A party objecting to disclosure shall provide the Disclosing Party with a written basis for withholding disclosure within 10 business days of notification of the request. A Party that concludes it is legally required to disclose certain information shall give Disclosing Party not less than an additional ten (10) Business Days to seek an appropriate protective order from a court of competent jurisdiction or other remedy reducing the extent of the Confidential Information that must be disclosed. The Receiving Party shall provide, and cause its Representatives to provide, reasonable cooperation to the Disclosing Party in undertaking any lawfully permitted steps to reduce or minimize the extent of the Confidential Information to be disclosed. In any event, the Receiving Party may disclose only such Confidential Information that such parties are advised by their legal counsel is legally required in order to comply with applicable law, rule, regulation, order, U.S. stock exchange rule or legal process and the Receiving Party shall use reasonable efforts to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment and, if applicable, CEII, CII and CIP protected status by the party to whom the information is disclosed.

(b) FOIL and Additional Public Access to Records Requirements. The Parties expressly acknowledge that LIPA is subject to the requirements of the NYS Public Officers Law, including New York's Freedom of Information Law ("FOIL") and the New York Code, Rules and Regulations ("NYCRR") and must comply therewith. If LIPA is requested by a third party to disclose Confidential Information that it has received from the Contractor, LIPA will (i) notify the Contractor of the request, (ii) provide the Contractor with the information LIPA intends to provide in response to the FOIL request, (iii) provide the Contractor the opportunity to provide information regarding the

need for confidential treatment, including pursuant to the NYS Public Officers Law § 87, (iv) evaluate Contractor's request for confidential treatment, and (v) determine if the Confidential Information is subject to disclosure under FOIL. If LIPA determines that Confidential Information is subject to disclosure, it will provide prompt written notice of such determination to the Contractor so that the Contractor may seek to appeal LIPA's determination, as applicable, or seek another appropriate remedy, or both, and the Parties may pursue their respective rights and remedies pursuant to NYS Public Officers Law § 89(5).

15.1.6 Breach Notification. In the event that a Receiving Party or its Representatives (a) loses or improperly discloses any Confidential Information of a Disclosing Party or (b) suffers a data breach or a breach in security, and such breach has affected or may affect a Disclosing Party's Confidential Information, the Receiving Party shall promptly notify the Disclosing Party. The Receiving Party (and its Representatives) shall reasonably cooperate and coordinate with the Disclosing Party in connection with any investigation, monitoring, notification, retrieval effort, prevention and mitigation, and reporting obligations rendered necessary or appropriate in connection with the potential or actual breach, loss or disclosure, consistent with the Disclosing Party's data security policy.

15.1.7 Return of Information. Upon the termination or expiration of this Agreement, or upon a Disclosing Party's earlier request, each Receiving Party will return (and cause its Representatives to return), or at the Receiving Party's option, destroy, the Disclosing Party's Confidential Information that is in the Receiving Party's and/or its Representative's possession. The Receiving Party (and its Representatives) shall complete any destruction of Confidential Information in a commercially reasonable manner, complying with all applicable laws, and shall promptly provide the Disclosing Party with a duly executed certificate certifying that the Receiving Party and its Representatives have complied with the requirements of this provision. The terms of this provision shall survive the expiration or termination of this Agreement.

15.1.8 Data Security Incidents. Each Receiving Party is responsible for all Data Security Incidents involving Confidential Information Processed by, or on behalf of, the Receiving Party. The Receiving Party shall notify the Disclosing Party in writing immediately (and in any event within twenty-four (24) hours) whenever the Receiving Party reasonably believes that there has been a Data Security Incident. After providing such notice, the Receiving Party will investigate the Data Security Incident and immediately take steps to eliminate or contain any exposure of Confidential Information, keeping the Disclosing Party advised of the status of the same. The Receiving Party further agrees to provide, at the Receiving Party's sole cost, reasonable assistance and cooperation requested by the Disclosing Party and/or the Disclosing Party's designated representatives, in the furtherance of any correction, remediation, or investigation of any such Data Security Incident and/or the mitigation of any damage. Unless required by law, the Receiving Party shall not notify any Person other than law enforcement of any potential Data Security Incident involving the Disclosing Party's Confidential Information without first consulting with, and obtaining the permission of, the Disclosing Party. In addition, within 30 days of an identified Data Security

Incident, the Receiving Party shall develop and execute a plan, subject to the Disclosing Party's approval, to reduce the likelihood of recurrence. Without limiting its other rights and remedies at law, the Disclosing Party may, without penalty, immediately suspend performance hereunder or terminate this Agreement if a Data Security Incident occurs.

15.1.9 No Warranty; No Implicit Rights. Each Receiving Party acknowledges that the Disclosing Party makes no representation or warranty (express or implied) as to the accuracy or completeness of any of the Disclosing Party's Confidential Information, and the Receiving Party agrees to assume full responsibility for all conclusions it may derive from such Confidential Information. A Disclosing Party and its officers, employers, trustees, agents, contractors, and assigns shall have no liability whatsoever based upon the Confidential Information provided to Receiving Party under this Agreement and shall have no liability based upon any errors or omissions contained in the Confidential Information. Nothing in this Agreement requires that a Party disclose its Confidential Information to any other Party nor grants or confers any rights, by license or otherwise, expressly, implicitly, or otherwise, under any patents, copyrights, other intellectual property, or trade secrets of the Disclosing Party, even if Confidential Information of a Disclosing Party is disclosed. Similarly, a Party that elects to disclose Confidential Information to some Parties may restrict its disclosure to other Parties. In all cases, the Confidential Information of a Disclosing Party shall remain its property. This Agreement grants no rights or obligations other than those expressly stated herein, and none may be implied. The Receiving Party shall obtain no ownership rights whatsoever in, nor any license to use, sell or exploit, a Disclosing Party's Confidential Information by virtue of this Agreement.

15.1.10 Liabilities and Remedies. Each Receiving Party acknowledges and agrees that unauthorized disclosure or improper use of a Disclosing Party's Confidential Information would cause the Disclosing Party irreparable harm, the amount of which may be difficult to ascertain, and which monetary damages cannot adequately compensate. Each Disclosing Party therefore has the right to seek specific performance and/or injunctive relief to enforce compliance by the Receiving Party (and its Representatives) with the terms of this Agreement, in addition to any other rights and remedies that the Disclosing Party may have at law and in equity, including monetary damages, without the need to post a bond.

To the fullest extent permitted by law, each Receiving Party shall defend, indemnify, and hold harmless Disclosing Party, Affiliates, Representatives and each of its respective officers, agents, servants, representatives, subcontractors, employees, shareholders, successors, assigns, and customers against any claims, complaints, suits, proceedings, demands, disputes, actions, or allegations of any kind, whether just or unjust, incurred by Disclosing Party, Affiliates or Representatives and their officers, agents, servants, representatives, subcontractors, employees, shareholders, successors, assigns, or customers as a result of Receiving Party's failure to treat such Disclosing Party, Affiliate, or Representative employee, shareholder, or customer Confidential Information in accordance with this Agreement. The terms of this provision will survive the expiration or termination of this Agreement.

15.1.11 The Parties agree that this Agreement contains rate, cost, financial, and other economic and material terms the disclosure of which would cause substantial injury to the competitive position of both Buyer and Seller.

**15.2 Contract Value Disclosure.** Notwithstanding any other provision in this Agreement, Buyer may publicly disclose the estimated total contract value associated with this Agreement, which value shall be an aggregated amount. Furthermore, Buyer may disclose certain Confidential Information in furtherance of Buyer's requirements to receive approval to execute this Agreement or to seek State Comptroller approval.

**15.3 FERC.** The Parties agree to seek confidential treatment of the Confidential Information in this Agreement from FERC, but acknowledge that certain Confidential Information may need to be disclosed in Seller's rate filing or reporting with FERC or in any other regulatory filings to the FERC required to be made by Seller that will be publicly available.

**15.4 Confidential Treatment.** Seller shall request confidential treatment of the Confidential Information in this Agreement in connection with filings under Sections 15.3; provided, however, that the Parties acknowledge that such request may be denied in whole or in part, and accordingly, that confidential treatment may not be afforded to such information.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above

<p><i>[Insert name of Seller]</i></p> <p>By: _____ Name: _____ Title: _____ Date: _____</p>	<p>LONG ISLAND POWER AUTHORITY</p> <p>By: _____ Name: _____ Title: _____ Date: _____</p>
<p>Approved as to Form: Approved: Office of the Attorney General</p> <p>By: _____ Name: _____ Title: _____ Date: _____</p>	<p>Approved: Office of the State Comptroller</p> <p>By: _____ Name: _____ Title: _____ Date: _____</p>



STATE OF [*INSERT STATE*] )  
 ) ss.:  
COUNTY OF [*INSERT COUNTY*] )

On the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me personally came \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the individual who executed the foregoing instrument in his authorized capacity on behalf of **[INSERT SELLER NAME]**, a **[SELLER INSERT ENTITY TYPE]** described in and which executed the foregoing instrument, who being duly sworn did acknowledge that [he/she] executed same on behalf of, and that [he/she] was authorized to execute same on behalf of the aforementioned entity.

I certify under PENALTY OF PERJURY under the laws of the State of [INSERT STATE] that the foregoing paragraph is true and correct.

**WITNESS MY HAND AND OFFICIAL SEAL**

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Notary Public

## **APPENDIX 1**

### **DESCRIPTION AND LOCATION OF PROJECT(S)**

*[Seller to provide details of each Project proposed supplying Capacity and Energy under this agreement.]*

## **APPENDIX 2**

### **CAPACITY QUANTITY AND PRICING<sup>1</sup>**

*[Seller to provide a separate table for each Project proposed.]*

Contract Year	Period	Project	Contract Capacity (MW)	Contract Capacity Price (\$/kW-mo.)
1	June 1 <sup>st</sup> , 20xx – May 31 <sup>st</sup> , 20yy			
2	June 1 <sup>st</sup> , 20xx – May 31 <sup>st</sup> , 20yy			
3	June 1 <sup>st</sup> , 20xx – May 31 <sup>st</sup> , 20yy			
4	June 1 <sup>st</sup> , 20xx – May 31 <sup>st</sup> , 20yy			
5	June 1 <sup>st</sup> , 20xx – May 31 <sup>st</sup> , 20yy			
6	June 1 <sup>st</sup> , 20xx – May 31 <sup>st</sup> , 20yy			
7	June 1 <sup>st</sup> , 20xx – May 31 <sup>st</sup> , 20yy			

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<sup>1</sup> Enter NA (Not Applicable) for any Contract Years when the Seller will not supply Contract Capacity and add additional Contract Years as necessary.

### **APPENDIX 3**

#### **CONTRACT ENERGY QUANTITY AND PRICING**

*[Seller to include a description of proposed Contract Energy structure, schedule, pricing and term for each Project Proposed]*

Contract Energy cannot exceed the Contract Capacity in any Hour and must be made available at the Contract Energy Delivery Point.

**APPENDIX 4**  
**BUYER'S FORM OF LETTER OF CREDIT**

[ISSUING BANK NAME]

LETTER OF CREDIT NO.: [\_\_\_\_\_]

WE HAVE ESTABLISHED OUR IRREVOCABLE STANDBY LETTER OF CREDIT IN YOUR FAVOR  
AS DETAILED HEREIN.

DATE OF ISSUE: [\_\_\_\_\_] , 2025

BENEFICIARY: LONG ISLAND POWER AUTHORITY  
333 EARLE OVINGTON BOULEVARD  
UNIONDALE, NY 11553  
TELEPHONE: 516-222-7700  
ATTENTION: LIPA CHIEF FINANCIAL OFFICER

APPLICANT: **[SELLER NAME AND CONTACT INFORMATION]**

EXPIRATION DATE: \_\_\_\_\_, 2026

AMOUNT: USD \$ **[RESPONDENT TO INSERT AMOUNT THAT IS \$50,000 PER  
MW OF HIGHEST CONTRACT CAPACITY]**

WE, \_\_\_\_\_**[BANK NAME AND ADDRESS]** ("ISSUER"), HEREBY ISSUE OUR  
IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER \_\_\_\_\_ (THIS "LETTER OF CREDIT")  
IN FAVOR OF LONG ISLAND POWER AUTHORITY ("BENEFICIARY"), BY ORDER AND FOR THE  
ACCOUNT OF **[SELLER]**, ("APPLICANT"), FOR A MAXIMUM AGGREGATE AMOUNT NOT  
EXCEEDING USD **[AMOUNT NUMBERS]** (US DOLLARS **[AMOUNT SPELLED]** AND 00/100)  
AVAILABLE WITH US BY PAYMENT AT SIGHT AGAINST PRESENTATION OF A DATED  
STATEMENT, SIGNED BY A PERSON PURPORTED TO BE AN AUTHORIZED REPRESENTATIVE  
OF BENEFICIARY, IN THE FORM ATTACHED HERETO AS ANNEX A AT  
[\_\_\_\_\_] **SPECIFY PLACE AND PERSON** DURING NORMAL BUSINESS HOURS ON OR  
BEFORE THE EXPIRATION DATE AND ANY EXTENSION THEREOF. ANY PRESENTATION AFTER  
NORMAL BUSINESS HOURS SHALL BE TREATED AS BEING MADE THE NEXT BUSINESS DAY.

SPECIAL CONDITIONS:

1. ALL ISSUING BANK CHARGES FOR THE ACCOUNT OF THE APPLICANT AND SHALL NOT BE DEDUCTED FROM ANY PAYMENT ISSUER MAKES UNDER THE LETTER OF CREDIT.
2. PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED.
3. THE AMOUNT OF THIS LETTER OF CREDIT SHALL BE AUTOMATICALLY REDUCED BY THE AMOUNT OF ANY DRAWING PAID HEREUNDER.
4. IF A DEMAND EXCEEDS THE AMOUNT AVAILABLE, BUT THE PRESENTATION OTHERWISE COMPLIES, ISSUER SHALL PAY THE AMOUNT AVAILABLE.

WE HEREBY ENGAGE WITH YOU THAT DOCUMENTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS IRREVOCABLE STANDBY LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION AS SPECIFIED HEREIN WITHIN THE VALIDITY DATE.

PAYMENT HEREUNDER SHALL BE MADE BY WIRE TRANSFER OF FEDERAL RESERVE WIRE FUNDS TO BENEFICIARY'S ACCOUNT WITHIN THREE (3) NEW YORK BUSINESS DAYS OF PRESENTATION OF COMPLIANT DOCUMENTS BY BENEFICIARY IN ACCORDANCE WITH THE PAYMENT INSTRUCTIONS SET FORTH IN THE BENEFICIARY'S LETTER OF CREDIT PAYMENT DEMAND.

THIS LETTER OF CREDIT EXPIRES AT 5:00 PM NEW YORK TIME ON \_\_\_\_\_, 2026, (SUBJECT TO EXTENSION IN ACCORDANCE WITH THE IMMEDIATELY FOLLOWING PARAGRAPH).

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR SUCCESSIVE ONE-YEAR PERIOD(S) UNLESS WE SEND YOU NOTICE VIA OVERNIGHT COURIER/CERTIFIED MAIL NOT LESS THAN THIRTY (30) DAYS BEFORE SUCH EXPIRY DATE THAT WE ELECT NOT TO EXTEND THIS STANDBY LETTER OF CREDIT FOR ANY SUCH ADDITIONAL PERIOD. FOR THE PURPOSES HEREOF, "BUSINESS DAY" SHALL MEAN ANY DAY ON WHICH COMMERCIAL BANKS ARE NOT AUTHORIZED OR REQUIRED TO CLOSE IN NEW YORK, NEW YORK.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBERS OF COMMERCE PUBLICATION NO. 590 (THE "ISP98") EXCLUDING SECTION 3.12(A) AND PROVIDED ISSUER SHALL FURNISH A REPLACEMENT FOR A LOST ORIGINAL LETTER OF CREDIT UPON BENEFICIARY'S EXECUTION OF INDEMNIFICATION AND OTHER REASONABLE REQUIREMENTS OF ISSUER. AS TO MATTERS NOT COVERED BY ISP98, THE LAW OF THE STATE OF NEW YORK WILL PREVAIL, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREUNDER. THE COURTS LOCATED IN THE BOROUGH OF MANHATTAN, NEW YORK CITY, NEW YORK SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY ACTION TO ENFORCE ISSUER'S OBLIGATIONS UNDER THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT MAY BE SIGNED BY THE ISSUING BANK WITH EITHER A DIGITAL OR ORIGINAL SIGNATURE, EITHER OF WHICH SHALL BE LEGALLY VALID AND ENFORCEABLE. THE ISSUING BANK MAY TRANSMIT THIS LETTER OF CREDIT TO THE BENEFICIARY BY MAIL OR ELECTRONIC TRANSMISSION. FOR THE AVOIDANCE OF DOUBT, ANY ELECTRONIC PDF

VERSION OF THIS LETTER OF CREDIT RECEIVED BY THE BENEFICIARY SHALL BE AN OPERATIVE INSTRUMENT AND MAY BE USED BY THE BENEFICIARY AS IT WOULD BE A HARDCOPY ORIGINAL.

[ISSUING BANK]

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AUTHORIZED SIGNATURE

ANNEX A  
FORM OF PAYMENT DEMAND

LETTER OF CREDIT PAYMENT DEMAND

BENEFICIARY: LONG ISLAND POWER AUTHORITY

APPLICANT: **[SELLER]**

- I) THE BENEFICIARY DEMANDS PAYMENT OF USD \$ \_\_\_\_\_ **[INSERT AMOUNT]**  
UNDER THE STANDBY LETTER OF CREDIT ISSUED BY **[INSERT ISSUER'S NAME]**  
LETTER OF CREDIT NUMBER \_\_\_\_\_ **[INSERT LOC #]**, AND
- II) APPLICANT IS OBLIGATED TO PAY THE BENEFICIARY THE AMOUNT DEMANDED  
UNDER THE POWER PURCHASE AGREEMENT FOR EXISTING PROJECTS IN PJM  
BETWEEN LONG ISLAND POWER AUTHORITY AND **[INSERT NAME OF SELLER]**  
DATED \_\_\_\_\_ **[INSERT DATE OF AGREEMENT]**, 2025, BETWEEN  
BENEFICIARY AND APPLICANT (THE "AGREEMENT")

EXECUTED BY BENEFICIARY ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_:

LONG ISLAND POWER AUTHORITY

BY: \_\_\_\_\_

AS ITS: \_\_\_\_\_

**PAYMENT INSTRUCTIONS:**

[INSERT NAME, ADDRESS, AND ROUTING NUMBER OF BANK]

[INSERT NAME AND NUMBER OF ACCOUNT]



**APPENDIX 5**

**SAMPLE MONTHLY INVOICE**

[*Seller to provide Sample Monthly Invoice for Product(s)*]

## **APPENDIX 6**

### **INSURANCE REQUIREMENTS**

Commencing with the Effective Date and at all times throughout the Term of this Agreement except as expressly provided below, Seller shall, at its own cost, maintain and cause to be maintained the types and amounts of insurance required by this Appendix. Such insurance shall be placed with responsible and reputable insurance companies (i) which have an A.M. Best rating of at least “A–” or (ii) an S&P rating of A or better, or (iii) which are reasonably acceptable to Buyer. Seller shall give Buyer prompt notice of any non–renewal of any insurance coverages or cancellations of such coverages, but in no event later than thirty (30) Business days after it learns of such material alteration.

#### **1. Insurance Policies and Limits:**

##### **1.1 Workers’ Compensation/Employer’s Liability:**

Workers’ Compensation insurance including coverage for occupational disease, covering all employees in compliance with all applicable state and federal laws, and Employer’s Liability Insurance of not less than \$1,000,000 each accident/\$1,000,000 disease per employee/\$1,000,000 disease policy limit.

##### **1.2 Automobile Liability:**

Automobile Liability Insurance covering all owned, non–owned and hired vehicles with a combined single limit for bodily injury and property damage liability in an amount not less than \$5,000,000 each occurrence.

##### **1.3 Commercial General Liability:**

Commercial General Liability insurance including contractual liability coverage for the indemnity provisions of this Agreement for Bodily Injury, personal Injury and Property Damage Liability in amounts no less than \$10,000,000 each occurrence and in the annual aggregate.

##### **1.4 Umbrella or Excess Liability:**

The limits of insurance specified in the foregoing Sections ~~1.1+1~~ through 1.3 may be satisfied by the specified limits in the separate policies or with the purchase of Umbrella or Excess Liability insurance which, in combination with the limits of the separate policies provides the total limit required by each type of insurance.

##### **1.5 Builders Risk Property Insurance:**

From and after the date that Seller or its contractors commence construction at the Site, and subject to availability on commercially reasonable terms, Property Insurance providing coverage as required by its Lenders or if there are no Lenders for all risks of direct physical loss or damage (including the perils of flood, earthquake and named windstorm to, and for the total replacement cost value of, all property and equipment of Seller used for probable

maximum loss as determined by a third party independent appraiser, to (subject to standard loss sublimits) all property and equipment of Seller used for or in connection with the Capacity provided under this Agreement. Such coverage shall provide the costs of continuing expenses and additional expenses necessary to continue operations, insofar as reasonably possible, following loss of or damage to the property and equipment of Seller.

## 2. General Provisions.

### 2.1 Evidence of Coverage:

Seller shall, prior to supplying Capacity under this Agreement, upon renewal of each of the required insurance coverages, and within ten (10) Days after each reasonable request by Buyer, provide certificates of insurance to Buyer' for all insurance policies required hereunder.

### 2.2 Additional Insureds:

With the exception of Workers' Compensation/Employer's Liability and Property Insurance, all insurance policies shall name Buyer and Servco, ("Agent") their respective subsidiaries and affiliates and their respective successors and assigns, as additional insured and Seller shall maintain the required coverage, naming Buyer and Agent as an additional insured. The following language should be used when referencing the additional insured status: Long Island Lighting Company d/b/a LIPA and Long Island Electric Utility Servco LLC, as well as their subsidiaries and affiliates, and their respective successors and assigns shall be named as additional insured.

### 2.3 Waiver of Subrogation:

Buyer and its Affiliates shall be granted waivers of subrogation by Seller and the insurers providing coverage as required by this Appendix.

### 2.4 Severability of Insureds:

Each policy under which Buyer is required by this Appendix to be named as an additional insured shall provide that (i) inclusion of more than one Person or organization as insured hereunder shall not in any way affect the rights of any such Person or organization as respects any claim, demand, suit or judgment made, brought or recovered, by or in favor of any other insured, or by or in favor of any employee of such other insured, and (ii) each Person or organization is protected thereby in the same manner as though a separate policy had been issued to each, but nothing therein shall operate to increase the insurance company's liability as set forth elsewhere in the policy beyond the amount for which the insurance company would have been liable if only one Person or interest had been named as insured.

### 2.5 Primary Insurance:

For each policy under which Buyer is required by this Appendix to be named as an additional insured, the insurance coverage required by this Appendix shall be primary insurance with respect to the interests of Buyer and its Affiliates; any other insurance

maintained by Buyer or such Affiliates shall be excess and shall not contribute with the insurance required by this Appendix.

2.6 Notice of Cancellation:

Seller shall provide Buyer with copies of any notices of cancellation or non-renewal of any insurance policy required by this Appendix, within thirty (30) Business Days of receipt of such notice by Seller, or within ten (10) Business Days if such notice is for non-payment of premium.

2.7 Deductibles:

Any and all deductible amounts and self-insured retention under policies maintained by Seller pursuant to this Appendix 3: INSURANCE REQUIREMENTS shall be assumed by, or for the account of, and at the sole risk of Seller.

## **APPENDIX 7**

### **Form of Letter Certifying Contractual Control**

Long Island Power Authority (LIPA) ("Requestor") requests to sell capacity from [External Resource] ("External Generator") located in PJM ("External Control Area") into the NYISO administered capacity markets.

Requestor understands that in order to qualify the External Generator to sell capacity in the NYISO-administered markets, the Requestor must have contractual control over the operations of the MW amount of External Installed Capacity transferred to the Requestor from the External Generator.

With this letter, Requestor certifies to the NYISO, understanding the NYISO is relying on this certification, that it has contractual control over the operations of the External Generator pursuant to the Capacity Purchase Agreement between Long Island Power Authority and [Generator Owner], dated [Agreement Date], which includes the terms contained in the attached term sheet ("Term Sheet"). In addition, Requestor agrees that if at any time during the Transfer Period it no longer has the required contractual control over the operations of the External Generator, Requestor will immediately notify the NYISO and will immediately cease offering capacity from the External Generator in the NYISO-administered markets. In such case, Requestor understands and agrees that there may be forward sales for which the Requestor remains responsible including shortfall penalties that may be applied.

By signing below, [Generator Owner] ("Generator Owner") acknowledges and agrees that this letter accurately reflects the relationship between the Requestor and Generator Owner with respect to the External Generator.

Requestor:

Acknowledged and agreed to by:

**Long Island Power Authority (LIPA)**

**[Full legal name of Generator Owner]**

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

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

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

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

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

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

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

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

Rev. 4/27/2026

Exhibit A

Term Sheet

External Generator PTID (assigned by the NYISO): \_\_\_\_\_

NYISO Requesting MP:

MP Address:

MP Officer Contact Name:

24x7 Number:

Generator Address:

Generator Contact Name:

Generator 24x7 Phone Number:

External Generator Name:

External PTID:

Control Area:

Location (City/State):

Transmission Zone:

Transfer Effective Date:

Transfer Period (in whole months):

Current Rating/DMNC (to be validated by NYISO):

Transferred MW (amount of transferred Available/Uncommitted External Installed Capacity)\*:

\*If the MW amount varies during the Transfer Period, describe the variance in detail below.  
(NOTE: Any Transfer Period variance may affect forward sales capability.)

Rev. 2/27/2023

## **Terms Used by NYISO vs. Terms Used in Main Body of CPA**

### Term Used by NYISO

Requestor  
External Generator  
External Control Area  
Generator Owner  
Transfer Period  
Transfer Effective Date

### Term Used in Main Body of CPA

Buyer  
Project  
PJM  
Seller  
Term  
Service Commencement Date

**APPENDIX 8**  
**OPERATING LIMITS**

**[Seller to provide details]**

1. Operating Limits
2. Planned Outages Schedule
3. Maintenance Outage Schedule

*[Remainder of page intentionally blank]*



## **APPENDIX 9**

### **OUTAGES**

#### **NERC Event Type U1:**

##### **U1 – Unplanned (Forced) Outage — immediate**

This is an outage that requires immediate removal of a unit from service, another outage state, or a reserve shutdown state. This type of outage usually results from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to unit alarms.

#### **NERC Event Type U2:**

##### **U2 – Unplanned (Forced) Outage — Delayed**

This is an outage that does not require immediate removal of a unit from the in-service state, instead requiring removal within six hours. This type of outage can only occur while the unit is in service.

#### **NERC Event Type U3:**

##### **U3 – Unplanned (Forced) Outage — Postponed**

This is an outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend (Sunday at 2400 or before Sunday turns into Monday). This type of outage can only occur while the unit is in service.

#### **NERC Event Type MO:**

##### **MO – Maintenance Outage**

An outage that can be deferred beyond the end of the next weekend (defined as Sunday at 2400 hours or as Sunday turns into Monday), but requires that the unit be removed from service, another outage state, or Reserve Shutdown state before the next Planned Outage (PO). Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration, and is usually much shorter than a PO. Discovery work and re-work which render the unit out of service beyond the estimated MO end date are not considered part of the original scope of work. A maintenance extension may be used only in instances where the original scope of work requires more time to complete than the estimated time. For example, if an inspection that is in the original scope of work for the outage takes longer than scheduled, the extra time should be coded as an extension (ME). If the damage found during the inspection is of a nature that the unit could be put back on-line and be operational past the end of the upcoming weekend, the work could be considered MO or ME. If the inspection reveals damage that prevents the unit from operating past the upcoming weekend, the extended work time should be Forced Outage (See definitions of Event Types U1, U2, or U3 above).

### **NERC Event Type ME:**

#### **ME – Maintenance Outage Extension**

GADS (Generating Availability Data System) defines a maintenance outage extension as an extension of a maintenance outage (MO) beyond its estimated completion date. This means that at the start of an MO, the outage had an estimated duration (time period) for the work and a date set for the unit to return to service. All work during the MO is scheduled (part of the original scope of work) and all repair times are determined before the outage started.

### **NERC Event Type PO:**

#### **PO – Planned Outage**

An outage that is scheduled well in advance and is of a predetermined duration, can last for several weeks, and occurs only once or twice a year. Turbine and boiler overhauls or inspections, testing, and nuclear refueling are typical planned outages. For a planned outage, all of the specific individual maintenance and operational tasks to be performed are determined in advance and are referred to as the “original scope of work.” The general task of repairing turbines, boilers, pumps, etc. is not considered a work scope because it does not define the individual tasks to be performed.

Discovery work and re-work which render the unit out of service beyond the estimated PO end date are not considered part of the original scope of work. A planned extension may be used only in instances where the original scope of work requires more time to complete than the estimated time.

### **NERC Event Type PE:**

#### **PE – Planned Outage Extension**

GADS defines a planned outage extension as an extension of a Planned Outage (PO) beyond its estimated completion date. This means that at the start of the PO, the outage had an estimated duration (time period) for the work and a date set for the unit to return to service. All work during the PO is scheduled (part of the original scope of work) and all repair times are determined before the outage started.

**APPENDIX 10**

**CONTRACT CAPACITY TEST AND OTHER TESTS**

## **APPENDIX 11**

### **FORM OF SELLER GUARANTY**

***[NOTE TO SELLER: THIS FORM IS TO BE USED BY SELLER FOR THE GUARANTY REQUIRED TO SATISFY GUARANTY OF SELLER'S PAYMENT OBLIGATIONS]***

This GUARANTY (this "Guaranty"), effective as of \_\_\_\_\_, \_\_\_\_\_ (the "Effective Date"), is made and entered into by \_\_\_\_\_, a \_\_\_\_\_ (the "Guarantor"), in favor of the LONG ISLAND POWER AUTHORITY, a corporate municipal instrumentality and political subdivision of the State of New York (the "Buyer").

#### **W I T N E S S E T H:**

WHEREAS, ***[SELLER ENTITY NAME]***, a ***[INSERT STATE AND ENTITY FORM]***, (the "Seller"), a subsidiary of the Guarantor, and the Buyer have previously entered into that certain Power Purchase Agreement For Existing Projects in PJM dated as of ***[SELLER TO INSERT]*** (as the same may be modified, amended, supplemented or extended, the "Agreement"), pursuant to which (a) the Seller has agreed to own, operate and maintain the ***[SELLER TO INSERT]*** generation facility located in ***[SELLER TO INSERT]*** (the "Project") and (b) the Seller has agreed to sell to the Buyer, and the Buyer has agreed to purchase from the Seller, certain Products generated by the Project (capitalized terms used herein and not defined herein shall have the meanings given such terms in the Agreement); and

WHEREAS, the Guarantor will directly or indirectly benefit from the transactions to be entered into between the Seller and the Buyer pursuant to the provisions of the Agreement.

NOW THEREFORE, in consideration of the Buyer entering into the Agreement and as an inducement therefor, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Guarantor hereby covenants and agrees as follows:

1. GUARANTY. Subject to the provisions hereof, the Guarantor hereby irrevocably and unconditionally guarantees to the Buyer the timely payment when due of all of the obligations of the Seller to the Buyer arising out of, under or pursuant to the Agreement, whether now existing or hereafter incurred or existing from time to time (the "Obligations"). This Guaranty shall constitute a guarantee of payment and not of performance or collection. Notwithstanding any provision to contrary set forth herein, the liability of the Guarantor under this Guaranty shall not exceed U.S. \$ \_\_\_\_\_ ( \_\_\_\_\_ United States dollars) in the aggregate, excluding successful collection and successful enforcement costs payable hereunder (including those payable under Section 8 of this Guaranty).

2. DEMANDS AND NOTICE. If the Seller fails or refuses to timely pay any Obligation due, and the Buyer has elected to exercise its rights under this Guaranty, the Buyer shall make a demand upon the Guarantor (hereinafter referred to as a "Demand"). A Demand shall be in writing and shall specify in what manner and what amount the Seller has failed to pay and an explanation of why such payment is due. The Guarantor shall pay the Obligations set out in

the Demand within five (5) Business Days after its receipt of the Demand. A single written Demand shall be effective as to any specific default during the continuance of such default, until the Seller or the Guarantor has cured such default, and additional written demands concerning such default shall not be required until such default is cured. As used herein, the term "Business Day" shall mean a day on which commercial banks or financial institutions are open for business in the State of New York.

3. REPRESENTATIONS AND WARRANTIES. The Guarantor represents and warrants that:

(a) it is a \_\_\_\_\_ duly organized and validly existing under the laws of State of \_\_\_\_\_ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guaranty;

(b) the execution, delivery and performance of this Guaranty by the Guarantor have been duly authorized by all necessary corporate action and approval;

(c) no approval of any Governmental Authority having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty;

(d) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity;

(e) neither the making nor performance by the Guarantor of this Guaranty violates or will violate (i) any provision of law or regulation applicable to the Guarantor or any of its properties or assets; (ii) any writ, order or decree of any Governmental Authority applicable to the Guarantor or any of its properties or assets; (iii) any governmental approval applicable to the Guarantor; or (iv) any provision of the organizational or constituent documents of the Guarantor, and such actions do not, and will not, result in a breach of, constitute a default under, require consent under, or result in the creation of any lien, charge or encumbrance upon any property or assets of the Guarantor under, any instrument or agreement to which the Guarantor is a party or by which the Guarantor or any of the Guarantor's properties or assets are bound or affected;

(f) after giving effect to this Guaranty and the contingent obligation evidenced hereby, Guarantor is solvent and has assets which, fairly valued, exceed its liabilities and has assets sufficient to satisfy and repay its obligations and liabilities; and

(g) Guarantor's financial statements delivered to Buyer on or before the date of this Guaranty fairly present in all material respect the financial position of the Guarantor as of the date thereof and the results of the operations of Guarantor for the periods indicated therein.

4. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by the Guarantor and the Buyer. Any such amendment, waiver or consent which is so granted by the Buyer shall apply only to the specific occasion, which is the subject of such amendment, waiver or consent and shall not apply to the occurrence of the same or any similar event on any future occasion.

5. WAIVER.

(a) Except as expressly required in Section 2 above, the Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) notice of any default or event of default under the Agreement or with respect to any of the Obligations or notice of any other adverse change in the Seller's financial condition or means or ability to pay any of the Obligations; (iii) presentment, demand, protest and notice of dishonor or nonpayment concerning the liabilities of the Guarantor or the Seller; and (iv) any right to require that any action or proceeding be brought against the Seller or any other Person, or to require that the Buyer seek enforcement of any performance against the Seller or any other Person, prior to any action against the Guarantor under the terms hereof.

(b) No delay of the Buyer in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of the Guarantor from any obligations hereunder. Except as provided herein, no notice to or demand on the Guarantor in any case by the Buyer hereunder shall entitle the Guarantor to any further notice or demand in any similar or other circumstances or constitute a waiver of the rights of the Buyer to take any other or future action in any circumstances without notice or demand.

(c) Except as otherwise provided in Section 4 above, the Guarantor shall not be released from any of its obligations under this Guaranty as a consequence of, and this Guaranty shall be effective and binding on the Guarantor despite (i) any lack of or limitation in the power or status of the Seller or the directors, officers or agents thereof, (ii) any lack of validity, legality or enforceability of any of the Obligations or the Agreement or any other document, instrument or agreement referred to therein, (iii) any indulgence which the Buyer may from time to time grant to the Seller, (iv) any exchange or release of, or any failure to perfect or otherwise protect an interest in, any collateral held by the Buyer or any furnishing to the Buyer of any additional collateral for any of the Obligations, (v) except for any applicable statute of limitation, any failure, delay or lack of diligence by the Buyer or any other Person to enforce, assert or exercise any right, privilege, power or remedy conferred on the Buyer under the Agreement or at law, or any action by the Buyer or such other Person granting indulgence or extension of any kind, (vi) the settlement, release or compromise of any Obligation, (vii) any change of status, composition, structure or name of the Seller by reason of bankruptcy, liquidation, insolvency, merger, dissolution, consolidation or reorganization, or otherwise, or (viii) except for full and final payment of any amounts owed under this Guaranty, any other circumstance which might otherwise constitute a defense against, or a legal or equitable discharge of, the Guarantor's liability under this Guaranty.

(d) The Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Agreement, in any such case without notice to or consent of the Guarantor.

(e) The Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment of any of the Obligations guaranteed hereby is at any time avoided or rescinded or must otherwise be restored or repaid by the Buyer as a result of the Seller or any other Person becoming bankrupt or otherwise, all as though such payments had not been made.

6. NOTICE. Any Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by nationwide courier service, as follows:

To Buyer:	Long Island Power Authority 333 Earle Ovington Boulevard, Suite 403 Uniondale, New York 11553 Attn: Director of Power Market Contracts Phone: (516) 719-7517 Facsimile: (516) 719-8602	To Guarantor: Name of Entity
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With a copy to:  
PSEG Long Island LLC  
333 Earle Ovington Boulevard  
Uniondale, New York 11553  
Attn: Vice President of Power Markets  
Phone: (516) 222-7700  
Facsimile: (516) 222-9137

Notice given by personal delivery shall be effective upon actual receipt. Notice given by mail or courier service shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if not received during the recipient's normal business hours. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

7. SUBROGATION. The Guarantor will not exercise any rights which it may acquire by way of subrogation under this Guaranty by any payment made hereunder or otherwise, until all the Obligations guaranteed hereunder have been paid in full or otherwise satisfied. If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all the Obligations guaranteed hereunder shall not have been paid in full or otherwise satisfied, such amount shall be held in trust for the benefit of the Buyer and shall forthwith be paid to the Buyer to be credited and applied to the Obligations of the Seller.

8. COLLECTION COSTS. In addition to any other obligation or indebtedness of the Guarantor pursuant to this Guaranty, the Guarantor shall be liable to the Buyer for, and shall pay to the Buyer on demand, all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses (including those for appellate proceedings)) incurred by the Buyer in enforcing performance of or collection of this Guaranty.

9. MISCELLANEOUS.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York.

(b) This Guaranty shall be binding upon the Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by the Buyer and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of the Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Guarantor may, without the prior written consent of Buyer, assign this Guaranty to any assignee that acquires all or substantially all of the assets of the Guarantor, if (i) such assignee enters into a written assumption agreement under which the assignee assumes all of the obligations of the Guarantor under this Guaranty, (ii) the assignee provides a legal opinion to Buyer, in form and substance reasonably acceptable to Buyer, regarding the enforceability of the assignee's obligations hereunder and (iii) Buyer reasonably determines that the assignee's financial condition is equal to or better than the financial condition of the Guarantor. Guarantor shall compensate Buyer for reasonable cost of counsel in connection with any assignment.

(c) This Guaranty embodies the entire agreement and understanding between the Guarantor and the Buyer and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof.

(d) Time is of the essence of this Guaranty. The remedies provided to the Buyer in this Guaranty are cumulative and not exclusive of any other remedies provided by law.

(e) Words importing the singular number hereunder shall include the plural number and vice versa and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

(f) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10. TERM & TERMINATION. Subject to the terms of Section 6(e), this Guaranty shall be and continue to be in full force and effect from the Effective Date until the later of the date



that (a) the Agreement terminates or (b) all Obligations shall have been paid and satisfied in full. Thereafter, subject to the terms of Section 6(e), this Guaranty shall terminate and no claim may be made against the Guarantor under this Guaranty. In addition to the foregoing, this Guaranty shall be terminated and released upon and to the extent that there shall have been a substitution under the Agreement of substitute Seller Security satisfying the requirements of the Agreement to the extent permitted by the Agreement.

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## **SUPPLEMENT 1: STANDARD CLAUSES FOR LIPA'S CONTRACTS**

For the purposes of this Supplement I, the Long Island Power Authority and its operating subsidiary the Long Island Lighting Company d/b/a LIPA are hereinafter referred to as "LIPA."

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than LIPA, whether a contractor, consultant, licensor, licensee, lessor, lessee or other party):

**NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of LIPA, and any attempts to assign the contract without LIPA's written consent are null and void. Contractor may, however, assign its right to receive payment without LIPA's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the New York State Finance Law (the "State Finance Law"), this Agreement shall not be valid, effective or binding upon LIPA until it has been approved by the State Comptroller and filed in his office.

**WORKER'S COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this Agreement shall be void and of no force and effect unless Contractor provides and maintains coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**NON-DISCRIMINATION REQUIREMENTS.** In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other New York State and Federal statutory and constitutional non-discrimination provisions, Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, age, disability, marital status, sexual orientation, genetic predisposition or carrier status. Furthermore, in accordance with Article 220-e of the New York Labor Law, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, national origin, sexual orientation, genetic predisposition or carrier status; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee for the performance of work under this Agreement.

**WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay,

as determined by the State Labor Department in accordance with the Labor Law and shall comply with all requirements set forth in Article 8 or Article 9 of the Labor Law whichever Article applies.

**NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 2878 of the Public Authorities Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to LIPA a non-collusive bidding certification on Contractor's behalf.

**INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, Contractor agrees, as a material condition of the contract, that neither Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC app. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**SET-OFF RIGHTS.** LIPA shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, LIPA's option to withhold for the purposes of set-off any moneys due to Contractor under this contract up to any amounts due and owing to LIPA with regard to this contract, any other contract with LIPA, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to LIPA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. LIPA shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by LIPA, its representatives, or the State Comptroller.

**RECORDS.** Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for six (6) years following the expiration or earlier termination of the contract. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. LIPA shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) Contractor shall timely inform LIPA in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**DISCLOSURE OF LIPA RECORDS OR INFORMATION.** If any third party requests that Contractor disclose LIPA records or information, as defined in subdivision 4 of section 86 of the Public Officers Law, to the extent permitted by law, Contractor shall notify LIPA of such request and LIPA shall determine, in accordance with Chapter 39 of the Laws of 2010, whether such LIPA records or information may be disclosed.

**EQUAL EMPLOYMENT FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the New York Executive Law: (i) Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status and shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation; (ii) at the request of LIPA, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status and that such union or representative will affirmatively cooperate in the implementation of Contractor's obligations herein; and (iii) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of this Agreement, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status. Contractor shall include the provisions of (i), (ii) and (iii) above, in every subcontract over twenty-five thousand dollars (\$25,000.00) for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "*Work*") except where the Work is for the beneficial use of Contractor.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES.** It is the policy of the Authority to provide Minority and Women-Owned Business Enterprises (M/WBEs) the greatest practicable opportunity to participate in the Authority's contracting activity for the procurement of goods and services. To effectuate this policy, Contractor shall comply with the provisions of this Supplement 1 and the provisions of Article 15-A of the New York Executive Law. The Contractor will employ good faith efforts to achieve the below-stated M/WBE Goals set for this contract, and will cooperate in any efforts of the Authority, or any government agency which may have jurisdiction, to monitor and assist Contractor's compliance with the Authority's M/WBE program.

Minority-Owned Business Enterprise (MBE) Subcontracting Goal	<b><u>0%</u></b>
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Women-Owned Business Enterprise (WBE) Subcontracting Goal	<b><u>0%</u></b>
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Waivers shall only be considered in accordance with the provisions of Article 15-A of the Executive Law.

To help in complying, Contractor may inspect the current New York State Certification Directory of Minority and Women Owned Businesses, prepared for use by state agencies and contractors in complying with Executive law Article 15–A, (the Directory) at the same location where the Authority’s bid document or request for proposals may be obtained or inspected and also at the Authority’s office at 333 Earle Ovington Boulevard, Suite 403, Uniondale, NY 11553. In addition, printed or electronic copies of the Directory may be purchased from the New York State Department of Economic Development, Minority and Women’s Business Division.

If requested, Contractor shall submit within ten (10) days of such request, a complete Utilization Plan, which shall include identification of the M/WBEs which the Contractor intends to use; the dollar amount of business with each such M/WBE; the Contract Scope of Work which the Contractor intends to have performed by such M/WBEs; and the commencement and end dates of such performance. The Authority will review the plan and, within twenty (20) days of its receipt, issue a written acceptance of the plan or comment–s on deficiencies in the plan.

The Contractor shall include in each Subcontract, in such a manner that the provisions will be binding upon each Subcontractor, all of the provisions herein including those requiring Subcontractors to make a good faith effort to solicit participation by M/WBEs.

If requested, the Contractor shall submit monthly compliance reports regarding its M/WBE utilization activity. Reports are due on the first business day of each month, beginning thirty (30) days after Contract award.

The Contractor shall not use the requirements of this section to discriminate against any qualified company or group of companies.

**CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Supplement I, the terms of this Supplement 1 shall control.

**GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Section 2880 of the Public Authorities Law and the guidelines adopted by LIPA thereto.

**PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of Contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with

the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of Contractor to meet with the approval of the State.

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the New York Laws of 1992), Contractor hereby stipulates that Contractor either (i) has no business operations in Northern Ireland, or (ii) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Article 165 of, the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
One Commerce Plaza  
Albany, New York 12245.

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Minority and Women's Business Development Division  
One Commerce Plaza  
Albany, New York 12245

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Contractor certifies that:

(a) Contractor has made commercially reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and woman-owned business enterprises, on this Project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; and

(c) Contractor agrees to make commercially reasonable efforts to provide notification to New York State residents of employment opportunities on this Project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. Contractor agrees to document these efforts and to provide said documentation to the State upon request.

(d) Contractor acknowledges that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**RECIPROCITY AND SANCTIONS PROVISIONS.** Contractor is hereby notified that if its principal place of business is located in a state that penalizes New York State vendors, and if the goods or services it offers are substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 amendments (Chapter 684, Laws of 1994) require that Contractor be denied contracts which it would otherwise obtain.

**PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), LIPA shall not purchase any apparel from any Contractor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) Contractor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with LIPA), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

**CONTRACTOR AFFIRMATION OF COMPLIANCE AND CERTIFICATION OF DISCLOSURE.** Contractor affirms that it understands and agrees to comply with the procedures of the Governmental Entity relative to permissible contacts as required by the State Finance Law § 139-j (3) and § 139-j (6)(b). Furthermore, Contractor certifies that the information disclosed pursuant to State Finance Law § 139-k (5) is complete true and accurate.

**OPTIONAL TERMINATION BY THE AUTHORITY.** LIPA reserves the right to terminate this contract in the event it is found that the certification filed by Contractor in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, LIPA may exercise its termination right by providing written notification to Contractor in accordance with the written notification terms of the contract.

**CONTINGENT FEES.** Contractor hereby certifies and agrees that (a) Contractor has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any LIPA contract or any amendment or modification thereto pursuant to any agreement or understanding for receipt of any form of compensation which in whole or in part is contingent or dependent upon the award of any such contract or any amendment or modification thereto; and (b) Contractor will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by LIPA.

**NONPUBLIC PERSONAL INFORMATION.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor's agents, officers, employees or subcontractors.

**IRAN DIVESTMENT ACT CERTIFICATION.** Contractor certifies under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to paragraph

(b) of subdivision 3 of Section 165–a of the State Finance Law. In addition, Contractor agrees that no person on the list created pursuant to paragraph (b) of subdivision 3 of Section 165–a of the State Finance Law will be utilized as a subcontractor on this contract.