

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (hereinafter the "Agreement"), dated [REDACTED] is entered into by and between Long Island Electric Utility Servco LLC, a New York limited liability company (hereinafter "Agent"), as agent of and acting on behalf of the Long Island Lighting Company d/b/a LIPA ("LIPA" or "Company") with offices located at 333 Earle Ovington Boulevard, Uniondale, New York 11553 and [OTHER PARTY] ("[REDACTED]"), a [REDACTED] corporation with offices located at [REDACTED]. Agent is executing this Agreement on behalf of Company in its capacity as agent for Company and Agent is not a principal party to this Agreement and is a third party beneficiary of this Agreement. COMPANY and the [OTHER PARTY] shall be sometimes referred to, individually, as "Party" and collectively, as the "Parties."

RECITALS

WHEREAS, the Parties have expressed an interest in entering into one or more potential business transactions or relationships ("Business Relationship") with each other; and

WHEREAS, the Parties, for their mutual benefit, and with their mutual objective to provide adequate protection and safeguards, may exchange and disclose certain Confidential Information (as hereinafter defined) to each other while exploring the possibility of a Business Relationship.

NOW, THEREFORE, in return for good and adequate consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. From and after the date written above, the Parties agree to hold in trust and confidence and not to disclose to any third party any Confidential Information (as described below), whether of a written, visual, magnetically stored and/or electronically retrievable nature, as well as any physical samples thereof, which is disclosed and provided by one Party to the other Party, and to limit its use as set forth in this Agreement.
2. The term "Confidential Information" means information disclosed by a Party to the other Party, including, but not limited to: business secrets; business information; business plans; financial and pricing information; business practices; financial statements and reports; project specifications; projections; schematics and drawings; trade secrets; processes; materials; customer lists; supplier lists; sales volume; territories; markets; current, future or potential acquisitions; technical, production, operational, marketing or sales information or any and all other financial, business, organizational and technological information related to a Party's business and/or organization, whether or not such information is specifically marked "Confidential" or other similar legend. "Confidential Information" shall include all writings, notes, memoranda, media (collectively, "Notes") made by a Party or its employees, agents or servants with respect to such Confidential Information.
3. "Confidential Information" does not include any information which: (a) at the time of receipt was already possessed by the receiving Party or was already in the public domain;(b)after

being provided by the disclosing Party entered the public domain without any action or fault of the receiving Party; (c) is obtained from any individual, firm or entity which had the unrestricted right to disclose it; (d) is required to be disclosed under applicable law, regulatory process, a court or governmental order (which requirement receiving Party shall use reasonable efforts to avoid or minimize by prior notice to disclosing Party for a protective order, agreement or otherwise); or (e) is independently developed by the receiving Party without knowledge of or access to the disclosing Party's Confidential Information.

4. Disclosure Pursuant to Legal Process; Applicable Law Receiving Party's Disclosure Pursuant to Legal Process. To the extent lawfully permitted to do so and in the event that the receiving Party believes that it is required to disclose Confidential Information pursuant to applicable law, regulatory process, a court order or other governmental order pursuant to Section 3(d) above, the receiving Party shall promptly notify the disclosing Party in writing and provide the disclosing Party with the basis for its belief that it is required to disclose Confidential Information. Prior to any such disclosure, the receiving Party shall (i) provide the disclosing Party at least ten (10) days prior to any such disclosure in order to enable the receiving Party to respond to such notice by seeking a protective order or similar measure to protect the Confidential Information from disclosure, (ii) provide an opinion of the disclosing Party's legal counsel that disclosure is not required by applicable law, regulatory process, a court order or governmental order, or provide only that portion of the Confidential Information which it is advised by legal counsel is legally required, (iii) use its reasonable best efforts to cause the applicable governmental entity to treat such information in a confidential manner and to prevent such information from becoming part of the public domain, and (iv) cooperate with disclosing Party's attempts to assure confidential handling of such information.

5. 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 disclosing Party, LIPA will (i) notify the disclosing Party of the request, (ii) provide the affected disclosing Party with the information LIPA intends to provide in response to the FOIL request, (iii) provide the affected disclosing Party the opportunity to provide information regarding the need for confidential treatment, including pursuant to the NYS Public Officers Law § 87, (iv) evaluate the affected disclosing Party'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 affected disclosing Party so that the affected disclosing Party may seek to appeal LIPA 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).

6. All written Confidential Information shall remain the property of the disclosing Party and immediately upon (i) the decision by either Party not to proceed further with consideration of the Business Relationship or (ii) a request by the disclosing Party at any time (which will be effective upon receipt, or three days after being mailed first class prepaid postage to the receiving Party), the receiving Party will turn over to the disclosing Party all Confidential Information of

the disclosing Party and all Notes containing any such Confidential Information and any and all copies or extracts thereof, or destroy all of the above upon notice to and approval of the disclosing Party; provided, however, that the receiving Party shall be permitted to retain a file copy of Confidential Information in accordance with the terms of this Agreement. Further, any information held in computer, word processing or other such systems shall only be required to be destroyed or returned to the extent reasonably practical. However, such return or destruction will not abrogate the continuing obligation of confidentiality hereunder.

7. The Parties may disclose the Confidential Information to employees, consultants, employees of affiliates and attorneys on a “need to know” basis, provided that such persons have agreed to adhere to the terms of this Agreement. Company may disclose Confidential Information to Agent, its employees, consultants and attorneys on a “need to know” basis. Company shall direct Agent to comply with the terms hereof and shall be responsible for any unauthorized disclosure of Confidential Information or breach of this Agreement by Agent.

8 Neither this Agreement nor the disclosing or receipt of Confidential Information shall constitute or imply any promise or intention to make any purchase of products or services by either Party or to enter into the Business Relationship.

9. The laws of the State of New York shall govern this Agreement, except for New York’s conflicts of laws provisions that would defeat the application of its substantive laws to this Agreement. Any disputes or lawsuits arising out of or related to this Agreement resulting in litigation shall be litigated in the state courts located in New York or the U.S. District Court for the Eastern District of New York.

10. The receiving Party understands and acknowledges that any disclosure or misappropriation of any Confidential Information in violation of this Agreement may cause the disclosing Party irreparable harm, the amount of which would be difficult to ascertain, and therefore agrees that the disclosing Party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the disclosing Party shall deem appropriate consistent with this Agreement. Such right of the disclosing Party is in addition to the remedies otherwise available to the disclosing Party at law or equity. Receiving Party expressly waives the defense that the remedy in damages will be adequate and any requirement in an action for specific performance or injunction for the posting of a bond by the disclosing Party.

11. In the event the receiving Party directly or indirectly obtains information pertaining to any Company or Agent employee or Company customer, it shall hold said information in trust and confidence and comply with all Company or Agent requests and requirements pertaining to such Company or Agent employee or Company customer related information in accordance with the Privacy Regulations (“HIPAA”) and the Identity Theft Regulations.

12. This Agreement shall be binding on all successors of the Parties.

13. The receiving Party has established policies and procedures to identify indications of possible identity theft risks (“Red Flags”) to Company’s or Agent’s employees or Company’s

customers that may arise in the performance of contractual undertakings on behalf Company. The receiving Party will take steps to mitigate and prevent identity theft. The receiving Party shall immediately notify the disclosing Party if it is reasonable to believe that a breach of security has occurred.

14. This Agreement constitutes the entire and only agreement between the Parties relating to the confidentiality of information, and supercedes any previous agreements between the Parties with respect thereto.

15. Confidential Information disclosed hereunder shall at all times remain, as between the Parties, the property of the party disclosing such Confidential Information. No license under any trade secrets, copyrights, or other rights is granted by this Agreement or any disclosure of confidential information hereunder.

16. The terms and conditions of this Agreement may not be changed, amended or waived unless in writing signed by both Parties. There are no third party beneficiaries to this Agreement, except with respect to Agent.

17. This Agreement may be executed in counterparts. Each shall be deemed an original, but together shall constitute one and the same instrument.

18. The receiving Party's obligations hereunder are in addition to, and not exclusive of, any and all other obligations and duties owed to disclosing Party and shall remain in effect for the greater of (i) five (5) years from the date of the receiving Party's receipt of such information, or (ii) the term of any agreement entered between the receiving Party and disclosing Party or its affiliates and subsidiaries; provided, however, that with respect to Company employee or customer information, the receiving Party's obligations and duties hereunder shall continue as provided under applicable law and Company's policies and practices.

19. Except as otherwise mutually agreed to, [OTHER PARTY] may not use the name of Company or Agent in connection with any advertising or publicity materials or activities without the prior written consent of Company or Agent (as the case may be).

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed by its duly authorized representative, as of the first date written above.

Long Island Electric Utility Servco LLC
As agent of and acting on behalf of the
Long Island Lighting Company d/b/a LIPA

[OTHER PARTY]

By: _____
(Signature)
Name: _____
(Print Name)
Title: _____

By: _____
(Signature)
Name: _____
(Print Name)
Title: _____

Date: _____

Date: _____