

ADDENDUM #2: Issued May 11, 2021

**LIPA'S PREFERRED BULK ENERGY STORAGE
BUILD-OWN-OPERATE-TRANSFER AGREEMENT BETWEEN
LONG ISLAND POWER AUTHORITY
AND
[NAME OF SELLER]**

[MONTH/DAY/YEAR]

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

REVISION HISTORY

Issue Date	Revised Sections
<u>May 10, 2021</u>	<u>Issue Date</u>
<u>May 11, 2021</u>	<u>Revisions: Numbering of all Articles and Sections , Appendix 7.1</u>

Formatted: Font: Not Bold

Formatted: Font: Not Bold

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1: GENERAL DEFINITIONS	1
1.1 Definitions	1
1.2 Construction	17
ARTICLE 2: TERM OF AGREEMENT	18
2.1 Term	18
2.2 Section Left Intentionally Blank	18
2.3 Early Termination by Buyer	18
2.4 Early Termination by Seller	19
2.5 Effective Date	19
ARTICLE 3: OBLIGATIONS AND DELIVERIES	20
3.1 Delivery and Sale of Products	20
3.2 Conditions for In-Service Date and Project COD	22
3.3 Daily Delay Liquidated Damages and COD Liquidated Damages	24
3.4 Buyer’s Resale of Products	24
3.5 Progress Behind Schedule	25
3.6 Testing	25
3.7 Section Left Intentionally Blank	26
3.8 Development of Operating Instructions	26
3.9 Technical Requirements	26
3.10 Test Energy	26
3.11 Station Service Energy	27
3.12 No Immunity Claim	27
3.13 Buyer’s Metering Device	27
3.14 Adjustment for Inaccurate Meters	28
3.15 Monitoring	29
3.16 Change in Law	30
3.17 Buyer’s Access to Records	30
3.18 Seller as Owner of the Project	30
3.19 Dispatch	30

3.20	Forced Outages.....	31
3.21	Effect of System Emergency on Outage Scheduling	31
3.22	Response to Forced Outages.....	31
3.23	Schedule Deviations	31
3.24	Suspension.....	32
3.25	Restoration of Service	32
3.26	Consequences of Buyer’s Suspension.....	32
3.27	Role of Seller.....	32
3.28	Role of Buyer	33
ARTICLE 4: INTERCONNECTION ARRANGEMENTS		35
4.1	General	35
4.2	Operation and Maintenance of Electrical Interconnection Facilities.....	35
4.3	Reimbursement of Interconnection Costs	35
4.4	Cooperation.....	35
4.5	CRIS Rights.....	35
ARTICLE 5: SALE OF CONTRACT CAPACITY, ENERGY, AND ANCILLARY SERVICES.....		37
5.1	Monthly Capacity Payments; Renewable Attributes.....	37
5.2	Monthly Energy Payment.....	37
5.3	Excused Outages	37
5.4	Equivalent Availability and Chronic Underperformance.....	38
ARTICLE 6: EVENTS OF DEFAULT; REMEDIES		40
6.1	Seller Events of Default.....	40
6.2	Buyer Events of Default	40
6.3	Declaration of an Early Termination Date and Calculation of Termination Payment.....	41
6.4	Notice of Payment of Termination Payment.....	41
6.5	Disputes With Respect to Termination Payment	41
6.6	Suspension of Performance	41
ARTICLE 7: PAYMENT		43
7.1	Billing Period	43
7.2	Invoices	43
7.3	Timeliness of Payment	44

7.4	Disputes and Adjustments of Invoices.....	44
7.5	Payment Obligation.....	44
ARTICLE 8: LIMITATIONS, MERCHANTABILITY AND FITNESS.....		46
8.1	Limitation of Liability.....	46
ARTICLE 9: SELLER SECURITY.....		47
9.1	Seller Security.....	47
9.2	Seller Security Replacement.....	47
9.3	Draw on Seller Security.....	48
9.4	Replenishment.....	48
9.5	Expiration of Letter of Credit.....	48
ARTICLE 10: GOVERNMENTAL CHARGES.....		50
10.1	Cooperation.....	50
10.2	Governmental Charges.....	50
ARTICLE 11: INSURANCE.....		51
11.1	Insurance Required.....	51
11.2	Insurance Notice to Buyer.....	51
ARTICLE 12: MISCELLANEOUS.....		52
12.2	Buyer’s Representations and Warranties.....	53
12.3	Indemnity.....	53
12.4	Claims.....	55
12.5	Section Left Intentionally Blank.....	55
12.6	Governing Law.....	55
12.7	Currency.....	56
12.8	Notices.....	56
12.9	General.....	56
12.10	Audit.....	57
12.11	Forward Contract.....	57
12.12	Counterparts.....	57
12.13	Amendment.....	57
12.14	Compliance With Legal Requirements, Regulations and NYISO Rules.....	57
12.15	Compliance with Manufacturer’s Requirements.....	57
12.16	Waiver.....	58
12.17	Agency.....	58

12.18	Severability.....	58
12.19	Negotiated Agreement.....	58
12.20	Local Workers.....	58
12.21	Business Continuity Plan.....	59
12.22	Seller’s Responsibility with Minority, Women-Owned and Service-Disabled Veteran Owned Businesses.....	59
ARTICLE 13: DISPUTE RESOLUTION.....		60
13.1	Notice.....	60
13.2	Response.....	60
13.3	Resolution of Dispute.....	60
13.4	Tolling Statute of Limitations.....	60
ARTICLE 14: FORCE MAJEURE EVENTS.....		62
14.1	Definition of Force Majeure Event.....	62
14.2	Force Majeure Event.....	62
14.3	Due Diligence.....	62
14.4	Extended Force Majeure Events.....	63
14.5	Insurance Proceeds.....	63
14.6	Right to Terminate or Discontinue Obligations.....	63
14.7	Liability Following Termination.....	64
ARTICLE 15: ASSIGNMENT; LENDERS; CONTROL OF SELLER.....		65
15.1	Assignment by Seller.....	65
15.2	Assignment by Buyer.....	66
15.3	Lender(s).....	66
15.4	Rights of Lender.....	67
15.5	Cure Rights of Lender.....	67
15.6	Control of Seller.....	68
15.7	Sale of Project.....	68
15.8	New York State Finance Law Section 138.....	68
15.9	Buyer’s Purchase of the Project.....	68
15.10	Key Personnel.....	69
15.11	Removal/Right to Approve Key Personnel.....	69
ARTICLE 16: CONFIDENTIALITY.....		71
16.1	Confidential Information.....	71

16.2	Compliance With the Freedom of Information Law	71
16.3	Treatment of Otherwise Publicly Available Information	72
16.4	Term of Confidentiality	72
16.5	FERC.....	72
16.6	SEC	72
16.7	Confidential Treatment.....	72

APPENDICES

1	DESCRIPTION AND LOCATION OF THE PROJECT
2	PROJECT DEVELOPMENT MILESTONES
3	CONTRACT CAPACITY TEST AND OTHER TESTS
4	CAPACITY PAYMENT
5	ENERGY PAYMENT
6	AVAILABILITY ADJUSTMENT FOR MONTHLY CAPACITY PAYMENT
7	GUARANTEED PERFORMANCE ADJUSTMENTS
8	SAMPLE INVOICE
9	OPERATING LIMITS
10	INSURANCE REQUIREMENTS
11	FORM OF SELLER LETTER OF CREDIT
12	FORM OF SELLER GUARANTY
13	MEETING, SITE ACCESS, INSPECTIONS, REPORTING, AND HAND OVER
14	DELIVERY POINT
15	PARTICIPATION BY MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES
16	PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES
17	OUTAGES
18	TECHNICAL REQUIREMENTS
19	TRAINING PROGRAM

20 KEY PERSONNEL

21 FORM OF PURCHASE AND SALE AGREEMENT

SUPPLEMENTS

SUPPLEMENT 1: STANDARD CLAUSES FOR LIPA'S CONTRACTS

SUPPLEMENT 2: LIPA'S STANDARD PROCUREMENT FORMS

BUILD-OWN-OPERATE TRANSFER AGREEMENT

THIS ENERGY STORAGE BUILD-OWN-OPERATE-TRANSFER AGREEMENT, dated as of **[DATE]** (this “Agreement”), 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 **[NAME OF ENTITY]**, a [(e.g., **LLC, LP, CORPORATION**)] organized and existing under the laws of the State of **[STATE]**, with its headquarters at **[ADDRESS], [CITY], [STATE] [ZIP CODE]** (“Seller” or “Contractor”) (collectively, Buyer and Seller are also referred to herein as the “Parties”).

RECITALS:

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

WHEREAS, pursuant to the Amended and Restated Operation Services Agreement dated December 31, 2013, 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, LLC, PSEG Long Island LLC 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 PSEG Energy Resources & Trade LLC provides certain services, such as purchasing power and fuel procurement, to Buyer related to these responsibilities;

WHEREAS, Seller intends to construct, own, operate and maintain the Project, as defined below, a[n] **[DESCRIBE PROJECT]** energy storage facility with a nominal rating of **[XXX MW_{AC}]**, to be located at **[DESCRIBE LOCATION]** as further described in **APPENDIX 1 DESCRIPTION AND LOCATION OF THE PROJECT**;

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Products, as defined below and in accordance with the provisions of this Agreement;

WHEREAS, Buyer intends to use such Products to meet the needs of its electric customers; and

WHEREAS, upon the expiration of this Agreement, Seller desires to sell the Project to the Buyer and Buyer is willing to purchase the Project from Seller, as further described in Section 15.9.

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

The following initially capitalized terms and phrases as and when used in this Agreement shall have the respective meanings set forth below:

Act – means the LIPA Act (Public Authorities Law of the State of New York § 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” may be by either management authority, contract or equity interest, including but 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 13.1.

Agreement – has the meaning set forth in the preamble.

Ambient-Adjusted Contract Capacity – has the meaning set forth in Section 5.5.1(i).

Ancillary Services – has the meaning set forth in the NYISO Rules.

Assignment – has the meaning set forth in Section 15.1.1.

Attribute Deficiency Month – has the meaning set forth in Section 3.1.5(ii).

Average Monthly Equivalent Capacity - has the meaning set forth in Section 5.11.1(c).

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.

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 6.2.

Buyer's Metering Device – means the electric meter and associated equipment, including metering transformer and meter for measuring delivery of Energy produced by the Project, located at the Delivery Point.

Buyer's Operations and Maintenance Contractor – means the contractor Buyer selects to perform operations and maintenance services on the Project following the termination of this Agreement.

Capacity – means the capability to generate and deliver Energy measured in MW and includes any Installed Capacity and/or Unforced Capacity, recognized by NYISO with respect to the Project.

Capacity Charge– means the annual price in \$/MW for Contract Capacity set forth in APPENDIX 4: CAPACITY PAYMENT.

Category 3 Storm – means a category 3 storm as defined by the Saffir-Simpson Hurricane Wind Scale.

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.

Charging Energy - means Energy supplied by Buyer and delivered to the Project to be stored by the Project.

Chronic Underperformance – has the meaning set forth in Section 5.5.1(iv).

Claims – means all third-party claims or actions, threatened or filed prior to or after the termination of this Agreement and, whether groundless, false, fraudulent or otherwise, that directly relate to this Agreement, and the resulting losses and damages, and reasonable expenses, attorneys' fees, consultants' fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed.

Claiming Party – has the meaning set forth in Section 14.3.

COD Liquidated Damages – has the meaning set forth in Section 3.3.1.

Commissioning - means that all Seller's Conditions have occurred pursuant to Section 3.2.1.

Confidential Information – has the meaning set forth in Section 16.1.2.

Confidential Parties – has the meaning set forth in Section 16.1.2.

Connecting Transmission Owner – means Long Island Lighting Company d/b/a LIPA.

Connecting Transmission Owner's Attachment Facilities – has the meaning set forth in the Interconnection Agreement.

Connecting Transmission Owner's Electrical System – means all equipment and facilities (including the Electrical Interconnection Facilities (other than the Developer Attachment Facilities)) now or hereafter comprising the Connecting Transmission Owner's system for transmission and/or distribution of electricity, as modified or expanded from time to time.

Consent Agreement – has the meaning set forth in Section 15.3.

Consent Delay – means the number of Days, notwithstanding Seller's commercially reasonable efforts to diligently obtain one or more Consents, that a delay in securing such Consents occurs and continues, [beyond **[DATE]**], including the Day on which such delay commences and excluding the Day on which such delay ends; *provided, however*, that any delay in securing a Consent due to an act or omission of Seller shall not be considered a Consent Delay.

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

Consents Period – means the time from the Effective Date to the Construction Milestone.

Construction Milestone – means when Seller has issued a notice to proceed to any contractor performing substantial work at the Site and physical activity has occurred at the Site, such as grading, earthwork, equipment installation, or other civil works, signaling construction has begun with regards to Early Termination in Section 2.3 and Daily Delay Liquidated Damages in Section 3.3.

Construction Milestone Date shall be set to ninety (90) Days following the Effective Date with regards to Early Termination in Section 2.3 and Daily Delay Liquidated Damages in Section 3.3.2.

Construction Milestone Date Extended – means the Construction Milestone Date plus Excused Failure Days.

Construction Milestone Deadline – shall be set equal to the Construction Milestone Date Extended plus one hundred and twenty (120) Days.

Construction Period – means the time from the Construction Milestone to the Project COD.

Contract Capability Period – means the Summer Capability Period or Winter Capability Period, as applicable.

Contract Capacity – means (i) as of the Project COD, the Capacity of the Project as determined pursuant to Section 3.2; and (ii) for any Contract Capability Period after Project COD, the Capacity of the Project as demonstrated by the applicable seasonal Contract Capacity Test adjusted to ISO Conditions, provided that the Contract Capacity shall not exceed one hundred and five percent (105%) of the Project Capacity.

Contract Capacity Buy-Down Liquidated Damages – has the meaning set forth in Section 3.1.5.

Contract Capacity Test – means the test set forth in APPENDIX 3 CONTRACT CAPACITY TEST AND OTHER TESTS for establishing the Contract Capacity.

Contract Price(s) – means the annual Capacity Charge and/or the annual Energy Charge set forth in Appendices 4 and 5 respectively.

Contract Year – means each of the consecutive twelve (12) Month periods commencing with the Month of Project COD and each anniversary of Project COD, through the end of the Term.

Contractor – has the meaning set forth in the preamble.

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 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 or any other rating agency agreed by the Parties.

Credit Requirements – means, with respect to any Person, that such Person has a Credit Rating: (a) "Baa2" or higher from Moody's or (b) "BBB" or higher from S&P.

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

Cycle – means the process of charging a battery with the intent of subsequently discharging it as required into load.

Daily Delay Liquidated Damages – means Liquidated Damages in an amount equal to three hundred dollars (\$300) per MW per Day multiplied by the Project Capacity (MW) for each Day:

- (i) commencing with the Day following the Construction Milestone Date Extended and continuing to and including the Day on which Seller achieves the Construction Milestone; and/or
- (ii) commencing with the Day following the Project COD Target Date Extended and continuing to and including the Day on which the In-Service Date occurs, in case of either clause (i) or (ii) above, up to a maximum of one hundred twenty (120) Days.

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

Day-Ahead Market – has the meaning set forth in the NYISO Rules.

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

Delivered Energy – means Energy that is delivered by Seller to Buyer at the Delivery Point pursuant to a Dispatch request as measured by Buyer’s Metering Devices.

Delivery Point – means the point of interconnection between Developer Attachment Facilities and the Connecting Transmission Owner’s Attachment Facilities, as shown in APPENDIX 14 DELIVERY POINT.

Developer Attachment Facilities – has the meaning set forth in the Interconnection Agreement.

Disclosing Party – has the meaning set forth in Section 16.1.2.

Dispatch – means a request to Seller from Buyer for Delivered Energy and/or Ancillary Services at the Delivery Point, in each case complying with the notification requirements of Article 9, and within the Operating Limits contained in APPENDIX 9: OPERATING LIMITS.

DMNC or Dependable Maximum Net Capability – means the Capacity demonstrated by the Project during a Contract Capacity Test for a NYISO Capability Period.

Duty Cycle – means the operating regime of a battery including factors such as charge and discharge rates, depth of discharge, cycle duration, and length of time in the standby mode.

Duty Cycle Test – means the Duty Cycle test set forth in APPENDIX 3 CONTRACT CAPACITY TEST AND OTHER TESTS.

Early Termination Date – has the meaning set forth in Section 6.3

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 (b) filed in the office of the State Comptroller (as provided for in Supplement 1).

Electrical Interconnection Facilities – means the electrical interconnection facilities required to connect the Project to the Connecting Transmission Owner’s Electrical System, as set forth in the Interconnection Agreement, including all “Attachment Facilities,” “System Upgrade Facilities,” and “System Deliverability Upgrades” (as such terms are defined in the Interconnection Agreement).

Energy – means three-phase, 60-hertz alternating current electric energy (including Test Energy), expressed in MWh.

EPC Contract – has the meaning set forth in Section 3.1.6.

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 which may be allowed in the discretion of a court before which such bankruptcy, insolvency or creditors rights proceedings may be pending.

Equivalent Availability – has the meaning set forth in Section 5.5(ii).

ERIS Rights or Energy Resource Interconnection Service Rights – has the meaning set forth in the NYISO Rules.

Excused Failure Day – means a Day on which (a) Seller has failed or been unable to perform its obligations under this Agreement resulting directly from (i) any Force Majeure Event affecting Seller; (ii) any Consent Delay, (iii) any Interconnection Delay, or (iv) any delay caused by Buyer; and (b) any other failure by Seller occurs that is otherwise excused under the terms of this Agreement. Excused Failure Days other than those resulting solely from Interconnection Delay shall not exceed one hundred eighty (180) Days in the aggregate.

Excused Outage – has the meaning set forth in Section 5.4.

Execution Date – means the date by which both Parties have executed this Agreement.

Extended Force Majeure Event – has the meaning set forth in Section 14.4.1.

Federal Power Act – means the Federal Power Act, as it may be amended from time to time.

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

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

Final Testing – has the meaning set forth in Section 15.9.

FOIL – has the meaning set forth in Section 16.2.

Force Majeure Event – has the meaning set forth in Article 14.

Force Majeure Remedy Plan – has the meaning set forth in Section 14.4.1

Forced Outage – means (i) an Outage of the Project due to an unanticipated failure or unavailability of one or components of the Project; (ii) NERC Event Types U1, U2 and U3 as set forth in Appendix 17: OUTAGES, which is not otherwise an Excused Outage; (iii) Maintenance Outage hours in excess of the maximum limits in APPENDIX 9: OPERATING LIMITS; (iv) any failure of the Project to provide Energy or Ancillary Services pursuant to a Dispatch request, 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.

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), and (iii) any court or governmental tribunal.

Governmental Charges – has the meaning set forth in Section 10.2.

Guaranteed Ramp Rate – has the meaning set forth in APPENDIX 7: GUARANTEED PERFORMANCE ADJUSTMENTS.

Guaranteed Roundtrip Efficiency – has the meaning set forth in APPENDIX 7: GUARANTEED PERFORMANCE ADJUSTMENTS.

Guaranteed Roundtrip Efficiency Credit – has the meaning set forth in APPENDIX 7: GUARANTEED PERFORMANCE ADJUSTMENTS.

Guaranteed Roundtrip Efficiency Monthly Variance - has the meaning set forth in APPENDIX 7: GUARANTEED PERFORMANCE ADJUSTMENTS.

Guarantor – means the guarantor, if any, providing a Guaranty hereunder.

Guaranty – means the instrument obligating the Guarantor to unconditionally guarantee the payment obligations of Seller which shall be in substantially the form of APPENDIX 12: FORM OF SELLER GUARANTY.

Hand Over Period – means the [four (4) Months] prior to the expiration of the Term when Seller agrees to comply with the requirements set forth in APPENDIX 13: MEETING, SITE ACCESS, INSPECTIONS, REPORTING, AND HAND OVER to successfully transition ownership of the Project to Buyer.

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 environmental laws.

Holding Company Act – means the Public Utility Holding Company Act of 2005, as such Act may be amended from time to time.

Hour Ahead Market – has the meaning set forth in the NYISO Rules.

Indemnifying Party – has the meaning set forth in Section 12.3.1

Independent Engineer – means an engineer engaged by Seller from a nationally recognized engineering firm with energy storage experience, as reasonably acceptable to Buyer.

In-Service Date – has the meaning set forth in Section 3.2.1.

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

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

Intellectual Property - means all intellectual property or other proprietary rights including all rights of inventorship and authorship, inventions, licenses, patents, patent applications and know-how for any product, process, method, machine, manufacture, design, composition of matter or any new or useful improvement thereof, as well as copyrights, trademark, trade dress and service mark rights and all rights in trade secrets, computer software, data and databases, calculations, and mask works.

Interconnection Agreement – means the agreement, by and between the Connecting Transmission Owner, Seller and the NYISO, in substantially the form set forth in the NYISO’s Open Access Transmission Tariff (“OATT”) that governs the interconnection between the Connecting Transmission Owner’s Electrical System and the Project; prior to the execution and delivery of the Interconnection Agreement, references in this Agreement shall refer to the form thereof set forth in the NYISO’s OATT.

Interconnection Costs – means all costs paid or incurred by Seller pursuant to the Interconnection Agreement for the Connecting Transmission Owner’s Attachment Facilities, the System Upgrade Facilities and the System Deliverability Upgrades on the Connecting Transmission Owner’s Electric System, documented by Seller, including any costs Buyer has directed Seller to incur as a consequence of any written election of Buyer pursuant to Section 4.5.

Interconnection Delay – means any delay for reasons outside Seller’s control in Connecting Transmission Owner’s completion of Connecting Transmission Owner’s Attachment Facilities, the System Upgrade Facilities or the System Deliverability Upgrades and approval for parallel operation for the Project, beyond [DATE]. For the avoidance of doubt, a delay in the foregoing shall be deemed to be an Interconnection Delay only if Seller has timely filed all required

documents and paid all applicable fees and is not in default or otherwise in breach of the Interconnection Agreement, but the Project is not able to be interconnected by the date set forth in the Interconnection Agreement for reasons outside of Seller's control.

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.

ISO Conditions – means fifty-nine degrees Fahrenheit (59°F) dry bulb temperature, sixty percent (60%) relative humidity, at sea level.

Key Personnel – means Seller personnel designated as essential personnel for purposes of this Agreement as identified in APPENDIX 20: KEY PERSONNEL.

kWh – means kilowatt-hours.

Large Generator Interconnection Agreement – means the agreement by and between the Connecting Transmission Owner, Seller and the NYISO, in substantially the form set forth in the NYISO's Open Access Transmission Tariff ("OATT") that governs the interconnection between the Connecting Transmission Owner's Electrical System and the Project; prior to the execution and delivery of the Interconnection Agreement, references in this Agreement shall refer to the form thereof set forth in the NYISO's OATT.

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

Lender – means any 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 transferable to any assignee of this Agreement from Buyer in accordance with the terms of Section 15.2 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) net assets of not less than one 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. A Letter of Credit will be

in an acceptable form if substantially similar to the form attached as APPENDIX 11: FORM OF SELLER LETTER OF CREDIT hereto.

LIPA – means the Long Island Power Authority, herein referred to as the Buyer.

Liquidated Damages – has the meaning set forth in Sections 2.3, 3.1.6 and 3.3.

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 transactions under this Agreement pursuant to Section 6.3, determined by such Non-Defaulting Party in a commercially reasonable manner.

Maintenance Outage – means NERC Event Types MO and ME as set forth in attached APPENDIX 17 OUTAGES, 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.

Minimum Required Consents – has the meaning set forth in Section 2.3.1.

Minimum Required Consents Application Target Date – means the date set forth on APPENDIX 2: PROJECT DEVELOPMENT MILESTONES that is the date when Seller is expected to have completed and filed all applications for the Minimum Required Consents.

Minimum Required Consents Receipt Target Date – means the date set forth on APPENDIX 2: PROJECT DEVELOPMENT MILESTONES that is the date when Seller is scheduled to receive each of the Minimum Required Consents.

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 Capacity Payment – means the amount to be paid by Buyer to Seller for Buyer's purchase of Contract Capacity for a particular Month, as set forth in Section 5.8 and calculated pursuant to APPENDIX 4: CAPACITY PAYMENT.

Monthly Energy Charge – is set forth in APPENDIX 5: ENERGY PAYMENT.

Monthly Energy Payment – means the amount to be paid by Buyer to Seller for Delivered Energy as set forth in Section 5.2 and calculated as set forth in APPENDIX 5: ENERGY PAYMENT.

Monthly Invoice – means an invoice delivered after the end of a Month, in accordance with Article 7.

Monthly Pass-Through Charges – has the meaning set forth in APPENDIX 5: ENERGY PAYMENT.

Moody's – means Moody's Investors Service, Inc. or its successor.

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

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

MWBE or M/WBE – means Minority-and Women-Owned Business Enterprises, as more fully described in APPENDIX 15 PARTICIPATION BY MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES.

NERC – means the North American Electric Reliability Corporation or any successor government agency.

New York Control Area – has the meaning as described in the NYISO Rules.

Non-Claiming Party – has the meaning set forth in Section 14.3.

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

Noticed Party – has the meaning set forth in Section 13.1.

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

NYISO Capability Period – means, as applicable, the Summer Capability Period or Winter Capability Period as defined by the NYISO.

NYISO Capability Period Test Window – means the window of time within a NYISO Capability Period in which the NYISO requires generator output capability testing to establish the Installed Capacity of the generator for the NYISO Capability Period in question.

NYISO Installed Capacity Market – means the markets which are administered by the NYISO in which Installed Capacity is sold and purchased pursuant to the NYISO Rules.

NYISO Markets – means markets administered by the NYISO.

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 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.

Operating Instructions – means those procedures developed by the Parties pursuant to Section 3.12.

Operating Limits – means the limits and constraints described in APPENDIX 9: OPERATING LIMITS relating to the operation of the Project beyond which Seller is not obligated to operate the Project for any reason.

Other Consents – means Consents other than Minimum Required Consents.

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

Outage Schedule Manual – has the meaning set forth in the NYISO Rules.

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.

Prepayment Notice – has the meaning set forth in Section 7.2.3(viii).

Planned Outage – means NERC Event Types PO and PE, as set forth in attached APPENDIX 17 OUTAGES, 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 the NYISO as contemplated under Section 8.3 and specifically excludes any Maintenance Outage or Forced Outage.

Prepayment Notice –has the meaning set forth in Section 7.2.3(vii).

Products – means Contract Capacity, Delivered Energy, Renewable Attributes, and Ancillary Services.

Project – means the Storage Facility as described in APPENDIX 1 DESCRIPTION AND LOCATION OF THE PROJECT.

Project Capacity – means the electric storage Capacity (in MW) with a maximum discharge rate of [XX] MWh over a continuous [specify number of hours] (X) hour period.

Project COD – has the meaning set forth in Section 3.2.1.

Project COD Deadline – shall be set equal to the Project COD Target Date Extended plus [ninety (90) Days].

Project COD Target Date – means [DATE TO BE INSERTED WHICH MAY TIE TO A SPECIFIED MILESTONE] or such later date to which the Project COD Target Date shall be extended in accordance with Section 3.2.3.

Project COD Target Date Extended – is equal to the Project COD Target Date plus Excused Failure Days.

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 power generation industry in the Northeast region and/or NERC and the energy storage industry, generally) 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. With respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

- A. equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project's needs;
- B. sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Project properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions whether caused by events on or off the Site;
- C. preventive, routine, and non-routine maintenance and repairs are performed on a basis that is reasonably expected to result in reliable, long term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- D. appropriate monitoring and testing are performed in a manner that is reasonably expected to result in equipment functioning as designed;
- E. equipment is not operated in a reckless manner, in violation of manufacturer's guidelines and warranties or in a manner unsafe to workers, the general public, or the interconnected system or contrary Legal Requirements, including any environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive loading, frequency, polarity, synchronization, and/or control system limits;
- F. equipment and components meet or exceed the standard of durability that is generally used for electric generation operations in the region and designed to function to the maximum extent possible over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions; and
- G. equipment, components, and processes are appropriately permitted with any Governmental Authority and are operated and maintained in accordance with Legal Requirements.

Purchase and Sale Agreement – has the meaning set forth in Section 15.9.

Ramp Rate – means the rate at which the Storage Facility can increase or decrease output.

Ramp Rate Test – means the Ramp Rate test set forth in APPENDIX 3 CONTRACT CAPACITY TEST AND OTHER TESTS.

Reactive Power – has the meaning set forth in the NYISO Rules.

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

Receiving Party – has the meaning set forth in Section 16.1.2.

Renewable Attributes – means any renewable or environmental attributes or credits, including Renewable Energy Certificates (RECs) or otherwise, in respect of the Project, existing now or in the future.

Roundtrip Efficiency – has the meaning ascribed to it in Appendix 7.

Roundtrip Efficiency Test – means the Duty Cycle test set forth in APPENDIX 3 CONTRACT CAPACITY TEST AND OTHER TESTS.

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

Saffir-Simpson Hurricane Wind Scale – is a 1 to 5 rating used to categorize a hurricane's sustained wind speed. The scale provides examples of the types of damage and impacts in the United States associated with winds of the indicated intensity.

SDVOB – means Service-Disabled Veteran-Owned Businesses, Business enterprises as more fully described in APPENDIX 16: PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES.

Schedule Deviation – means a failure by Seller to cause the Delivered Energy to match the NYISO's Energy schedule for the Project as communicated to Seller in the Dispatch request, except to the extent such failure results directly from an Outage of the Project or results from a Suspension.

SEC – has the meaning set forth in Section 16.6.

Seller – has the meaning set forth in the preamble.

Seller Event of Default – means an event described in Section 6.1.

Seller Security – means Letter(s) of Credit or Guaranty.

Seller's Conditions – means the conditions for Project COD, as set forth in Section 3.2.1

Seller's Metering Devices – has the meaning set forth in Section 3.17.1.

Site – means the Project premises described in APPENDIX 1: DESCRIPTION AND LOCATION OF THE PROJECT.

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

State of Charge (SOC) – means a numerical indication of the available Energy in the battery system expressed as a percentage of the maximum Energy storage capacity (XX MWh).

Station Service Energy – means Energy consumed by the Project other than Charging Energy.

Storage Facility – means a facility capable of receiving Charging Energy and storing Stored Energy in the Project and discharging Stored Energy at the Delivery Point in response to a Dispatch instruction received from Buyer.

Stored Energy – means Charging Energy delivered by Buyer to the Delivery Point and stored by Seller in the Project consistent with the terms of this Agreement.

Submission Date – has the meaning set forth in Section 3.1.7.

Summer Capability Period – means May 1 through October 31 of each Calendar Year as currently defined by the NYISO, or such other periods as may be determined by the NYISO.

Summer Period – means the period from May 1 through September 30 in any Contract Year.

Suspension – has the meaning set forth in Section 3.28.

System Deliverability Upgrades – has the meaning set forth in the Interconnection Agreement.

System Emergency – means and “Emergency” as defined in NYISO Manual 15 – Emergency Operations Manual (October 2020).

System Upgrade Facilities – has the meaning set forth in the Interconnection Agreement.

Term – has the meaning set forth in Section 2.1.2.

Termination Payment – has the meaning set forth in Section 6.3.

Test Energy – has the meaning set forth in Section 3.10.

Test Period – has the meaning set forth in Section 3.10

Title – has the meaning set forth in Section 3.6.

Unacceptable Condition – has the meaning set forth in Section 2.3.2(i).

Unforced Capacity – has the meaning set forth in the NYISO Rules.

Weekend – means the period of time that commences with the hour ending on Friday 2300 and ends the following Monday at hour ending 0900.

Winter Capability Period – means November 1 of each Calendar Year through April 30 of the following Calendar Year as currently defined by the NYISO, or such other periods as may be determined by the NYISO.

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

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 including but not limited to the [RFP], 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; and (ix) the word “day” means a “Day” as defined herein and includes each calendar day including Saturdays, Sundays and holidays.

[Remainder of page is left intentionally blank]

ARTICLE 2: TERM OF AGREEMENT

2.1 Term

2.1.1 This Agreement shall become effective on the Effective Date. Buyer shall give Seller written notice after the occurrence of the Effective Date.

2.1.2 The term of this Agreement shall begin on the Effective Date and shall remain in effect until the [seventh (7th) anniversary] of the Project COD unless terminated earlier in accordance with the terms hereof (the “Term”).

2.2 Section Left Intentionally Blank

2.3 Early Termination by Buyer

In addition to the right to terminate upon a Seller Event of Default as provided in Article 6.1, Buyer shall have the right to terminate this Agreement as set forth below without payment of any kind to Seller:

2.3.1 Seller shall deliver to Buyer written notice that Seller has applied for the Minimum Required Consents set forth in APPENDIX 2: PROJECT DEVELOPMENT MILESTONES, (“Minimum Required Consents”) within seventy-two (72) hours of such occurrence. If Seller has not completed and filed the applications for the Minimum Required Consents by the Minimum Required Consents Application Target Date, then Seller shall pay Buyer Liquidated Damages equal to Daily Delay Liquidated Damages for each Day of delay following the Minimum Required Consents Application Target Date until Seller has completed and filed the applications for the Minimum Required Consents, up to a maximum amount equivalent to ninety (90) Days’ Liquidated Damages. Buyer shall deposit the Liquidated Damages paid pursuant to this Section 2.3.1 into an [Escrow Account]. Buyer shall maintain the deposited amount in the Escrow Account as a down payment for satisfying the COD Liquidated Damages, if any, payable pursuant to Section 3.3; provided, however, that if Seller achieves the Project COD on or before the Project COD Target Date, Buyer shall return to Seller any Liquidated Damages paid by Seller pursuant to this Section 2.3.1, without interest, within thirty (30) Business Days of the Project COD. In the event Seller fails to complete and file its applications for Consents required to commence development of the Project, on or before ninety (90) Days after the Minimum Required Consents Application Target Date other than for reasons beyond Seller’s control, Buyer shall have the right to terminate this Agreement by written notice to Seller.

2.3.2 In the event Seller fails to obtain the Minimum Required Consents by the Minimum Required Consents Receipt Target Date, Buyer shall have the right to terminate this Agreement by written notice to Seller within [one hundred and eighty (180) Days] after the Minimum Required Consents Receipt Target Date, unless such period is extended in writing by both Parties.

(ii) In the event any Governmental Authority issues any Consent subject to any material condition that is unacceptable to Seller in its reasonable discretion prior to achievement of Project COD (an “Unacceptable Condition”), the Parties shall promptly confer and discuss potential solutions and Seller shall make commercially reasonable efforts to negotiate removal or mitigating changes in such Consent. If such condition cannot be removed or mitigated, and the effect of such condition has a material adverse effect on Seller, Seller may terminate this Agreement upon written notice to Buyer without payment of any kind by either Party, and each Party will bear its own cost through the date of such termination without reimbursement. For purposes of this paragraph, a “material adverse effect” means any effect or circumstances making performance impossible or unlawful, or imposing a net present value cost upon Seller in excess of **SELLER TO INSERT \$ AMOUNT BASED ON PROJECT.**

2.3.3 If Seller does not achieve the Construction Milestone by the Construction Milestone Date Extended, for each day that Seller fails to achieve such Construction Milestone, Seller shall pay Buyer Liquidated Damages equal to Daily Delay Liquidated Damages; *provided* that in addition to the right to terminate upon a Seller Event of Default as provided in Article 6, Buyer shall also have the right to terminate this Agreement by written notice to Seller if Seller has not achieved the Construction Milestone on or before the Construction Milestone Deadline.

2.3.4 In the event Buyer elects to terminate this Agreement as a consequence of the conditions described in Section 2.3.3, Buyer’s sole remedies shall be a Liquidated Damages payment of one hundred fifty thousand dollars (\$150,000) multiplied by the Project Capacity less any Daily Delay Liquidated Damages already paid as provided in Section 2.3.3.

2.4 Early Termination by Seller

In addition to the right to terminate upon a Buyer Event of Default as provided in Article 6, Seller shall have the right at any point up to the Project COD Deadline, unless waived by Seller in writing, to terminate this Agreement, without any further or financial obligation to Buyer as a result of such termination, by written notice to Buyer if despite Seller having used [commercially reasonable efforts], it could not obtain all Consents required to achieve Project COD, without material conditions unacceptable to Seller acting reasonably. In the event of such termination, Seller will be entitled to a return of any Seller Security provided to Buyer.

2.5 Effective Date

Notwithstanding anything herein, this Agreement shall be null and void and the Parties shall have no obligation to each other hereunder if the Effective Date has not occurred on or before, **[DATE TO BE INSERTED]** unless otherwise mutually agreed by the Parties in writing.

[Remainder of page is left intentionally blank]

ARTICLE 3: OBLIGATIONS AND DELIVERIES

3.1 Delivery and Sale of Products

Seller shall, in accordance with Sections 3.1.2 and 3.1.3 except during the occurrence of an Excused Outage, as applicable, sell and deliver to Buyer at the Delivery Point all the Delivered Energy and Ancillary Services produced by the Project during the Term, make available to Buyer all Contract Capacity associated with such Delivered Energy and Ancillary Services. Buyer shall purchase all Products by paying Seller the Contract Prices in the corresponding Contract Year, subject to the provisions of Sections 5.1 and 5.5. For the avoidance of doubt, there shall be no additional charge to Buyer for Ancillary Services or Renewable Attributes.

3.1.1 Buyer's obligation to purchase Delivered Energy at the Contract Price shall commence on Project COD. Buyer shall purchase Test Energy in accordance with Section 3.14.

3.1.2 Contract Capacity

Title to and risk of loss for all Contract Capacity shall pass from Seller to Buyer at the Delivery Point. Contract Capacity shall be made available from Seller to Buyer at the Delivery Point. Seller shall be responsible for any costs or charges related to making Capacity available to Buyer at the Delivery Point.

3.1.3 Charging Energy, Stored Energy and Delivered Energy

Buyer shall have title to Charging Energy, Stored Energy and Delivered Energy. Risk of loss for Buyer's deliveries of Charging Energy for storage by Seller shall pass from Buyer to Seller at the Delivery Point. Risk of loss for Seller's deliveries of Stored Energy to Buyer shall pass from Seller to Buyer at the Delivery Point.

3.1.4 Ancillary Services

Buyer is entitled to Ancillary Services produced by the Project under the terms and conditions set forth in APPENDIX 5: ENERGY PAYMENT.

3.1.5 Failure to Achieve Project Capacity

In the event that on the Project COD Deadline, the In-Service Date has occurred but the Contract Capacity is less than the Project Capacity, Seller shall pay Liquidated Damages in the amount of one hundred fifty thousand dollars (\$150,000), multiplied by the number of MW by which the Contract Capacity is below the Project Capacity less any Daily Delay Liquidated Damages previously paid by Seller ("Contract Capacity Buy-Down Liquidated Damages").

3.1.6 Installation, Operation and Maintenance

No later than the Effective Date, Seller shall proceed with engineering, construction and implementation of the Project using Prudent Utility Practices and in a manner that will

allow for achievement of the In-Service Date by the Project COD Target Date Extended by entering into an engineering, procurement and construction contract (“EPC Contract”) with a contractor capable of executing the engineering, construction and implementation of the Project. Buyer shall have the right to review and provide comments to the EPC Contract prior to execution thereof by Seller. Seller shall be solely responsible for obtaining all Consents, the development, construction, installation, operation and maintenance of the Project, including provision of necessary workforce, equipment, spare parts and supplies. Seller shall maintain the Project in good operating condition in accordance with Prudent Utility Practices. Seller shall ensure that the Project and its provision of Products under this Agreement conforms to all applicable NYISO Rules, NERC requirements, all applicable rules for the Connecting Transmission Owner’s Electrical System, and the Operating Instructions. All Project facilities and interconnection facilities (for which Seller has responsibility to design under the Interconnection Agreement or hereunder) must be designed to withstand a Category 3 Storm with 130 mph winds and to elevate equipment to accommodate the one in FEMA 500-year flood zones standards applicable at the Execution Date. Subject to Section 4.5, Seller shall assure that the Project is qualified as an Installed Capacity Supplier. Seller shall reimburse Buyer for any charges or penalties imposed on Buyer by NYISO due to Seller’s action or inaction.

Seller shall coordinate with Buyer on maintenance procedures and schedules, and the scheduling of Planned Outages and Maintenance Outages of the Project. A Maintenance Outage, once scheduled, may be cancelled by Seller or deferred by Seller beyond the end of the next Weekend, but if deferred, must occur before the next Planned Outage. The number of Days allowed for Planned Outages and Maintenance Outages are set forth in APPENDIX 9: OPERATING LIMITS. Any Planned Outage and Maintenance Outage that exceed the number of Days set forth in APPENDIX 9: OPERATING LIMITS shall be deemed to be a Forced Outage, but only for such excess Days. Seller shall submit a plan detailing the Planned Outages for the two coming Calendar Years to Buyer on or before the date when such information is due to be submitted to the NYISO prior to each Calendar Year (the “Submission Date”) for Buyer’s review and approval, which shall not be unreasonably withheld or delayed and such approval shall be deemed given unless Seller receives written notice to the contrary within thirty (30) Days of its submission to Buyer. In no event shall Seller schedule a Planned Outage during the Summer Period. In the event a Planned Outage or Maintenance Outage is commenced and continuing, and a Forced Outage occurs, Seller shall promptly notify Buyer and such Outage shall be re-designated as a Forced Outage as of the date of the original Planned Outage or Maintenance Outages is first extended to the maximum extent permitted in accordance with NYISO Rules and APPENDIX 9: OPERATING LIMITS. Seller shall give Buyer prior written notice of any proposed change in the annual Planned Outage schedule consistent with the NYISO Rules set forth in the Outage Schedule Manual and any such change shall be subject to Buyer’s approval (in consultation with the Connecting Transmission Owner) which shall not be unreasonably withheld or delayed. Except as provided for in Section 3.23, Buyer shall not be permitted to make Dispatch requests for the Project or otherwise receive Delivered Energy from the Project during a Planned Outage or Maintenance Outage.

3.1.7 Site Control

Seller shall be solely responsible to obtain all necessary rights to effectuate and maintain control for the Site throughout the Term. Seller shall provide evidence acceptable to Buyer of such Site control for the Site to Buyer by the Effective Date and upon reasonable request by Buyer at any time during the Term.

3.2 Conditions for In-Service Date and Project COD

3.2.1 Seller's Conditions

The In-Service Date is defined as the date on which Buyer receives written confirmation from Seller that Commissioning is complete and that Seller is ready to meet its obligations to Buyer in accordance with this Agreement. Commissioning is complete on the first (1st) Day on which all the following Seller's Conditions occur unless both Parties agree otherwise in writing:

(i) delivery of written certificate from an officer of Seller to Buyer subject to reasonable and prompt verification by Buyer, that:

(a) Seller has obtained all Consents necessary to install and operate such Project;

(b) Seller has successfully completed all tests required prior to such Project being placed in service under the engineering, procurement and construction contract entered into by Seller regarding the Project, the Operating Instructions for such Project, and all tests required by the manufacturer(s) of the Project components for warranty compliance, except for such testing that is either required by Legal Requirements, or order of a Governmental Authority to be conducted after the Project COD or is customarily performed after commercial operation;

(c) the Project as built complies with all applicable NYISO Rules; and

(d) such Project is capable of operation in accordance with Prudent Utility Practices, all Legal Requirements, and all equipment manufacturers' instruction manuals and warranties;

(ii) delivery by Seller to Buyer of certificates of insurance coverage or proof of insurance policies, as required pursuant to Article 11 and APPENDIX 10: INSURANCE REQUIREMENTS of this Agreement;

(iii) (a) the Project has been interconnected with Connecting Transmission Owner's Electrical System, (b) [Seller has qualified the Project as an Installed Capacity Supplier in accordance with NYISO Rules, and has provided written notice to Buyer of completing such activities and acceptance by the NYISO on or before the deadline established by the NYISO for participation in the NYISO's Installed Capacity market for the Month in which the Project COD is to

occur and will use commercially reasonable efforts to enable Buyer to receive Contract Capacity] **[IF BUYER APPROVED CRIS RIGHTS FOR PROJECT PURSUANT TO SECTION 4.5]**, (c) Seller has executed the Interconnection Agreement for the Project for a term commencing on or before the Project COD and ending no earlier than the twentieth (20th) anniversary date of the Term and has used commercially reasonable efforts to obtain NYISO execution of the Interconnection Agreement;

(iv) delivery of written notice by Seller to Buyer providing the results of a Contract Capacity Test demonstrating that the Project is capable of producing and making available Contract Capacity of at least [eighty percent (80%)] of the Project Capacity at the Delivery Point;

(v) written notice by Seller to Buyer that the Operating Instructions have been completed with respect to the Project;

(vi) an Independent Engineer's certification (subject to customary qualifications, assumptions and exceptions) has been obtained by Seller and provided to Buyer stating that such Project has been completed in accordance with manufacturers' specifications in all material respects (excepting punch list items that do not materially and adversely affect the ability of such Project to provide the Project Capacity consistent with the design capacity thereof and operate as intended hereunder) in accordance with this Agreement; and

(vii) Seller has made or caused to be made all arrangements and executed or caused to be executed all agreements, including any necessary easements or licenses to effectuate Site control required to deliver the Products from the Project to the Delivery Point in accordance with the provisions of this Agreement.

Unless otherwise agreed by the Parties, the commercial operation date of the Project ("Project COD") shall occur on the first Day of the Month following the Month in which the In-Service Date occurs, *provided*, if the In-Service Date occurs fewer than ten (10) Days prior to the end of a Month, Project COD shall be the first Day of the second Month following the Month in which the In-Service Date occurs.

3.2.2 Information, Site Access, Inspections, and Progress Reports

Buyer shall have the right to request information related to all phases of permitting, development, construction, operation and maintenance of the Project at any time during the Term. Seller shall cooperate by providing the information requested within five (5) Business Days.

Seller shall notify Buyer of any events which may reasonably be expected to adversely affect Seller's ability to achieve the In-Service Date by the Project COD Deadline, such notice to be given within three (3) Business Days of the occurrence of such event. Within ten (10) Days after the end of each Month during the Construction Period, Seller shall deliver a written report to Buyer describing the progress of construction of the Project, including, any events of material significance to Seller's ability to meet the Project

COD Target Date. Seller shall also provide for meetings, site access and inspections, and reports as described in APPENDIX 12: MEETINGS, SITE ACCESS, INSPECTIONS, AND REPORTING.

3.2.3 Extension of Project COD Target Date

The Project COD Target Date shall be extended day-for-day for each Excused Failure Day. For avoidance of doubt, any one Day on which the conditions for an Excused Failure Day occur shall count as only one Excused Failure Day, regardless of the nature or number of such circumstances.

3.3 Daily Delay Liquidated Damages and COD Liquidated Damages

3.3.1 If Seller does not achieve the Seller's Conditions or reach In-Service Date by the Project COD Target Date Extended, for each Day thereafter that Seller fails to reach In-Service Date, Seller shall pay Buyer Liquidated Damages equal to Daily Delay Liquidated Damages. If the In-Service Date has not occurred on or before the Day that is the Project COD Deadline, Buyer may terminate this Agreement by written notice to the Seller and shall be entitled to the amount of one hundred fifty thousand dollars (\$150,000) multiplied by the Project Capacity ("COD Liquidated Damages") as its sole remedy, less any Daily Delay Liquidated Damages already paid by Seller.

3.3.2 If the Seller has already paid Daily Delay Liquidated Damages for failure to meet the Construction Milestone Date Extended, then additional Daily Delay Liquidated Damages will not be paid by the Seller until the total owed due to the delay past the Project COD Target Date Extended exceeds Daily Delay Liquidated Damages already made by Seller for not meeting the Construction Milestone Date Extended. If, however, the total owed due to delay past the Project COD Target Date Extended is less than Daily Delay Liquidated Damages already collected, then the Buyer will refund the difference to the Seller. If Seller reaches In-Service Date on or before the Project COD Target Date Extended, Buyer will refund any Daily Delay Liquidated Damages previously paid by Seller.

3.3.3 Buyer's right to terminate this Agreement pursuant to Section 3.3.1 and/or to collect COD Liquidated Damages payable under Section 3.3.1 shall be Buyer's sole remedies if the In-Service Date has not occurred by the Project COD Deadline; *provided, however*, that if a Seller Event of Default has occurred, then in addition to the foregoing remedies, Buyer may also pursue its remedies pursuant to Sections 6.3 and 6.4.

3.3.4 Liquidated Damages due under Section 3.3.1 will be paid by Seller to Buyer pursuant to the provisions of Article 7.

3.4 Buyer's Resale of Products

Buyer shall be free to use or resell Products without restriction and to retain all proceeds from any such sales.

3.5 Progress Behind Schedule

Seller shall provide prompt written notice to Buyer if at any time Seller becomes aware of actual or potential delays in the performance, progress or completion of the Project during the Construction Period that would jeopardize achievement of Project COD by the Project COD Target Date. Additionally, if at any time Buyer believes that achievement of Project COD by the Project COD Target Date may be in jeopardy, Buyer may provide written notice to Seller. Within five (5) Business Days of receipt of such notice from Buyer or Seller's notice to Buyer of a delay, Seller shall propose a commercially reasonable written recovery plan to overcome the delay in the performance, progress or completion of the Project during the Construction Period identified by Buyer or Seller, as applicable.

3.5.1 Recovery Plan

Within ten (10) Days of receipt of Seller's proposed recovery plan, Buyer shall notify Seller in writing if Seller's proposed recovery plan is acceptable, and, if so, Seller shall immediately implement, or cause to be implemented, such recovery plan. If Buyer determines that Seller's proposed recovery plan is not likely to restore the progress or completion of the Project during the Construction Period, Buyer shall have the right to require Seller to implement, or cause to be implemented, measures determined in its sole reasonable discretion to bring the Project back on schedule for achievement of the Project COD Target Date. All excess costs for Seller to recover the Project COD Target Date will be to Seller's account and Seller's sole responsibility.

3.6 Testing

3.6.1 Project COD Contract Capacity Test

Prior to achieving Project COD, Seller shall conduct or cause to be conducted a Contract Capacity Test and DMNC test in accordance with NYISO Rules and APPENDIX 3 CONTRACT CAPACITY TEST AND OTHER TESTS to establish the Contract Capacity commencing on the Project COD, even if the date of such test does not fall within a NYISO Capability Period Test Window. In such event, the Contract Capacity shall be revised based on the results of any in-period test conducted by Seller as required by NYISO Rules and any deficiency charges shall be Seller's sole responsibility. Buyer shall reserve the right to review the test results to ensure that such results are in accordance with the NYISO Rules and APPENDIX 3: CONTRACT CAPACITY TEST AND OTHER TESTS.

3.6.2 Post Project COD Contract Capacity Tests

In each Contract Capability Period, Seller shall conduct or cause to be conducted a Contract Capacity Test in accordance with NYISO Rules to establish the Contract Capacity for such Contract Capability Period, as more fully described in Appendix 3 CONTRACT CAPACITY TEST AND OTHER TESTS.

3.6.3 Other Tests

Prior to achieving Project COD, Buyer shall have the right to request that Seller conduct, or cause to be conducted, a Ramp Rate Test, a Duty Cycle Test and/or a Roundtrip Efficiency Test in accordance with NYISO Rules and APPENDIX 3 CONTRACT CAPACITY TEST AND OTHER TESTS. Buyer shall reserve the right to review any such test results to ensure that such results are in accordance with the NYISO Rules and APPENDIX 3: CONTRACT CAPACITY TEST AND OTHER TESTS.

3.6.4 Notice of Tests

A Party requesting or performing a test shall provide written notice thereof to the other Party, which shall be the lesser of seven (7) Days or the requisite notice period set forth under then applicable NYISO Rules for such test. Buyer shall have the right to attend, observe and receive the results of all tests. Seller shall provide to Buyer the results of each test no later than five (5) Business Days after the performance of such test.

3.6.5 Reporting

Seller shall regularly report all such operating and test data as the NYISO shall require of Installed Capacity Suppliers and other sellers of Products.

3.7 Section Left Intentionally Blank

3.8 Development of Operating Instructions

Buyer and Seller shall jointly develop the written Operating Instructions for the Project by no later than ninety (90) Days prior to the Project COD Target Date Extended. The Operating Instructions shall be consistent with this Agreement and shall conform to the Project's and Connecting Transmission Owner's Electrical System operating parameters and characteristics that are in effect on or after the date of this Agreement and the NYISO Rules. The Operating Instructions may be revised from time to time to the extent mutually agreed in writing by the Parties. Unless otherwise agreed upon by the Parties, the Operating Instructions will provide that Buyer shall be responsible for all communications and transactions with NYISO relating to the Project, including without limitation, registering capacity, scheduling test and Delivered Energy and acting as the market participant and financial participant, and Seller shall provide such information regarding the Project or its operation that Buyer may be required to report to the NYISO. The Operating Instructions shall contain a level of detail reasonably required by Buyer and Seller to perform their respective obligations under this Agreement.

3.9 Technical Requirements

Seller shall ensure that the Project complies in all material respects with the technical requirements set forth in APPENDIX 18: TECHNICAL REQUIREMENTS.

3.10 Test Energy

On or before seventy (70) Days prior to the Project COD, Seller shall provide Buyer with its good faith estimate of the quantity of (i) Charging Energy and Station Service Energy required by the Project during the testing period prior to the Project COD (the "Test Period"), and (ii) the

Delivered Energy to be produced by the Project during the Test Period (such Delivered Energy, the “Test Energy”). Station Service Energy required during the Test Period will be invoiced by Buyer in the first Monthly Invoice after the Project COD and will be reimbursed by Buyer to Seller in accordance with APPENDIX 5: MONTHLY ENERGY PAYMENT.

3.11 Station Service Energy

Seller shall have responsibility to obtain such Station Service Energy as applicable to the Project. The cost of Station Service Energy provided by Seller shall be included as Monthly Pass-Through Charges that constitute part of the Monthly Energy Payment.

3.12 No Immunity Claim

Buyer warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (i) suit, (ii) jurisdiction of court as provided herein and of any court to which an appeal may be taken, (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment.

3.13 Buyer’s Metering Device

3.13.1 The Buyer’s Metering Device used to measure the Delivered Energy sold by Seller to Buyer and Charging Energy delivered by Buyer to Seller at the Delivery Point under this Agreement and to monitor and coordinate operation of the Project shall be owned, installed, and maintained by Buyer. Buyer shall provide Seller access, for Seller’s use only and subject to Article 16 hereof, to Buyer’s Metering Device during Business Days upon reasonable advance notice. Buyer’s Metering Device shall be located at the Delivery Point unless the Interconnection Agreement indicates a different location, in which instance, if necessary in accordance with Prudent Utility Practice, the Buyer’s Metering Device may be relocated to a reasonable alternate location mutually-agreed to by the Parties. If Buyer’s Metering Device is not located at the Delivery Point, the readings of such metering device shall be adjusted in a manner consistent with Prudent Utility Practice, to reflect accurately the actual Delivered Energy at the Delivery Point based on data available from the metering device and the known losses or other factors occurring between the Delivery Point and the metering device.

Buyer shall inspect and test Buyer’s Metering Device upon installation and at least annually thereafter. Buyer shall provide Seller with reasonable advance notice of, and permit a representative of Seller to witness and verify, such inspections and tests; *provided, however*, that Seller shall not unreasonably interfere with or disrupt the activities of Buyer and shall comply with all of Buyer’s safety standards. Upon request by Seller, Buyer shall perform additional inspections or tests of Buyer’s Metering Device and shall permit a qualified representative of Seller to inspect or witness the testing of Buyer’s Metering Device; *provided, however*, that Seller shall not unreasonably interfere with or disrupt the activities of Buyer and shall comply

with all of Buyer's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by Seller, unless upon such inspection or testing Buyer's Metering Device is found to register inaccurately by more than the allowable limits established in Section 3.17, in which event the expense of the requested additional inspection or testing shall be borne by Buyer. If requested by Seller in writing, Buyer shall provide copies of any inspection or testing reports to Seller.

Seller may elect to install and maintain, at its own expense, metering devices (the "Seller's Metering Devices") in addition to the Buyer's Metering Device installed and maintained by Buyer, which installation and maintenance shall be performed in a manner reasonably acceptable to Buyer. Seller, at its own expense, shall inspect and test the Seller's Metering Devices upon installation and at least annually thereafter. Seller shall provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify, such inspections and tests; *provided, however,* that Buyer shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. Upon request by Buyer, Seller shall perform additional inspections or tests of the Seller's Metering Devices and shall permit a qualified representative of Buyer to inspect or witness the testing of Seller's Metering Devices; *provided, however,* that Buyer shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by Buyer, unless, upon such inspection or testing, Seller's Metering Devices are found to register inaccurately by more than the allowable limits established in Section 3.17, in which event the expense of the requested additional inspection or testing shall be borne by Seller. If requested by Buyer in writing, Seller shall provide copies of any inspection or testing reports to Buyer. If Buyer's Metering Device or Seller's Metering Devices are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced and/or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party's expense.

3.13.2 Not later than close of business on the third (3rd) Day after the end of each Month, Buyer shall deliver to Seller a report stating for each hour during such immediately preceding Month the number of kilowatt hours of Energy received at the Delivery Point.

3.14 Adjustment for Inaccurate Meters

If Buyer's Metering Device or Seller's Metering Devices fail to register, or if the measurement made by Buyer's Metering Device or Seller's Metering Devices is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Buyer's Metering Device, or Seller's Metering Devices, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner.

3.14.1 In the event that Buyer's Metering Device is found to be defective or inaccurate, the Parties shall use Seller's Metering Devices, if installed, to determine the amount of such inaccuracy; *provided, however*, that Seller's Metering Devices have been tested and maintained in accordance with the provisions of this Section. If the Seller's Metering Devices are installed on the low side of Seller's step-up transformer, the Seller's Metering Devices data shall be adjusted for losses. In the event that Seller did not install Seller's Metering Devices, or Seller's Metering Devices are also found to be inaccurate by more than one percent (1.0%), the Parties shall estimate the amount of the necessary adjustment on the basis of Delivered Energy during periods of similar operating conditions when the Buyer's Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

3.14.2 In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Buyer's Metering Device to the test that found the Buyer's Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Buyer's Metering Device to be defective or inaccurate.

3.14.3 To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to re-compute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. Such computation and methodology shall be shared with Seller and the Parties shall use good faith efforts to reach mutual agreement on this calculation. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Seller in the case of a payment to be made by Buyer to Seller, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset.

3.15 Monitoring

Buyer may monitor system performance of the Project on the Buyer's side of the Delivery Point in order to facilitate public education and outreach. As such, Buyer may install, own and maintain a data acquisition system on the Buyer's side of the Delivery Point at Buyer's sole expense that allows Buyer to monitor, analyze, and display historical and real-time, electric generation data for the Project. Seller shall reasonably cooperate with Buyer to allow for installation and maintenance of the monitoring system on the Buyer's side of the Delivery Point. Any monitoring system that Seller requires for operation and control of the Project shall be installed at Seller's sole expense.

As Seller will purchase the Project from Seller at the expiration of the Term, Buyer shall have the right to review all Project maintenance records on a Monthly basis and to conduct physical inspections of the Project as further described in Appendix 13.

3.16 Change in Law

Seller shall be responsible for and pay for all additional costs resulting from a Change in Law affecting or arising on Seller's side of the Delivery Point. Buyer shall be responsible for and pay for all additional costs resulting from a Change in Law affecting or arising on Buyer's side of the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of Products to Buyer and are, therefore, the responsibility of Seller).

3.17 Buyer's Access to Records

At Buyer's request, Seller shall make available all records pertaining to production and sale of Delivered Energy to Buyer, as well as financial records or any other records required by Buyer to support the reimbursement of any amounts due to Seller from Buyer under this Agreement or due diligence in connection with Buyer's purchase of the Project.

3.18 Seller as Owner of the Project

Seller shall at all times during the Term 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 lessor or permitted assigns, except as permitted under Section 15.1.1. 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, except as permitted under Section 15.1.1. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986.

3.19 Dispatch

3.19.1 Seller shall be responsible to make the Project available for Dispatch so that Buyer can receive Products.

3.19.2 Buyer has the right, but not the obligation, to Dispatch the Project.

3.19.3 If Buyer bids the Project in the NYISO's Hour-Ahead Market and such bid to operate the Project is accepted, Buyer shall communicate to Seller, within fifteen (15) minutes following such acceptance, the NYISO's Energy schedule for the Project, including any Ancillary Services.

3.19.4 If Buyer bids the Project in the NYISO's Day-Ahead Market and such bid to operate the Project is accepted, Buyer shall communicate to Seller, within one (1) hour following such acceptance, the NYISO's Energy schedule for the Project, including any Ancillary Services.

3.19.5 Buyer may Dispatch the Project up to the State of Charge and Seller shall operate the Project in accordance with the most recent Dispatch schedule received from Buyer.

3.19.6 Seller is not required to deliver Energy in excess of the Contract Capacity. Buyer shall not Dispatch the Project beyond the Contract Capacity.

3.19.7 As soon as reasonably practicable, but no later than sixty (60) Days prior to the Project COD, Seller and Buyer shall agree to performance curves detailing the MW and MVAR capability of the Project over a range of ambient conditions. Such performance curves shall be part of the Operating Limits within which Buyer can Dispatch the Project. Within ten (10) Days of establishing a new Contract Capacity pursuant to Section 3.6.1, Buyer and Seller shall agree to new performance curves reflecting the new Contract Capacity. In the absence of new performance curves, the old performance curves shall be used by Buyer as Operating Limits.

3.20 Forced Outages

Seller shall take commercially reasonable efforts consistent with Prudent Utility Practice to minimize the occurrence and duration of Forced Outages. Upon the occurrence of a Forced Outage, Seller shall notify Buyer as soon as possible of such occurrence and the Project's capability, if any, to produce Products during such Forced Outage. Seller shall notify Buyer promptly upon the conclusion of the Forced Outage. Seller shall provide such notice pursuant to the terms of the Operating Instructions.

3.21 Effect of System Emergency on Outage Scheduling

If Seller has scheduled a Planned Outage or a Maintenance Outage, and such outage occurs or would occur coincident with the System Emergency, Buyer shall notify Seller of the System Emergency. Buyer may request Seller to reschedule the outage or, if the outage has begun, to expedite the completion thereof, and Seller shall use commercially reasonable efforts to comply with such request and applicable NYISO Rules. Buyer has no obligation to pay Seller for any incremental cost or expense Seller may incur as a result of such rescheduling or expediting resulting from a System Emergency declared by NYISO.

3.22 Response to Forced Outages

Seller shall give Buyer notice as soon as possible if Energy or Ancillary Services from the Project unexpectedly becomes unavailable to satisfy a Dispatch as a result of a Forced Outage of the Project. Buyer and Seller, through a previously designated individual (with authority and ability to respond to such event) whose name and contact information shall be incorporated into the Operating Instructions, shall be immediately available to each other for communications during a Forced Outage and shall respond with all necessary promptness in accordance with NYISO Rules.

3.23 Schedule Deviations

Seller shall provide Delivered Energy in accordance with Dispatch requests. 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 Charging Energy, which shall be deemed to be the Real-Time Market LBMP for Load Zone K applicable for all Hours during the previous charging cycle.

3.24 Suspension

Buyer shall have the right, at its sole discretion, to suspend acceptance of Products from the Project during any one of the following circumstances: (i) to prevent damage to Connecting Transmission Owner's Electrical System; (ii) to maintain electrical service to Buyer's customers; (iii) a System Emergency, or (iv) if suspension is required for relocation, repair or maintenance of facilities or to facilitate restoration of line outages (each, a "Suspension"). Buyer shall give advance notice, as circumstances permit, of the need for such Suspension to a previously designated individual (with authority and ability to respond to such event), whose name and contact information shall be incorporated into the Operating Instructions. Upon receipt of notice of a Suspension, Seller shall carry out the required action without undue delay. Where circumstances do not permit such advance notice, including circumstances in which the Project is not staffed,¹ or where Seller fails to carry out the required action, Buyer may invoke Suspension without notice. Except to the extent that a Suspension is the result of negligence or willful misconduct in Seller's operation of the Project, Seller shall not be responsible for payment of any cost incurred by Buyer during, or as a result of, such Suspension.

3.25 Restoration of Service

Buyer and Seller shall endeavor to restore acceptance of deliveries of Energy and Ancillary Services as promptly as is reasonably possible in cases of Outages or Suspensions.

3.26 Consequences of Buyer's Suspension

In the event of a Suspension, Buyer shall continue to make Monthly Capacity Payments during the Suspension and the Suspension will be deemed an Excused Outage, unless such Suspension results from a Force Majeure Event or Seller's negligence or willful misconduct in the operation of the Project. If the Suspension results from a Force Majeure Event or Seller's negligence or willful misconduct in the operation of the Project, Buyer will be excused from payment of an equitable portion of the Monthly Capacity Payment.

3.27 Role of Seller

3.27.1 Subject to the terms of this Agreement and for the Term, Seller shall, among other things:

¹ **NTD**: Staffing should be addressed in the operating procedures.

- (i) Design, permit, own (by fee or leasehold), finance, engineer, construct, test, start-up, commission, maintain and operate the Project;
- (ii) Schedule and be responsible for receipt of Charging Energy, at no cost to Seller, at the Deliverability Point;
- (iii) Provide Delivered Energy to Buyer in response to a Dispatch;
- (iv) Maintain Storage Energy in Project consistent with the terms of this Agreement pending Dispatch from Buyer;
- (v) Apply for, expeditiously prosecute, obtain and maintain all Consents necessary for Seller to design, construct, test, start-up, commission, operate and maintain the Project in accordance with this Agreement using commercially reasonable efforts;
- (vi) If requested by Buyer, cause the Project to qualify as an Installed Capacity Supplier;
- (vii) Operate and maintain the Project consistent with Prudent Utility Practices;
- (viii) In accordance with Prudent Utility Practices, and, as applicable pursuant to NYISO Rules and NERC requirements, employ or make available sufficient operating personnel who are adequately trained to operate and maintain the Project and to provide Buyer with Products required under this Agreement;
- (ix) Meet all the conditions for the Commercial Operation Date set forth in Section 3.3 by the COD Target Date and maintain compliance in all material respects with the operating standards as set forth in Appendix 9: OPERATING LIMITS;
- (x) Comply with all applicable Legal Requirements, Consents, and, as applicable, NYISO Rules and NERC Requirements;
- (xi) Pay all tax and Governmental Charges, including applicable property taxes; and
- (xii) Manage local community relations as such are related to the development of the Project, including local workforce;
- (xiii) Construct and be responsible for the cost and expense of Developer Attachment Facilities;

3.28 Role of Buyer

3.28.1 Subject to the terms of this Agreement and for the Term, Buyer shall, among other things:

i) Receive and pay for Products and receive Test Energy on the terms and conditions set forth herein and pay the Interconnection Payment and all other charges required of Buyer pursuant to this Agreement;

(ii) In accordance with Prudent Utility Practices and acting in a commercially reasonable manner, deliver at Buyer's cost, Charging Energy to the Project at the Delivery Point within acceptable specifications, as Buyer may wish to provide to charge the Storage Facility to enable it to meet subsequent Dispatch requests of Buyer;

(iii) Dispatch the Project;

(iv) Cause the Connecting Transmission Owner to (a) enter into the Interconnection Agreement, and (b) construct the Connecting Transmission Owner's Attachment Facilities, System Upgrade Facilities and System Delivery Upgrades as set forth in Section 4.1; and

(v) Register the Project with the NYISO.

Remainder of page is left intentionally blank]

ARTICLE 4: INTERCONNECTION ARRANGEMENTS

4.1 General

Buyer shall cause the Connecting Transmission Owner to execute the Interconnection Agreement with a term ending no earlier than the twentieth (20th) anniversary of the Effective Date. Seller shall cooperate with all reasonable requests of Buyer to provide information with respect to the interconnection process. The Parties shall cooperate to make all arrangements, execute all agreements, and make commercially reasonable efforts to cause the Electrical Interconnection Facilities to be completed within the schedule agreed to in the Interconnection Agreement.

4.2 Operation and Maintenance of Electrical Interconnection Facilities

Under the terms of the Interconnection Agreement, Seller is responsible for the operation and maintenance of the Developer Attachment Facilities. The Connecting Transmission Owner is responsible for the operation and maintenance of the Electrical Interconnection Facilities (other than the Developer Attachment Facilities).

4.3 Reimbursement of Interconnection Costs

Seller shall be responsible for timely payment of all Interconnection Costs as and when incurred and invoiced. Buyer shall reimburse Seller upon the Project COD for Interconnection Costs paid by Seller to the Connecting Transmission Owner through a one-time lump sum payment, pursuant to invoices submitted by Seller in accordance with Article 7. Notwithstanding the requirements of the Interconnection Agreement with respect to Seller's obligation to reimburse the Connecting Transmission Owner for Interconnection Costs, Buyer in its sole discretion, may elect to set off such reimbursement against Seller's obligations to the Connecting Transmission Owner.

4.4 Cooperation

Buyer and Seller shall cooperate and act in good faith in the implementation of the Project. Such cooperation shall include timely responses to reasonable requests for information and the reasonable coordination of the activities of both Parties and their respective third parties regarding the design and construction of the Project and the Electrical Interconnection Facilities. On a Monthly basis during the Consents Period and the Construction Period, Seller shall provide Buyer copies of all documents pertaining to the Electrical Interconnection Facilities (including, but not limited to, all e-mails, meeting notices and meeting notes) that were issued during such Month and to which Seller has access. The required documents shall be provided to Buyer's designated contact shown in Section 12.8.

4.5 CRIS Rights

Seller shall obtain CRIS Rights, if Buyer's written approval is given to Seller's estimated budget of Interconnection Costs arising from such election. If Buyer declines to approve any such costs, Seller shall obtain ERIS Rights only.

4.6 Assignment of Interconnection Agreement

Upon the expiration of this Agreement and the related transfer of ownership of the Project from Seller to Buyer, Seller shall assign the Interconnection Agreement to Buyer.

[Remainder of page is left intentionally blank]

**ARTICLE 5: SALE OF CONTRACT CAPACITY, ENERGY,
AND ANCILLARY SERVICES**

5.4 Monthly Capacity Payments; Renewable Attributes

Beginning with the Month in which the Project COD occurs, Buyer shall pay to Seller a Monthly Capacity Payment calculated in accordance with APPENDIX 4: CAPACITY PAYMENT and pursuant to the terms of Article 6, and adjusted, as applicable, in accordance with APPENDIX 6: AVAILABILITY ADJUSTMENT FOR MONTHLY CAPACITY PAYMENT. In the event that an enactment, adoption, or promulgation of a law, rule or regulation by a Governmental Authority results in the availability of any present or future Renewable Attributes and/or derivative products in respect of the Project or energy storage projects, generally, then in consideration of the Monthly Capacity Payment, Seller shall transfer all of Seller's rights, title and interests in such Renewable Attributes and/or derivative products to Buyer.

5.5 Monthly Energy Payment

5.5.1 Buyer shall pay Seller for Delivered Energy calculated in accordance with APPENDIX 5: ENERGY PAYMENT and pursuant to the terms of Article 6. Buyer shall receive and purchase all Ancillary Services listed in APPENDIX 5: ENERGY PAYMENT for no additional charge.

5.5.2 Seller shall calculate any amounts owed to Buyer pursuant to APPENDIX 7: GUARANTEED PERFORMANCE ADJUSTMENTS

5.6 Excused Outages

Seller's obligation to provide Products pursuant to this Agreement will be excused if and to the extent that any of the following (each an "Excused Outage") occurs and continues:

5.6.1 Any Outage of the Project which is the result of a Planned Outage or Maintenance Outage;

5.6.2 Any Outage where a Dispatch by Buyer is outside the Operating Limits set forth in APPENDIX 9: OPERATING LIMITS;

5.6.3 Buyer's or Connecting Transmission Owner's inability or unwillingness to accept Delivered Energy or Ancillary Services at the Delivery Point;

5.6.4 A Suspension pursuant to Section 3.28; or

5.6.5 A Force Majeure Event to the extent provided in Article 14,

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

the occurrence of and the resolution of an Excused Outage and shall use commercially reasonable efforts to limit the duration and extent of such Excused Outage.

5.7 Equivalent Availability and Chronic Underperformance

5.7.1 For purposes of this Agreement, the following defined terms shall be used for the determination of Equivalent Availability and Chronic Underperformance:

(i) “Equivalent Availability” means during any Month after Project COD the Capacity-weighted percentage of time in a specific time period during which the Project is Available for Operation, whether or not the Project is actually Dispatched, which shall be expressed as a percentage equal to one hundred percent (100%) multiplied by a fraction where: (x) the numerator is the sum of the Capacity of the Project in every hour of a specific time period that is Available for Operation; provided, for purposes of this calculation that Capacity that is unavailable due to an Excused Outage will be included in the Capacity of the Project Available for Operation, and (y) the denominator is the sum of the Contract Capacity in every hour of such time period. For the avoidance of doubt, Capacity that is not Available for Operation due to a Forced Outage is excluded from the numerator and is included in the denominator and the Equivalent Availability shall not exceed one hundred percent (100%). In each applicable hour, the Capacity of the Project Available for Operation will be limited to the average hourly output of the most recent Contract Capacity Test performed per Section 3.6.2. In addition, when the Project is providing reactive power as per Appendix 9: OPERATING LIMITS, and the Project’s output is below [X] MW, the Capacity of the Project Available for Operation will be determined based on the expected full MW output that would be available if Seller were not supplying reactive power.

Commencing with the Month in which Commercial Operation occurs and continuing throughout the Term, Seller shall calculate and provide to Buyer a written report setting forth the Equivalent Availability for each Month, including the details of the calculation of the Equivalent Availability, as soon as practicable after the end of such Month, but in no event later than thirty (30) Days after the end of such Month.

(ii) “Monthly Equivalent Capacity” means Contract Capacity for such Month multiplied by the Equivalent Availability for such Month.

(iii) “Chronic Underperformance” means the failure of the Project to achieve an average Monthly Equivalent Capacity in any consecutive twenty-four (24) Month period (“Average Monthly Equivalent Capacity”) that is equal to at least [eighty percent (80%)] of the Project Capacity.

Commencing on the third (3rd) anniversary of the Project COD, Buyer shall have the option to terminate this Agreement as provided herein in the event of Chronic Underperformance. If Chronic Underperformance has occurred, Buyer may give Seller written notice of such Chronic Underperformance within thirty (30) Days of the end of the consecutive twenty-four (24) Month

period in which such Chronic Underperformance occurred. Upon receipt of any notice of Chronic Underperformance, Seller shall have an additional six (6) Months to achieve an Average Monthly Equivalent Capacity in excess of eighty (80%) of the Project Capacity. In the event that Seller fails to achieve an Average Monthly Equivalent Capacity level in excess of eighty percent (80%) of the Project Capacity within such six (6) Month period, Buyer shall have the right to terminate this Agreement pursuant to Section 6.3.

[Remainder of page is left intentionally blank]

ARTICLE 6: EVENTS OF DEFAULT; REMEDIES

6.1 Seller Events of Default

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

6.1.1 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;

6.1.2 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;

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

6.1.4 Seller becomes Bankrupt;

6.1.5 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) Days after written notice;

6.1.6 Chronic Underperformance has occurred;

6.1.7 any sale of Products during the Term to any entity other than Buyer unless a Buyer Event of Default or Force Majeure Event preventing Buyer’s receipt of Delivered Energy is continuing; or

6.1.8 failure to provide or maintain Seller Security in accordance with Article 9 or insurance in accordance with Article 11 if either such failure is not cured with ten (10) Business Days.

6.2 Buyer Events of Default

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

6.2.1 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;

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

6.2.3 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.

6.3 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 twenty (20) 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, subject to the provisions set forth in Section 2.3.4, in a commercially reasonable manner the Non-Defaulting Party’s Losses and Costs, 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) to suspend performance in accordance with Section 6.6. For the avoidance of doubt, a Defaulting Party shall not be entitled to receive payment of any Termination Payment. In addition and notwithstanding anything herein to the contrary contained herein, in the event of a Seller Event of Default, Seller shall be responsible for all of costs related to decommissioning and/or removal of the Project and any costs related to disconnecting the Project from the Connecting Transmission Owner’s Electrical System.

6.4 Notice of Payment of Termination Payment.

As soon as practicable after an Early Termination Date has been established pursuant to Section 6.3, 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 effective.

6.5 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 in Article 13.

6.6 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, and, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall 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 6.3, 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. In addition, to the extent that a Seller Event of Default causes a suspension of Seller's performance, Seller shall be responsible for providing replacement Capacity and Energy equal to the Contract Capacity and the Delivered Energy required pursuant to this Agreement at its sole cost.

[Remainder of page is left intentionally blank]

ARTICLE 7: PAYMENT

7.1 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.

7.2 Invoices

All invoices presented by either of the Parties shall be in the form of the sample Monthly Invoice as set forth in APPENDIX 8: SAMPLE MONTHLY INVOICE.

7.2.1 Liquidated Damages

- (a) Minimum Required Consents Liquidated Damages Amounts. Buyer shall prepare and submit an invoice to Seller for any Liquidated Damages amounts due and payable to Buyer from Seller pursuant to Section 2.3.1 providing sufficient detail to show the amounts due.
- (b) Daily Delay Liquidated Damages Amounts. Buyer shall prepare and submit an invoice to Seller for any Liquidated Damage amounts due and payable to Buyer from Seller providing sufficient detail to show the amounts due pursuant to Section 3.3.
- (c) Contract Capacity Buy-Down Liquidated Damages Amounts. Buyer shall prepare and submit an invoice to Seller for any Liquidated Damage amounts due and payable to Buyer from Seller providing sufficient detail to show the amounts due pursuant to Section 3.1.5
- (d) COD Liquidated Damages and Other Amounts. Buyer shall prepare and submit an invoice to Seller for such amounts due and payable to Buyer from Seller providing sufficient detail to show the amounts due pursuant to Section 3.3 for COD Liquidated Damages.

7.2.2 Interconnection Costs Invoice

After Project COD, Seller shall prepare and submit to Buyer a single invoice for the accumulated Interconnection Costs pursuant to Article 4.

7.2.3 Monthly Invoice

- (i) Monthly Capacity Payment. The Monthly Capacity Payment, which shall be adjusted as set forth in APPENDIX 4 CAPACITY PAYMENT, for the current Month (and any previous Months in the case of the first (1st) invoice).

(ii) Monthly Energy Payment. Each Monthly Invoice that includes the Monthly Energy Payment shall be accompanied by the calculation thereof in accordance with APPENDIX 5: ENERGY PAYMENT.

(iii) Ancillary Services. If the NYISO makes payment directly to Seller for any Ancillary Services, including Reactive Power, provided by the Project, Seller shall hold such funds (net of taxes, costs or other liabilities incurred by Seller in connection with receipt of the payment) in trust for Buyer and shall credit Buyer with an amount equivalent to such payment (net of taxes, costs or other liabilities incurred by Seller in connection with receipt of such payment) on the subsequent Monthly Invoice submitted to Buyer. For the avoidance of doubt, Buyer's payment of the Contract Price includes payment for any Ancillary Services contemporaneously provided by the Project.

7.2.4 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 7.2.1 through Section 7.2.3.

7.3 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. 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.

7.4 Disputes and Adjustments of Invoices

A Party may, in good faith, dispute the correctness of any invoice or any adjustment 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.

7.5 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.

[Remainder of page is left intentionally blank]

ARTICLE 8: LIMITATIONS, MERCHANTABILITY AND FITNESS

8.1 Limitation of Liability

The Parties agree that Seller's warranties specifically set forth in this Agreement constitute Buyer's sole remedy and Seller's sole liability with respect to warranty claims and are in lieu of any other warranties available at law or in equity. There is no warranty 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. 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. The Parties expressly agree that the liquidated damages provided for in this Agreement; damages, costs or losses caused by a Party's gross negligence or willful misconduct; and the amounts payable pursuant to Section 12.3 (Indemnity), and Article 6 (Events of Default; Remedies) shall not be construed or deemed to be indirect, special, incidental, punitive, consequential or exemplary damages for purposes of this Agreement.

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.

[Remainder of page is left intentionally blank]

ARTICLE 9: SELLER SECURITY

9.1 Seller Security

9.1.1 As security for Seller's obligations under or related to this Agreement, within fifteen (15) Business Days of receipt of notice from Buyer in accordance with Section 2.1 that the Effective Date has occurred, Seller shall deliver to Buyer and shall thereafter maintain security consisting of Letters of Credit in an aggregate amount through Project COD equal to the product of (a) the Project Capacity and (b) one hundred and fifty thousand dollars (\$150,000) per MW (the "Security Amount"). The initial Seller Security may not include a Guaranty, and may only be in the form of a Letter of Credit, but after Project COD has been achieved, Seller may provide or substitute Guaranties or Letters of Credit as provided in Section 9.2.1. Seller shall maintain the Seller Security in the Security Amount, at Seller's sole cost and expense, until the latest of (x) the end of the Term, (y) completion of all payments Seller is obligated to make to Buyer at any time, including any Termination Payment and/or Liquidated Damages, and (z) in the event any payment has been made by Seller to Buyer within ninety-eight (98) Days prior to the end of the Term or any payment is due by Seller to Buyer as of the end of the Term, the date of which is ninety-eight (98) Days following the date on which the last such payment is made.

9.1.2 Each Guaranty and Letter of Credit provided as Seller Security shall be issued by a Guarantor meeting the Credit Requirements or an issuer meeting the Letter of Credit requirements, as applicable, and if at any time such Guarantor fails to meet the Credit Requirements or such issuer fails to meet such requirements, Seller shall as promptly as practicable replace such Guaranty or Letter of Credit with alternative forms of Seller Security as required by this Agreement, and in the case of a Guaranty or Letter of Credit provided by a Guarantor or an issuer that meets the Credit Requirements.

9.2 Seller Security Replacement

9.2.1 Subject to Section 9.1, if no Seller Event of Default has occurred that is continuing, and no Seller Event of Default will occur upon the giving of notice, the passage of time or both, Seller shall have the right to replace any Letter of Credit or Guaranty with a substitute form or substitute forms of Seller Security, provided that such replacement meets the terms and conditions of Seller Security under this Agreement and *provided further* that there be no lapse in the required amount of Seller Security resulting from such replacement.

9.2.2 If the applicable substitute Seller Security shall be replacing a Letter of Credit, then Buyer shall promptly mark such Letter of Credit as "cancelled" and return the original of same to Seller and shall take such other actions as reasonably may be requested by the issuer of such letter of credit to evidence the cancellation thereof. If the applicable substitute Seller Security shall be replacing a Guaranty, then Buyer shall execute such release documentation as may be reasonably requested by Seller. If Seller shall have previously provided, but shall no longer be required to maintain,

certain Seller Security hereunder, then Buyer shall return, in the same manner as described above, the applicable Seller Security previously posted on behalf of Seller but which is no longer required to be maintained.

9.3 Draw on Seller Security

Buyer may draw upon or make a claim on Seller Security (a) to satisfy any amounts owed by Seller to Buyer under this Agreement (other than disputed amounts) that are not satisfied within ten (10) Days following the date on which such amounts become due and owing pursuant to Section 9.3, or (b) in the entire amount of such Seller Security if any Guaranty, Letter of Credit or Escrow Account or other form of Seller Security instrument is due to expire by its terms within thirty (30) Days and has not been replaced, and Seller continues to be required to provide such Seller Security, in which instance Buyer may hold the proceeds of such draw as a cash balance to secure Seller's obligations but shall return such to Seller upon Seller's provision of substitute Seller Security in accordance with this Agreement. Upon termination of this Agreement due to a Seller Event of Default, Buyer shall have the right to draw upon or make a claim on Seller Security for any undisputed amounts owed to Buyer under this Agreement. In the event Seller becomes Bankrupt, if any payment has been made by Seller to Buyer within the period prior to Seller becoming Bankrupt in a manner that such Seller payment to Buyer could be challenged or recovered as a preference or fraudulent conveyance in bankruptcy, Buyer may, at any time prior to expiry of Seller Security, draw upon or make a claim on such Seller Security in an amount equal to the potentially recoverable prior payment and hold such amount in a segregated account until the later of (i) the last date on which any trustee or party may assert claims seeking to recover such payment, if no such claim has been asserted, and (ii) final adjudication of any asserted claim as to such payment, provided that, if no such claim for recovery of such payment has been timely asserted or if such claim is finally adjudicated and found not recoverable from Buyer, the amount in the segregated account shall be promptly paid to Seller, and, if the payment is recovered from Buyer, such amount may be retained by Buyer.

9.4 Replenishment

In the event Buyer draws upon or makes a claim on Seller Security pursuant to Section 9.3, Seller shall replenish the amount of Seller Security required by Section 9.1 or Section 9.2 within ten (10) Days.

9.5 Expiration of Letter of Credit

If a Letter of Credit is serving as Seller Security, Seller shall replace, if more than five (5) days remain in the Term, such Letter of Credit with other Seller Security (which may be another Letter of Credit) more than five (5) Business Days before the expiration of the Letter of Credit. If Seller fails to provide such substitute Seller Security more than five (5) Business Days before the expiration of the Letter of Credit, Buyer may draw the full amount of the Letter of Credit and hold the proceeds in escrow until the end of the Term or such time as the Seller Security satisfying the requirements of this Agreement is provided by Seller to Buyer, at which time all such escrowed funds will be released to Buyer. Buyer may at any time thereafter apply such proceeds to satisfy

any amounts owed by Seller to Buyer under this Agreement (other than disputed amounts) that are not satisfied within ten (10) Days following the date on which such amounts become due and owing pursuant to Article 7, or any amount Buyer is entitled to draw in the event a Seller Event of Default has occurred and is continuing.

[Remainder of page is left intentionally blank]

ARTICLE 10: GOVERNMENTAL CHARGES

10.4 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.

10.5 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 Products arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Products at and from the Delivery Point (other than *ad valorem*, franchise or income taxes which are related to the sale of Energy and are, therefore, the responsibility of the Seller). 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 7 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, Buyer shall not be required to pay any portion of Governmental Charges arising from Seller’s failure to perform any obligation under 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, Buyer shall not be required to pay any portion of Governmental Charges arising from Seller’s failure to perform any obligation under this Agreement.

[Remainder of page is left intentionally blank]

ARTICLE 11: INSURANCE

11.4 Insurance Required

Seller, at its sole cost and expense, shall acquire and maintain in full force and effect the types and amounts of insurance coverage described in APPENDIX 10: INSURANCE REQUIREMENTS. Not less frequently than annually, and upon reasonable request by Buyer, Seller shall submit to Buyer original insurance certificates or other documents providing evidence of such insurance and that such insurance policies name Buyer as an additional insured to the extent that such insurance policies are required to do so pursuant to APPENDIX 10: INSURANCE REQUIREMENTS. Failure by Seller to obtain the insurance coverage required by this Article 11 shall not relieve Seller of the insurance requirements set forth or in any way relieve or limit Seller's obligations and liabilities.

11.5 Insurance Notice to Buyer

Seller's insurance certificates or other applicable documents shall provide that underwriters undertake to inform Buyer thirty (30) Days in advance of any cancellation or material change in coverage. Seller shall promptly notify Buyer in the event of underwriters' cancellation, termination or substantive modification of any of Seller's insurance coverages required in APPENDIX 10: INSURANCE REQUIREMENTS. If Seller enters into arrangements with any Lender that requires Seller's underwriters to notify such Lender in the event of policy cancellation, termination or substantive modification, Seller will arrange to have such underwriters also provide such notice to Buyer at the time Lender is notified.

[Remainder of page is left intentionally blank]

ARTICLE 12: MISCELLANEOUS

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

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

12.4.2 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;

12.4.3 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;

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

12.4.5 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;

12.4.6 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;

12.4.7 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;

12.4.8 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;

12.4.9 it has entered into this Agreement in connection with the conduct of its business and, not later than the Project COD, it will have the capacity or ability (as applicable) to deliver the Products; and

12.4.10 with respect to the purchase or sale of the Products, not later than the Project COD, it will be a producer, processor, commercial user or merchant

handling the Products, and it is entering into this Agreement for purposes related to its business as such.

12.5 Buyer's Representations and Warranties

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

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

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

12.5.3 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;

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

12.5.5 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;

12.5.6 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;

12.5.7 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;

12.5.8 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;

12.5.9 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

12.6 Indemnity

12.6.1 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) 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.

12.6.2 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, penalties, and expenses (including reasonable attorneys’ fees) (i) arising out of or relating to the construction, operation and maintenance of the Project, and (ii) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of or relating to the construction, operation and maintenance of the Developer Attachment Facilities.

12.6.3 Nothing in this Section 12.3 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.

12.6.4 Seller agrees to indemnify, defend, and hold Buyer harmless from any liability, claim, complaint, demand, action, cause of action, audit, investigation, proceeding, obligation, loss, cost damage, judgment, adjudication, arbitration decision, penalty (including fees and fines), or expenses (collectively, the “Indemnified Environmental Obligations”) suffered or incurred by any of them as a result of, arising out and/or relating to any acts or omissions of Seller or Seller’s contractors, agents, or employees related to or involving Hazardous Materials brought onto the Site, subsequently released at the Site or negligently exacerbated at the Site (whether such Hazardous Materials were pre-existing at the Site, or introduced to the Site during the Construction Period or during the Term) by any such Persons during the course of the development and/or operation of the Project.

12.6.5 Each Party, as Indemnifying Party, agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, trustees, officers, employees and agents (each being an Indemnified Party), from and against all claims, demands, losses, liabilities, and expenses (including reasonable attorneys’ fees) arising out of or relating to a breach of applicable law or any fines or penalties imposed by a Governmental Authority (including, without limitation, NYISO) to the extent arising

out of, resulting from, or caused by the Indemnifying Party, its Affiliates, its directors, trustees, officers, employees, or agents.

12.6.6 If any infringement or alleged infringement of any Intellectual Property or other proprietary right based upon the performance of or failure to perform the development, construction or operation of the Project or any of the other obligations under this Agreement occurs, including design and engineering or the materials and equipment or other Intellectual Property designed or incorporated into the Project by Seller or any of its subcontractors or vendors, Seller shall at its sole expense, promptly defend, indemnify, and hold harmless Buyer and its Affiliates, directors, trustees, officers, employees and agents (each being an Indemnified Party) from and against claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) arising out of or resulting from such infringement or alleged infringement, unless directed otherwise by Buyer.

12.7 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 12 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall defend the action with counsel of its choosing 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.

12.8 Section Left Intentionally Blank

12.9 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.

12.10 Currency

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

12.11 Notices

All notices, requests, statements or payments shall be made as follows:

If to Seller: _____

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
333 Earle Ovington Blvd. Suite 403
Uniondale, New York 11553
Attn: Manager of Power Portfolios
Email Robert.Camporeale@pseg.com

Email for invoices only: PMInvoice@pseg.com

Copy to: Long Island Power Authority
333 Earle Ovington Blvd. Suite 403
Uniondale, New York 11553
Attn: General Counsel
Fax: (516) 719-8602

Notices, consents, approvals or other communications required herein shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, or overnight courier service. Notice by hand delivery shall be effective at the close of business on the Day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses or update payment information by providing notice of same in accordance herewith.

12.12 General

This Agreement (including the Appendices, schedules and any written supplements hereto), constitutes the entire agreement between the Parties relating to the subject matter. Any terms, conditions or clarifications set forth by Seller in its proposal in response to PSEGLI’s Bulk Energy Storage RFP shall not be enforceable or applicable, and this Agreement alone will govern the relationship of the Parties. 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. 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.

12.13 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 requested, a Party shall provide to the other Party statements evidencing the Energy delivered at the Delivery Point. 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.

12.14 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).

12.15 Counterparts

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

12.16 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.

12.17 Compliance With Legal Requirements, Regulations and NYISO Rules

Each Party will comply with Legal Requirements, regulations and NYISO 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.

12.18 Compliance with Manufacturer’s Requirements

Seller shall comply at all times with requirements of manufacturers in order to maintain all rights available under warranty provisions for major equipment installed as a part of the Project.

12.19 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.

12.20 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, except as provided for herein. 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.

12.21 Severability

12.21.1 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 affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Legal Requirements.

12.21.2 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.

12.22 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.

12.23 Local Workers

To the extent possible and subject to the collective bargaining agreement of Seller and/or its Affiliates, if any, Seller shall make a good faith effort given its commercial requirements to hire local workers (such as local unionized workforce, and minority and women-owned business enterprises as indicated in APPENDIX 15: PARTICIPATION BY MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES and Service-Disabled Veteran-Owned Businesses as indicated in APPENDIX 16: PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES) during construction of the Project and as permanent employees for the operation of the Project and performance of Seller's obligations under the terms of this Agreement. Notwithstanding the foregoing, Seller shall be responsible to manage relations among Seller, its Affiliates, its contractors and subcontractors and local unionized workforce and other local workers.

12.24 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 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.

12.25 Seller's Responsibility with Minority, Women-Owned and Service-Disabled Veteran Owned Businesses

Seller shall comply with the requirements of Appendices 10 and 11 with respect to the M/WBE and SDVOB subcontracting goals.

[Remainder of page is left intentionally blank]

ARTICLE 13: DISPUTE RESOLUTION

13.4 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.

13.5 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.

13.6 Resolution of Dispute

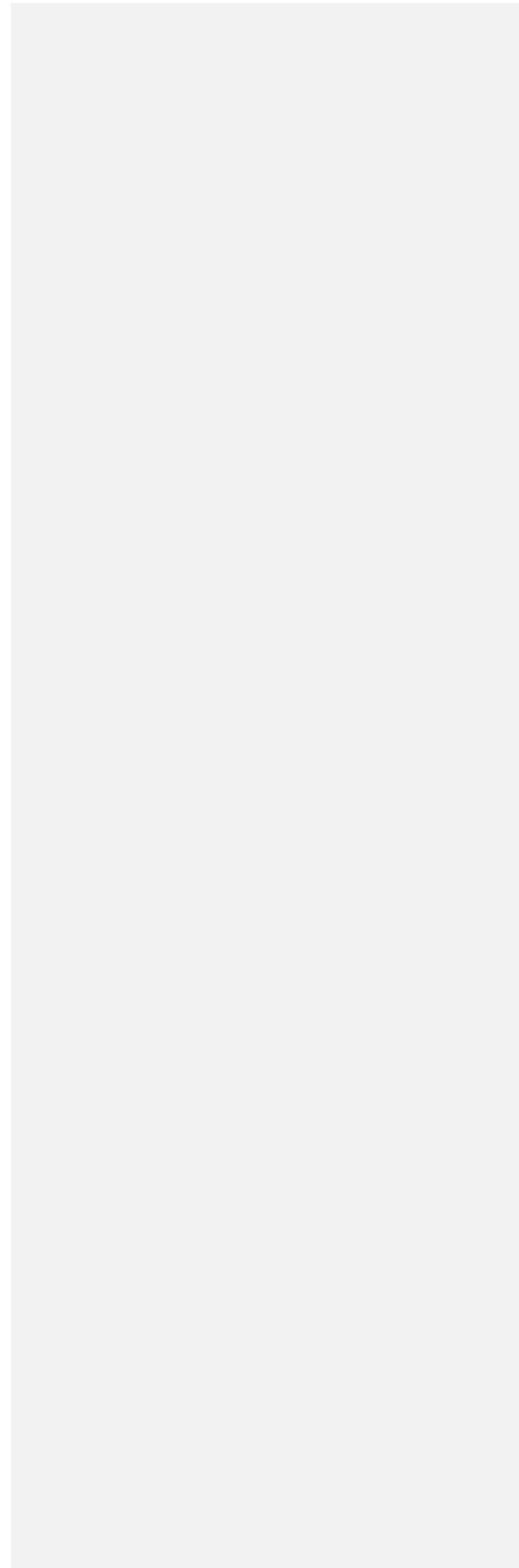
If Noticed Party disagrees with Aggrieved Party’s concern, each Party shall designate a member or members of senior management to discuss the matter and attempt to resolve the dispute. The representatives of the Parties shall meet in a location mutually agreed upon by the Parties within ten (10) Days 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 13.6 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 or in equity.

13.7 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 13 are pending. The Parties will take such action, if any, required to effectuate such tolling. Without prejudice to the procedures specified in this Article 13, 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 13, subject, however, to the rights of the Parties under the last sentence of Section 13.6.

[Remainder of page is left intentionally blank]



ARTICLE 14: FORCE MAJEURE EVENTS

14.4 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 and, which could not have been avoided by the affected Party through the employment of Prudent Utility Practices, arising out of or from 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, cyber-attack, 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, flood, lightning, earthquake, hurricane, tornado, winds of extreme force, extreme accumulation of snow or ice, naturally occurring epidemic, explosion or any similar cataclysmic occurrence. 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 Products at a price greater than that for which such is herein contracted, (iii) Buyer’s ability to purchase Products 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, nor (v) loss of Seller’s supply including any breakdown of machinery or equipment shall constitute a Force Majeure Event.

14.5 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); provided that, if such Force Majeure Event affects the Electrical Interconnection Facilities and/or Connecting Transmission Owner’s Electrical System such that Buyer is unable to receive and use all of the Energy, Buyer shall be relieved of its obligation to receive and pay for Delivered Energy and Seller shall be relieved of its obligation to deliver Products. The suspension of performance (or payment) 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.

14.6 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”) within five (5) Business Days after such Claiming Party becomes aware, or should reasonably have become aware, 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) provide the Non-Claiming Party with weekly status reports of all efforts to mitigate and remedy the Force Majeure Event.

14.7 Extended Force Majeure Events

14.7.1 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.

14.7.2 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.

14.8 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 (i) such Force Majeure Event occurs during the first ten (10) years after Project COD, and (ii) 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 14.5 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 14.5, Buyer’s rights under Section 14.6 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.

14.9 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 eighteen (18) 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 eighteen (18) 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. Notwithstanding the foregoing, if the Project or any portion of the Electrical Interconnection Facilities (or both, as the case may be) are damaged or destroyed by a Force Majeure Event, Seller or Buyer (as applicable) may rebuild the Project (subject to Section 14.5) or the Electrical Interconnection Facilities and recommence performance as soon as commercially practicable after the Force Majeure Event (and in such event neither Party shall have the right to terminate this Agreement under this Section 14.6); *provided, however*, that (1) if the Project shall be damaged or destroyed by a Force Majeure Event, Seller shall not be required to rebuild the Project (subject to Section 14.5), and if it elects not to rebuild the Project, then Buyer shall have no obligation to rebuild the Electrical Interconnection Facilities; and (2) if the Electrical Interconnection Facilities are damaged or destroyed and either the Project is not damaged or destroyed, or the Project is damaged or destroyed and Seller elects to rebuild the Project, then Buyer shall be obligated to rebuild the Electrical Interconnection Facilities (other than the Developer Attachment Facilities).

14.10 Liability Following Termination

Upon termination of this Agreement as provided in Section 14.9, 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.

[Remainder of page is left intentionally blank]

ARTICLE 15: ASSIGNMENT; LENDERS; CONTROL OF SELLER

15.4 Assignment by Seller

15.4.1 [Prior to Project COD,] Seller may not, without the prior written consent of Buyer, sell, transfer or assign its rights, obligations or interest in this Agreement (“Assignment”) to a third party (other than an Affiliate of Seller) or sell, transfer or assign its rights, obligations or interest in this Agreement to any Person succeeding to all or substantially all of the assets of Seller or effect a change of control of Seller which results in a change of more than fifty (50) percent of the ownership of Seller or a change in the Party or Parties who currently control Seller, either directly or indirectly. [After Project COD] and upon forty-five (45) Days’ advance written notice by Seller to Buyer, Seller may sell, transfer or assign this Agreement to a Person (i) who complies with the requirements of Section 15.1.2, and (ii) who complies with the requirements of Section 15.1.3, upon demonstrating such compliance with (i) and (ii) above to Buyer’s reasonable satisfaction.

15.4.2 Subject to Section 15.7, any Assignment by Seller of its obligations hereunder including, without limitation, involving the ownership and/or operation of the Project, other than any Assignment to a Lender in connection with a financing, re-financing or other financial arrangements, shall be to a Person that, (i) is qualified, financially sound and has at least two (2) years’ experience and capability involving the ownership and/or operation of comparable energy storage facilities of a size equal to or greater than the Project; or (ii) has engaged prior to or concurrent with the Assignment an operator to operate the Project that is qualified, financially sound and has such experience and capability.

15.4.3 With respect to any permitted Assignment of this Agreement in compliance with this Article 15, including any assignment of this Agreement to any transferee that acquires Seller’s interest in the Project in accordance with Section 15.7, other than an Assignment to a Lender in connection with a financing, or sale or transfer of the Project to a substitute owner in compliance with the terms of the Consent Agreement (as provided in 15.6), the assignee or transferee or successor entity shall assume all of the duties and obligations of Seller under this Agreement pursuant to an assignment and assumption agreement in which the assignee, transferee or successor entity unconditionally assumes and agrees to be bound by all of the terms and conditions of this Agreement as Seller, including providing Seller Security as provided for in Article 9, and whereby the assignee makes certain additional representations and warranties as appropriate for such assignee that are substantially similar to those contained in Section 15.1.3 and such assignee delivers such enforceability assurance as Buyer may reasonably request. Following any Assignment in compliance with this Article 15 (including Section 15.4), Seller shall be, without further action by Buyer, released and discharged from all obligations under this Agreement arising after the effective date of such Assignment. Seller agrees to compensate Buyer for Buyer’s reasonable 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 Section 15.4 (including this Section 15.1.3). Buyer shall provide an invoice to Seller for such charges, with appropriate documentation, and Seller shall pay such invoice within thirty (30) Days.

15.5 Assignment by Buyer

15.5.1 Buyer may not at any time, without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed, assign, transfer, sell, pledge or encumber this Agreement or its rights hereunder to any Person; provided, however, that Buyer may, without the consent of Seller (i) transfer, sell, pledge, encumber or assign this Agreement or the account, revenues, or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to (a) an Affiliate of Buyer, *provided*, that such Affiliate has creditworthiness at the time of such transfer or assignment that is equal to or higher than that of Buyer as of the time of the transfer or assignment, as evidenced by audited financial statements, or (iii) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of Buyer whose creditworthiness, such transfer or assignment, is equal to or higher than that of Buyer as of the time of the transfer or assignment, as evidenced by audited financial statements; *provided further*, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as Buyer delivers such tax and enforceability assurance as Seller may reasonably request.

15.5.2 With respect to any permitted assignment or transfer of this Agreement in compliance with Section 15.2.1 above, the assignee or transferee or successor entity shall assume all of the duties and obligations of Buyer under this Agreement pursuant to an assignment and assumption agreement in which the assignee, transferee or successor entity unconditionally assumes and agrees to be bound by all of the terms and conditions of this Agreement as Buyer and whereby the assignee makes certain additional representations and warranties as appropriate for such assignee that are substantially similar to those contained in Section 12.5. Upon any permitted assignment or transfer by Buyer pursuant to Section 15.2.1, Buyer shall be, without further action by Seller, released and discharged from all obligations under this Agreement arising after the effective date of such assignment or transfer. Buyer agrees to compensate Seller for Seller's reasonable costs and expenses incurred by its use of outside attorneys, consultants, accountants and advisors in connection with this Agreement in response to Buyer's requests made pursuant to Section 15.5 (including this Section 15.2.2). Seller shall provide an invoice to Buyer for such charges, with appropriate documentation, and Buyer shall pay such invoice within thirty (30) Days.

15.6 Lender(s)

Seller may, subject to Parties' compliance with requirements of this Section 15.3 which compliance shall constitute Buyer's written consent, collaterally assign, or grant as security, beneficially or otherwise, its rights under this Agreement to Lenders for collateral security purposes in connection with any financing of the Project, or other financing arrangement;

provided, however, that Seller's obligations under this Agreement shall continue in their entirety in full force and effect as the obligations of a principal and not as a surety, and Seller shall remain fully liable for all of its obligations under or relating to this Agreement. Each such collateral assignment and any assignee, purchaser or transferee shall be subject to Buyer's rights and defenses hereunder and under Legal Requirements. Seller shall provide prior notice to Buyer of any such collateral assignment. Buyer shall execute such consents, agreements or similar documents with respect to a collateral assignment hereof to Lender(s) as Lender(s) may reasonably request in connection with the documentation of the financing of the Project(s), including a consent to collateral assignment ("Consent Agreement") in a form reasonably acceptable to Buyer. Seller agrees to pay for Buyer's reasonable costs and expenses incurred in response to Seller's and Lender's requests, including attorney and consultant fees. Promptly after granting any such interest, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which Seller's interest under this Agreement has been assigned. Such notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

15.7 Rights of Lender

If Seller grants an interest under this Agreement as permitted by Section 15.6, the following provisions shall apply:

15.7.1 Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a Seller Event of Default in accordance with Section 6.1 and such act is timely performed by Lender shall be as effective to prevent or cure a default as if done by Seller.

15.7.2 Within thirty (30) Days of the receipt of a written request from Seller or any Lender, Buyer, at Seller's sole cost and expense, shall execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments and other documents reasonably requested by Seller or Lender in order to consummate any financing, or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the rights of such Lender upon foreclosure of Lender's security interest and such other customary provisions as may be reasonably requested by Seller or any such Lender.

15.7.3 Buyer agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to Buyer with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of Seller hereunder in a written agreement; *provided* that Buyer shall nevertheless be entitled to exercise all of its rights hereunder in the event that Seller or Lender fails to perform Seller's obligations under this Agreement.

15.8 Cure Rights of Lender

The cure rights of Lender shall be as agreed in the Consent Agreement. Buyer shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between Buyer and any Lender. Notwithstanding any such action by any Lender, Seller shall not be released and discharged from and shall remain liable for any and all unsatisfied obligations to Buyer arising or accruing hereunder.

15.9 Control of Seller

At all times prior to and following Project COD, the Seller, and the managing member or manager of the Seller, as applicable, shall be a Person that is qualified, financially sound and (i) has at least two (2) years' experience and capability involving the ownership and/or operation of comparable energy storage facilities of a size equal to or greater than the Project; or (ii) has engaged an operator to operate the Project with at least two (2) years' experience and capability involving the operation of comparable energy storage facilities of a size equal to or greater than the Project; *provided, however*, that the Parties may agree to a different standard in a Consent Agreement with any Lender.

15.10 Sale of Project

Other than as set forth in Section 15.9, Seller may not, sell, transfer or assign 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 Sections 15.1.2 and 15.1.3) or sell, transfer or assign its interest in the Project to any Person succeeding to all or substantially all of the assets of Seller.

15.11 New York State Finance Law Section 138

Notwithstanding any other provision of this Article 15, the provisions set forth in New York State Finance Law Section 138 shall apply.

15.12 Buyer's Purchase of the Project

15.9.1 Upon the expiration of the Term, and unless this Agreement has been terminated earlier in accordance with the terms hereof, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, the Project, free and clear of all liens, encumbrances and liabilities of any kind, including all of Seller's right, title and interest in, to and under all of the assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible, wherever located, which relate to, or are used or held for use in connection with, the Project, including without limitation all contract rights, intellectual property, environmental attributes and credits, interconnection rights, insurance benefits, and books and records of the Project [, and specifically including the Site described in APPENDIX 1: DESCRIPTION AND LOCATION OF THE PROJECT.] **[TO BE INCLUDED IF SELLER OWNS THE SITE AND BUYER ELECTS TO PURCHASE INSTEAD OF LEASE THE SITE]**. The purchase price, which Buyer shall pay to Seller for the Project [and the Site] shall be an amount equal to \$ _____, which is Seller's estimate of the fair market value of the Project [and the Site] at the time of submitting its proposal in PSEGLI's Bulk Energy Storage RFP. [Notwithstanding the foregoing, Seller shall assign the lease for the Site to Buyer for a term of thirteen (13) years at a price of \$1 per year under the terms of a lease to be provided to Buyer upon

submittal of its Proposal in the PSEGLI's Bulk Energy Storage RFP, which term may be extended by Buyer at the end of such thirteen (13) year term, or any extension thereof. The Site is described in APPENDIX 1: DESCRIPTION AND LOCATION OF THE PROJECT. **[TO BE INCLUDED IF SELLER LEASES THE PROJECT SITE.]** Additionally, Seller shall assign the Interconnection Agreement to Buyer in accordance with Section 4.6 and will transfer any Project warranties to Buyer. Such purchase and sale of the Project shall be pursuant to a purchase and sale agreement, in form and substance mutually agreeable to Buyer and Seller and in substantially the form set forth in APPENDIX 21: FORM OF PURCHASE AND SALE AGREEMENT, to be negotiated between the Parties prior to the expiration of the Term ("Purchase and Sale Agreement"), which shall include customary representations and warranties and indemnification obligations for the sale of facilities of a similar nature to the Project. Seller shall provide comprehensive training to Buyer's Operations & Maintenance Contractor and to Buyer as set forth in APPENDIX 19: TRAINING PROGRAM. Seller also agrees to cooperate with the Buyer and Buyer's agents and contractors to ensure a safe and orderly hand over of the Project to the Buyer at the expiration of the Term and comply with the requirements set forth in APPENDIX 13: MEETING, SITE ACCESS, INSPECTIONS, REPORTING, AND HAND OVER during the Hand Over Period.

Prior to expiration of the Term, Buyer shall have the right to request that Seller conduct, or cause to be conducted, a Contract Capacity Test, a Ramp Rate Test, a Duty Cycle Test and/or a Roundtrip Efficiency Test in accordance with NYISO Rules and APPENDIX 3: CONTRACT CAPACITY TEST AND OTHER TESTS ("Final Testing"). Buyer's remedies with respect to any degradation of the Project's performance from the results of testing conducted prior to achievement of Project COD, which degradation is demonstrated by Final Testing, shall be addressed as set forth in the Purchase and Sale Agreement.

15.13 Key Personnel

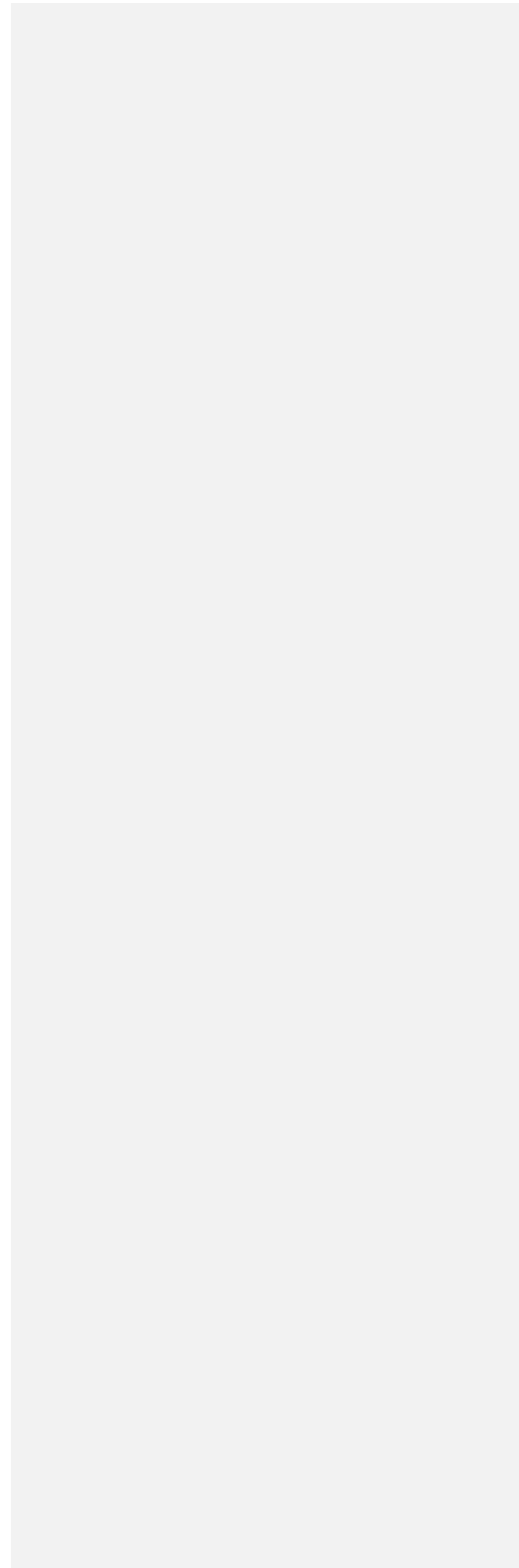
Seller personnel set forth in APPENDIX 20: KEY PERSONNEL are designated as essential personnel for purposes of this Agreement ("Key Personnel"). Designation of Key Personnel not identified in APPENDIX 20: KEY PERSONNEL shall be subject to Buyer's review and approval. Key Personnel shall (i) have as their primary responsibility the services related to development and construction of the Project and operation of the Project, as applicable and (ii) be assigned to the Project on a full-time basis in accordance with their respective responsibilities. Seller shall not change any of the Key Personnel without the prior written consent of Buyer.

15.14 Removal/Right to Approve Key Personnel

Buyer may, in its sole discretion and at any time, request and Seller shall remove any Key Personnel from the Project and provide a replacement reasonably acceptable to Buyer. If Seller desires or is required to replace one of the Key Personnel, Seller shall provide written notice to Buyer of the identity and qualifications of the proposed replacement. If Buyer rejects, in its sole discretion, the proposed replacement, Seller shall promptly propose an alternative replacement.

The costs associated with the replacement of any Key Personnel pursuant to this Section 15.11 shall be borne by Seller.

[Remainder of page is left intentionally blank]



ARTICLE 16: CONFIDENTIALITY

16.4 Confidential Information

16.4.1 The Parties agree that the following sections of this Agreement consist of 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:

[SELLER TO IDENTIFY ARTICLES AND APPENDICES IT WISHES TO DESIGNATE AS CONFIDENTIAL]

- (a) Articles
- (b) Appendices

16.4.2 Any Party (the “Disclosing Party”) that provides written, confidential information to the other Party (the “Receiving Party”) shall mark such as “Confidential” to be protected from disclosure to third parties (the “Confidential Information”). The Receiving Party shall protect the marked Confidential Information from disclosure to third parties consistent with the provisions of this Article 16 and subject to Legal Requirements, provided, however, that a Party may disclose Confidential Information to (i) its Affiliates, rating agencies, potential Lenders, potential investors, or potential purchasers of, the Seller or the Project, (ii) its trustees, directors, employees, advisors, consultants, agents, partners, members, managers, or representatives, and (iii) any Governmental Authority, but only if and to the extent necessary in connection with applying for or obtaining (a) an easement, license or permit related to the Project or the Site, or (b) funding from a Governmental Authority in connection with the Project, the Site or the Electrical Interconnection Facilities (such Persons referenced in clauses (i) through (iii), “Confidential Parties”). Confidential Parties shall be obligated by Legal Requirements, professional rules of conduct or a legally binding obligation to maintain the confidentiality of such Confidential Information.

16.5 Compliance With the Freedom of Information Law

16.5.1 Seller expressly acknowledges that Buyer is subject to the requirements of New York’s Freedom of Information Law (“FOIL”) and must comply therewith. If Buyer is requested by a third party to disclose the marked Confidential Information that it has received from Seller, Buyer will, to the extent it is consistent with the requirements in Article 6 of the New York State Public Officers Law, (i) notify Seller of the request, (ii) provide Seller the opportunity to provide information regarding the need for confidential treatment, (iii) evaluate the third party’s request for disclosure and Seller’s request for confidential treatment, and (iv) determine if the marked Confidential Information is subject to disclosure under FOIL. If Buyer determines that the marked Confidential Information is subject to disclosure, it will provide prompt written notice of such determination to Seller so that Seller may seek a protective order or other appropriate remedy. If Seller does not obtain a protective order within ten (10) Days after Buyer

provides notice to Seller of its intent to make public the marked Confidential Information, Buyer may disclose such information with no liability or further obligation to Seller.

16.5.2 Contract Value Disclosure. Notwithstanding any other provision in this Agreement, Buyer may publicly disclose the estimated total contract value associated with this Agreement prior to Buyer's Board of Trustees authorization of the execution of 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.

16.6 Treatment of Otherwise Publicly Available Information

Notwithstanding anything to the contrary in this Article 16, neither Party shall be required to hold confidential any information which: (i) was available to the public prior to the time of disclosure; (ii) is or becomes available to the public through no act or omission of the other Party or its Confidential Parties; (iii) is rightfully communicated or received by the other Party free of any obligation of nondisclosure and without restriction as to its use; (iv) was in the other Party's possession and obtained on a non-confidential basis prior to its disclosure by the Disclosing Party or its Confidential Parties; (v) is independently developed by the other Party without reference to or use of the Confidential Information of the Disclosing Party; or (vi) disclosure is approved in writing by the Disclosing Party.

16.7 Term of Confidentiality

The obligations set forth in this Article 16 shall survive expiration or termination of this Agreement for a period of three (3) years thereafter.

16.8 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.

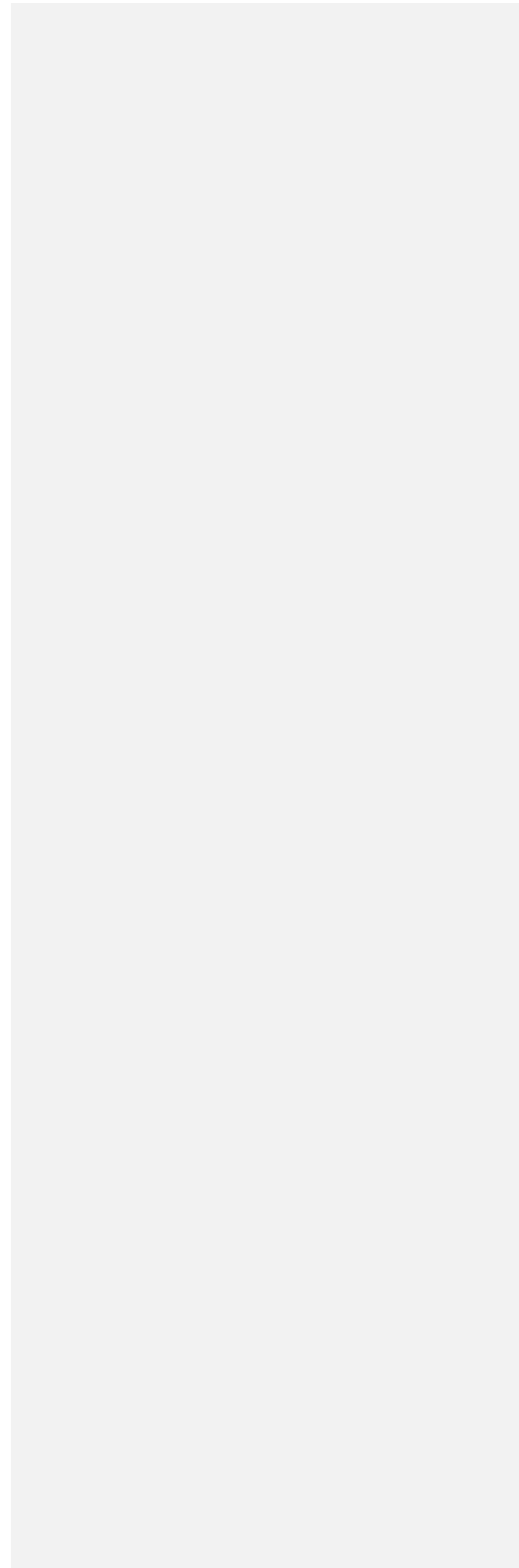
16.9 SEC

Seller may file this Agreement with the Securities and Exchange Commission ("SEC") as may be necessary under applicable federal law in connection with Seller's application to the SEC for such orders and approvals as may be required for the financing of the Project and/or the issuance and sale of interests in Seller.

16.10 Confidential Treatment

Seller shall request confidential treatment of the Confidential Information in this Agreement in connection with filings under Sections 16.5 and 16.6; *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.

[signatures on next page]



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

[INSERT SELLER NAME]

LONG ISLAND POWER AUTHORITY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to Form:
Office of the Attorney General

Approved:
Office of the State Comptroller

By: _____

By: _____

Name: _____

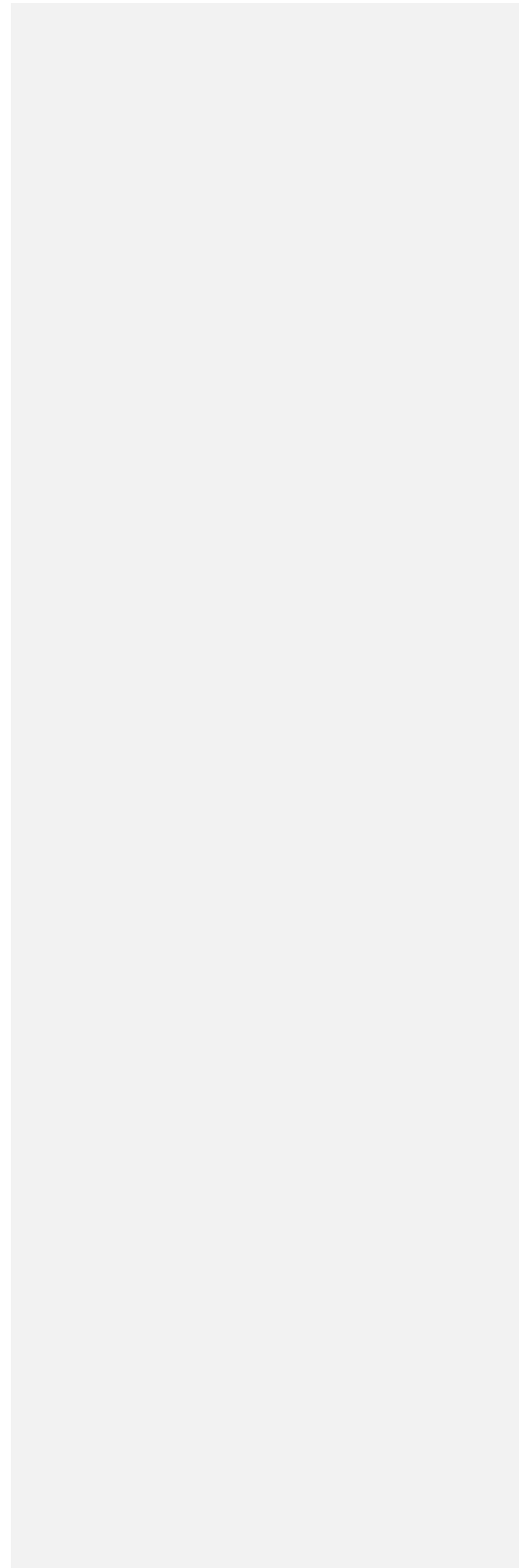
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



STATE OF [STATE])

ss.:

COUNTY OF [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 [SELLER NAME], the [SELLER TO 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 [STATE] that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

Notary Public

[Remainder of page is left intentionally blank]

APPENDIX 1

DESCRIPTION AND LOCATION OF THE PROJECT

[SELLER TO INSERT PROJECT DETAILS] Pursuant to the terms of the Agreement, **[INSERT SELLER'S NAME]** is planning to construct a **[SELLER TO INSERT TYPE OF PROJECT]** project at **[SELLER TO INSERT LOCATION]** referred to as "**[SELLER TO INSERT NAME OF PROJECT]**" (a project sized at up to **[SELLER TO INSERT AMOUNT OF MW]** MW AC). "**[SELLER TO INSERT PROJECT NAME]**" is approximately **[SELLER TO INSERT NUMBER OF ACRES]** acres in size.

Project Description [SELLER TO SPECIFY]

Identify at minimum type(s) of Facility, Site, description of equipment, design and key component manufacturer information, nameplate MW of Capacity of Project or components (per location); rated output for up to 12 hour discharge period, ramp rate at which discharge output or charging of the Facility may occur; proposed NYISO Summer Capability Period and Winter Capability Period Capacity, power factor(s), charging time hours, maximum hours continuous discharge at full output, type(s) of Ancillary Services available from such Facility, location(s), Point of Interconnection, Delivery Point.

Since Seller will be selling or leasing the Site to Buyer, a full legal description of the Site must be included along with aerial photos of the Site showing the proposed location of the Project on the Site.

[remainder of page intentionally blank]

APPENDIX 2
PROJECT DEVELOPMENT MILESTONES

1. Minimum Required Consents [***SELLER TO SPECIFY***]

MINIMUM REQUIRED CONSENTS				
Item	Permit	Agency	Application Target Date to Submit Application, Filing or Proposal	Receipt Target Date to Obtain Permit or Agreement

2. Other Consents [***SELLER TO SPECIFY***]

OTHER CONSENTS				
Item	Permit	Agency	Target Date to Submit Application/Filing/Proposal	Target Date to Obtain Permit/Agreement

3. Construction Milestone Target Date **[SELLER TO SPECIFY ITS TARGET DATE FOR COMPLETING ITS CONSTRUCTION MILESTONE]**

4. Other Project Development Milestone Date(s) **[SELLER TO SPECIFY OTHER KEY PROJECT DEVELOPMENT DATES]**

[remainder of page intentionally blank]

APPENDIX 3
CONTRACT CAPACITY TEST
AND
OTHER TESTS

1. Contract Capacity Test

The results of each DMNC test conducted in accordance with NYISO Rules for each Summer Capability Period or Winter Capability Period, as adjusted to ISO Conditions, will be used to determine the Contract Capacity for the Month in which such test occurs and continuing until the next Contract Capacity Test under NYISO Rules; provided, however, that if the Project is re-tested and the Capacity of the Project is re-determined for NYISO purposes in accordance with the applicable NYISO Rules at any time prior to the next required NYISO Contract Capacity Test, such re-test results, as adjusted to ISO Conditions, shall be used to determine Contract Capacity for the Month in which such re-test occurs and continuing until the next succeeding Contract Capacity Test under NYISO Rules.

The DMNC procedures in effect under NYISO Rules from time to time shall be the test used to establish the Contract Capacity, provided that if NYISO Rules are amended or discontinued such that no equivalent test procedures are included, the Parties will utilize the last set of procedures in such NYISO Rules prior to such amendment or discontinuance.

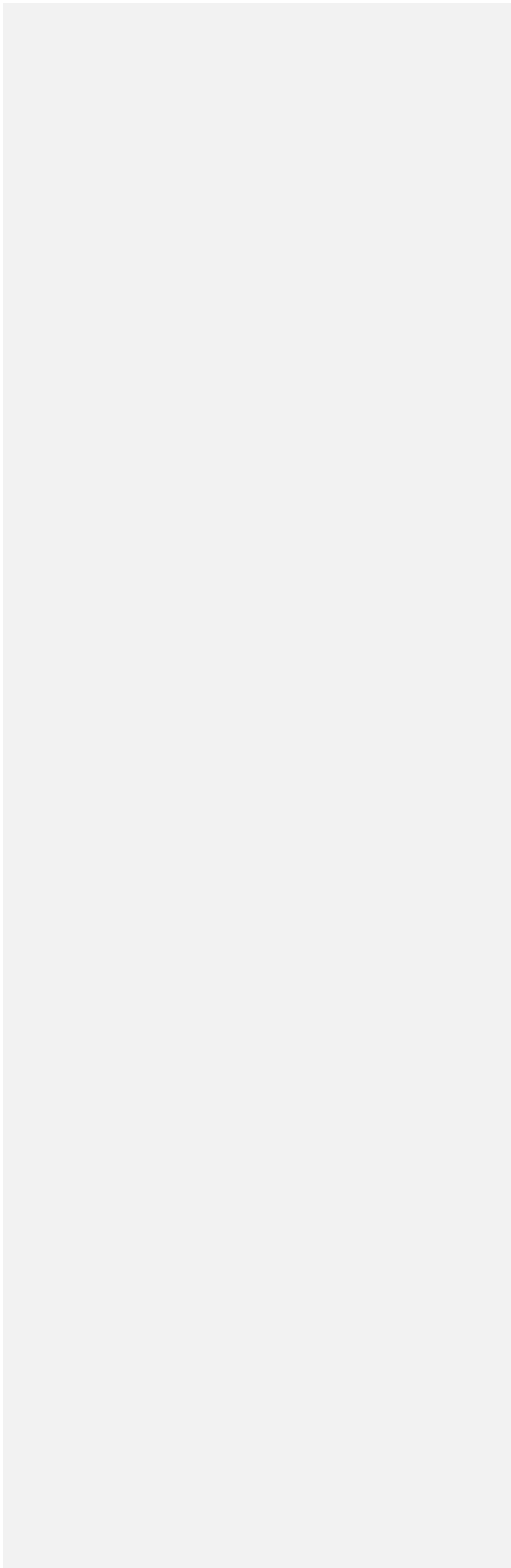
If a material change occurs to any DMNC test procedures as established by the NYISO which makes it impossible or impracticable for the Parties to utilize such test procedures to establish Contract Capacity, or which imposes a material hardship upon or deprives a Party of a material benefit of the Agreement, then the Parties agree to use the DMNC test procedures as they existed prior to such material change or alternatively to discuss and agree in good faith upon a replacement set of test procedures that fairly represent the test procedures in effect upon the Execution Date.

2. Other Tests

Duty Cycle Test – This test entails the period during which the Project would be discharged from 100% SoC down to the Minimum SoC and then charged back to 100% SoC. The required performance guaranty would involve the duration of the Duty Cycle. This will vary depending on the duration design of the Energy Storage system (e.g., 2 hours, 4 hours, etc.).

SELLER TO SPECIFY APPLICABLE DMNC OR OTHER TESTS PER NYISO RULES

[remainder of page intentionally blank]



10-2

#

APPENDIX 4

CAPACITY PAYMENT

[SELLER TO SPECIFY \$/KW-MONTH PRICE AND PROVIDE FORMULA FOR CALCULATING MONTHLY CAPACITY PAYMENT]

[remainder of page intentionally blank]

APPENDIX 5

ENERGY PAYMENT

The Monthly Energy Payment is equal to the sum of the Monthly VOM, the Monthly Scheduling Charges, the Monthly Pass-Through Charge, and the Guaranteed Roundtrip Efficiency Credit.

1. Monthly VOM

The Monthly variable operations & maintenance (“Monthly VOM”) payment is equal to \$XXX/MWh multiplied by the Monthly Delivered Energy in MWh.

2. Monthly Scheduling Charges: [TO BE COMPLETED BY RESPONDENT]

3. Monthly Pass-Through Charges:

- o Cost of Station Service Energy
 - o O&M charges relating to Connecting Transmission Owner’s Attachment Facilities
 - o O&M charges related to Connecting Transmission Owner’s System Upgrade Facilities
 - o O&M charges related to Connecting Transmission Owner’s System Deliverability Upgrades
4. Guaranteed Roundtrip Efficiency Credit (as defined in APPENDIX 7: GUARANTEED ROUNDTRIP EFFICIENCY CREDIT)

[SELLER TO LIST ALL ANCILLIARY SERVICES TO BE INCLUDED IN THE ENERGY PAYMENT AND ALL TERMS AND CONDITIONS FOR BUYER’S USE OF SUCH SERVICES]

[remainder of page intentionally blank]

APPENDIX 6

AVAILABILITY ADJUSTMENT FOR MONTHLY CAPACITY PAYMENT

Monthly Capacity Payments will be adjusted by multiplying the Monthly Capacity Payment otherwise due under Section 5.1 and APPENDIX 4: CAPACITY PAYMENT by the “Monthly Capacity Adjustment Factor” or “MCAF,” calculated as follows:

MCAF = Lesser of 1.0 or MCA for such Month

Where:

MCA (Monthly Capacity Adjustment) for a month is a fraction where: (i) the numerator is the Equivalent Availability during the twelve (12)-month period ending with such Month, and (ii) the denominator is __ percent (__%). **[SELLER TO INSERT GUARANTEED EQUIVALENT AVAILABILITY]**

For purposes of this calculation, the Equivalent Availability during the eleven (11) Months prior to COD is assumed to be __ percent (__%). **[SELLER TO INSERT GUARANTEED EQUIVALENT AVAILABILITY]**

Force Majeure adjustment to Equivalent Availability: For purposes of this calculation, the Equivalent Availability calculation referenced in Section 5.4.1(i) shall be adjusted to remove fifty percent (50%) of the Capacity unavailable due to the Force Majeure Event from the available Capacity in the numerator.

[remainder of page intentionally blank]

APPENDIX 7

GUARANTEED PERFORMANCE ADJUSTMENT

1. GUARANTEED ROUNDTRIP EFFICIENCY CREDIT

“Roundtrip Efficiency” means the measured and recorded amount of Energy the Project delivers to the Delivery Point relative to the amount of Energy injected into the Project at the Delivery Point during the preceding charge. Actual Roundtrip Efficiency will be measured and recorded on a Monthly basis for any Month in which the Storage Facility is Cycled.

For each applicable month, the Guaranteed Roundtrip Efficiency Monthly Variance, as defined below, will be calculated.

Guaranteed Roundtrip Efficiency Monthly Variance = MCE x CCE x (GRE – ARE)

Where:

MCE = Charging Energy for the Month (in MW hours)

CCE = Average Load Zone K LBMP (\$/MW hour) in the Day-Ahead Market for all hours in the Month between midnight and 8:00 AM

GRE = Guaranteed Roundtrip Efficiency, %

ARE = Actual Roundtrip Efficiency, %

For each Contract Year, Seller shall pay to Buyer the Guaranteed Roundtrip Efficiency Credit which equals the sum of the Guaranteed Roundtrip Efficiency Monthly Variances for such Contract Year; provided that, if such sum is a negative value, the Guaranteed Roundtrip Efficiency Credit is zero.

Contract Year	Guaranteed Roundtrip Efficiency (GRE)
1	
2	
3	
4	
5	
6	
7	

Actual Roundtrip Efficiency

The Actual Roundtrip Efficiency shall be calculated and recorded to determine the amount of energy the Project can deliver relative to the amount of Energy injected into the system during

the preceding charge. The Actual Roundtrip Efficiency of the Project [for the billing Month](#) shall be determined in accordance with the equation below from the recorded and measured data.

$$\text{Roundtrip Efficiency} = \frac{\text{MWh delivered} + \text{Stored Energy}_{\text{end}}}{\text{MWh received} + \text{Stored Energy}_{\text{start}}}$$
$$\text{Roundtrip Efficiency} = \frac{\text{MWh delivered}}{\text{MWh received} - (\text{Stored Energy}_{\text{end}} - \text{Stored Energy}_{\text{start}})}$$

Where:

MWh_{delivered} = measured and recorded energy delivered from the storage system at the Delivery Point [for the billing Month](#), all Station Service Energy will be excluded from MWh_{delivered}.

MWh_{received} = measured and recorded energy received during charging of the storage system at the Delivery Point [for the billing Month](#), all Station Service Energy will be excluded from MWh_{received}.

Stored Energy_{end} = available energy in the battery at the end of the efficiency measurement period.

Stored Energy_{start} = available energy in the battery at the start of the efficiency measurement period

Formatted: Indent: Left: 0"

2. GUARANTEED RAMP RATE

Seller guarantees a minimum response rate of xxx percent (xx% *Seller to insert percentage*) of the Contract capacity per minute ("Guaranteed Ramp Rate"). The Ramp Rate test will be conducted in accordance with the procedure described below.

In the event that the Project fails to achieve the Guaranteed Ramp Rate, the Seller shall promptly place the Project in a Forced Outage and resolve any issues such that the Project can successfully achieve the Guaranteed Ramp Rate. The period of Forced Outage shall be reflected in the Availability Adjustment for Monthly Capacity Payment (Appendix 6).

- i. Pre-charging Storage Facility prior to Ramp Rate test. To commence a Ramp Rate test the Project must be charged to no more or less than 50% SOC.
- ii. Buyer shall issue a Dispatch request to increase Project output from zero (0) MW to the full Contract Capacity.
- iii. Each minute following the Dispatch request, a meter reading of power (as measured in MW AC) shall be taken at the Delivery Point. After five (5) minutes, the corresponding five (5) distinct meter readings will be summed and then divided by five (5).
- iv. The resulting number shall be recorded as the test Ramp Up Rate.

v. Ramp Up Rate shall be tested four (4) times within an hour as part of the Ramp Rate test with the average of the three highest results serving as the recorded Ramp Up Rate for the test which must conform to the Regulation Up Ramp rate (MW/min) set forth in Appendix 9: OPERATING LIMITS.

vi. INITIATING STORAGE RAMP DOWN (CHARGING) RATE TEST. Within one hour of the Ramp Up test, Buyer shall issue a Dispatch request to charge the Storage Facility at the maximum rated power per APPENDIX 9: OPERATING LIMITS.

vii. Each minute following the Dispatch request, a meter reading of power (as measured in MW AC) shall be taken at the Delivery Point. After five (5) minutes, the corresponding five (5) distinct meter readings will be summed and then divided by five (5).

viii. The resulting number shall be recorded as the test Ramp Down Rate and must match the Regulation Down Ramp Rate (MW/min) set forth in Appendix 9: OPERATING LIMITS.

Ramp Down Rate shall be tested four (4) times within an hour as part of the Storage Rating Test with the average of the three lowest results serving as the recorded Ramp Down Rate for the Project.

APPENDIX 8

SAMPLE MONTHLY INVOICE

[SELLER TO INSERT SAMPLE MONTHLY INVOICE]

[remainder of page intentionally blank]

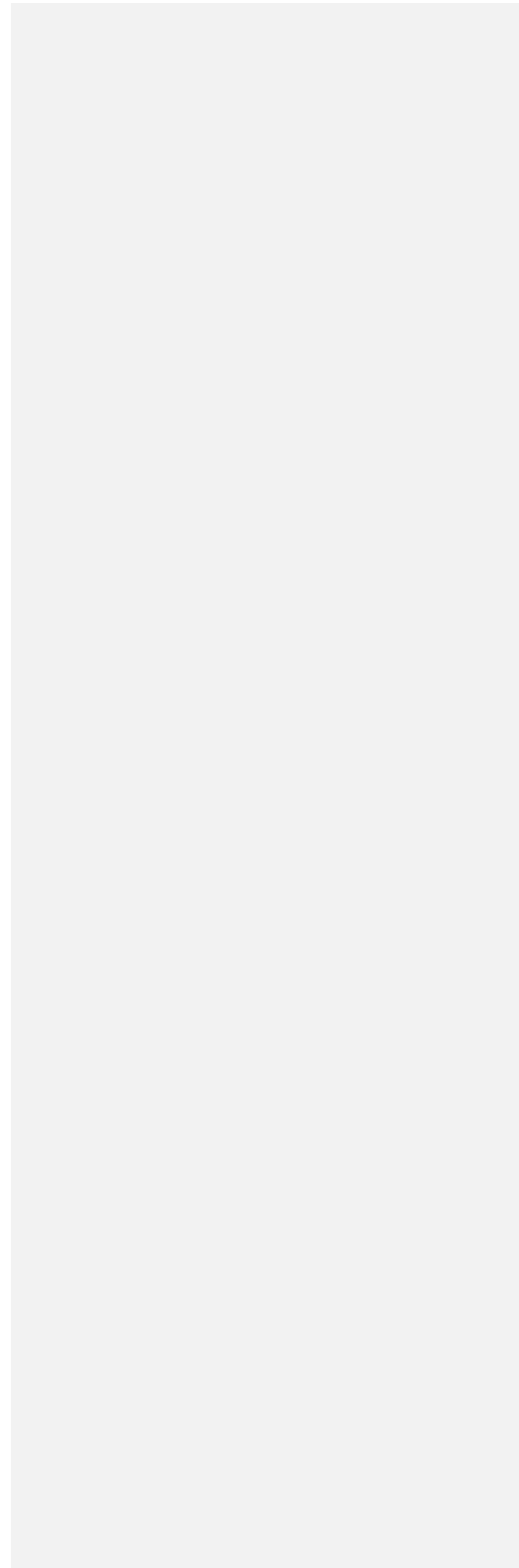
APPENDIX 9
OPERATING LIMITS
[SELLER TO PROVIDE DETAILS]

1. Operating Limits

2. Planned Outages Schedule

3. Maintenance Outage Schedule

[remainder of page intentionally blank]



APPENDIX 10

INSURANCE REQUIREMENTS

10. 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 set forth below. 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 which are reasonably acceptable to Buyer. Seller shall give Buyer prompt notice of any material alteration to any of such insurance coverages or cancellations of such coverages, but in no event later than thirty (30) Business Days after it learns of such material alteration.

Insurance Policies and Limits:

Error! Reference source not found. 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 accident.

1.3 Commercial General Liability:

Commercial General Liability insurance including contractual liability coverage for the indemnity provisions of this Agreement with a Combined Single Limit 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 subsections 1.1 through 1.3 may be satisfied by the specified limits in the separate policies or by Umbrella or Excess Liability insurance which, in combination with the limits of the separate policies provides the total limit required for each type of insurance.

1.5 Property Insurance:

10. 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 Products 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. General Provisions.

Error! Reference source not found. Evidence of Coverage:

Seller shall, prior to supplying Products under this Agreement, upon each 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's insurance consultant 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 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 material alteration 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 under policies provided by Seller pursuant to this Appendix shall (as between Seller and Buyer) be assumed by, for the account of, and at the sole risk of Seller.

[remainder of page intentionally blank]

APPENDIX 11
FORM OF SELLER LETTER OF CREDIT

[Issuing Bank Name]

Irrevocable Transferable Standby

Letter of Credit No. _____

DATE:

BENEFICIARY:

Long Island Power Authority
333 Earle Ovington Boulevard, Suite 403
Uniondale, New York 11553

Attn: TBD

APPLICANTS:

[_____]

INITIAL AMOUNT: USD \$ ***[RESPONDENT TO INSERT AMOUNT THAT IS \$150,000 PER MW OF PROJECT CAPACITY]***

DATE OF EXPIRY: [_____]

We hereby issue in your favor our Irrevocable Nontransferable Standby Letter of Credit No. _____ (this "Letter of Credit") for the account of _____, [and _____] ([collectively], the "Applicant(s)"), [on behalf of _____ ("Seller")], in the aggregate stated amount not to exceed AND /100 US DOLLARS (US\$) (as the same may be reduced from time to time as a result of draws made pursuant to the provisions of this Letter of Credit, the "Available Amount"), effective immediately and expiring at 5:00 p.m., New York, New York, time, on the Expiration Date at our counters at [_____].

This Letter of Credit shall be of no further force or effect upon the close of business on the Date of Expiry written above (or, if such day is not a Business Day) (as hereinafter defined), on the next preceding Business Day) (the "Expiration Date"). 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.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to you by presentation in strict compliance on or prior to 5:00 p.m., New York, New York time, on or prior to the Expiration Date at our counters of:

- (1) the original of this Letter of Credit and all amendments; and
- (2) your sight draft drawn on us; and
- (3) Beneficiary's Certificate issued in the form of Annex I attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary.

Drafts drawn under this Letter of Credit must contain the clause: "Drawn under [Issuing Bank Name] Irrevocable Transferable Standby Letter of Credit No. _____, dated, ____."

Partial and multiple draws are permitted under this Letter of Credit; *provided* that the Available Amount of this Letter of Credit shall be permanently reduced by the amount of each such draw.

This Letter of Credit may be transferred, and Beneficiary's rights hereunder may be assigned in accordance with our standard Transfer Document duly executed and properly submitted by Beneficiary. Any purported transfer or assignment shall be void and of no force or effect.

This Letter of Credit sets forth in full our undertaking and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the annexes referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such annexes.

We engage with you that your drafts drawn under and in strict compliance with the terms of this Letter of Credit will be duly honored if presented to us on or before the Expiration Date.

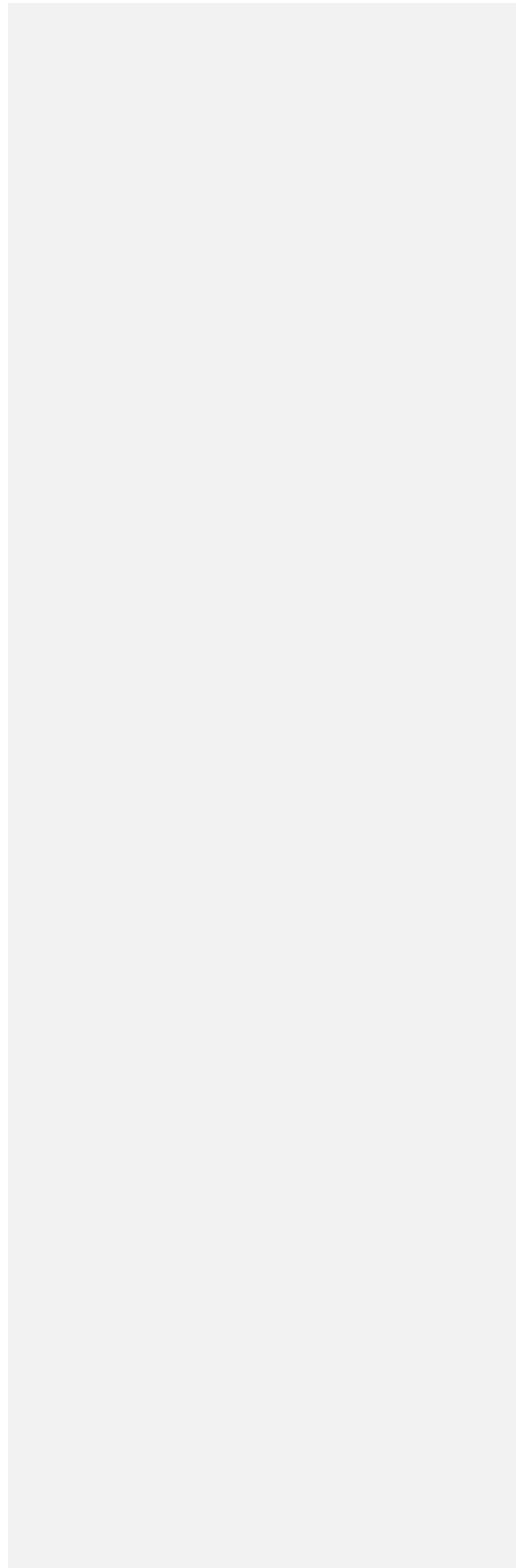
Except so far as otherwise stated, this Letter of Credit is subject to the "International Standby Practices ISP98"² of the International Chamber of Commerce as in effect on the date of issuance thereof (the "ISP98") excluding Section 3.12(a), and provided Issuer shall furnish a replacement for a lost original credit upon Beneficiary's execution of indemnification and other reasonable requirements of Issuer, and except to the extent that the terms hereof are inconsistent with the provisions of ISP98, including but not limited to Rule 5.01ai of ISP98, in which case the terms of this Letter of Credit shall govern. As to matters not covered by the ISP98, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York.

² Issuing Bank entitled to choose later version.

[Issuing Bank Name]

By: _____
Authorized Signature

Address: []
 []
 []



ANNEX I TO [Issuing Bank Name]
IRREVOCABLE TRANSFERABLE STANDBY LETTER OF CREDIT NO. _____

[Issuing Bank Name]

Date: _____, ____

[]
[]
[]

Ladies and Gentlemen:

The undersigned, the duly elected and acting of LONG ISLAND POWER AUTHORITY (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), _____, [and _____] ([collectively], the "Applicant(s)"), and _____ ("Seller"), with reference to Irrevocable Transferable Standby Letter of Credit No. _____, dated, ____ (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is a party to that certain Build-Own-Operate-Transfer Agreement dated as of _____ (as amended from time to time, the "Agreement"), between the Beneficiary and Seller.
2. The Beneficiary has not heretofore disposed of its right, title or interest in or to the Agreement.
3. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ _____, pursuant to the provision of Section 9.3 of the Agreement because [indicate applicable reason]:
 - The amount drawn hereunder constitutes undisputed amounts that are owed to Beneficiary by Seller under the Agreement and that remain unsatisfied for at least ten (10) Days (as defined in the Agreement) of becoming due and payable.
 - The amount drawn hereunder constitutes undisputed amounts that are owed to Beneficiary by Seller under the Agreement as a result of a declaration of an early termination date by Beneficiary as a result of a Seller Event of Default (as defined in the Agreement).
 - The Seller is Bankrupt (as defined in the Agreement) and the amount drawn hereunder constitutes not less than the amounts paid by Seller to Beneficiary that could be challenged or recovered as a preference or fraudulent conveyance.
 - The Letter of Credit is to expire in five (5) Business Days (as defined in the Agreement) or less and Beneficiary has not been provided substitute Seller Security (as defined in the Agreement), permitting Beneficiary to draw the entire amount of the Letter of Credit.

4. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of \$ _____ U.S. DOLLARS AND /100ths (U.S.\$), which amount does not exceed (i) the amount set forth in Paragraph 3, above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
5. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 4 above. The date of the sight draft is the date hereof, which is not later than the Expiration Date or any New Expiration Date.
6. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its duly elected and acting _____ as of this ____ day of _____, _____.

Beneficiary:

LONG ISLAND POWER AUTHORITY

By: _____
Name:
Title:

[remainder of page intentionally blank]

APPENDIX 12

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").

WITNESSETH:

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 Build-Own-Operate-Transfer Agreement 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 construct, own, operate and maintain the *[SELLER TO INSERT]* energy storage facility located in *[SELLER TO INSERT]* County, New York (the "Project") and (b) the Seller has agreed to sell to the Buyer, and the Buyer has agreed to purchase from the Seller, certain Contract Capacity, Delivered Energy, Renewable Attributes and Ancillary Services 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 if due under the Agreement 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; I(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
-----------	--	---------------	----------------

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. Neither party may assign this Guaranty in part or in whole without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that either party (the "Assigning Party") may, without the prior written consent of the other party (the "Non-Assigning Party"), assign this Guaranty to any assignee that acquires all or substantially all of the assets of the Assigning Party, if (i) such assignee enters into a written assumption agreement under which the assignee assumes all of the obligations of the Assigning Party under this Guaranty, (ii) the assignee provides a legal opinion to the Non-Assigning Party, in form and substance reasonably acceptable to the Non-Assigning Party, regarding the enforceability of the assignee's obligations hereunder and (iii) the Non-Assigning Party reasonably determines that the assignee's financial condition is equal to or better than the financial condition of the Assigning Party.

(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.

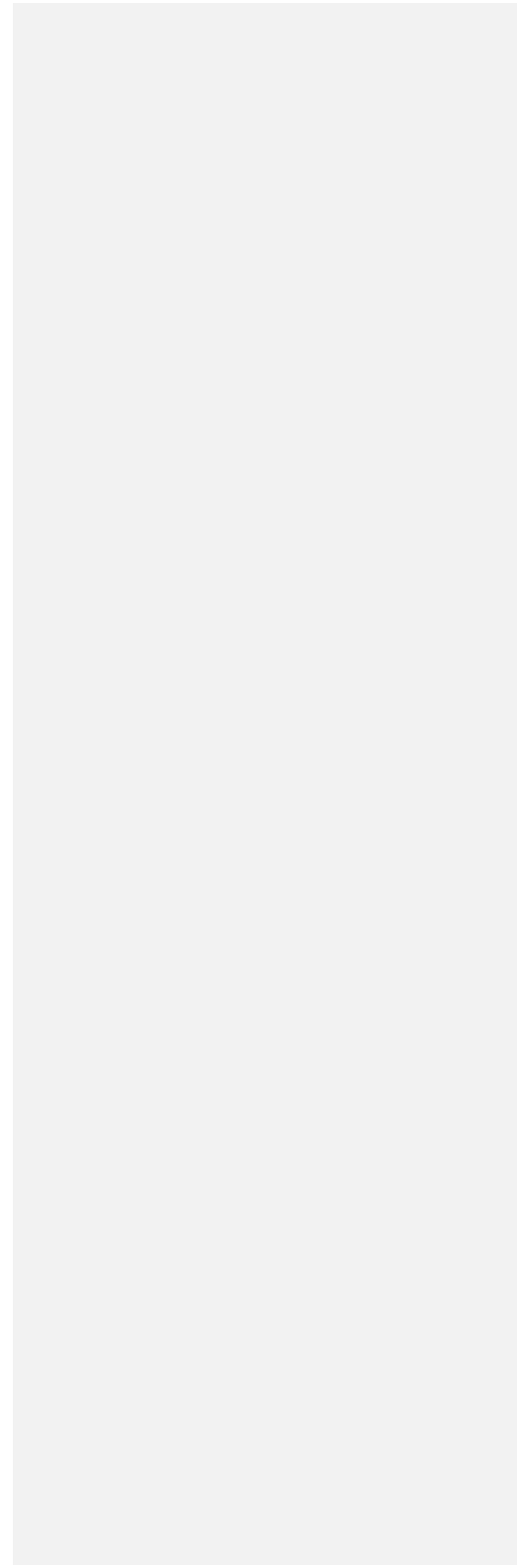
(e) Words importing the singular number hereunder shall include the plural number and vice versa and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, 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 earlier of the date that the Agreement terminates, and 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



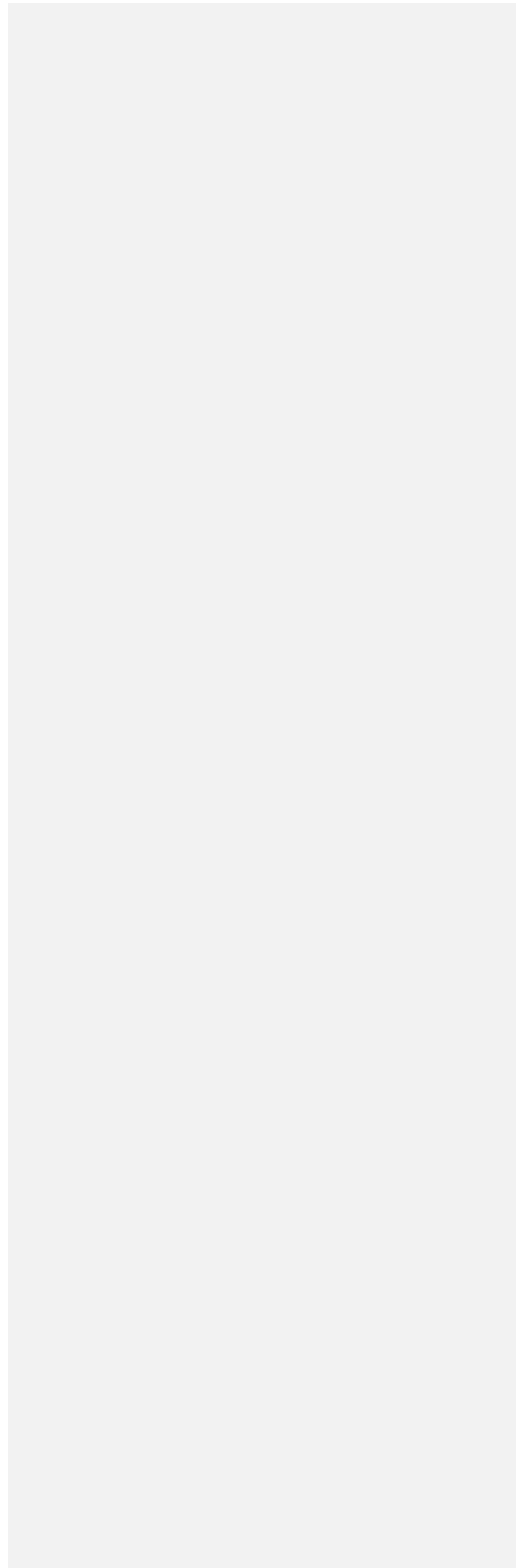
NAME OF ENTITY
("Guarantor")

By: _____ By: _____
Name: _____ Name: _____
Title: _____ Title: _____

Accepted and agreed to this ____ day of _____, 20XX.

LONG ISLAND POWER AUTHORITY
("Beneficiary")

By: _____
Name: _____
Title: _____



APPENDIX 13

MEETING, SITE ACCESS, INSPECTIONS, REPORTING, AND HAND OVER

I. CONSENTS PERIOD

During the Consents Period Seller shall arrange bi-weekly project status meetings. During these meetings the schedule and current status for receiving various project permits and other consents will be discussed, as well as any other significant issues and any potential Excused Failure Days.

Within ten (10) Days after the end of each Month during the Consents Period of the Project, Seller shall deliver a written report to Buyer describing the progress and current schedule of permitting activities of the Project, including any events of material significance to Seller's ability to develop the Project or meet the Construction Milestone Date.

II. CONSTRUCTION PERIOD

During the Construction Period Seller shall arrange weekly project status meetings. During these meetings the schedule and current status of construction will be discussed, as well as any other significant issues and any potential Excused Failure Days.

Within ten (10) Days after the end of each Month during the Construction Period of the Project, Seller shall deliver a written report to Buyer describing the schedule and current status of construction of the Project, including any potential Excused Failure Days or other events of material significance to Seller's ability to meet the Project COD Target Date.

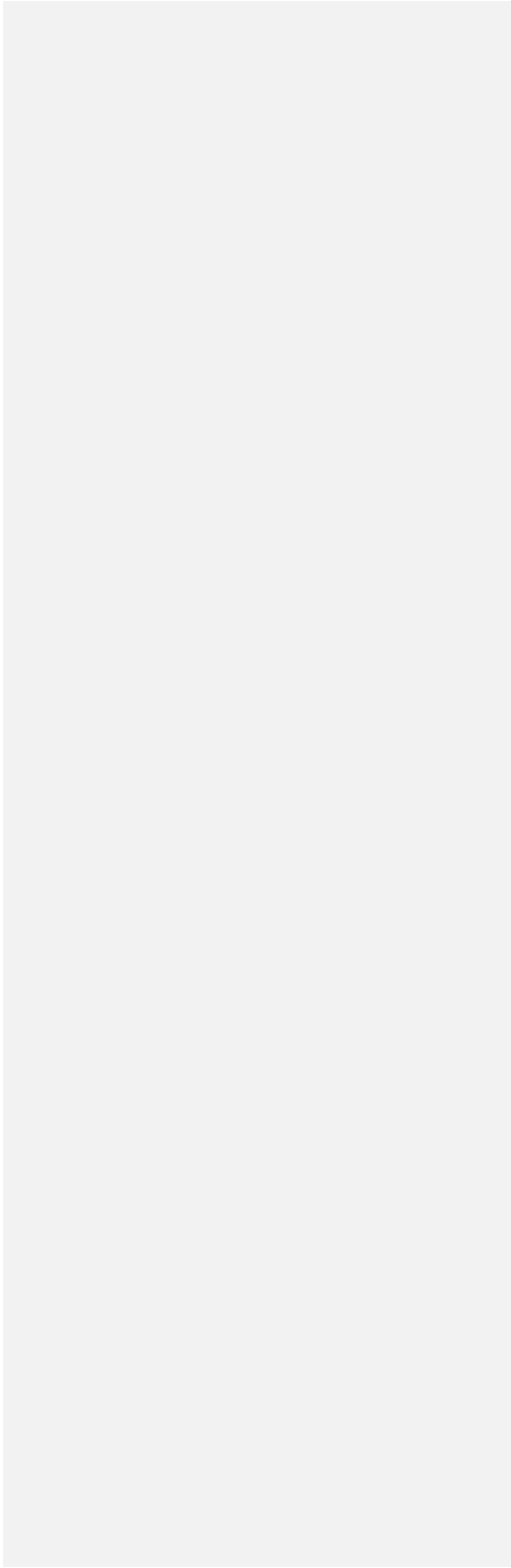
III. ACCESS AND INSPECTIONS

To the extent necessary to enable Buyer to verify Seller's compliance with this Agreement, Buyer may have its duly authorized agents and representatives on Site both before and after the Project COD to inspect the construction, start-up, operation and maintenance of the Project and to witness all Testing. Seller grants to Buyer (including Buyer's duly authorized agents and representatives) for the Term, if applicable, a right to access the Project at all reasonable hours, and, in an emergency, immediately upon request. In no event shall such access unreasonably interfere with Seller's ownership, development, construction, operation or maintenance of the Project. In connection with Buyer's exercise of these rights, while on Seller's premises, Buyer's personnel and duly authorized agents and representatives shall comply with all applicable health and safety rules or regulations of Seller, including, if required, acceptance of an escort. [Prior to the Project COD, Seller agrees to provide Buyer (i) space at the Site for one (1) single wide construction trailer (or at Seller's option in lieu of such trailer space, an office in Seller's offices at the Site for Buyer's representative), and (ii) utilities for such construction trailer, or such office space.] **[PARTIES TO DISCUSS WHETHER BUYER NEEDS TO HAVE TRAILER/OFFICE ON THE CONSTRUCTION SITE].**

IV. HAND OVER PERIOD

[Four] Months prior to the expiration of the Term, Seller shall provide at no cost to Buyer training for its chosen Operations & Maintenance Contractor and Buyer's staff and agents training as

detailed in Appendix 19 sufficient so that they can successfully and efficiently operate and maintain the Project in compliance with all local, state, and federal regulations. During this period Buyer, its contractors and agents will have reasonable access to all Project facilities for the purpose of such training and turn over activities.



APPENDIX 14
DELIVERY POINT

[SELLER TO PROVIDE DETAILS]

[remainder of page intentionally blank]

APPENDIX 15

PARTICIPATION BY MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISES:REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The Authority is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of this Agreement and at no additional cost to the Authority, to fully comply and cooperate with the Authority in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to subsection VII of this Appendix or enforcement proceedings as allowed by this Agreement.

II. Contract Goals

- A. For purposes of this procurement, the Authority hereby establishes an overall goal of 0 % for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 0 % for Minority-Owned Business Enterprises (“MBE”) participation and 0 % for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on this Agreement and achieving the Contract Goals established in subsection II-A above, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <http://ny.newnycontracts.com/>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development (518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on this Agreement.

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS – The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.]
- D. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
 - 1. Evidence of outreach to MWBEs;
 - 2. Any responses by MWBEs to the Contractor’s outreach;
 - 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 - 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by Authority with MWBEs; and,
 - 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
 - 1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Contractor shall submit an EEO policy statement to the Authority within seventy two (72) hours after the date of the notice by Authority to award this Agreement to the Contractor.
3. If Contractor or Subcontractor does not have an existing EEO policy statement, the Authority may provide the Contractor or Subcontractor a model statement (see attached - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The 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 or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form 101 - Staffing Plan

To ensure compliance with this subsection III, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of this Agreement by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time thereafter, but no later than the time of award of the contract.

D. Form 102 - Workforce Employment Utilization Report ("Workforce Report")

1. The Contractor shall submit a Workforce Utilization Report (excel form format), and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as required by Authority on a MONTHLY/QUARTERLY

basis during the term of the Contract.

2. Separate forms shall be completed by the Contractor and any subcontractors.

E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan (Form 103), or shall submit an MWBE Utilization Plan required by Authority through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to the Authority, either prior to, or at the time of, the execution of the contract.

B. Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.

C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Authority shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

V. Waivers

A. For Waiver Requests Contractor should use Form 104 – Waiver Request.

B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Authority shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

C. If the Authority, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract Goals and no waiver has been issued in regards to such non-compliance, the Authority may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form 105) to the Authority by the 10th day following each end of quarter over the term of this Agreement documenting the progress made towards achievement of the MWBE goals of this Agreement.

VII. Liquidated Damages - MWBE Participation

- A. Where the Authority determines that Contractor is not in compliance with the requirements of this Agreement and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth herein, Contractor shall be obligated to pay to the Authority liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under this Agreement.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Authority, Contractor shall pay such liquidated damages to the Authority within sixty (60) days after they are assessed by the Authority unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Authority.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to
adopt the following policies with respect to the project being developed or services rendered at
_____.

M/WBE

This organization will and will cause its
contractors and subcontractors to take good
faith actions to achieve the M/WBE
contract participations goals set by the State

for that area in which the State-funded project is located, by taking
the following steps:

Actively and affirmatively solicit bids for contracts and
subcontracts from qualified State certified MBEs or WBEs,
including solicitations to M/WBE contractor associations.

Request a list of State-certified M/WBEs from AGENCY and
solicit bids from them directly.

Ensure that plans, specifications, request for proposals and other
documents used to secure bids will be made available in sufficient
time for review by prospective M/WBEs.

EEO

Where feasible, divide the work into smaller
portions to enhanced participations by
M/WBEs and encourage the formation of
joint venture and other partnerships among
M/WBE contractors to enhance their participation.

Document and maintain records of bid solicitation, including those
to M/WBEs and the results thereof. Contractor will also maintain
records of actions that its subcontractors have taken toward
meeting M/WBE contract participation goals.

Ensure that progress payments to M/WBEs are made on a timely
basis so that undue financial hardship is avoided, and that bonding
and other credit requirements are waived or appropriate
alternatives developed to encourage M/WBE participation.

(a) This organization will not discriminate against any employee or
applicant for employment because of race, creed, color, national
origin, sex, age, disability or marital status, will undertake or
continue existing programs of affirmative action to ensure that

minority group members are afforded equal employment
opportunities without discrimination, and shall make and document
its conscientious and active efforts to employ and utilize minority
group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation or advertisements
for employees that in the performance of the State contract all
qualified applicants will be afforded equal employment
opportunities without discrimination because of race, creed, color,
national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall
request each employment agency, labor union, or authorized
representative will not discriminate on the basis of race, creed,
color, national origin, sex, age, disability or marital status and that
such union or representative will affirmatively cooperate in the
implementation of this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human
Rights Law, all other State and Federal statutory and constitutional
non-discrimination provisions. Contractor and subcontractors shall
not discriminate against any employee or applicant for
employment because of race, creed (religion), color, sex, national
origin, sexual orientation, military status, age, disability,
predisposing genetic characteristic, marital status or domestic
violence victim status, and shall also follow the requirements of
the Human Rights Law with regard to non-discrimination on the
basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a)
through (d) of this agreement in every subcontract in such a
manner that the requirements of the subdivisions will be binding
upon each subcontractor as to work in connection with the State
contract.

Agreed to this _____ day of _____, 2 _____

By _____
Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison) responsible for administering the Minority and Women-Owned
Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE and SDVOB Contract Goals

X% Minority and Women's Business Enterprise Participation

- Minority Business Enterprise Participation
- Women's Business Enterprise Participation
- New York State Service-Disabled Veteran-Owned Business Participation

EEO Contract Goals

_____ % Minority Labor Force Participation

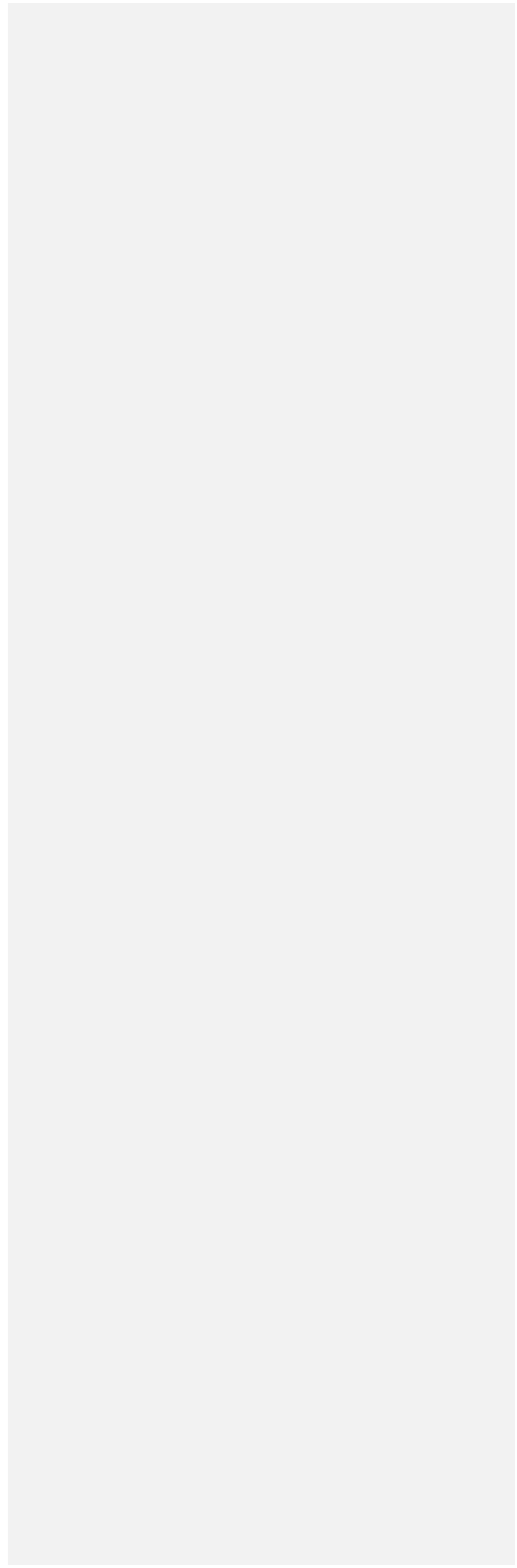
_____ % Female Labor Force Participation

(Authorized Representative)

Title: _____

Date: _____

[remainder of page intentionally blank]



APPENDIX 16

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. The Authority recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of the Authority contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Seller is expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

I. Contract Goals

A. The Authority hereby establishes an overall goal of [X]% for SDVOB participation in this procurement, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Seller/Contractor should reference the directory of New York State Certified SDVOBs found at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf. Questions regarding compliance with SDVOB participation goals should be directed to the Authority. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

[remainder of page intentionally blank]

APPENDIX 17

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:

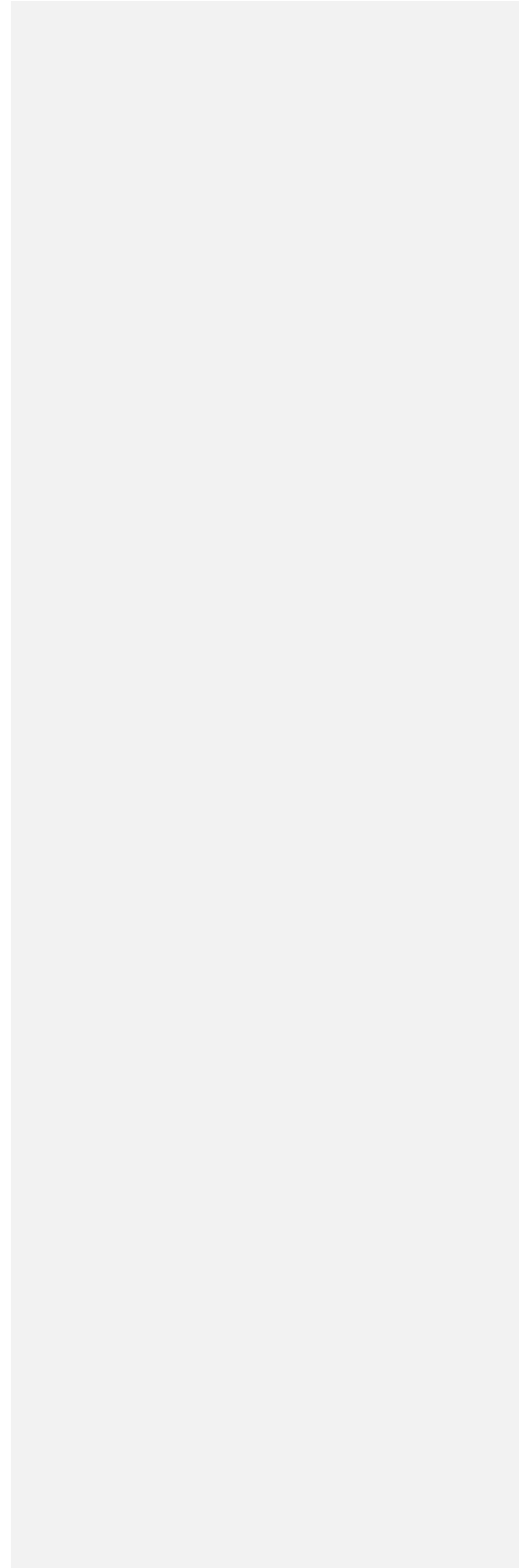
PE – Planned Outage Extension

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 18

TECHNICAL REQUIREMENTS

[remainder of page intentionally blank]



APPENDIX 19
TRAINING PROGRAM

[remainder of page intentionally blank]

APPENDIX 20
KEY PERSONNEL

[remainder of page intentionally blank]

APPENDIX 21
FORM OF PURCHASE AND SALE AGREEMENT

[remainder of page intentionally blank]

SUPPLEMENT 1 - STANDARD CLAUSES FOR LIPA CONTRACTS

For the purposes of this Supplement 1, 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 [15%]

Women-Owned Business Enterprise (WBE) Subcontracting Goal [15%]

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 comments 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 1, 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.

SUPPLEMENT 2: LIPA'S STANDARD PROCUREMENT FORMS

Access forms online at:

<http://www.pseglirenrfp.com/Documents.html>