**ENERGY SERVICES Agreement**

**Between**

**Long Island ELECTRIC UTILITY SERVCO LLC**

**on behalf of**

**THE long island lighting company D/B/A lipa**

**AND**

**[NAME OF SELLER]**

Month/Day/Year

***NOTE: THIS IS LIPA’S PREFERRED ENERGY SERVICES AGREEMENT FOR THE 2015 SOUTH FORK RFP (“ESA”) FOR LOAD REDUCTION RESOURCES. 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 PROPOSERS. THIS DRAFT ESA SHALL NOT BE CONSTRUED TO CREATE AN OBLIGATION ON THE PART OF LONG ISLAND ELECTRIC UTILITY SERVCO LLC OR LIPA TO ENTER INTO ANY CONTRACT, TO SERVE AS A BASIS FOR ANY CLAIM WHATSOEVER FOR REIMBURSEMENT OF COSTS FOR EFFORTS EXPENDED BY RESPONDENTS OR TO MODIFY THE PROCUREMENT PROCESS. RESPONDENTS MAY MODIFY THIS ESA TO REFLECT RESOURCE SPECIFIC REQUIREMENTS. THIS DRAFT WAS PREPARED TO COVER A BROAD RANGE OF POSSIBLE RESOURCES BEHIND CUSTOMER METERS. RESPONDENTS SHOULD REVISE AS APPROPRIATE FOR PARTICULAR PROJECTS. RESPONDENTS SHALL PROVIDE A “REDLINE” VERSION OF THIS ESA 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. THE LONG ISLAND ELECTRIC UTILITY SERVCO LLC IS EXECUTING THIS AGREEMENT ON BEHALF OF LIPA AND IS NOT A PRINCIPAL PARTY TO THIS AGREEMENT.***

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SUPPLEMENT 2: LIPA’S STANDARD PROCUREMENT FORMS

**ENERGY SERVICES AGREEMENT**

THIS ENERGY SERVICES AGREEMENT, dated as of [Date], is between Long Island Electric Utility Servco LLC, a New York limited liability company, with a principal office at 333 Earle Ovington Boulevard, Uniondale, New York 11553 acting as Agent for The Long Island Lighting Company d/b/a LIPA (“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] (“Seller”).

**WITNESSETH:**

WHEREAS, Buyer, as the Agent for the Long Island Power Authority (“LIPA”), a corporate municipal instrumentality and political subdivision of the State of New York, is engaged in the distribution and sale of electricity for heat, light and power to the public in the State of New York;

WHEREAS, pursuant to the Amended and Restated Operation Services Agreement (“A&R OSA”) dated December 31, 2013, as may be restated, amended, modified, or supplemented from time to time, between LIPA and Buyer, through its operating subsidiary, Long Island Electric Utility Servco (“Servco”), assumed the responsibility as LIPA’s Agent to operate and manage Buyer’s transmission and distribution system (“T&D System”) and other utility business functions as of January 1, 2014. On January 1st, 2015, Buyer assumed responsibility for LIPA’s power supply planning, and its affiliate provides certain services, such as purchasing power, to LIPA related to these responsibilities;

WHEREAS, Buyer and Servco (collectively referred to herein as “Buyer” or “Servco”), as Agent of and acting on behalf of LIPA per the A&R OSA, issued Requests for Proposals, South Fork Resources (the “RFP” or “2015 SF RFP”) on June 24, 2015, as amended from time to time, and administered the RFP on behalf of LIPA;

WHEREAS, Buyer and Seller desire to incorporate herein the terms and conditions of the 2015 SF RFP, as amended on October 1, 2015, as if set forth in this Agreement in full, provided that in the event of a conflict between the 2015 SF RFP and this Agreement, the terms and conditions of this Agreement shall control;

WHEREAS, Seller intends to [develop, own, operate and maintain a demand reduction project with a nominal peak demand reduction rating of [MW], to be located at [Project Location] (the “Project”) and [if applicable]][develop and implement an electric energy efficiency project with a nominal peak demand reduction rating of [MW] located at [define area]]; **[PROPOSER TO DESCRIBE PROJECT. FOR DEMAND RESPONSE PROJECTS THAT MEET NYISO REQUIREMENTS, INCLUDING EMERGENCY DEMAND RESPONSE PROGRAM (“EDRP”), ICAP SPECIAL CASE RESOURCES (“SCR”), DAY AHEAD DEMAND RESPONSE PROGRAM (“DADRP”) OR DEMAND SIDE ANCILLARY SERVICES PROGRAM (“DSARP”) PROJECTS, PROPOSER SHOULD BRIEFLY DESCRIBE THE NATURE OF THE PROJECT AND INTERCONNECTION AND/OR PRICING POINT, AS APPLICABLE; FOR OTHER DEMAND RESPONSE PROJECTS, PROPOSER SHOULD DESCRIBE THE NATURE OF THE PROJECT AND PRICING, INTERCONNECTION OR OTHER RELEVANT LOCATIONAL INFORMATION AS APPLICABLE; AND FOR ENERGY EFFICIENCY PROJECTS, PROPOSER SHOULD INDICATE RELEVANT DESCRIPTION AND STATE WHETHER THE PROJECT CONFORMS TO ANY EXISTING LIPA, NYSERDA OR OTHER EXISTING PROGRAM REQUIREMENTS, AND THE LOCATION OR AREA COVERED.]**

WHEREAS, Buyer has agreed to pay Seller, in accordance with the provisions of this Agreement, for completing, installing, and operating the Project and ensuring that it remains in place.

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.

#  DEFINITIONS

## Definitions

. In addition to the initially capitalized terms and phrases defined in the preamble of this Agreement, the following initially capitalized terms and phrases as and when used in this Agreement shall have the respective meanings set forth below: ***[Proposer should delete inapplicable definitions, AND MAY ADD FURTHER DEFINED TERMS AS NEEDED FOR THE PROPOSED PROJECT CONTRACT.]***

*A&R OSA* – has the meaning set forth in the recitals.

*AC* – means Alternating Current.

*AC Net MW* – means Capacity of the Project measured at the Delivery Point in alternating current MW net of any Energy consumed by the Project when generating. [**IF APPLICABLE**]

*Affiliate* – means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” includes but is not limited to the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or equity interest. A voting interest of ten percent (10%) or more shall create a rebuttable presumption of control.

*Agent* – has the meaning set forth in Section 18.19.

*Aggrieved Party* – has the meaning set forth in Section 16.1.

*Agreement* – means this Energy Services Agreement, including all appendices and supplements attached hereto and amendments hereto that may be made from time to time in accordance herewith, and including the 2015 SF RFP, as amended on October 1, 2015.

*Ambient-Adjusted Contract Capacity* – has the meaning set forth in Section 5.11(i)(a).

*Assignment* – means the transfer, sale, conveyance, pledge, encumbrance or assignment of this Agreement or any rights or obligations under this Agreement.

*Attribute Deficiency Month* – has the meaning set forth in Section 5.6(vi).

*Average Monthly Equivalent Capacity* – has the meaning set forth in Section 5.11(i)(d).

*Bankrupt* – means with respect to any Person, such Person: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a Person or entity not described in clause (A) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within sixty (60) days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) days thereafter; (viii) causes or is subject to any event with respect to it which, under the Legal Requirements of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) above (inclusive); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

*Base Term* – has the meaning set forth in Section 2.1(ii).

*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 local time for the relevant Party’s principal place of business.

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

*Buyer Event of Default* – means an event described in Section 12.2.

*Calendar Year* – means each consecutive twelve (12) Month period beginning January 1st and ending December 31st.

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

*Change of Control* – means any sale, transfer or other disposition that results in: (i) a change or change in control of a manager or managing member, general partner or similar controlling entity of Seller that results in such entity no longer possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of such Member, whether through the ownership of voting securities, by contract, or otherwise, other than a transfer of such Person’s interests to a Member holding fifty percent (50%) or more of Seller’s equity or an Affiliate of such Member; (ii) a Person other than the current shareholders of Seller, or Seller’s immediate parent, as the case may be, obtaining, directly or indirectly, the power to direct or to cause the direction of the management or policies of Seller, or Seller’s immediate parent, as the case may be, whether through the ownership of capital stock, by contract or otherwise; (iii) any change of the party that has day-to-day control over the operations and maintenance of the Project to a third party contractor which does not meet the Operating Experience Requirements; or (iv) any liquidation, dissolution or winding up of Seller or Seller’s immediate parent, , as the case may be.

*Chronic Underperformance* – has the meaning set forth in Section 5.11(i)(d).

*Claim* – means all third party claims or actions, threatened or filed, whether groundless, false, fraudulent or otherwise and whether such claim or action is threatened or filed prior to or after the termination of this Agreement, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise.

*Claiming Party* – has the meaning set forth in Section 11.3.

*Commercial Operation* – means the achievement of the conditions set forth in Section 3.2.

*Commercial Operation Date or COD* – has the meaning set forth in Section 3.2.

*Company* – has the meaning set forth in the recitals.

*COD Liquidated Damages* – has the meaning set forth in Section 3.3(iv).

*COD Notice* – has the meaning set forth in Section 3.1.

*COD Target Date* – means [May 1], [year.] ***[PROPOSER TO IDENTIFY THE “YEAR” FOR THE COD TARGET DATE]***

*Confidential Information* – has the meaning set forth in Section 19.1(ii).

*Confidential Parties* – has the meaning set forth in Section 19.1(ii).

*Connecting Transmission Owner* – means Long Island Lighting Company d/b/a LIPA, a corporation organized under the laws of the State of New York. [***IF APPLICABLE***]

*Connecting Transmission Owner’s Attachment Facilities* – shall have the meaning assigned thereto in the Interconnection Agreement. [***IF APPLICABLE***]

*Connecting Transmission Owner’s Electrical System* – means all equipment and facilities (including the Connecting Transmission Owner’s 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. [***IF APPLICABLE***]

*Consent(s)* – means any approval, acceptance, consent, permit, license, decree, directive, qualification, certificate or other authorization that is required 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.

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

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

*Contract Capacity* – means (i) as of the Commercial Operation Date, the Capacity of the Project (AC New MW) as determined pursuant to Section 3.2(vi); and (ii) for any Contract Capability Period after COD, the Capacity of the Project (AC New MW) 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 Net Design Capacity.

*Contract Capacity Test* – means the test set forth in Appendix 3 for establishing the Contract Capacity.

*Contract Year* – means each consecutive twelve (12) Month period beginning with the Month in which the Commercial Operation Date occurs.

*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 pursuant to which it has hedged its obligations or entering into new arrangements which replace the transactions contemplated by this Agreement and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of the transactions contemplated by this Agreement.

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

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

*Day* – means twenty–four (24) consecutive hours commencing with the hour ending 0100 through 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, the Seller, and (b) with respect to a Buyer Event of Default, the Buyer.

*Delivered Peak Demand Savings* – means Peak Demand Savings that is delivered by Seller to Buyer at the Delivery Point pursuant to a Dispatch request as measured by the Electric Metering Equipment. [***IF APPLICABLE***]

*Delivery Point* – means the point of interconnection between Developer Attachment Facilities and the Connecting Transmission Owner’s Attachment Facilities [***IF APPLICABLE***], as shown in Appendix 14, or as further modified in the Interconnection Agreement. [***IF APPLICABLE***]*Demand Response* – means furnishing of any peak electrical load demand reduction or similar arrangement recognized by the NYISO, including provision of Unforced Capacity or Energy, as applicable, in accordance with the SCR Program.

*Demand Response Products* – means any Demand Response resource or capability provided under the NYISO Rules applicable to NYISO Demand Response programs.

*Demand Response Services* – has the meaning set forth in Appendix 1.

*Developer Attachment Facilities* – has the meaning set forth in the Interconnection Agreement. [***IF APPLICABLE***]

*Development Contract* – means an engineering, procurement and construction contract or other development agreement entered into between Seller and a contractor providing for the construction or furnishing of one or more significant components of the Project for Seller’s use and operation. ***[NOTE TO RESPONDENTS: REVISE DEVELOPMENT CONTRACT DEFINITIONS AS APPROPRIATE DEPENDING ON PROJECT INSTALLATION AGREEMENTS.]***

*Development Contract Execution Target Date* – means the date that is [\_\_] Days prior to the COD Target Date (which is the date by which Seller expects to execute the Development Contract). [***IF APPLICABLE***] ***[PROPOSER TO INSERT NUMBER OF DAYS]****Disclosing Party* – has the meaning set forth in Section 19.1(ii).

*Dispatch* – means a request to Seller from Buyer or the NYISO to generate and provide Delivered Peak Demand Savings and/or Ancillary Services at the Delivery Point, in each case complying with the notification requirements of Article 8, and within the Operating Limits contained in Appendix 8. [***IF APPLICABLE***]

*DMNC or Dependable Maximum Net Capability* − means the Capacity demonstrated by the Project during a Contract Capacity Test for a NYISO Capability Period, as applicable. [***IF APPLICABLE***]

*Duration Estimate* – has the meaning set forth in Section 11.3.

*Early Termination Date* – has the meaning set forth in Section 12.5(ii).

*Effective Date* – has the meaning set forth in Section 2.1(i).

*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. [***IF APPLICABLE***]

*Electric Metering Equipment* – has the meaning set forth in Section 5.5(ii). [***IF APPLICABLE***]

*Electric Meters* – has the meaning set forth in Section 5.5(ii). [**IF APPLICABLE**]

*Emission Rights* – has the meaning set forth in Section 3.5. [**IF APPLICABLE**]

*End-Use Customer* – means a Person or entity that is a service customer of Buyer, as Agent for LIPA, has a Buyer customer service account number, and has one or more Project units installed by Seller pursuant to this Agreement.

*Energy* – means three–phase, 60–hertz alternating current electric energy.

*Energy Efficiency Program* – means a program for installation or retrofit of electrical and thermal equipment, controls, lighting, weatherproofing and insulation to conserve and reduce energy use in a residential, commercial, industrial or other facility, including any such program identified and administered by Buyer, the New York State Energy Research and Development Authority or any other similar federal, state or local governmental or non-governmental organization program.

*Energy Efficiency Services* – has the meaning set forth in Appendix 1.

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

*Equivalent Availability* – has the meaning set forth in Section 5.11(i).

*Escrow Account* – has the meaning set forth in Section 3.3(vi).

*Event of Default –* means a Buyer Event of Default or Seller Event of Default, as applicable.

*Excused Outage –* has the meaning set forth in Section 5.10.

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

*Extended Term* – has the meaning set forth in Section 2.1(iii).

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

*FERC* – means the Federal Energy Regulatory Commission or any Governmental Authority succeeding to the powers and functions thereof under the Federal Power Act.

*Fitch* – means Fitch Inc., Fitch Ratings Ltd. and its subsidiaries.

*FOIL* – has the meaning set forth in Section 19.2.

*Force Majeure Event* – means the events or circumstances described in Section 11.1.

*Force Majeure Remedy Plan* – has the meaning set forth in Section 11.6(i).

*Forced Outage* *–* means (i) an Outage of the Project that is a result of the failure or unavailability of one or more components of the Project which is not otherwise an Excused Outage, including Maintenance Outage hours in excess of the maximum limits in Appendix 8, (ii) 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 (iii) inability of the Project to provide Capacity, Energy or Ancillary Services within the Operating Limits which inability is not otherwise an Excused Outage.

*Gains* – means, with respect to any Party, an amount equal to the net present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of transactions under this Agreement, determined in good faith and using commercially reasonable procedures.

*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, FERC, the electrical transmission system operators and NERC), and (iii) any court or governmental tribunal; provided that LIPA and its subsidiaries shall not be included in such definition when acting as Buyer or the Connecting Transmission Owner pursuant to this Agreement and any related agreement between the Parties hereto.

*Governmental Charges* – has the meaning set forth in Section 4.4(i).

 *Guaranteed Performance* – has the meaning set forth in Appendix 7.

*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.

*Indemnified Party* – has the meaning set forth in Section 18.18(i).

*Indemnifying Party* – has the meaning set forth in Section 18.18(i).

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

*Installed Capacity Supplier* – means a generating resource that satisfies the NYISO Rules for qualification to supply Installed Capacity.

*Interconnection Agreement* – means the agreement, by and between the Connecting Transmission Owner, the Seller and the NYISO, in substantially the form set forth in Appendix [\_\_] that governs the interconnection between the Connecting Transmission Owner’s Electrical System and the Project; provided, however, that prior to the execution and delivery of the Interconnection Agreement, references in this Agreement shall refer to the form thereof set forth in Appendix [\_\_] ***[PROPOSER TO INSERT IF APPLICABLE]***.

*Interconnection Costs* – means all costs paid or incurred by Seller pursuant to the Interconnection Agreement for the Connecting Transmission Owner's Attachment Facilities [***IF APPLICABLE***], the System Upgrade Facilities and the System Deliverability Upgrades on the Connecting Transmission Owner's Electric System, documented by Seller.

*Interconnection Rate Adapter* – has the meaning set forth in Section 3.11(iii).

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

*ISO Conditions* – means fifty-nine degrees Fahrenheit (590F) dry bulb temperature, sixty percent (60%) relative humidity, at sea level.

*kWh –* means kilowatt–hours.

*Lead Lender* – means that lender to Seller who is not an Affiliate of Seller and any agent, trustee, collateral agent or depositary for any such Persons and any successors or assigns of any of the foregoing Persons who is designated to accept notices as provided for in this Agreement on behalf of all of Seller’s Lenders.

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

*Lender* – means any Person or agent or trustee of such Person who provides financing for the Project.

*Letter(s) of Credit* – means one or more irrevocable, transferable standby letters of credit governed by the International Standby Practices 1998 (ISP 98) 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 (US$1,000,000,000), and (ii) not less than the following Credit Rating from two of the three specified rating agencies: “A-” from S&P, “A-” from Fitch, and “A3” from Moody’s, 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 hereto.

*Liabilities* – has the meaning set forth in Section 18.18(i).

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

*Liquidated Damages* – means liquidated damages associated with failing to (i) apply for the Minimum Required Consents by the Minimum Required Consents Application Target Date, (ii) achieve the Major Development Milestone by the Major Development Milestone Target Date, (iii) execute the Development Contract by the Development Contract Execution Target Date, or the COD Liquidated Damages or any other amounts that constitute liquidated damages in this Agreement, or (iv) having a MW reduction Shortfall exceeding twenty five percent (25%) as set forth in Section 5.11(ii)(b). [***PROPOSER TO DELETE/REVISE REFERENCES TO REQUIRED CONSENTS APPLICATION TARGET DATE AND DEVELOPMENT CONTRACT EXECUTION TARGET DATE AS APPROPRIATE TO MATCH MILESTONES TO BE INCLUDED***]

*Losses* – means, with respect to any Party, an amount equal to the net present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of transactions under this Agreement, determined in good faith and using commercially reasonable procedures.

*Lump Sum Interconnection Payment* – has the meaning set forth in Section 3.11(ii).

*Maintenance Outage*– means an Outage 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.

*Major Development Milestone –* means the [major development milestone] for the Project as more specifically set forth in Appendix 2. ***[PROPOSER TO IDENTIFY ONE OR MORE DEVELOPMENT MILESTONES WHICH WILL BE LINKED TO LIQUIDATED DAMAGES (E.G., INSTALLATION OF MAJOR EQUIPMENT AT SITE, SUBSCRIPTION OF A TARGET PERCENTAGE OF PARTICIPATING LOAD CUSTOMERS FOR A DEMAND REDUCTION OR ENERGY EFFICIENCY PROGRAM, OR ACHIEVEMENT OF PEAK DEMAND SAVINGS).]***

*Major Development Milestone Target Date –* means the date that is [\_\_] Days prior to the COD Target Date (which is the date the Major Development Milestone is scheduled to occur). ***[PROPOSER TO INSERT NUMBER OF DAYS]***

*M&V (measurement and verification) Plan* – means measurement and verification of a quantity of demand reduction achieved or avoided capacity or energy consumption or Peak Demand Savings.

*Member* – means any Person owning, directly or indirectly, an outstanding limited liability company interest of Seller.

*Minimum Participation Target* – means [***PROPOSER TO IDENTIFY MINIMUM THRESHOLD FOR MW or kW OF PEAK LOAD, NUMBER OR PERCENTAGE OF SUBSCRIBERS OR OTHER QUANTITATIVE TARGET FIGURE FOR IMPLEMENTATION OF THE PROPOSED PROJECT***] as set forth in Appendix 2.

*Minimum Participation Target Date* – means [***PROPOSER TO IDENTIFY***]

*Minimum Required Consents –* has the meaning set forth in Section 2.3(i).

*Minimum Required Consents Application Target Date* – means the date that is [\_\_] Days prior to the COD Target Date which is the date when the Seller is expected to have completed and filed  all applications for the Minimum Required Consents. ***[PROPOSER TO INSERT NUMBER OF DAYS]***

*Minimum Required Consents Receipt Target Date* – means the date that is [\_\_] Days prior to the COD Target Date (which is the date the Seller is scheduled to receive the Minimum Required Consents). ***[PROPOSER TO INSERT NUMBER OF DAYS]***

*Month or Monthly –* means a period commencing with hour ending 0100 EPT on the first day of a calendar month and closing at 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. [***IF APPLICABLE***]

*Monthly Energy Payment* – means the amount to be paid by Buyer to Seller for Energy as set forth in Section 5.8 and calculated as set forth in Appendix 5. [***IF APPLICABLE***]

*Monthly Equivalent Capacity* – has the meaning set forth in Section 5.11(i).

*Monthly Interconnection Payments* – has the meaning set forth in Section 3.11(ii).

*Monthly Invoice* – means a notice or claim for payment delivered after the end of a Month, in accordance with Section 6.1.

*Monthly Services Payment* – means the amount Buyer must pay Seller in any Month for provision of [Demand Response Services][Energy Efficiency Services] pursuant to Article 6 and Appendix [\_\_] ***[PROPOSER TO REVISE AS APPLICABLE]***.

*MVAR* – means Megavar(s), which is one million (1,000,000) volt amperes-reactive.

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

*M/WBE/VET* – means Minority, Women-Owned, and New York State Service-Disabled Veteran-Owned Business Enterprises, as more fully described in Supplement 1 to this Agreement.

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

*Net Design Capacity –* means [\_\_] MW. ***[*PROPOSER TO INSERT THE NUMBER OF MW EQUAL TO THE CAPACITY OF THE PROJECT AS DESIGNED UNDER ISO CONDITIONS*]***

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

*Non-Claiming Party* – has the meaning set forth in Section 11.3.

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

*Noticed Party* – has the meaning set forth in Section 16.1.

*Notice of Default* – has the meaning set forth in Section 12.3.

*NYISO* – means the New York Independent System Operator, Inc. or any successor 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 Demand Response Program* – means one or more programs defined and administered by the NYISO for grid operator scheduling and dispatch of electrical peak load reduction, including the NYISO Emergency Demand Response Program (“EDRP”), ICAP Special Case Resource Program (“SCR”), Day Ahead Demand Response Program (“DADRP”) and Demand Side Ancillary Services Program (“DSASP”), or any other demand response program defined and administered by the NYISO Rules from time to time.

*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 which include, but are not limited to, the Day Ahead Market, Hour Ahead Market and NYISO Installed Capacity Markets.

*NYISO Rules* – means the NYISO Tariff and all NYISO manuals, rules, procedures, agreements or other documents relating to sale of Capacity, Energy, and Ancillary Services as such govern the participation of market participants with respect thereto 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.

*Operating Experience Requirements* – has the meaning set forth in Section 15.6(ii).

*Operating Instructions* – means those procedures developed by the Parties pursuant to Section 8.2.

*Operating Limits* – means the limits and constraints described in Appendix 8 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 Ambient-Adjusted Contract Capacity ***[PROPOSER TO REVISE AS APPROPRIATE FOR PROJECT TYPE AND TECHNOLOGY]***.

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

*Party or Parties* – means either Buyer or Seller, or both.

*Payee* – has the meaning set forth in Section 6.3(i).

*Payor* – has the meaning set forth in Section 6.3(i).

*Peak Demand Savings* – means a quantity of [MW][MWh] ***OTHER QUANTITY SPECIFIED BY PROPOSER*** to be available upon dispatch or, in the case of a non-dispatchable resource, the total Peak Demand Savings achieved by the Project.

*Peak Hours* – means those hours between the hour ending 0800 EPT to and including the hour ending 2300 EPT, Monday through Friday, except for holidays as defined by the NERC.

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

*Planned Outage* – means an Outage 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. [***IF APPLICABLE***]

*Products –* has the meaning set forth in Section 5.1.

*Project* – has the meaning set forth in the fifth (5th) recital and is described further in Appendix 2.

*Prudent Utility Practices* – means, any of the practices, methods and acts engaged in or approved by a significant portion of the generation sector of the electric power industry in the United States at the time in question, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a delineation of acceptable practices, methods or acts expected within the relevant sector of the electric power industry to accomplish the desired results, having due regard for, among other things, manufacturers’ operating instructions, the preservation of manufacturers’ warranties, the requirements of Governmental Authorities of competent jurisdiction and the requirements of this Agreement. With respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that [***IF AND AS APPLICABLE***]:

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.

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

*Receiving Party* – has the meaning set forth in Section 19.1(ii).

*Renewable Attribute* – means all environmental characteristics, environmental claims, environmental credits, environmental benefits, environmental emissions reductions, environmental offsets, environmental allowances and environmental allocations, howsoever characterized, denominated, measured or entitled, attributable to Delivered Peak Demand Savings and/or Capacity at any time during the Term, including any such attributes initially created, denominated or defined after the Execution Date. Renewable Attributes include but are not limited to: (i) any avoided emissions of pollutants to the air, soil or water including but not limited to sulfur oxides (SOx), nitrogen oxides (NO), carbon monoxide (CO), particulate matter and other pollutants; (ii) any avoided emissions of carbon dioxide (CO2), methane (CH4) and other greenhouse gases that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (iii) all set-aside allowances and/or allocations from emissions trading programs, including but not limited to allocations available under 6 NYCRR §§ 204, 237 and 238; and (iv) all credits, certificates, registrations, recordations or other memorializations of whatever type or sort, representing any of the above, including but not limited to all RECs. Renewable Attributes do not include (a) any Energy, Capacity, reliability or other power Products, such as Ancillary Services; (b) production or investment tax credits or grants associated with the construction, development or operation of the Project or other financial incentives in the form of credits, reductions, exemptions, deductions, adjustments or allowances associated with the Project that are applicable to a local, state or federal income taxation obligation; (c) fuel-related subsidies or “tipping fees” that may be paid to the Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or (d) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

*REC* – means renewable energy certificate units that fully comply with the New York State Renewable Portfolio Standards, as in effect on the Execution Date, offered and delivered as performance during the term of this Agreement, such that one REC shall be associated with each MW of Delivered Peak Demand Savings.

*RFP* or *2015 SF RFP* – means the documents issued on June 24, 2015, as amended from time to time, pursuant to which Servco, acting as Agent on behalf of LIPA, sought to procure the demand reduction resources contracted for in this Agreement.

*RPS Program* – means the portion of the New York State Renewable Portfolio Standard program pertaining to the Project as described in Appendix 2.

*S&P* – means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.).

*Schedule Deviation* – means a failure by Seller to cause the Delivered Peak Demand Savings to match the NYISO’s Energy schedule for the Project as communicated to the Seller in the Dispatch request, within the Base Point Tolerance Level, except to the extent such failure results directly from an Outage of the Project or results from a Suspension.

*SCR* – means Special Case Resources as defined in the NYISO Rules.

*SCR Program* – means the NYISO program for supply of Capacity in the NYISO Installed Capacity Market by Special Case Resources as set forth in the NYISO Rules.

*SEC* – has the meaning set forth in Section 19.7.

*Seller Event of Default –* means an event described in Section 12.1.

*Seller Interest Rate* – has the meaning set forth in Section 3.11(iii).

*Seller Security* – has the meaning set forth in Section 7.1.

*Settlement Amount* – means, with respect to transactions arising under this Agreement, the Losses or Gains, and Costs, expressed in U.S. Dollars, which the Non-Defaulting Party incurs as a result of the liquidation of transactions pursuant to Section 12.5(ii).

*Servco* – has the meaning set forth in the recitals.

*Services* – means Demand Response Services or Energy Efficiency Services as set forth in Appendix 1.

*Shortfall* – has the meaning set forth in Section 5.11(ii).

*Site* or *Sites* – means the physical location(s) of the Project and the End-Use Customer(s)’ account(s) as more fully described in Appendix 2.

*Site Control* – means sufficient title, leasehold or other legal and equitable rights to access to and use of the Site for development, construction, ownership, use and operation of the Project.

*Special Case Resources or SCR* – has the meaning set forth in the NYISO Rules.

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

*Station Service Energy* – means Energy consumed by the Project.

*Submission Date –* has the meaning set forth in Section 8.3.

*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 8.11.

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

*System Emergency* – means a condition that, in Buyer’s reasonable judgment in accordance with Prudent Utility Practices and the NYISO Rules or the NYISO’s judgment, results in or is reasonably likely to result in a disruption of the operation of Connecting Transmission Owner’s Electrical System or of service to Buyer’s customers or a condition that endangers or is reasonably likely to endanger life or property.

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

*Taxes* – means any income, gross or net receipts, property, sales, use, consumption, capital gain, transfer, excise, license, production, franchise, employment, social security, occupation, payroll, registration, governmental pension or insurance, recordation, withholding, royalty, severance, stamp or documentary, value added, or other tax, charge, assessment, duty, levy, compulsory loan, business or occupation tax (including any interest, additions to tax, or civil or criminal penalties thereon) of the United States or any state or local taxing jurisdiction therein, or of any other nation or any jurisdiction therein, including payments in lieu of tax or similar arrangements.

*Term* – means the Base Term of this Agreement and, if applicable, the Extended Term.

*Termination Payment* – has the meaning set forth in Section 12.5(ii).

*Test Energy* – has the meaning set forth in Section 5.3.

*Testing* – means the testing of the Project as described in Section 3.4.

*Unacceptable Condition* – has the meaning set forth in section 3.8.

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

*Weekend* – means the period of time that commences with the hour ending on Friday 2400 and ends the following Monday at hour ending 0700.

*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.

## 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 2015 SF 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]*

#  TERM OF AGREEMENT

## Term.

(i) This Agreement shall become effective on the date by which all of the following conditions shall have occurred (the “Effective Date”): (a) Seller shall have obtained all requisite approvals of Governmental Authority, including (if applicable) a certificate of environmental compatibility and public need under New York State Public Service Law Article 10; (b) Seller shall have received authorization and approval by its Board of Directors, or equivalent executive body, of the execution, delivery and performance of this Agreement; and (c) this Agreement has been executed by both Seller and Buyer. Buyer shall give Seller written notice within five (5) Business Days after the occurrence of the Effective Date. ***[LIPA NOTE: IF THE PROJECT IS NOT SUBJECT TO ARTICLE 10 AND INSTEAD UNDERGOES A SEQRA ENVIRONMENTAL REVIEW PROCESS, LIPA WOULD BE AN INVOLVED AGENCY, AND THE SEQRA REVIEW WOULD BE CONDUCTED BY THE STATE OR MUNICIPAL AGENCY SERVING AS LEAD AGENCY. LIPA’S BOARD CANNOT UNDERTAKE AN “ACTION,***” ***(I.E., AUTHORIZING LIPA TO EXECUTE THE ESA) UNTIL THE REQUIRED SEQRA REVIEW HAS BEEN COMPLETED.]***

(ii) The term of this Agreement shall begin on the Effective Date and shall remain in effect until the later of (a) the [fifth (5th)][tenth (10th)][fifteenth (15th)][twentieth (20th)] anniversary of the Commercial Operation Date and (b) the end of the first NYISO Capability Period occurring after the [fifth (5th)][tenth (10th)][fifteenth (15th)][twentieth (20th)] anniversary of the Commercial Operation Date, unless terminated earlier in accordance with the terms hereof (“Base Term”), with the option to extend as set forth in Section 2.1(iii) below; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination and, provided further, that this Agreement and any other documents executed and delivered hereunder shall remain in effect until both Parties have fulfilled all of their obligations with respect to purchase and sale of the Products. The Term shall be subject to the termination provisions of Sections 2.3, 5.11, 11.9, 12.5, 14.2, and Supplement 1 to this Agreement.

(iii) Buyer shall have an option to extend this Agreement for [five (5) or ten (10) Years] (the “Extended Term”) by providing Seller written notice of Buyer’s election at least twelve (12) Months prior to the end of the Base Term. This Agreement, including the prices and terms set forth herein shall apply during the Base Term and the Extended Term. ***[PROPOSER TO INSERT THE EXTENDED TERM PERIOD]***

(iv) In the event the Base Term or the Extended Term, as applicable, ends in a Month that is not at the end of a NYISO Capability Period, Buyer shall have the option to extend the Term to the end of the then current NYISO Capability Period by providing Seller written notice of Buyer’s election at least twelve (12) Months prior to the end of the applicable Term.

## Opinion of Counsel

. Seller shall deliver to Buyer an opinion of counsel (which may be an opinion of its in-house counsel) within thirty (30) Days after the Seller receives written notice from Buyer stating that the Effective Date has been achieved, in a form and substance reasonably satisfactory to Buyer, containing the opinions that this Agreement has been duly and validly executed and delivered by Seller , and that this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against it in accordance with its terms, subject to customary assumptions, qualifications and exceptions.

## Early Termination by Buyer

. In addition to the right to terminate upon a Seller Event of Default as provided in Section 12.5, Buyer shall have the right to terminate this Agreement without payment of any kind to Seller if any of the following events occur [***PROPOSER SHOULD DELETE INAPPLICABLE ITEMS AND ADD OTHERS AS APPROPRIATE***]:

(i) Seller fails to obtain all Consents which are necessary to commence construction or development of the Project as set forth in Appendix 2 (the “Minimum Required Consents”) on or before two hundred seventy (270) Days after the Minimum Required Consents Receipt Target Date, unless such period is extended in writing by both Parties;

(ii) Seller fails to complete and file its applications for the Minimum Required Consents on or before ninety (90) Days after the Minimum Required Consents Application Target Date [***PROPOSER MAY DELETE/MODIFY THIS PROVISION AS APPLICABLE FOR APPROPRIATE FOR THE PROJECT***];

(iii) Seller fails to execute the Development Contract on or before ninety (90) Days after the Development Contract Execution Target Date [***PROPOSER MAY DELETE/MODIFY THIS PROVISION AS APPLICABLE FOR APPROPRIATE FOR THE PROJECT***];

(iv) Seller fails to achieve the Minimum Participation Target by the Minimum Participation Target Date *[****PROPOSER MAY DELETE/MODIFY THIS PROVISION AS APPLICABLE FOR APPROPRIATE FOR THE PROJECT];***

(v) Seller fails to complete any of the Major Development Milestones on or before ninety (90) Days after the Major Development Milestone Target Date ***PROPOSER MAY DELETE/MODIFY THIS PROVISION AS APPLICABLE FOR APPROPRIATE FOR THE PROJECT***; and

(vi) The Commercial Operation Date does not occur on or before ninety (90) Days after the COD Target Date.

For all purposes under this Agreement, including this Section 2.3 and Section 3.3, each of the foregoing dates shall be extended by one (1) Day for each Day Seller has been prevented or delayed from accomplishing the required action or event as a result of a Force Majeure Event, a failure of the Connecting Transmission Owner to timely complete the Connecting Transmission Owner’s Attachment Facilities [***IF APPLICABLE***], System Upgrade Facilities or the System Deliverability Upgrades, or by Buyer’s willful or grossly negligent actions or inactions that have proximately caused a delay (provided that such extension shall be reduced for each Day that Seller caused or materially contributed to the delay), and Seller could have accomplished such action or event by the required date, but for such Force Majeure Event or Buyer’s actions or inactions.

In the event Buyer elects to terminate this Agreement as a consequence of the conditions described in Sections 2.3(ii) through 2.3(v), Seller shall pay to Buyer a Liquidated Damage payment of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_) ***[PROPOSER TO INSERT ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000) MULTIPLIED BY THE NUMBER OF MW OF NET DESIGN CAPACITY]*** in lieu of a Termination Payment, provided, if Seller has made timely application for Minimum Required Consents and diligently performed Seller’s obligations pursuant to Section 3.8, but for reasons beyond Seller’s control any such Consent has not been issued, or has been issued subject to an Unacceptable Condition, no Liquidated Damage payment shall be due upon Buyer’s termination under this Section 2.3.

*[Remainder of page is left intentionally blank]*

#  PROJECT DEVELOPMENT AND COMMERCIAL OPERATION

## Commercial Operation Date Notice

. Upon the achievement of the conditions set forth in Section 3.2, Seller shall deliver to Buyer an officer’s certificate stating that the conditions set forth in Section 3.2 have been achieved (“COD Notice”); provided that (i) Seller must deliver the COD Notice at least three (3) Business Days prior to the first (1st) Day of a Month in order for the Commercial Operation date to occur on the first (1st) Day of such Month as provided in Section 3.2, and (ii) Seller shall have given ten (10) Days’ prior written notice of the date of the Contract Capacity Test to Buyer. The Parties’ respective obligations to sell and deliver, and receive and pay for, the Products under this Agreement shall commence on the Commercial Operation Date.

## Conditions for Commercial Operation Date

. The “Commercial Operation Date” shall occur, after delivery of the COD Notice, upon the first (1st) Day of the first (1st) Month following achievement of all of the following [***PROPOSER SHOULD DELETE INAPPLICABLE ITEMS AND ADD OTHERS AS APPROPRIATE***]:

(i) Successful completion of all tests required for Seller to operate the Project in accordance with Prudent Utility Practices, the NYISO Rules, and all equipment manufacturers’ instruction manuals and in a manner that the manufacturer’s warranties remain in full force and effect for their term (in each case subject to Prudent Utility Practices), except for such testing that is required by Legal Requirements or order of a Governmental Authority to be conducted after the Commercial Operation Date;

(ii) All Consents required to construct and operate the Project and to deliver Products to Buyer have been obtained;

(iii) Delivery by Seller to Buyer of certificates of insurance coverage or proof of insurance policies, as required pursuant to Article 9 of this Agreement;

(iv) Seller has **[qualified the Project][provided information as required by the NYISO to Buyer so that Buyer can register the Project]** as an [Installed Capacity Supplier][Other NYISO Demand Response Program][LIPA, NYSERDA or other Energy Efficiency Program], in accordance with NYISO Rules [LIPA, NYSERDA or other Energy Efficiency Program criteria], and has provided written notice to Buyer of completing such activities and acceptance by the NYISO [LIPA, NYSERDA or other Energy Efficiency Program sponsor] on or before the deadline established by the NYISO for participation in the NYISO’s Installed Capacity market for the Month in which the Commercial Operation Date is to occur [other applicable date/deadline];

(v) The Project has achieved the Minimum Participation Target;

 (v) ***[IF APPLICABLE]*** The Project has been interconnected with Connecting Transmission Owner’s Electrical System, and (b) Seller has executed the Interconnection Agreement for the Project in substantially the form in Appendix [\_\_] hereto, providing for a term commencing on or before the COD and ending no earlier than the last day of the Term, and has used commercially reasonable efforts to obtain NYISO execution of the Interconnection Agreement;

(vi) 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 delivering Contract Capacity of at least the Net Design Capacity at the Delivery Point [***IF APPLICABLE***]; and

(vii) The Project and the Renewable Attributes to be produced thereby meet the RPS Program eligibility rules and requirements as in effect on the Execution Date. [***IF APPLICABLE***]

## Seller Milestone Delay Liquidated Damages.

(i) Minimum Required Consents Liquidated Damages. [***IF APPLICABLE***] Seller shall deliver to Buyer written notice that Seller has applied for the 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 to Buyer as Liquidated Damages an amount equal to [\_\_\_\_\_\_\_\_] Dollars ($\_\_\_) ***[PROPOSER TO INSERT NUMBER EQUAL TO TWO HUNDRED DOLLARS ($200) MULTIPLIED BY THE NUMBER OF MW OF NET DESIGN CAPACITY OF THE PROJECT]*** per Day 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, to be paid to Buyer as set forth in Section 3.3(v). Buyer shall deposit the Liquidated Damages paid pursuant to this Section 3.3(i) 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(iv); provided, however, that if Seller achieves the Commercial Operation Date on or before the COD Target Date, Buyer shall return to Seller any Liquidated Damages paid by Seller pursuant to this Section 3.3(i), without interest, within thirty (30) Business Days of the Commercial Operation Date.

(ii) Execution of Development Contract. ***[IF APPLICABLE]*** Seller shall deliver to Buyer written notice that Seller has executed the EPC Contract within seventy-two (72) hours of such occurrence. If Seller has not executed the Development Contract by the Development Contract Execution Target Date, then Seller shall pay to Buyer as Liquidated Damages an amount equal to [\_\_\_\_\_\_\_\_] Dollars ($\_\_\_) ***[PROPOSER TO INSERT NUMBER EQUAL TO TWO HUNDRED DOLLARS ($200) MULTIPLIED BY THE NUMBER OF MW OF NET DESIGN CAPACITY OF THE PROJECT]*** per Day for each Day of delay following the Development Contract Execution Target Date until Seller has executed the Development Contract up to a maximum amount equivalent to ninety (90) Days’ Liquidated Damages, to be paid to Buyer as set forth in Section 3.3(v). Buyer shall deposit the Liquidated Damages paid pursuant to this Section 3.3(ii) 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(iv); provided, however, that if Seller achieves the Commercial Operation Date on or before the COD Target Date, Buyer shall return to Seller any Liquidated Damages paid by Seller pursuant to this Section 3.3(ii), without interest, within thirty (30) Business Days of the Commercial Operation Date.

(iii) Major Development Milestone Liquidated Damages. ***[IF APPLICABLE]*** Seller shall deliver to Buyer its written notice that the Major Development Milestone has occurred within seventy-two (72) hours of such occurrence. If the Major Development Milestone has not occurred by the Major Development Milestone Target Date, then Seller shall pay to Buyer as Liquidated Damages an amount equal to \_\_\_\_\_\_\_\_ Dollars ($\_\_\_)***[PROPOSER TO INSERT NUMBER EQUAL TO TWO HUNDRED DOLLARS ($200) MULTIPLIED BY THE NUMBER OF MW OF NET DESIGN CAPACITY OF THE PROJECT]*** per Day for each Day of delay following the Major Development Milestone Target Date until the Major Development Milestone has occurred up to a maximum amount equivalent to ninety (90) Days’ Liquidated Damages, to be paid pursuant to Buyer as set forth in Section 3.3(v). Buyer shall deposit the Liquidated Damages paid pursuant to this Section 3.3(iii) 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(iv); provided, however, that if Seller achieves the Commercial Operation Date on or before the COD Target Date, Buyer shall return to Seller any Liquidated Damages paid by Seller pursuant to this Section 3.3(iii), without interest, within thirty (30) Business Days of the Commercial Operation Date.

(iv) COD Liquidated Damages. If Seller has not achieved Commercial Operation as of the COD Target Date, then Seller shall pay to Buyer as Liquidated Damages an amount equal to \_\_\_\_\_\_\_\_ Dollars ($\_\_\_) ***[PROPOSER TO INSERT NUMBER EQUAL TO TWO HUNDRED DOLLARS ($200) MULTIPLIED BY THE NUMBER OF MW OF NET DESIGN CAPACITY OF THE PROJECT]*** per Day for each day of delay (“COD Liquidated Damages”) following the COD Target Date.

(v) Payment of Liquidated Damages.

(a) Liquidated Damages owed pursuant to Sections 3.3(i), 3.3(ii), 3.3(iii) and 3.3(iv) shall be due and payable in accordance with Section 6.1 of this Agreement; provided, however, that the maximum daily payment is \_\_\_\_\_\_\_\_ Dollars ($\_\_\_) ***[PROPOSER TO INSERT NUMBER EQUAL TO TWO HUNDRED DOLLARS ($200) MULTIPLIED BY THE NUMBER OF MW OF NET DESIGN CAPACITY OF THE PROJECT]*** and the maximum total payment is \_\_\_\_\_\_\_\_ Dollars ($\_\_\_). Such Liquidated Damages shall first be paid from the Escrow Account (and any money remaining in the Escrow Account once such Liquidated Damages are paid and any other remaining events that may require maintenance of the Escrow Account or payment to Buyer shall be refunded to Seller in accordance with the provisions of Section 7.1). If said Liquidated Damages are still owed, said Liquidated Damages shall be paid by Seller in accordance with Section 6.1 and if said Liquidated Damages are not paid by Seller in accordance with Section 6.1, in addition to the rights under Article 12, Buyer shall have the right to collect such Liquidated Damages from Seller Security.

(b) If Buyer terminates this Agreement pursuant to Section 2.3, Buyer may retain all Liquidated Damages collected pursuant to this Section 3.3 as credit towards the Liquidated Damages due pursuant to Section 2.3. Once any Liquidated Damages or other amounts owed to Buyer pursuant to this Agreement (if any) have been paid, any moneys remaining in the Escrow Account (if any) shall be paid to Seller; provided, however, that the Escrow Account shall be maintained until the date that is ninety-eight (98) Days after the payment of all obligations due from Seller to Buyer in this Section 3.3. If Seller becomes Bankrupt, and any amount remains in the Escrow Account following all payments required to be made to Buyer pursuant to this Section 3.3, such amount (subject to withdrawal for any amounts that subsequently become due to Buyer, or any Escrow Agent’s fees) shall remain in the Escrow Account until a final determination has been made, by a court of competent jurisdiction, that any amounts paid previously paid to Buyer by Seller or from the Escrow Account with respect to Seller’s obligations to Buyer prior to Seller becoming Bankrupt are not subject to being recovered from Buyer pursuant to Sections 544, 547, 549 or 550 of the U.S. Bankruptcy Code (or pursuant to any successor or similar provisions of law) in any proceeding instituted under the U.S. Bankruptcy Code, or any comparable provision of any applicable state or federal bankruptcy or creditors’ rights law, by or against Seller. If such a final determination is made, the Escrow Account balance may be released to Seller at the time set forth in this Section 3.3(vi)(b). If such final determination is not made and the bankruptcy trustee or debtor-in-possession recovers moneys from Buyer with respect to prior Seller payments to Buyer, Buyer shall be entitled to withdraw funds from the Escrow Account, to the extent available, to substitute for such recovered funds and any interest earnings thereon equal to the amount of such recovery, prior to release of any remaining Escrow Account funds to Seller.

(c) If either Party disputes whether Liquidated Damages are owed or the amount of Liquidated Damages owed, such Party may seek resolution of such dispute pursuant to the terms of Article 16.

(d) To the extent any damages required to be paid under this Agreement are liquidated, the Parties agree that such damages are difficult or impossible to determine, otherwise obtaining an adequate remedy is inconvenient and the Liquidated Damages set forth in this Agreement constitute a reasonable approximation of the harm or loss and not a penalty. For breach of any provision for which Liquidated Damages are provided, and with regard to a termination of this Agreement by Buyer pursuant to Section 2.3 for which the payment of Liquidated Damages are provided, such damages are the sole and exclusive remedy unless otherwise expressly stated and Seller’s liability will be limited as set forth herein.

(vi) Escrow Account. The term “Escrow Account” means an account in which an amount of U.S. currency is placed with an escrow agent (and pursuant to an escrow agreement), which agent, account and agreement is reasonably acceptable to the Parties, and which agreement provides for draws by Buyer in accordance with Section 3.3, the costs of which shall be borne by Seller. The Escrow Account shall be an interest bearing account. The interest earned on the Escrow Account shall first be used to pay the costs of the account, then the cost of the escrow agent, and then to replenish any deficiency in the Escrow Account, and, except as provided for in this Section 3.3, any excess interest shall belong to Seller.

## Testing.

(i) COD Contract Capacity Test. ***[If Applicable]*** Prior to achieving Commercial Operation, Seller shall conduct or cause to be conducted a Contract Capacity Test in accordance with NYISO Rules and Appendix 3 to establish the Contract Capacity commencing on the 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.

(ii) Post 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.

(iii) 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.

(iv) 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.

## Emission Allowances

. ***[IF APPLICABLE]*** Seller shall be responsible for obtaining any and all emissions allowances, credits, offsets or similar rights required to operate the Project under existing Legal Requirements, including emissions allowances, credits, offsets or similar rights for PM2.5, VOCs, NOx, SOx, CO2 and other pollutants (“Emission Rights”). Any Seller costs relating to allowances arising from Seller’s failure to meet Guaranteed Performance as set forth in Appendix 7 [**IF APPLICABLE**] shall not be included in any charges to Buyer.

## Notice of Development Contract Execution

. ***[IF APPLICABLE]*** Seller shall provide Buyer with prompt written notice of the execution of the Development Contract.

## Status of Milestone Dates

. Not less than one (1) Month following the Effective Date, Seller shall provide a written report to Buyer, and continuing on a Monthly basis, on the progress in achieving each of the development milestones set forth in Appendix 2.

## Obtaining Consents

.

1. Seller shall perform the necessary analyses, studies and other activities and make all necessary applications and proceed in an expeditious manner to obtain all Consents that will allow for development and commercial operation of the Project by the COD Target Date. Seller shall immediately notify Buyer of any events that may reasonably be expected to change in any material manner the Project or that adversely affect Seller’s ability to meet the COD Target Date. Within ten (10) Days after the end of each Month prior to the time when all Minimum Required Consents are received, Seller shall deliver a written report to Buyer describing the progress of activities to obtain Minimum Required Consents, including any events of material significance to Seller’s ability to develop the Project or meet the COD Target Date.
2. In the event any Governmental Authority issues any Consent subject to any material condition that is unacceptable to either Party in its reasonable discretion (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 either Party, the affected Party may terminate this Agreement upon written notice to the other Party 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 the burdened party in excess of [$\_\_\_\_\_\_\_\_\_\_][***PROPOSER TO PROVIDE FIGURE APPROPRIATE FOR PROJECT***.]

## Design and Development

. Seller shall design and develop, or cause to be designed and developed, the Project in a manner so as to conform in all material respects with:

(i) The Project description set forth in Appendix 2;

(ii) All applicable Legal Requirements;

(iii) Prudent Utility Practices; and

(iv) Consents.

The Project shall be designed and developed in such a manner that it will provide and maintain the Net Design Capacity (as adjusted from time to time in accordance with the manufacturer’s degradation curve) and that the useful life of the Project shall be at least equal to the Term or the Extended Term, whichever is applicable. Except as otherwise provided under Sections 3.8 or 3.10, Seller shall not make any material changes to the Project (unless required by Legal Requirements) that may be expected to adversely affect the performance of Seller’s obligations under this Agreement.

## Development of the Project

. Seller shall be solely responsible to obtain all necessary easements or licenses to effectuate Site Control for the Project and the Developer Attachment Facilities [***IF APPLICABLE***] throughout the Term. Seller shall proceed with engineering, development, construction [***IF APPLICABLE***], and implementation of the Project using Prudent Utility Practices and in a manner that will allow for achievement of the Commercial Operation Date by the COD Target Date. Seller shall notify Buyer immediately of any events which may reasonably be expected to adversely affect Seller’s ability to achieve Commercial Operation by the COD Target Date. Within ten (10) Days after the end of each Month during the development phase of the Project, Seller shall deliver a written report to Buyer describing the progress of development of the Project, including any events of material significance to Seller’s ability to meet the COD Target Date.

## Interconnection Arrangements

. ***[If Applicable]***

1. The Parties shall cooperate to make all arrangements, execute all agreements, and take other action necessary to cause the Electrical Interconnection Facilities to be completed within [\_\_] Days prior to the COD Target Date. ***[PROPOSER TO INSERT THE NUMBER OF DAYS*]**
2. Buyer shall, at its sole option, reimburse Seller for Interconnection Costs paid by Seller to the Connecting Transmission Owner either (a) through two hundred and forty (240) equal Monthly Payments beginning one (1) month from the Project COD (“Monthly Interconnection Payments”) as described below; or (b) a lump sum payment to be made within one (1) month after the Project achieves COD (“Lump Sum Interconnection Payment”).
3. “Monthly Interconnection Payment” shall mean equal monthly mortgage style loan payments (interest and principal) based on (a) two hundred and forty (240) payments; (b) the dollar amount of Interconnection Costs; and the Seller Interest Rate divided by twelve (12). “Seller Interest Rate” shall be equal to the sum of the twenty (20) Year U.S. Treasury Bond Rate as determined by the U.S Department of the Treasury plus [PROPOSER TO INSERT X.XX%] (“Interconnection Rate Adapter”). Seller Interest Rate shall be set on Project COD using the prior Business Day’s U.S. Treasury Bond Rate. Figure 3.11 – Example of calculation of Monthly Interconnection Payment:

|  |
| --- |
| For example, if Interconnection Costs = $1,000,000 Number of Payments = 240 Seller Interest Rate = 6.0% Seller Interest Rate divided by 12 = 0.5%**Monthly Interconnection Payment** = $7,164.31 |

### Ninety (90) Days prior to the expected Project COD the Seller will provide the Buyer with a statement of the estimated Interconnection Costs and the estimated Monthly Interconnection Payment if the levelized payment option is selected. Buyer will have thirty (30) days after receipt of statement of Interconnection Costs to notify the Seller which reimbursement methodology will be used.

## 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 development of the Project and the Electrical Interconnection Facilities (if applicable).

*[Remainder of page is left intentionally blank]*

#  ROLES OF THE PARTIES; REGULATORY APPROVALS

## Role of Seller

. Subject to the terms of this Agreement and for the Term, Seller shall, among other things [***PROPOSER SHOULD DELETE INAPPLICABLE PORTIONS, REVISE OR ADD PROVISIONS COVERING THE PARTICULARS OF DEMAND RESPONSE OR ENERGY EFFICIENCY PROJECT PRODUCTS AND/OR SERVICES AS APPLICABLE***]:

(i) Design, permit, own (by fee or leasehold), finance, engineer, contact, develop, construct, maintain and operate the Project, and provide [Products][Demand Response Services][Energy Efficiency Services] as set forth in Appendix 1 of this Agreement;

1. Apply for, expeditiously prosecute, obtain and maintain all Consents necessary for Seller to design, construct, operate and maintain the Project in accordance with this Agreement using commercially reasonable efforts;
2. Upon Seller’s learning of any material violation of a Consent obtained by Seller, Seller shall provide Buyer with written notice of such violation and as soon as reasonably practicable thereafter, a written statement setting forth Seller’s plan for curing the violation;
3. Operate and maintain the Project consistent with Prudent Utility Practices, and pay all operating costs, Tax and Governmental Charges;
4. In accordance with Prudent Utility Practices and NYISO Rules, employ and/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;
5. Meet all the conditions for the Commercial Operation Date set forth in Section 3.2 by the COD Target Date and maintain compliance in all material respects with the performance requirements and operating standards as set forth in Appendix 8;
6. Comply with all applicable Legal Requirements, Consents and NYISO Rules [***PROPOSER SHOULD ADD REFERENCES TO OTHER BUYER, GOVERNMENT OR NON-GOVERNMENTAL RULES AND ELIGIBILITY CRITERIA FOR THE PROJECT***];
7. Maintain all Project operating, metering, measurement and verification and compliance records to support all contract billing and performance requirements under this Agreement during the Term and for a sufficient period following the term to comply with Buyer audit requirements under Sections 6.3 and 6.5;
8. Manage local community relations as such are related to the development of the Project, including local workforce as set forth in Section 18.16 and M/WBE/VET subcontracting goals as set forth in Supplement 1; and
9. Construct and be responsible for the cost and expense of the Developer Attachment Facilities [***IF APPLICABLE***].

## Role of Buyer

. Subject to the terms of this Agreement and for the Term, Buyer (at its sole cost and expense) shall, among other things [***PROPOSER SHOULD DELETE INAPPLICABLE PORTIONS, REVISE OR ADD PROVISIONS COVERING THE PARTICULARS OF DEMAND RESPONSE OR ENERGY EFFICIENCY PROJECT AS APPLICABLE***]:

(i) Receive and pay for [Products][Demand Response Services][Energy Efficiency Services] and pay the [Monthly Interconnection payment][Lump Sum Interconnection Payment] [***IF APPLICABLE***]on the terms and conditions set forth herein and pay all other charges required of Buyer pursuant to this Agreement;

(iii) Dispatch the Project (if applicable);

(iv) Bid Test Energy into NYISO Markets, as directed by Seller and in accordance with NYISO Rules (if applicable);

(v) Cause the Connecting Transmission Owner to (a) enter into the Interconnection Agreement, and (b) construct the Connecting Transmission Owner’s Attachment Facilities [***IF APPLICABLE***], System Upgrade Facilities and System Deliverability Upgrades as set forth in Section 3.11 (if applicable); and

(vi) Register the Project with the NYISO [***PROPOSER SHOULD ADD REFERENCES TO OTHER APPLICABLE BUYER, GOVERNMENT OR NON-GOVERNMENTAL RULES AND ELIGIBILITY CRITERIA FOR THE PROJECT***].

(vii) [***PROPOSER SHOULD SPECIFY OTHER REQUIRED BUYER ACTIONS AND PROCEDURES FOR THE PROJECT***].

## FERC Agreement: Regulatory Review

. [***IF APPLICABLE***] Each Party agrees that, except with the prior written consent of the other Party, the Party or its Affiliates will not institute or voluntarily cooperate in the institution or conduct of any action or proceeding of the FERC under Section 205 or any other portion of the Federal Power Act, which action or proceeding is intended for the purpose of, or could reasonably be expected to have the effect of, changing the terms of this Agreement then in effect; provided, Seller shall have the right to file this Agreement with FERC and seek acceptance thereof in accordance with Section 205 of the Federal Power Act. Without limiting the foregoing, the Parties agree that the rates and terms and conditions for service specified herein shall remain in effect for the Term and shall not be subject to change through application to FERC pursuant to provisions of Section 205 of the Federal Power Act, absent written agreement of the Parties.

## Costs and Charges Related to Products.

(i) [***PROPOSER SHOULD DELETE INAPPLICABLE PORTIONS, REVISE OR ADD PROVISIONS COVERING THE PARTICULARS OF DEMAND RESPONSE PROJECT OR ENERGY EFFICIENCY PROJECT AS APPLICABLE. PROPOSER SHOULD PROVIDE DETAILS REGARDING SELLER’S OBLIGATION TO PAY ALL COSTS OF DEVELOPING AND IMPLEMENTING THE PROJECT***.] Seller shall be responsible for (a) any costs or charges on or with respect to the Products arising prior to the Delivery Point, including all Tax imposed on the Project and costs of claiming Renewable Attributes or qualifying Delivered Peak Demand Savings for claiming Renewable Attributes, and (b) pay or cause to be paid all Taxes imposed by any Governmental Authority (“Governmental Charges”), on or with respect to the Products arising prior to the Delivery Point.

(ii) Buyer shall be responsible for (a) any costs or charges on or with respect to the Products at and from the Delivery Point, and (b) 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 the Products to Buyer and are, therefore, the responsibility of Seller).

(iii) In the event either Party is required by Legal Requirements to remit or pay Governmental Charges which are the other Party’s responsibility hereunder, the Party required to pay shall promptly reimburse the other Party for such Governmental Charges.

(iv) Notwithstanding the foregoing, Buyer shall not be required to pay any portion of such costs arising from Seller’s failure to perform any obligation under this Agreement.

*[Remainder of page is left intentionally blank]*

#  SALE OF [PRODUCTS][DEMAND RESPONSE SERVICES][ENERGY EFFICIENCY SERVICES]

[***PROPOSER TO REVISE AS APPLICABLE, AND DELETE OR ADD APPROPRIATE TERMS FOR THE PROPOSAL***]

## Obligations

. Commencing on the Commercial Operation Date and continuing throughout the Term, Seller shall sell and make available to Buyer [the Contract Capacity, Delivered Peak Demand Savings, other Demand Response Products, and Renewable Attributes (if any) associated with the foregoing (“Products”)][Demand Response Services or Energy Efficiency Services for which this Agreement provides as set forth in Appendix 1]. [***PROPOSER TO REVISE AS APPLICABLE FOR DEMAND RESPONSE PRODUCTS OR SERVICES AND ENERGY EFFICIENCY PROJECT SERVICES***]. Buyer shall purchase and receive all such Products [Services] in the manner set forth under this Agreement upon achievement of the conditions set forth in Section 3.2. Seller’s failure to make available to Buyer such [Products][Services]in the manner and time for which this Agreement provides shall give Buyer the right to terminate this Agreement as a Seller Event of Default as set forth in Article 12.

## Agreement to Sell and Purchase

 [Products][Services]. Following the Commercial Operation Date, except during the occurrence of an Excused Outage, Seller shall make available [Products][Services] to Buyer in accordance with the terms of this Agreement (including as specifically set forth in Article 5), and Buyer agrees to compensate Seller therefor in accordance with the terms of this Agreement. Seller shall not deliver and Buyer shall not be obligated to purchase any Products in excess of one hundred five percent (105%) of Contract Capacity and Energy, Demand Resources or Renewable Attributes associated with Contract Capacity in any Month, provided Buyer shall have the option, upon written notice, to elect for the remainder of the Term to purchase such excess Capacity and associated Energy at the price set forth in Appendices 4 and 5, and such purchase shall include Renewable Attributes associated with such additional Delivered Peak Demand Savings. [***PROPOSER TO ADD APPROPRIATE PROVISIONS FOR DEMAND RESPONSE SERVICES OR ENERGY EFFICIENCY SERVICES, IF APPLICABLE***]

## Test Energy Before the Commercial Operation Date

. ***[IF APPLICABLE]*** On or before one hundred eighty (180) Days prior to the COD Target Date, Seller shall provide Buyer with its good faith estimate of the quantity of Energy to be generated by the Project before the Commercial Operation Date (such quantity, the “Test Energy”). Seller will deliver the quantity of Test Energy actually generated by the Project at no charge to Buyer. To the extent that any Renewable Attributes are available with Test Energy, such Renewable Attributes will be transferred to Buyer in accordance with the provisions of this Agreement.

## Title

. Title to and risk of loss for Energy provided under the terms of this Agreement shall pass from Seller to Buyer at the Delivery Point.

## Meters.

* + 1. ***[IF APPLICABLE]*** Buyer shall be responsible for the ownership, operation and maintenance of the Electric Metering Equipment. All such Electric Metering Equipment shall comply with applicable NYISO Rules as of the date hereof. Buyer shall pay any and all costs required in connection with any modifications necessary to make such Electric Metering Equipment compliant with any subsequent changes to NYISO Rules. Buyer shall inspect, test and adjust the Electric Metering Equipment at its own expense on a frequency and as required by applicable NYISO Rules. Buyer shall provide Seller with reasonable advance notice of, and permit a representative of Seller to witness and verify such inspections, tests and adjustments.
		2. For purposes of metering Delivered Peak Demand Savings and Ancillary Services provided by the Project pursuant to this Agreement, the meters (the “Electric Meters”), together with the associated current and potential transformers (together, the “Electric Metering Equipment”), shall measure and record the amount of Delivered Peak Demand Savings received from Seller by Buyer at the Delivery Point.
		3. If the Electric Metering Equipment fails to register Delivered Peak Demand Savings and Ancillary Services provided by the Project, or if the measurement made by the Electric Metering Equipment is found upon testing to vary by more than one percent (1%) from the measurement made by the standard meter used in the test, then the readings of such Electric Metering Equipment, taken during the measurement periods up to the lesser of (a) six (6) Months before the test, or (b) the last test of such equipment was made, will be adjusted, either upward, if the tests indicate under-reading by the Electric Metering Equipment or downward, if the tests indicate over-reading by the Electric Metering Equipment, to correct for such error, unless there is verifiable information available upon which a more accurate adjustment can be made, including readings from Seller-installed metering devices. If the Parties are unable to agree on the amount of the adjustment to be applied, the amount of the adjustment shall be determined (x) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation, or (y) if not so ascertainable, by estimating on the basis of deliveries under similar conditions during the period since the last test. Any accumulated difference in payments due under the terms of this Agreement which are owing or to be refunded as a result of such metering errors will be reflected in adjustments to bills for a future period of reasonable length, to be agreed upon by the Parties, but in no event over a period greater than the three (3) succeeding billing periods after the inaccuracy is verified. Subject to Section 6.3, such correction when made shall, in the absence of bad faith, fraud, or intentional wrongdoing, constitute a complete and final settlement of any claim arising between the Parties out of such inaccuracy of the Electric Metering Equipment.

## Renewable Attributes Title and Conditions

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* + 1. Good and Marketable Title; No Encumbrances

At the time of any assignment, delivery or conveyance by Seller to Buyer of the Renewable Attributes as to which right and title is to be transferred to Buyer under this Agreement, (a) the Seller shall have good and marketable title to such Renewable Attributes, (b) all such Renewable Attributes shall be free and clear of all liens, judgments, encumbrances and restrictions created by or on behalf of Seller or any party claiming through Seller, and (c) all such Renewable Attributes shall not have otherwise been, nor will be sold retired, claimed or represented by or on behalf of Seller or any party claiming through Seller, as part of electricity output or sales, or used by or on behalf of Seller or any party claiming through Seller, to satisfy obligations in any other jurisdiction or any voluntary renewable program or standard; provided that Buyer shall have no continuing obligation with respect to such Renewable Attributes after any assignment, delivery or conveyance by Seller to Buyer of such Renewable Attributes.

(ii) Seller’s Responsibility Related to Renewable Attributes

In the event that Seller is required to apply for or take any action under any emission-trading or any other regime other than the RPS Program in order to secure a claim, title, ownership, or rights of any type, nature or sort to any Renewable Attributes associated with Delivered Peak Demand Savings, or any certification, registration, verification or other memorializations of the creation of such Renewable Attributes by the Project to which Seller may be entitled (“Title”), Seller shall make good faith and commercially reasonable efforts to (x) take all actions necessary to apply for and secure such Title, to the maximum extent to which Seller is entitled; (y) provide Buyer with evidence of taking such action; and (z) transfer such Title to Buyer whenever so secured.

(iii) Buyer’s Obligation Under the RPS Program

#### Buyer’s obligations under this Agreement are expressly conditioned on the eligibility of the Project under the RPS Program eligibility rules and requirements in effect as of the Execution Date.

* + 1. Buyer’s Rights Related to Renewable Attributes
		2. Buyer shall have sole, exclusive and perpetual ownership of all Renewable Attributes associated with Delivered Peak Demand Savings and shall be free to sell, assign, transfer, retire, or otherwise subject to any encumbrance, any of the Renewable Attributes or the right, title and interest to the Renewable Attributes Buyer shall acquire under this Agreement, at any time and from time to time to any entity and on such terms and conditions as Buyer may desire. Any financial or other consideration received by Buyer from any such action shall inure solely to Buyer’s benefit, and shall not affect the Seller’s obligations under the terms of this Agreement. Buyer’s rights shall include exclusive rights to claim, consistent with the RPS Program that (x) the Energy associated with Renewable Attributes was generated by the Project and matches on a Monthly basis, and (y) Buyer receives credit for the reductions in emissions and/or pollution resulting from the generation of the Energy and Renewable Attributes.
		3. For each Month during the Term, any and all Renewable Attributes associated with the Energy made available by Seller during such Month shall be transferred from Seller to Buyer through their inclusion on the Certification and Assignment of Rights Form (attached as Appendix [\_\_]) ***[PROPOSER TO REVISE IF APPLICABLE]***, which shall accompany each Monthly Invoice. Should Buyer create, sanction, adopt or begin participation in a tracking system for accounting for generation attributes or certificates associated with generation in the New York Control Area, Buyer shall give Seller written notice thereof, together with instructions and any necessary forms, and thereafter such transfer will also include the delivery of the attributes or certificates associated with each Renewable Attribute, at the earliest time such certificates or attributes become available for delivery, to Buyer.

In the event that any Renewable Attributes associated with Delivered Peak Demand Savings for any Month are not delivered with the Monthly Invoice for such associated Delivered Peak Demand Savings for such Month (an “Attribute Deficiency Month”), and such failure is not cured during the following Month, Seller shall include in the Monthly Invoice for such following Month, as an Attribute Deficiency Month credit as set forth in Article 7, such amount (if any) as shall be necessary to adjust the price paid for Energy delivered during the Attribute Deficiency Month to the lesser of (i) the Contract Price for the Attribute Deficiency Month or (ii) the NYISO locationally-based Real-Time Market price at the Delivery Point for the applicable MWh delivered during the Attribute Deficiency Month, to reflect the Seller’s failure to deliver such Renewable Attributes.

## Right to Resell

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Seller shall convey all [Products][Services] to Buyer with good title, free and clear of liens and encumbrances of any nature whatsoever.  At any time during the Term, Buyer shall have the right to resell Products to third parties either within or outside the NYISO, for any time duration, and to retain any and all proceeds of such sales.  Seller shall reasonably cooperate with Buyer in undertaking such efforts, provided that Buyer shall be responsible for any incremental costs incurred by Seller to make Products available for resale in the event Buyer elects to make such sales outside the NYISO.  In such event, Buyer shall also be responsible for any incremental costs resulting from Buyer’s resale of Products outside the NYISO that are reasonably incurred by Seller within one Year after the Term to make Products available for sale within the NYISO for Seller’s own account.

## Monthly Capacity and Energy Payments

1. . ***[If Applicable]*** Subject to the provisions in Section 5.2, beginning with the Month in which the Commercial Operation Date occurs, Buyer shall pay to Seller a Monthly Capacity Payment calculated in accordance with Appendix 4 and pursuant to the terms of Article 6, and adjusted, as applicable, in accordance with Appendix 6. Buyer shall make Monthly Energy Payments as Follows:
2. Buyer shall pay Seller for Delivered Peak Demand Savings calculated in accordance with Appendix 5 and pursuant to the terms of Article 6. Buyer shall receive and purchase all Ancillary Services listed in Appendix 5 for no additional charge.
3. Seller shall calculate any amounts owed to Seller or owed to Buyer pursuant to Appendix 7 with respect to the Guaranteed Performance and pursuant to the terms in Article 6. [**IF APPLICABLE**]

## Monthly [Demand Response Services][Energy Efficiency Services] Payment

. ***[If Applicable]***.

[***PROPOSER OFFERING DEMAND RESPONSE SERVICES OR ENERGY EFFICIENCY SERVICES SHOULD SPECIFY PAYMENT METHODOLOGY AND INCLUDE FULL METHODOLOGY AND CALCULATION OF PAYMENT AMOUNTS IN APPENDIX 5***]

## Excused Outages*.*

 ***[PROPOSER OFFERING DEMAND RESPONSE SERVICES OR ENERGY EFFICIENCY SERVICES SHOULD INCLUDE AN ANALOGOUS PROVISION COVERING EXCUSE OF PERFORMANCE OBLIGATIONS DUE TO REGULATORY OR FORCE MAJEURE EVENTS]*** 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:

(i) Any Outage of the Project which is the result of a Planned Outage or Maintenance Outage;

(ii) Any Outage where Seller failed to comply with a Dispatch by Buyer not in accordance with Section 8.8;

(iii) Buyer’s or Connecting Transmission Owner’s inability or unwillingness to accept Energy or Ancillary Services at the Delivery Point;

(iv) A Suspension pursuant to Section 8.11; or

(v) A Force Majeure Event to the extent provided in Article 11;

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

## Equivalent Availability and Chronic Underperformance.

(i) ***[THIS SECTION APPLICABLE FOR DEMAND REDUCTION PROJECTS; PROPOSER SHOULD REVISE TO COVER PROJECT SPECIFICS AND PRODUCTS.]***  For purposes of this Agreement, the following defined terms shall be used for the determination of Equivalent Availability and Chronic Underperformance:

(a) “Ambient-Adjusted Contract Capacity” means the maximum amount of Capacity in MW the NYISO will permit to be Dispatched for the Project in any hour, based on temperature, humidity and any other applicable ambient conditions, exclusive of the effect of any Outages.

(b) “Equivalent Availability” means the Capacity-weighted percentage of time in a specific time period during which the Project is available for Dispatch, 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 Ambient-Adjusted Contract Capacity in every hour of a specific time period that is actually available for Dispatch; provided, for purposes of this calculation that project Capacity unavailable due to an Excused Outage will be included in the Ambient-Adjusted Contract Capacity, and (y) the denominator is the sum of the Ambient-Adjusted Contract Capacity in every hour of such time period. For the avoidance of doubt, Contract Capacity not available for Dispatch 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%).

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

(d) “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 ninety percent (90%) of the Net Design Capacity.

(ii) *[****THIS SECTION APPLICABLE FOR ENERGY EFFICIENCY PROJECTS. PROPOSER SHOULD MODIFY TO COVER PROJECT SPECIFICS AND PRODUCTS.]*** For purposes of this Agreement the following terms will be used to determine Guaranteed Performance, Shortfalls and Chronic Underperformance.

### “Guaranteed Performance” means delivery by the Project of at least Ninety Percent (90%) of minimum guaranteed average quantity of Peak Demand Savings, in aggregate for all callable occurrences **[PROPOSER TO REVISE IF NON-DISPATCHABLE]** measured in [MW] [MWh] **[OTHER QUANTITY SPECIFIED BY PROPOSER]** for each Contract Year as detailed in Appendix 7. For avoidance of doubt, Guaranteed Performance shall be without regard to any Outages except Outages arising from Force Majeure Events, and the Guaranteed Performance is agreed to include a reasonable allowance for all scheduled or unscheduled maintenance and any forced Outages and other circumstances.

### “Shortfall” means the amount by which the Project failed to achieve Guaranteed Performance in any Contract Year, expressed as a percentage of the projected Peak Demand Savings for such Contract Year. As an example, if the Project delivered 88 percent of the projected Peak Demand Savings in such Contract Year set forth in Appendix 7, the Shortfall for such Contract Year is two percent (2%).

### “Chronic Underperformance” means the failure of the Project to achieve Guaranteed Performance in any three consecutive Contract Years.

## Remedies for Underperformance

(1) If a Shortfall of less than ten percent (10%) has occurred in any Contract Year, Seller shall compensate Buyer with a payment (the “Make-Whole Payment”) for such Contract Year equal to the Shortfall multiplied by two (2) multiplied by Buyer’s total payments to Seller for Energy Savings during such Contract Year.

(2) If a Shortfall of ten percent (10%) or more and less than twenty-five percent (25%) has occurred in any Contract Year, Seller’s Make-Whole Payment for such Contract Year shall equal the Shortfall multiplied by four (4) multiplied by Buyer’s total payments to Seller for Peak Demand Savings during such Contract Year.

(3) If a Shortfall of twenty-five percent (25%) or more has occurred in any Contract Year, Seller, as a Make-Whole Payment, will refund the entire payment for Peak Demand Savings made by Buyer during such Contract Year, and in addition, pay to Buyer Liquidated Damages in an amount equal to the Shortfall multiplied by the amount Buyer would have paid Seller for Peak Demand Savings had the Shortfall been fifty percent (50%) during such Contract Year.

(4) Seller shall invoice Buyer in accordance with Section 6.1(ii)(b) for any applicable Make-Whole Payment within thirty (30) Days following Buyer’s receipt of Seller’s final Monthly Invoice for the preceding Contract Year.

## (c) Overdelivery

In the event that Seller delivers quantities of Peak Demand Savings equal to or in excess of one hundred and five percent (105%) of the projected Energy Deliveries as set forth on Appendix 7 during any Contract Year, Buyer will not be obligated to pay for any additional quantities delivered

(iii) Commencing on the third (3rd) anniversary of the Commercial Operation Date, 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 applicable period in which such Chronic Underperformance occurred. Buyer shall have the right, but not the obligation, to terminate this Agreement immediately pursuant to Section 12.5.

## Measurement and Verification

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[***SELLER SHOULD INSERT M&V PROVISIONS AS APPLICABLE FOR PROJECT FOR APPROVAL BY BUYER***.]

 *[Remainder of page is left intentionally blank]*

#  BILLING AND COLLECTIONS

## Billing and Payment

. 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, except that Monthly Capacity Payments will be submitted in accordance with the terms and conditions set forth in Section 6.1(i)(c)(1) below ***[IF APPLICABLE]***.

(i) Billing by Seller.

(a) Reading Electric Metering Equipment. ***[IF APPLICABLE]*** Buyer shall read the Electric Metering Equipment at the end of each Month of the Term and provide such readings to Seller. [***PROPOSER SHOULD ADD EQUIVALENT PROVISION FOR MEASUREMENT OF PERFORMANCE UNDER ANY DEMAND RESPONSE PROJECT OR ENERGY EFFICIENCY PROJECT***.]

(b) Interconnection Costs. ***[IF APPLICABLE]*** After the Commercial Operation Date, Seller shall prepare and submit to Buyer a statement for the accumulated capital costs it has incurred associated with paying for all Interconnection Costs, including Connecting Transmission Owner’s Attachment Facilities [***IF APPLICABLE***], System Upgrade Facilities and System Deliverability Upgrades pursuant to the Interconnection Agreement. Such statement shall show the nature, amount and Payee, if any, of the capital costs paid and incurred by Seller, and shall be the basis for determining the Monthly Interconnection Payment or Lump Sum Interconnection Payment in accordance with Section 3.11(iii).

(c) Monthly Invoice. Subject to the provisions of Section 6.3, on or about the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall send Buyer a Monthly Invoice for [***PROPOSER TO REVISED, ADD AND DELETE PROVISIONS AS APPLICABLE***]:

(1) Monthly Capacity Payment. The Monthly Capacity Payment for the current Month (and any previous Months in the case of the first (1st) invoice) in accordance with Appendix 4;

(2) Monthly [Energy][Demand Response Products][Demand Reduction Services][Peak Demand Savings] Payment. The Monthly [Energy][Demand Response Products][Demand Reduction Services][Peak Demand Savings] Payment for the preceding Month in accordance with Appendix 5;

(3) Monthly Interconnection Payment [Lump Sum Interconnection Payment]. The Monthly Interconnection Payment [or Lump Sum Interconnection Payment] calculated in accordance with Section 3.11(iii).

(d) Other Amounts. Any other amounts that Buyer owes Seller pursuant to this Agreement.

(e) Buyer shall be obligated to pay to Seller, within thirty (30) Days of the receipt of each invoice (except, in the case of a Termination Payment, within the time period prescribed in Section 12.5(ii)), any undisputed amounts owed to Seller.

(f) Seller shall deliver each invoice to Buyer’s billing address as set forth in Section 18.5 herein or such other delivery address/method as specified by the Buyer. Such invoice shall include the basis of the calculation of the payment amounts, the applicable rates and any interest charges or other adjustments to the amounts owed.

(ii) Billing by Buyer.

(a) Liquidated Damages. Commencing with the first Month after any Liquidated Damages are owed by Seller, Buyer shall send Seller an invoice for any applicable Liquidated Damages for the preceding Month.

(1) Minimum Required Consents Liquidated Damages Amounts. [***IF APPLICABLE***] Buyer shall prepare and submit an invoice to Seller for any Liquidated Damages amounts due and payable to Buyer from Seller pursuant to Section 3.3(i) providing sufficient detail to show the amounts due.

(2) Execution of Development Contract. [***IF APPLICABLE***] Buyer shall prepare and submit an invoice to Seller for any Liquidated Damages amounts due and payable to Buyer from Seller pursuant to Section 3.3(ii) providing sufficient detail to show the amounts due.

(3) Major Development Milestone Liquidated Damages Amount. [***IF APPLICABLE***] Buyer shall prepare and submit an invoice to Seller for any Liquidated Damages amounts due and payable to Buyer from Seller pursuant to Section 3.3(iii) providing sufficient detail to show the amounts due.

(4) COD Liquidated Damages and Other Liquidated Damage Amounts. Buyer shall prepare and submit an invoice to Seller for any COD Liquidated Damages or other Liquidated Damage amounts due and payable to Buyer from Seller providing sufficient detail to show the amounts due.

(b) Other Amounts. Any other amounts that Seller owes Buyer pursuant to this Agreement, including any applicable Make-Whole Payment. [**IF APPLICABLE**]

(c) Seller shall be obligated to pay to Buyer, within thirty (30) Days of the receipt of any invoice (except, in the case of a Termination Payment, within the time period prescribed in Section 12.5(ii)), any undisputed amounts owed to Buyer.

(d) Buyer shall deliver each invoice to Seller’s billing address as set forth in Section 18.5 herein or such other delivery address/method as specified by the Buyer. Such invoice shall include the basis of the calculation of the payment amounts, the applicable rates and any interest charges or other adjustments to the amounts owed.

## Monthly Availability Adjustment

. In each Month of the Contract Year, Seller will adjust the Monthly Capacity Payment as set forth in Appendix 6. ***[IF APPLICABLE]***

## Billing and Final Accounting.

(i) If a Party (“Payor”) questions or contests the amount or propriety of any payment claimed by the other Party (“Payee”) to be due pursuant to this Agreement, Payor shall make payment to Payee only of amounts not in dispute.

(ii) In the event Payor questions or contests the correctness of any calculations made by Payee in developing an invoice, Payor shall provide Payee with written notice of such dispute and the basis for Payor’s question or contest. Payee shall promptly review the questioned invoice and shall notify Payor whether or not it believes that a change needs to be made in the original invoice. If Payee determines that a change does need to be made in such original invoice, Payee shall notify Payor of any error in Payee’s determination of the invoice amounts and issue an amended invoice in conjunction with any payment to, or request for payment from, Payor, as the case may be, in light of the redetermination. If Payor disputes in good faith Payee’s determination or amended invoice amount, then Payor may submit the matter for dispute resolution pursuant to the procedure set forth in Article 16. To the extent Payee disagrees with Payor’s basis for questioning the original invoice, Payee shall provide a written explanation of its position.

(iii) Payor’s Right to Review and Audit. At any time and from time to time and during and until the expiration of six (6) Years after the delivery of an invoice, Payor may, upon reasonable notice, audit (or cause to be audited) Payee’s books and records in connection with any invoice to question or contest the correctness of such invoice and the calculation of such payments and reimbursements. If Payor, as a result of its audit, concludes that any invoice or calculation is incorrect, it shall notify Payee and will meet with Payee to discuss Payor’s conclusions. If Payee and Payor agree that an adjustment of an invoice should be made, then Payee shall issue a corrected invoice in the agreed upon amount. If the Payee and Payor cannot agree and Payee, in good faith disputes Payor’s calculations, then Payee or Payor may submit the matter for dispute resolution pursuant to Article 16. In addition, either Party may correct calculations at any time NYISO adjusts prior data calculations upon which any settlement has been based. If payment already has been made by either Party pursuant to the invoice and a Party thereafter questions or contests the correctness of such previously reconciled invoice, neither Party shall be required to refund any payment received pursuant to the contested invoice nor make any additional payment thereto until such time as the contested invoice is determined by a final, non-appealable judgment to have been in error.

## Interest

. If either Party does not make a payment required by this Agreement when due, then interest at the Interest Rate shall be added to the due payment from the date such payment was due until such overdue payment (including interest then owed) is paid, including as to any disputed amount that is later determined, in whole or in part, to have been correct. If either Party makes a payment pursuant to an invoice that is later determined to have been incorrect, the refund of such overpayment shall include interest on such overpayment at the Interest Rate for the period from the date such overpayment was made until the date upon which the refund is made.

## Records

. Seller shall abide by the “Records” provision in Supplement 1.

## Required Payment

. Any amounts due pursuant to this Article 6, shall be paid by the owing Party in the amounts and when required by this Agreement, notwithstanding any event, act, omission, failure, condition, change, excuse, suspension of a Party’s performance under Section 12.1 or Section 12.2 (as the case may be) or contrary provision in this Agreement. The obligations contained in this Article 6 shall survive the termination or expiration of this Agreement.

*[Remainder of page is left intentionally blank]*

#  SELLER SECURITY

## Seller Security

. On the Effective Date, as security for Seller’s payment and performance obligations under this Agreement, Seller shall deliver to Buyer, at Seller’s sole cost and expense, cash in escrow (which escrow account shall be different from the Escrow Account established pursuant to Section 3.3(vi)), but shall be governed by rules in the definition of Escrow Account) or Letter(s) of Credit in an amount equal to [[\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (“Seller Security”).The obligations contained in this Article 7 shall survive the termination or expiration of this Agreement. Seller shall maintain the Seller Security in the foregoing amount until the date that is ninety-eight (98) Days after the later to occur of (a) the expiration or earlier termination of this Agreement, or (b) payment of all obligations due from Seller to Buyer, For purposes of this Agreement, Seller Security shall be deemed to include Initial Seller Security held by Buyer at any time.

[**PROPOSER TO INSERT NUMBER EQUAL TO THE NUMBER OF MW OF NET DESIGN CAPACITY OF THE PROJECT MULTIPLIED BY ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000 FOR THE SELLER SECURITY IN SECTION 7.1**

## Seller Security Replacement.

(i) Each Letter of Credit provided as Seller Security shall be issued by an issuer meeting the requirements contained in the definition “Letter of Credit” or meeting the Credit Requirements, and if at any time such issuer of a Letter of Credit fails to meet such Credit Rating or net worth requirements or becomes Bankrupt, Seller shall promptly replace such Letter of Credit within five (5) Days of such event. Notwithstanding the foregoing, 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 with a substitute form of security; provided, that any such replacement meets the terms and conditions of Seller Security under this Agreement; and provided further that there is no lapse in Seller Security.

(ii) If the applicable substitute Seller Security is 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.

## Draw on Seller Security

. Any amounts owed by Seller to Buyer under this Agreement (other than disputed amounts) and not satisfied within thirty (30) Days of becoming due and owing may be satisfied by Buyer on a draw on Seller Security. Buyer may also draw on Seller Security as provided in Section 7.4 or Section 7.5. Prior to termination, Buyer shall have the right to draw upon Seller Security for any undisputed amounts owed to Buyer under this Agreement.

## Replenishment

. In the event Buyer draws upon the Seller Security, Seller shall replenish the amount of security required by Section 7.1 within ten (10) Days.

## Draw on Letter of Credit if Seller Becomes Bankrupt

. If Seller becomes Bankrupt, Buyer is entitled to make a draw or draws upon any Letter of Credit constituting Seller Security up to the full amount of such Letter of Credit. With respect to those amounts drawn that are not used to satisfy any amount owed by Seller to Buyer hereunder, Buyer shall hold such amounts separate and apart from all other funds of Buyer in an interest-bearing account until a final determination has been made, by a court of competent jurisdiction, that the amounts paid with respect to Seller’s obligations to Buyer prior to Seller becoming Bankrupt are not subject to being recovered from Buyer pursuant to Sections 544, 547, 549 or 550 of the U.S. Bankruptcy Code (or pursuant to any successor or similar provisions of law) in any proceeding instituted under the U.S. Bankruptcy Code, or any comparable provision of any applicable state or federal bankruptcy or creditors’ rights law, by or against Seller. If such a final determination is made, Buyer shall pay Seller the funds drawn under the Letter of Credit pursuant to the first sentence of this Section 7.5, net of any amounts that have been applied in regard to amounts owed by Seller to Buyer, and actual interest earnings thereon. If such final determination is not made and the bankruptcy trustee or debtor-in-possession recovers moneys from Buyer, Buyer shall retain the funds drawn under the Letter of Credit and any interest earnings thereon equal to the amount of such recovery, and any excess shall be paid to Seller.

## Expiration of Letter of Credit

. If a Letter of Credit is serving as Seller Security, Seller shall replace such Letter of Credit with other Seller Security (which may be another Letter of Credit) at least five (5) Business Days before the expiration of the Letter of Credit. If Seller fails to provide such substitute Seller Security at least 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 until Seller Security satisfying the requirements of this Agreement is provided to Buyer (and Buyer may at any time apply such proceeds to any amount due and owing from Seller to Buyer).

*[Remainder of page is left intentionally blank]*

#  OPERATION AND MAINTENANCE

## Operation and Maintenance

. Seller shall manage, control, operate and maintain the Project in a manner [***PROPOSER SHOULD REVISE, DELETE AND ADD PROVISIONS AS APPLICABLE FOR THE PROPOSED PROJECT***]:

(i) Consistent with Prudent Utility Practices;

(ii) In accordance with the Operating Instructions and manufacturers’ warranties;

(iii) To provide all Products in the amounts as specified in this Agreement;

(iv) To meet all obligations of this Agreement; and

(v) In accordance with all Consents and other Legal Requirements.

## Development of Operating Instructions

. The Parties shall jointly develop written Operating Instructions no later than sixty (60) Days prior to the Commercial Operation Date. The Operating Instructions will be based on the design of the Project and will conform to Connecting Transmission Owner’s Electrical System operating standards and NYISO Rules. Such instructions shall be in a level of detail reasonably required by Buyer. The Operating Instructions shall be revised to the extent mutually agreed in writing by the Parties to continue coordination of the operation and Dispatch of Seller’s Project in accordance with NYISO Rules.

## Coordination of Maintenance

. 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 8. Any Planned Outage and Maintenance Outage that exceed the number of Days set forth in Appendix 8 (or as amended pursuant to this Section 8.3) 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 circumstances such as a casualty occur that would constitute a Forced Outage of the same portion of the Capacity of the Project but for the existence of such Planned Outage or Maintenance Outage, 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 8. 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 8.8, Buyer shall not be permitted to make Dispatch requests for the Project or otherwise receive Delivered Peak Demand Savings from the Project during a Planned Outage or Maintenance Outage.

##  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.

## 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.

## Consistency with Applicable NYISO Rules

. The Parties shall comply with [NYISO Rules][other federal, state, local governmental or non-governmental rules and criteria applicable to the proposed Project], and to the extent any [NYISO Rules][other rules] or Parties’ actions in compliance with [NYISO Rules][other rules] are inconsistent with the provisions of this Agreement, such actions or compliance by a Party shall not be deemed to be a breach of this Agreement an Event of Default.

## Station Service Energy

. Seller shall have responsibility to obtain such Station Service Energy as applicable for the Project.

## Dispatch

. ***[If Applicable]*** Seller shall be responsible to make the Project available for Dispatch so that Buyer can receive Products.

(i) Buyer has the right, but not the obligation, to Dispatch the Project in accordance with the Operating Limits specified in Appendix 8.

(ii) 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.

(iii) 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.

(iv) Seller shall operate the Project in accordance with the most recent Dispatch schedule received from Buyer.

(v) Seller is not required to deliver Energy in excess of the Ambient-Adjusted Contract Capacity. Buyer shall not Dispatch the Project beyond the Ambient-Adjusted Contract Capacity.

(vi) As soon as reasonably practicable, but no later than sixty (60) Days prior to the Commercial Operation Date, 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, 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.

## Response to Forced Outages

. ***[If Applicable]*** 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 procedures.

## Schedule Deviations

. ***[If Applicable]*** Seller shall generate Energy in accordance with Dispatch requests. In the event Seller’s failure to comply with the foregoing results in a Schedule Deviation, Seller shall reimburse Buyer for any penalties charged to Buyer by NYISO with respect to such Schedule Deviation. Seller shall credit Buyer at the rate set forth in the Monthly Payment for any Delivered Peak Demand Savings for which Buyer receives no payment from the NYISO as a result of a Schedule Deviation.

## Suspension

. ***[If Applicable]*** 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”). A Suspension in the foregoing cases shall be regarded as an Excused Outage. 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, 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.

## Restoration of Service

. ***[If Applicable]*** 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.

## Consequences of Buyer’s Suspension

. ***[If Applicable]*** 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.

*[Remainder of page is left intentionally blank]*

#  INSURANCE

## Insurance Required

. Seller, at its sole cost and expense, shall acquire and maintain in full force and effect the types and amounts of insurance coverages described in Appendix 9.

## Certificates of Insurance

. On or prior to commencement of development of the Project, Seller will provide Buyer with certificates of insurance and the insurance policies evidencing the required coverage set forth above and in Appendix 9. Such certificates and policies shall provide for a minimum of thirty (30) Days’ advance notice to Buyer of cancellation or material change in coverage. Failure by Seller to obtain the insurance coverage or certificates of insurance or insurance policies required by this Section 9.2 or Appendix 9 shall not relieve Seller of the insurance requirements set forth herein or therein or in any way relieve or limit Seller’s obligations and liabilities under any other provision of this Agreement.

## Insurance Notice to Buyer

. Seller shall arrange to have its insurance carriers send Buyer a written notice of cancellation or termination of Seller’s insurance coverage required under this Article 9.

*[Remainder of page is left intentionally blank]*

#  INFORMATION, ACCESS AND NONINTERFERENCE

## Information

. Buyer shall have the right to request information related to all phases of permitting, development, 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.

## Access, Inspections, and Noninterference

. 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 Commercial Operation Date to inspect the development, 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 Base Term and Extended 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, operation or maintenance of the Project. In connection with Buyer’s exercise of rights under this Section 10.2, 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 Commercial Operation Date, 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 ***[if applicable]***.

*[Remainder of page is left intentionally blank]*

#  FORCE MAJEURE

## Definition

. 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 or mitigated 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, acts or restraints of a Governmental Authority other than Buyer which temporarily or permanently prevent required performance under this Agreement. Neither Party may claim a Force Majeure Event for any delay or failure to perform or carry out any provision of this Agreement to the extent that such Party has been negligent or has engaged in willful misconduct and such negligence or willful misconduct contributed to that Party’s delay or failure to perform or carry out its duties and obligations under this Agreement. Neither (i) economic hardship of a Party, (ii) curtailment or reduction in deliveries of Energy at the direction of the Connecting Transmission Owner or unavailability of Buyer’s transmission capability, (iii) Seller’s ability to sell Products at a price greater than that for which such is herein contracted, (iv) Buyer’s ability to purchase Products at a price less than that for which such is herein contracted, (v) inability of a Party to obtain financing, arrange credit support or make payments, nor (vi) loss of Seller’s supply including any breakdown of machinery or equipment, shall constitute a Force Majeure Event.

## Force Majeure Event

. Except as specifically provided elsewhere in this Agreement, if a Force Majeure Event causes either Party to be rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from performance (other than credit support or payment obligations) solely to the extent and during such period performance is prevented and shall not be construed to be in default in respect of any obligation hereunder for so long as, but only to the extent that, failure to perform such obligation is due to a Force Majeure Event.

## Due Diligence

. A Party claiming a Force Majeure Event (the “Claiming Party”) shall: (i) as soon as reasonably practicable, provide oral notice followed by written notice to the other Party (the “Non-Claiming Party”) within three (3) Business Days after occurrence of such Force Majeure Event, giving 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 (“Duration Estimate”), (ii) use commercially reasonable efforts in accordance with Prudent Utility Practices to continue to perform its obligations under this Agreement, to remedy the condition that prevents performance and to mitigate the effects of the same, and (iii) keep the Non-Claiming Party informed in writing of all efforts to mitigate and remedy the Force Majeure Event including periodic updates to the Duration Estimate and, if applicable notice of the Force Majeure Event’s cure.

## Effect of Force Majeure on Buyer’s Payment Obligations

. If Seller is the Party claiming a Force Majeure Event, the Monthly Capacity Payments shall be adjusted as set forth in Appendix 6.

## Suspension of Performance

. The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by such Force Majeure Event. No Force Majeure Event shall extend this Agreement beyond its stated Term.

## Force Majeure Events.

(i) The Claiming Party shall submit a “Force Majeure Remedy Plan” to the Non-Claiming Party setting forth a course of repairs, improvements, changes to operations or other actions which should permit the Claiming Party to perform its obligations under this Agreement as soon as reasonably practicable. The Claiming Party shall submit such Force Majeure Remedy Plan to the Non-Claiming Party within three (3) Days of the request.

(ii) If the Claiming Party has reason to believe that a Force Majeure Event will prevent it from performing its obligations required by the Agreement for thirty (30) Days or longer, 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 Force Majeure Remedy Plan to the Non-Claiming Party within ten (10) Days of such notification.

(iii) While the Force Majeure Remedy Plan is in effect, the Claiming Party shall provide weekly status reports notifying the other Party of the steps which have been taken to remedy the Force Majeure Event and the expected remaining duration of the Claiming Party’s inability to perform its obligations.

## Insurance Proceeds

. In the event Seller obtains or receives insurance proceeds to repair or rebuild the Project or its related facilities and equipment that have been damaged as a result of a Force Majeure Event, Seller shall apply such proceeds to repair or rebuild the Project or its facilities and equipment as part of Seller’s Force Majeure Remedy Plan. If insurance proceeds are inadequate to repair or rebuild the Project or its related facilities and equipment, then Seller has a right to terminate this Agreement pursuant to Section 11.9.

## Right to Terminate.

(i) The Non-Claiming Party may terminate this Agreement upon thirty (30) Days prior written notice if the Claiming Party remains unable to perform its obligations hereunder for one hundred eighty (180) consecutive Days following the submission of the Force Majeure Remedy Plan; except that the parties may mutually agree to terminate earlier than the one hundred eighty (180) Days if Seller is unable to restore the Project to operate at least eighty percent (80%) of the Net Design Capacity using commercially reasonable efforts.

(ii) The Non-Claiming Party may terminate this Agreement upon thirty (30) Days prior written notice if the Claiming Party (a) fails to provide a Force Majeure Remedy Plan as provided for in this Article 11; or (b) fails to perform its obligations set forth in its Force Majeure Remedy Plan. In the event of (a) or (b), such failures shall be considered a material breach of the provisions of this Agreement constituting a Seller Event of Default or a Buyer Event of Default, as applicable, and the Non-Claiming Party shall have the right to terminate this Agreement and seek a Termination Payment pursuant to Article 12.

## Liability Following Termination

. Upon termination of this Agreement as provided in Section 11.9(i), the Parties shall have no further liability or obligation to each other except for any obligation arising prior to the date of such termination.

*[Remainder of page is left intentionally blank]*

#  DEFAULT AND REMEDIES

## Default by Seller

. The occurrence of one or more of the following events shall constitute a “Seller Event of Default” (unless it results from an Excused Outage or a Force Majeure Event, breach of this Agreement by Buyer or is otherwise excused pursuant to terms set forth in this Agreement):

(i) Seller fails to pay Buyer any amount payable by Seller to Buyer (other than amounts in dispute that are not expressly required by this Agreement to be paid) pursuant to this Agreement after the same shall have become due and payable;

(ii) Seller fails to perform or observe any material obligation of Seller under this Agreement, other than those obligations specifically addressed in this Section;

(iii) Any representation or warranty made by Seller herein or in any certificate delivered to Buyer pursuant hereto shall prove to be incorrect in any respect, and such error has a material adverse effect on the ability of Seller or of Buyer to perform their respective obligations under this Agreement or the ability to deliver Products to Buyer;

(iv) Seller becomes Bankrupt;

(v) [RESERVED];

(vi) The failure of Seller to provide, maintain, replace, replenish or reinstate Seller Security pursuant to Article 7;

(vii) Failure to maintain Monthly Equivalent Capacity of at least ninety percent (90%) during any consecutive twenty-four (24) Month period as set forth in Section 5.11(i), [***PROPOSER OF DEMAND RESPONSE OR ENERGY EFFICIENCY PROJECT SHOULD SUBSTITUTE AN EQUIVALENT ONGOING MINIMUM PERFORMANCE STANDARD***]

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## Default by Buyer

. The occurrence of any of the following events shall constitute a “Buyer Event of Default” (unless it results from a Force Majeure Event, a breach of this Agreement by Seller or is otherwise excused pursuant to terms set forth in this Agreement):

(i) Buyer fails to pay any amount payable by Buyer to Seller (other than amounts in dispute that are not expressly required by this Agreement to be paid) pursuant to this Agreement after the same shall have become due and payable;

(ii) Buyer fails to perform or observe any material obligation of Buyer under this Agreement, other than those obligations specifically addressed in this Section;

(iii) Any representation or warranty made by Buyer herein or in any certificate delivered to Seller pursuant hereto shall prove to be incorrect in any material respect, unless Buyer shall promptly commence and diligently pursue action to cause the facts or circumstances which are the subject of such representation or warranty to become true in all material respects; and

(iv) Buyer becomes Bankrupt.

## Notice and Opportunity to Cure Event of Default

. Upon actual discovery of an Event of Default, the Non-Defaulting Party claiming the occurrence of such Event of Default shall promptly provide the Defaulting Party with written notice of the Event of Default and any remedy sought (“Notice of Default”). If such notice is to Seller with respect to a Seller Event of Default, then Buyer shall provide concurrent written notice to Lead Lender. The Defaulting Party shall have thirty (30) Days to (a) cure such default, or (b) undertake dispute resolution pursuant to Article 16; provided, however, that notwithstanding the foregoing, as to a Seller Event of Default described in Section 12.1(vii) the cure period shall be as specified in Section 5.11(i), and the cure period for failure to make any timely payment shall be five (5) Business Days. If the Defaulting Party chooses to cure such default and the default cannot be reasonably cured within such thirty (30) Day period, then the cure period shall be extended by an additional thirty (30) Days, so long as the alleged Defaulting Party diligently pursues efforts to cure such default; provided that no additional extension of the cure period will apply for an Event of Default described in Sections 12.1(i), 12.1(vi) and 12.2(i).

## Dispute of Claim of Seller Event of Default or Buyer Event of Default

. If, within thirty (30) Days of the service of a Notice of Default pursuant to Section 12.3, the alleged Defaulting Party disputes in writing that an Event of Default has occurred, either Party may seek resolution of such dispute pursuant to the terms of Article 16, and this Agreement shall not be terminated by the Non-Defaulting Party prior to such resolution.

## Remedies

. If an Event of Default has occurred, which is not cured as provided herein, then the Non-Defaulting Party may, at its discretion, take any or all of the following actions:

(i) Proceed by appropriate proceedings, judicial, administrative or otherwise at law, in equity or otherwise, to protect and enforce its rights, to recover any damages to which it may be entitled hereunder, and to enforce performance by the Defaulting Party, including specific performance of the Defaulting Party’s obligations hereunder.

(ii) Declare an Early Termination Date and Calculation of Settlement Amounts as set forth in (a) through (d) below.

* + - 1. Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default shall have occurred and be continuing, the Non-Defaulting Party shall have the right (x) to designate a day, no earlier than the day such notice is effective and no later than ninety (90) Days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement and liquidate all amounts due and owing between the Parties, (y) withhold any payments due to the Defaulting Party under this Agreement, and (z) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for this Agreement as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of matters under the Agreement are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable). Upon demand, the Defaulting Party shall promptly pay the Settlement Amount to the Non-Defaulting Party.

(b) Net Out of Settlement Amounts. The Non-Defaulting Party shall calculate an amount (the “Termination Payment”) by subtracting any and all amounts due from the Non-Defaulting Party to the Defaulting Party under this Agreement with respect to deliveries of Products or other matters completed prior to the Early Termination Date from the sum of (x) the Settlement Amount due from the Defaulting Party to the Non-Defaulting Party and (y) any or all other amounts due and owing from the Defaulting Party to the Non-Defaulting Party under this Agreement with respect to deliveries of Products or other matters completed prior to the Early Termination Date, less (z) if Buyer is the Non-Defaulting Party, any cash held by Buyer from prior draws upon Seller Security that has not been applied to other amounts owed by Seller plus, at Buyer’s option, any amounts that may prospectively be drawn upon the Seller Security. The Termination Payment, if any, shall be immediately due from the Defaulting Party to the Non-Defaulting Party. For the avoidance of doubt, notwithstanding any provision of this Agreement that may be interpreted to the contrary, the Defaulting Party shall not be entitled to receive or recover a Termination Payment.

(c) Notice of Payment of Termination Payment. If the Non-Defaulting Party exercises its termination right set forth in Section 12.5(ii)(a), the Non-Defaulting Party shall provide prompt written notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within five (5) Business Days after such notice is effective. Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed.

(d) 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 five (5) 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; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer additional amounts for the Seller Security to the Non-Defaulting Party in an amount equal to the amount calculated by the Non-Defaulting Party to be the Termination Payment.

(iii) If the Non-Defaulting Party is the Buyer and the Lead Lender has elected not to pursue its rights to cure the Seller Event of Default, the Buyer may purchase the Project from the Seller for an amount equivalent to eighty percent (80%) of the net present value of the remaining Monthly Capacity Payments, as calculated using a discount rate of six percent (6%), but in no instance for an amount less than the amount required to satisfy in full all outstanding Lender obligations plus applicable prepayment premiums. Buyer shall notify both Seller and Lead Lender at least fifteen (15) Days before the expiration of the last applicable cure period that Buyer intends to exercise its option under this Section 12.5 to purchase the Project.

(iv) Buyer shall also be entitled to draw upon any Seller Security established pursuant to Section 7.1 to satisfy in whole or in part any Seller’s obligations under this Agreement.

## No Consequential Damages

. Notwithstanding any other provision of this Agreement (except with respect to a Termination Payment and to the extent indemnification payments are made pursuant to Section 18.18 as a result of a third party being awarded special, indirect, incidental, punitive or consequential damages), neither Buyer nor Seller (nor any of their Affiliates, trustees, agents, employees, officers, directors, successors and assigns) shall be liable for special, indirect, incidental, punitive or consequential damages under, arising out of, due to, or in connection with its performance or non-performance of this Agreement or any of its obligations herein, whether based on contract, tort (including, without limitation, negligence), strict liability, warranty, indemnity or otherwise. For purposes of this Agreement, consequential damages shall include loss of revenue, cost of capital, loss of business reputation or opportunity, and loss due to outages of equipment and facilities.

## Suspension of Performance

. In addition to the remedies set forth above and, notwithstanding other provisions herein, whenever any Event of Default shall have occurred and is continuing, and notwithstanding any dispute resolution process commenced under Article 16, the Non–Defaulting Party, to the extent permitted by Legal Requirements and to the extent of such default, shall be entitled to suspend immediately its performance under this Agreement until such Event of Default is cured.

## Limitations of Liability; Remedies and Damages

. Except pursuant to the provisions of Article 6, each Party acknowledges and agrees that in no event shall any of the Party’s Affiliates, partners, trustees, members, shareholders, owners, officers, managers, directors, employees, agents, or any Affiliates thereof be liable to the other Party for any payments, obligations or performance due under this Agreement or any breach or failure of performance of either Party; and the sole recourse for payment or performance of the obligations under this Agreement shall be against Seller or issuer or of any Letter of Credit for the account of Seller, or Buyer and each of their respective assets and not against any other Person.

## Cure by Lenders

. All rights of Buyer to terminate this Agreement as a result of the occurrence of any Seller Event of Default shall be subject to and conditioned upon Buyer having first given Lead Lender written notice of such Seller Event of Default pursuant to Section 12.3 and said Lead Lender having failed to remedy such default within the later of: (i) thirty (30) Days after receipt of notice from Buyer, or (ii) thirty (30) Days after the last Day Seller could have cured such Seller Event of Default pursuant to the terms of this Agreement; provided, however, that the Lead Lender’s cure period for failure to make any payment when due shall be ten (10) Business Days.

*[Remainder of page is left intentionally blank]*

#  MERCHANTABILITY AND FITNESS

## NO MERCHANTABILITY AND FITNESS WARRANTY

. 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.

*[Remainder of page is left intentionally blank]*

#  COMPLIANCE WITH LEGAL REQUIREMENTS; CHANGE IN LAW

## Compliance

. Seller covenants that as of the Execution Date and throughout the Term, Seller shall be in compliance with all Legal Requirements applicable to Seller (including the terms and conditions set forth in Supplement 1) with respect to the ownership, operation and maintenance of the Project, including (without limitation) all requirements to seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, any and all Consents.

## No Dedication

. No undertaking by Seller under this Agreement is intended to constitute the dedication of the Project or any part thereof, to the public or affect the status of Seller as an independent entity and not a public utility or public service company.

*[Remainder of page is left intentionally blank]*

#  ASSIGNMENT

## Assignment by Seller.

(i) Except as provided in Section 15.1(i), Seller may not, without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed (a) assign, transfer, pledge, encumber or otherwise dispose of this Agreement or its rights hereunder, or (b) sell, assign, transfer or otherwise dispose of all or substantially all of Seller’s assets, or (c) merge or consolidate with any other entity (whether or not Seller is the survivor).

(ii) With respect to any permitted Assignment of this Agreement in compliance with this Article 15.1, the assignee or transferee or successor entity shall execute this Agreement and 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 7, and whereby the assignee makes certain additional representations, warranties and covenants as appropriate for such assignee that are substantially similar to those contained in Section 17.1 and such assignee delivers such corporate powers, due authorization and enforceability assurance as Buyer may reasonably request. Following any Assignment in compliance with this Article 15 (including Section 15.1) other than an assignment in connection with a financing or merger where Seller is the surviving entity, 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 this Article 15. Buyer shall provide an invoice to Seller for such charges, with appropriate documentation, and Seller shall pay such invoice within thirty (30) Days after receipt of such invoice.

## Assignment by Buyer.

(i) 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 (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, (b) transfer or assign this Agreement to an Affiliate of Buyer, or (c) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of Buyer and its Affiliates with such Person meeting the Credit Requirements; 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.

(ii) With respect to any permitted assignment or transfer of this Agreement in compliance with this Section 15.2, 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, warranties and covenants as appropriate for such assignee that are substantially similar to those contained in Section 17.2. Upon any permitted assignment or transfer by Buyer pursuant to Section 15.2(i), 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 15.2 (including this Section 15.2(ii)). Seller shall provide an invoice to Buyer for such charges, with appropriate documentation, and Buyer shall pay such invoice within thirty (30) Days after receipt of such invoice.

## Lenders

. Notwithstanding Section 15.1 and the non-assignment provisions in Supplement 1, Seller may, without the consent of Buyer, 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”) substantially in the form set forth in Appendix 12; provided that, in the case of an equity financing or refinancing by any equity or tax investor, Buyer shall execute a consent and agreement substantially similar to the Consent Agreement, modified, mutatis mutandis, to include language customary to such equity financing or refinancing. Seller agrees to pay for Buyer’s costs and expenses incurred in response to Seller’s and Lender’s requests, including attorney, consultant and expert fees. Buyer shall provide an invoice to Seller for such charges with appropriate documentation, and Seller shall pay such invoice prior to the delivery by Buyer of the executed Consent Agreement. 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, including designating the Lead Lender. 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.

## Rights of Lender

. If Seller grants an interest under this Agreement as permitted by Section 15.3, the following provisions shall apply:

(i) 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 Article 12, and such act if timely performed by Lender shall be as effective to prevent or cure a default as if done by Seller.

(ii) 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.

(iii) 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; 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.

## Sale of Project

.

1. Except as otherwise provided in this Section 15.5, Seller shall not sell the Project to any Person unless Buyer has provided its advance written approval of such sale. If Seller does not obtain Buyer’s prior written consent, such sale of the Project by Seller shall constitute a Seller Event of Default as set forth in Section 12.1(ii).
2. Seller shall provide one hundred twenty (120) Days’ advance notice to Buyer of any sale of the Project and no consent shall be required for such sale if Seller submits information to Buyer’s satisfaction evidencing that the purchaser: (a) unconditionally assumes Seller’s obligations hereunder, including providing necessary Seller Security pursuant to the requirements in Article 7, and (b) meets or exceeds the Credit Requirements or has tangible net assets of not less than Two Million Dollars (US$2,000,000) per MW of Net Design Capacity and meets the Operating Experience Requirements or has retained (or agrees to retain) a facility operator to operate the Project for the remainder of the Term of this Agreement who meets the Operating Experience Requirements. In the event that a proposed purchaser satisfies the criteria set out in this Section 15.5(ii), Buyer shall give Seller its written consent to sale of the Project to such purchaser. Seller and Buyer shall execute such documents as may be reasonably required to enable Buyer to record notice that this Agreement must be assigned to, and assumed by, any purchaser of the Project as a condition of transfer of legal title to the Project.
3. After Buyer has provided written consent to any sale that requires such consent, at least thirty (30) Days prior to the effective date of the proposed sale, Seller shall deliver to Buyer a draft assignment and assumption agreement. Within ten (10) Business Days after the effective date of the sale, Seller shall deliver to Buyer an assignment and assumption agreement, duly executed, in which purchaser unconditionally assumes and agrees to be bound by all of the terms and conditions of this Agreement, and whereby the purchaser makes certain additional representations, warranties and covenants as appropriate for purchaser consistent with those contained in Article 17, Seller shall make any sale of the Project conditioned upon the purchaser’s (i) unconditional assumption of Seller’s obligations hereunder, including providing necessary Seller Security pursuant to the requirements in Article 7, and (ii) possessing the creditworthiness and experience as set forth herein. A proposed purchaser must meet or exceed the Credit Requirements and provide such documentation satisfactory to Buyer demonstrating that such purchaser has (a) owned and/or operated a minimum of three (3) power plants having generation Capacity equal to or greater than the Project during a period of no less than five (5) Years, or (b) retained a facility operator that satisfies the criteria set forth herein to operate the Project for the remainder of the Base Term or Extended Term, if applicable, shall not have consent to sale denied on the grounds of a lack of creditworthiness or lack of sufficient experience. Seller and Buyer shall execute such documents as may be reasonably required to enable Buyer to record notice that this Agreement must be assigned to, and assumed by, any purchaser of the Project as a condition of transfer of legal title to the Project.

## Change in Control

.

1. Any Change of Control of Seller shall be subject to Buyer’s prior written consent, except as otherwise set forth in Section 15.6(ii) below. If Seller merges, consolidates or amalgamates with or into or transfers substantially all its assets to another entity, at the time of such merger transaction the resulting, surviving or transferee entity shall assume obligations of Seller. If Seller does not obtain Buyer’s prior written consent (such consent not to be unreasonably withheld, conditioned or delayed by Buyer) or properly demonstrate that such consent is not required by submittal of the information described in this Section 15.6 to Buyer’s reasonable satisfaction, or if following any such merger transaction the surviving entity does not assume obligations of Seller under this Agreement within thirty (30) Days, such Change of Control of Seller shall constitute a Seller Event of Default as set forth in Section 12.1(ii).
2. After COD, Seller will not need to obtain the consent of Buyer for any Change of Control that results in the successor entity (a) meeting the Credit Requirements or having net tangible assets of not less than Two Million Dollars (US$ 2,000,000,) per MW of Net Design Capacity (after taking into account the proposed Change of Control), and that has, directly or indirectly, owned and/or operated a minimum of three (3) power plants having generation Capacity equal to or greater than the Project for a period of no less than five (5) Years (such experience collectively referred to as the “Operating Experience Requirements”); provided that Seller provides Buyer with documentation demonstrating the successor entity’s satisfaction of the criteria in subparagraph (a), or (b) meeting the Credit Requirements or having net tangible assets of not less than Two Million Dollars (US$ 2,000,000,) per MW of Net Design Capacity (after taking into account the proposed Change of Control), and has retained (or agrees to retain) a facility operator to operate the Project for the remainder of the Term of this Agreement who meets the Operating Experience Requirements. Seller shall respond timely to any requests for additional information as are reasonable under the circumstances.
3. Seller agrees to compensate Buyer for the reasonable and documented costs and expenses incurred by Buyer for the services of outside attorneys, consultants, experts and advisers utilized by Buyer in response to Lender’s reasonable written request for Buyer’s support of Seller’s financing of the Project, including such requests made pursuant to Section 15.3. Buyer shall provide an invoice to Seller for any such charges with appropriate documentation, and Seller shall pay such invoice within thirty (30) Days after receipt of such invoice.
4. Seller agrees to compensate Buyer for the reasonable and documented costs and expenses incurred by Buyer for the services of outside attorneys, consultants, experts and advisers utilized by Buyer in response to Seller’s reasonable written request regarding Seller’s sale of the Project pursuant to Section 15.5 and a Change of Control of Seller pursuant to Section 15.6. Buyer shall provide an invoice to Seller for any such charges with appropriate documentation, and Seller shall pay such invoice within thirty (30) Days after receipt of such invoice.

*[Remainder of page is left intentionally blank]*

#  DISPUTE RESOLUTION

## Notice

. Either Party (“Aggrieved Party”) shall have the right to give written notice to the other Party (“Noticed Party”) that the Noticed Party is not performing in accordance with the terms and conditions of this Agreement. Such notice shall describe with specificity the basis for the Aggrieved Party’s belief and may describe the recommended options to correct the failure.

## Response

. If the Noticed Party agrees with the Aggrieved Party’s concern, the Noticed Party shall promptly take appropriate action to correct the failure. In such circumstance, the Noticed Party shall respond to the Aggrieved Party’s written notice within ten (10) Days of receipt thereof describing the action taken in response to the notice and shall bear all costs incurred by both Parties associated with the corrective action.

## Resolution of Dispute

. If the Noticed Party disagrees with the Aggrieved Party’s concern, each Party shall designate a member or members of its executive 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 of the Aggrieved Party’s notice to the Noticed Party of the Aggrieved Party’s concern. The Parties agree to 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 16.3 shall be confidential, subject to Legal Requirements, and shall be treated as compromise and settlement negotiations for purposes of Federal Rule of Evidence 408 and applicable state rules of evidence. If at any time 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, and as set forth in Section 18.7 and 18.8.

## 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 16 are pending. The Parties will take such action, if any, required to effectuate such tolling. Without prejudice to the procedures specified in this Article 16, 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 16.

*[Remainder of page is left intentionally blank]*

#  REPRESENTATIONS, WARRANTIES AND INDEMNITIES

## Seller’s Representation and Warranties.

(i) As of the Effective Date of this Agreement, Seller represents and warrants to Buyer that:

(a) Seller is a **[insert as to type of entity and State of formation]**, is duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;

(b) Seller represents and warrants that it is capable of suing and being sued in the State of New York, and that it will assert no legal defense(s) to the assertion of jurisdiction in the courts of the State of New York or the courts of the United States of America for the Eastern District of New York having subject matter jurisdiction;

(c) Seller has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;

(d) The execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, any Legal Requirements, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected;

(e) This Agreement has been duly and validly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;

(f) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller’s ability to perform its obligations under this Agreement and Seller has no knowledge of any violation or default by Seller or its Affiliates with respect to any order, writ, injunction or decree of any court or any federal, state, municipal or other governmental department, commission, board, agency or instrumentality which is reasonably likely to have such a materially adverse effect or to result in such impairment; and

(g) Seller is and will be, for the Base Term and Extended Term, if applicable, in compliance in all material respects with all Legal Requirements, judicial and administrative orders, rules and regulations, and Consents as of the Effective Date to the extent compliance is required as of such date (a) which govern Seller’s ability to perform its obligations under this Agreement, or (b) the noncompliance with which would have a material adverse effect on Seller’s ability to perform its obligations under this Agreement.

(ii) Seller covenants that it will have, from the COD through the termination or expiration of the Agreement, good and merchantable title to the Project, or any component part thereof, except as otherwise contemplated or permitted by this Agreement or as required for financing purposes (it being acknowledged by Buyer that depending on the financing structure utilized, the Project may be owned by a special purpose entity or an Affiliate of Seller).

Seller has and will have good and marketable title to all Products sold and delivered to Buyer, including Renewable Attributes, in accordance with the provisions of this Agreement.

## Buyer’s Representation and Warranties.

(i) As of the Effective Date of this Agreement, Buyer represents and warrants to Seller that:

(a) Buyer is a corporate municipal instrumentality of the State of New York, duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Buyer is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;

(b) Buyer is capable of suing and being sued in the State of New York, and that it will assert no legal defense(s) to the assertion of jurisdiction in the courts of the State of New York or the courts of the United States of America for the Eastern District of New York having subject matter jurisdiction;

(c) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;

(d) The execution, delivery and performance of this Agreement by Buyer will not conflict with its governing documents, any Legal Requirements, or any covenant, agreement, understanding, decree or order to which Buyer is a party or by which it is bound or affected;

(e) This Agreement has been duly and validly executed and delivered by Buyer and constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity; and

(f) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer’s ability to perform its obligations under this Agreement and Buyer has no knowledge of any violation or default by Buyer or its Affiliates with respect to any order, writ, injunction or decree of any court or any federal, state, municipal or other governmental department, commission, board, agency or instrumentality which is reasonably likely to have such a materially adverse effect or to result in such impairment.

(ii) Buyer covenants that it is and will be, for the Base Term and Extended Term, if applicable, in compliance in all material respects with all Legal Requirements and Consents as of the Effective Date to the extent compliance is required as of such date (a) which govern Buyer’s ability to perform its obligations under this Agreement, or (b) the non-compliance with which would have a material adverse effect on Buyer’s ability to perform its obligations under this Agreement.

*[Remainder of page is left intentionally blank]*

#  MISCELLANEOUS PROVISIONS

## Next Business Day

. Unless specifically required otherwise by the terms of this Agreement (e.g., scheduling and delivery), if any date on which action is to be taken under this Agreement, or date on which a period of time provided herein expires, is not a Business Day, the effective date for taking such action, or expiration of such time period, shall be the next Business Day.

## Amendments

. This Agreement may be amended only by a written instrument duly executed by authorized representatives of Buyer and Seller.

## Binding Effect

. This Agreement and any extension shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns.

## Counterparts

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

## Notices

. Unless otherwise specified, where notice is required by this Agreement, such notice shall be in writing and shall be deemed given: (i) upon receipt, when mailed by United States registered or certified mail, postage prepaid, return receipt requested; (ii) upon the next Business Day, when sent by overnight delivery, postage prepaid using a recognized courier service; or (iii) upon receipt, when sent by electronic mail or facsimile transmission, provided receipt of such electronic mail or facsimile transmission is confirmed before 1700 EPT and written confirmation of such notice is sent on the same Day in accordance with either subsection (i) or (ii) above. In all instances, notice to the respective Parties should be directed as follows:

To Seller: [Name]

 [Title]

 [Address]

 [Fax]

 [Email]

with a copy to: [Name]

 [Title]

 [Address]

 [Fax]

 [Email]

To Lead Lender: [Name]

 [Title]

 [Address]

 [Fax]

 [Email]

To Buyer: Long Island electric Utility Servco, LLC

 333 Earle Ovington Boulevard, Suite 403

 Uniondale, New York 11553

 Attention: Vice President, Power Markets

 Fax: (516) 222-9137

 [Email]

with a copy to: Long Island Power Authority

 333 Earle Ovington Boulevard, Suite 403

 Uniondale, New York 11553

 Attention: General Counsel

 Fax: (516) 222-9137

 [Email]

and copy to: Long Island Electric Utility Servco, LLC

 333 Earle Ovington Boulevard, Suite 403

 Uniondale, New York 11553

 Attention: General Counsel

 Fax: (516) 222-9137

 [Email]

or to such other addressees as may later be designated by the Parties.

## Entire Agreement

. This Agreement (including the attached Appendices and Supplements) constitutes the entire understanding between the Parties and supersedes any previous agreements between the Parties.

## Governing Law and Jurisdiction

. 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 thereof. 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.

## Service of Process

. In addition to the methods of service allowed by the New York Civil Practice Law & Rules, each Party hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Party’s actual receipt of process or upon the serving Party’s receipt of the return thereof by the United States Postal Service as refused. Each Party must promptly notify the other Party, in writing, of each and every change of address to which service of process can be made. Service to the last known address provided pursuant to Section 18.5 shall be sufficient.

## Provisions Required By Law

. Certain provisions required by law (Standard Clauses for NYS Contracts) required by the State Comptroller are attached to this Agreement as Supplement 1 (Attachments A and B), and is hereby incorporated as part of this Agreement with the same force and effect as if herein set forth at length and may be modified from time to time as required.

## 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.

## Headings

. The headings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner in the construction of this Agreement.

## Third Parties

. This Agreement is intended solely for the benefit of the Parties herein. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a Party to this Agreement.

## 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.

## Severability.

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

(ii) 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.

## 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.

## 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 M/WBE/VETs) during development 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.

## Currency

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

## Indemnification.

(i) In addition to all other sums due hereunder or provided for in this Agreement, each Party (an “Indemnifying Party”) agrees to indemnify and hold harmless the other Party and its Affiliates and each of its officers, trustees, directors, agents, employees, subsidiaries, partners, members, attorneys, accountants and controlling persons, successors and permitted assigns (each, an “Indemnified Party”) to the fullest extent permitted by Legal Requirements from and against any and all losses, claims, damages, expenses (including, without limitation, reasonable fees, disbursements and other charges of outside counsel and costs of investigation incurred by an Indemnified Party) or other liabilities, losses, or diminution in value (collectively, “Liabilities”) resulting from or arising out of any breach of any representation or warranty, covenant or agreement of the Indemnifying Party in this Agreement or other related documents; provided, however, that no Indemnifying Party shall be liable under this Section 18.18 to an Indemnified Party to the extent that such Liabilities resulted principally from the willful misconduct or negligence of such Indemnified Party; provided, further, that if and to the extent that such indemnification is unenforceable for any reason, the Indemnifying Party shall make the maximum contribution to the payment and satisfaction of such Liabilities that shall be permissible under applicable Legal Requirements. In connection with the obligation of Indemnifying Party to indemnify for expenses as set forth above, Indemnifying Party further agrees, upon presentation of appropriate invoices containing reasonable detail, to reimburse, without duplication, each Indemnified Party for all such expenses (including, without limitation, reasonable fees, disbursements and other charges of counsel and costs of investigation incurred by an Indemnified Party in any action or proceeding between an Indemnified Party (or Indemnified Parties) and any third party or otherwise) as they are incurred by such Indemnified Party; provided, however, that if an Indemnified Party is reimbursed hereunder for any expenses, such reimbursement of expenses shall be refunded to the extent it is finally judicially determined that the Liabilities in question resulted solely from the willful misconduct or negligence of such Indemnified Party.

(ii) Each Indemnified Party under this Section 18.18 will, promptly after the receipt of written notice of the commencement of any action, investigation, claim or other proceeding against such Indemnified Party in respect of which indemnity may be sought from the Indemnifying Party under this Section 18.18, notify Indemnifying Party in writing of the commencement thereof. The failure of any Indemnified Party to so notify Indemnifying Party of any such action shall not relieve Indemnifying Party from any liability which it may have to such Indemnified Party unless, and then only to the extent that, such omission results in Indemnifying Party being materially prejudiced thereby. In case any such action, claim or other proceeding shall be brought against any Indemnified Party and it shall notify Indemnifying Party of the commencement thereof, Indemnifying Party shall be entitled to assume the defense thereof at its own expense, with counsel satisfactory to such Indemnified Party in its reasonable judgment; provided, however, that any Indemnified Party may, at its own expense, retain separate counsel to participate in such defense. Notwithstanding the foregoing, in any action, claim or proceeding in which Indemnifying Party or any of its affiliates, on the one hand, and an Indemnified Party, on the other hand, is, or is reasonably likely to become, a party, such Indemnified Party shall have the right to employ separate counsel at Indemnifying Party’s expense and to control its own defense of such action, claim or proceeding if, in the reasonable opinion of counsel to such Indemnified Party, a conflict or potential conflict exists between Indemnifying Party, on the one hand, and such Indemnified Party, on the other hand, that would make such separate representation advisable; provided, however, that in no event shall Indemnifying Party be required to pay fees and expenses under this Section 18.18 for more than one firm of attorneys in any jurisdiction in any one legal action or group of related legal actions. Each Indemnifying Party agrees that it will not, without the prior written consent of the Indemnified Party, which consent will not be unreasonably withheld or delayed, settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated hereby (if any Indemnified Party is a party thereto or has been actually threatened to be made a party thereto) unless such settlement, compromise or consent includes an unconditional release of such Indemnified Party from all liability arising or that may arise out of such claim, action or proceeding. Indemnifying Party shall not be liable for any settlement of any claim, action or proceeding effected against an Indemnified Party without its written consent, which consent shall not be unreasonably withheld, delayed or conditioned. The rights accorded to the Indemnified Parties hereunder shall be in addition to any rights that any Indemnified Party may have at common law, by separate agreement or otherwise.

**18.19. Agent for Buyer**. This Agreement is by and between the Long Island Electric Utility Servco LLC (“Agent”) as Agent of and acting on behalf of the Long Island Lighting Company d/b/a LIPA (“LIPA”) and Seller.  Agent is executing this Agreement on behalf of LIPA in its capacity as Agent for LIPA, and Agent is not a principal party to this Agreement.

*[Remainder of page is left intentionally blank]*

#  CONFIDENTIALITY

## Claim of Confidentiality.

(i) 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: ***[THE CONFIDENTIAL SECTIONS OF THE AGREEMENT WILL NEED TO CONFORM WITH FOIL EXEMPTIONS. NOTE THAT ALL OF THE ARTICLES ARE NOT CONFIDENTIAL BECAUSE LIPA PROVIDED A FORM ESA WHICH SET FORTH THE TERMS AND CONDITIONS. ONCE THE ESA IS FINAL, THE PARTIES TO REVIEW AND PREPARE AN AGREED-UPON REDACTED VERSION AT THE TIME THE PARTIES EXECUTE THE ESA.]***

(a) Articles (Sections) [IDENTIFY SECTION NO(S).]

(b) Appendices [IDENTIFY APPENDIX NO(S).]

(c) Supplement [IDENTIFY SUPPLEMENT NO(S).]

(ii) 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 Confidential Information from disclosure to third parties consistent with the provisions of this Article 19 and subject to Legal Requirements; provided, however, that a Party may disclose Confidential Information to (i) its Affiliates, potential Lenders, potential and actual equity investors in, or purchasers of, the Project, (ii) trustees, directors, employees, agents, consultants, contractors, partners, members, managers, or representatives of such Party, and (iii) the federal government of the United States of America, the New York state government, or local governments within the State of New York to the extent necessary for such Party to apply for and obtain Benefits associated with this Agreement (“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.

## Compliance with the Freedom of Information Law

. 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 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, including pursuant to NYS Public Officers’ Law §87, (iii) evaluate the Seller’s request for confidential treatment, and (iv) determine if the 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 to appeal Buyer’s determination, seek a protective order, or seek another appropriate remedy, or any of the foregoing, and the Parties may pursue their respective rights and remedies pursuant to NYS Public Officers’ Law §89(5).

## Executive Directive No. 3

. Notwithstanding any other provision in this Agreement and consistent with its Executive Directive No. 3 issued by Buyer on January 12, 2009, Buyer may disclose to the public the estimated total contract value of this Agreement prior to the authorization of the execution of this Agreement by Buyer’s Board of Trustees. Furthermore, if applicable, Buyer may disclose certain Confidential Information in furtherance of Buyer’s requirements to receive approval to execute this Agreement or to seek approval by the Office of the New York State Comptroller.

## Treatment of Otherwise Publicly Available Information

. Notwithstanding anything to the contrary in this Article 19, 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.

## Term of Confidentiality

. The obligations set forth in this Article 19 shall survive expiration or termination of this Agreement for a period of two (2) Years thereafter.

## 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 and in any application to FERC for determination of Seller’s status as an exempt wholesale generator under the Holding Company Act that will be publicly available.

## SEC

. Seller may file this Agreement with the U.S. Securities and Exchange Commission (“SEC”) as may be necessary under the Legal Requirements 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. Seller shall request confidential treatment of the Confidential Information in this Agreement in connection with such filing; 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 by the SEC to such information.

## Confidential Treatment

. Seller shall request confidential treatment of the Confidential Information in this Agreement in connection with filings under Sections 19.6 and 19.7; 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.

[*The next page is the signature page*]

IN WITNESS WHEREOF, the Parties have executed this agreement as of the day and Calendar Year first above written.

|  |  |
| --- | --- |
| LONG ISLAND ELECTRIC UTILITY SERVCO LLC ON BEHALF OF THE LONG ISLAND LIGHTING COMPANY D/B/A LIPA By Name Title | [“PROPOSER’S COMPANY NAME”] By Name Title |
|  |  |
|  |  |
|  |  |
|  |  |

STATE OF \_\_\_\_\_\_\_\_\_\_ )

 ss.:

COUNTY OF \_\_\_\_\_\_\_\_ )

On the [DATE] day of [MONTH], [YEAR] before me personally came \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to me known to be the individual described in the foregoing instrument in his/her capacity as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of [RESPONDENT COMPANY’S NAME], the [ENTITY] described in and which executed the foregoing instrument, who being duly sworn did acknowledge that he/she executed the same on behalf of, and that he/she was authorized to execute same on behalf of the aforementioned entity.

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

 Notary Public

STATE OF NEW YORK )

 ss.:

COUNTY OF NASSAU )

On the [DATE] day of [MONTH], [YEAR] before me personally came \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to me known to be the individual described in the foregoing instrument in his capacity as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the Long Island Power Authority, the corporate municipal instrumentality and political subdivision of the State of New York 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.

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

 Notary Public

**APPENDIX 1**

**RESERVED FOR SELLER PROJECT SPECIFICATIONS AS APPROPRIATE**

General Project Description, Specifications and Location:

Proposed Products and Delivery Point:

Proposed Demand Response Services:

Proposed Energy Efficiency Services:

[Proposed Energy Storage Capacity]:

**APPENDIX 2**

**PROJECT DESCRIPTION**

**AND**

**PROJECT DEVELOPMENT MILESTONES**

1. Project Description ***[Proposer to Specify]***

Identify type of Project, specify whether Project complies with and NYISO Demand Response Program or Buyer, NYSERDA other Energy Efficiency Program or other project type; provide technical and financial details, details of Project scheduling and dispatch, and location and interconnection (as applicable); provide Major Development Milestones.

For Demand Side Storage Project: Identify at minimum type(s) of Facility, description of equipment, design and key component manufacturer information, nameplate MW of Capacity or Project or components (per location); rated output for 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), interconnection point, delivery point.

2. Minimum Required Consents ***[Proposer to Specify]***

| **MINIMUM REQUIRED CONSENTS** |
| --- |
| **Item** | **Permit** | **Agency** | **Target Date to Submit Application/Filing/Proposal** | **Target Date to Obtain Permit/Agreement** |
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2. Other Consents

| **OTHER CONSENTS** |
| --- |
| **Item** | **Permit** | **Agency** | **Target Date to Submit Application/Filing/Proposal** | **Target Date to Obtain Permit/Agreement** |
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3. Milestones Associated with the Commencement of [\_\_\_\_\_\_] [Major Development Milestone]

*[Proposer to specify, IF APPLICABLE]*

4. Taxing Authorities; PILOTS; Community Host Benefits

***[PROPOSER TO INSERT DATE BY WHICH SELLER EXPECTS TO COMPLETE SUCH ACTIVITIES]***

**5. [*If APPLICABLE*]** minimum participation target

***[proposer to add description]***

**APPENDIX 3**

**CONTRACT CAPACITY TEST**

**AND**

**OTHER TESTS [*IF APPLICABLE*]**

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

***[PROPOSER TO SPECIFY - INCLUDE APPLICABLE DMNC or other TESTS PER NYISO RULES]***

**APPENDIX 4**

**CAPACITY PAYMENT**

***[Proposer to Specify $/kW Month PRICE AND PROVIDE FORMULA for cAlculating Monthly capacity payment, if applicable]***

**APPENDIX 5**

**[ENERGY][DEMAND RESPONSE PRODUCTS][DEMAND RESPONSE SERVICES] [PEAK DEMAND SAVINGS] PAYMENT**

***[Proposer to Specify]***

***[provide pricing in $/mw and formula for calculating monthly CAPACITY payment]***

***[SELLER TO PROVIDE ENERGY AND CAPACITY COST DATA AND INFORMATION FOR CALCULATION FORMULA FOR ENERGY BIDS.]***

***[proposer should substitute description of monthly payments for demand response services or energy efficiency services here, if applicable]***

**APPENDIX 6**

**AVAILABILITY ADJUSTMENT FOR MONTHLY CAPACITY PAYMENT**

[***If Applicable***] Monthly Capacity Payments will be adjusted by multiplying the Monthly Capacity Payment otherwise due under Section 5.7 and Appendix 4 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 (\_\_%). ***[PROPOSER 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 (\_\_%). ***[PROPOSER TO INSERT GUARANTEED EQUIVALENT AVAILABILITY]***

Force Majeure adjustment to Equivalent Availability: For purposes of this calculation, the Equivalent Availability calculation referenced in Section 5.11(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.

**APPENDIX 7**

**GUARANTEED PERFORMANCE AND ADJUSTMENTS**

***[Proposer to Specify DETAILS OF VOLUMETRIC PERFORMANCE GUARANTEE, AS AND IF APPLICABLE FOR THE PROJECT]***

**APPENDIX 8**

**OPERATING LIMITS**

(1) Operating Limits - ***[Proposer to Specify, if applicable]***

(2) Planned Outages: ***[Proposer to PROVIDE DETAIL ON PLANNED OUTAGES, GENERALLY AND PROCEDURE]***

(3) Maintenance Outage Hours: ***[Proposer to SET FORTH SPECIFIC MAINTENANCE OUTAGE HOURS CAP]***

**APPENDIX 9**

**INSURANCE REQUIREMENTS**

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

1. Insurance Policies and Limits:

1.1 Workers’ Compensation/Employer’s Liability:

Workers’ Compensation insurance including coverage for occupational disease, covering all employees in compliance with all applicable state and federal laws, and Employer’s Liability Insurance of not less than $25,000,000 each accident.

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 $25,000,000 each accident.

1.3 Third Party Liability:

Third Party Liability insurance on a Commercial, Comprehensive, or similar “occurrence” general liability insurance policy form or AEGIS, or equivalent, claims-first made form, unless otherwise agreed to in writing by Buyer, including coverage for operations of independent contractors; 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 $25,000,000 each occurrence and in the aggregate each policy year.

1.4 Umbrella or Excess Liability:

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

1.5 Additional Insurance:

It is the intent that the insurance requirements of this Appendix 9 represent reasonable and customary minimum requirements that at all times meet or exceed all Legal Requirements and are consistent with generally accepted standards of Prudent Utility Practices. Buyer may determine that other forms or types of insurance, including increased (or reduced) amounts of insurance, may be required or appropriate to substitute for, or secure, the obligations undertaken in the Agreement. Such insurance coverage may include, but not be limited to protection for:

* All risks of loss of or damage to, and for the full replacement value of, all property and equipment of Seller (including without limitation, at all times during the development, construction (if applicable), operation, maintenance, and repair of the Project) utilized for or in connection with the Project in accordance with this Agreement.
* The costs of continuing expenses and additional expenses necessary to continue operations, insofar as reasonably possible, following loss of or damage to the property and equipment of Seller.

2. General Provisions.

2.1 Evidence of Coverage:

Seller shall, within thirty (30) Days following the Effective Date of this Agreement, and within five (5) 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 and Employer’s Liability, Buyer shall be included as an additional insured, and any other party reasonably requested by Buyer shall be named as additional insured for occurrences arising out of or in connection with this Agreement with respect Sections 1.2, 1.3 and 1.4 of this Appendix 9, as their interests may appear. With respect to Workers’ Compensation and Employer’s Liability, Buyer and any other party reasonably requested by Buyer, shall be named as Alternate Employer; provided that, Seller’s insurance shall not include coverage for Buyer’s employees or any employee of any other party requested by Buyer.

2.3 Waiver of Subrogation:

Under each policy under which Buyer is required by this Appendix 9 to be named as an additional insured, Buyer and any other party reasonably requested by Buyer shall be granted waivers of subrogation by insurers providing coverage as required by this Exhibit.

2.4 Severability of Insureds:

Each policy under which Buyer is required by this Appendix 9 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:

Except for Property Insurance, for each policy under which Buyer is required by this Appendix 9 to be named as an additional insured, the insurance coverage required by this Appendix 9 shall be primary insurance with respect to the interests of Buyer and any other party reasonably requested by Buyer; any other insurance maintained by Buyer or such other parties shall be excess and shall not contribute with the insurance required by this Appendix 9.

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 9, within thirty (30) Days of receipt of such notice by Seller.

2.7 Deductibles:

Any and all deductible amounts under policies provided by Seller pursuant to this Appendix 9 shall (as between Seller and Buyer) be assumed by, for the account of, and at the sole risk of Seller.

3. Seller Disclosure and Cooperation:

Where Seller is providing insurance coverage for the benefit of Buyer, procuring insurance at the request of Buyer, and/or securing coverage at the expense of Buyer, Seller shall furnish an exact copy of said policies, upon Buyer’s request.

**APPENDIX 10**

**RESERVED**

**appendix 11**

**FORM OF SELLER LETTER OF CREDIT**

[Issuing Bank Name]

Irrevocable Standby

Letter Of Credit No. \_\_\_\_\_\_\_\_\_

DATE:

BENEFICIARY: APPLICANTS:

Long Island Power Authority [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

333 Earle Ovington Boulevard, Suite 403

Uniondale, New York 11553

Attn: Vice President, Power Markets

INITIAL AMOUNT: USD $

DATE OF EXPIRY: On the Expiration Date (as hereinafter defined), as the same may be extended from time to time pursuant to the terms hereof

PLACE OF EXPIRY: At our Counters

We hereby issue in your favor our Irrevocable 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 (as hereinafter defined) at our counters at [ ].

This Letter of Credit shall be of no further force or effect upon the close of business on [ , \_\_\_\_] (or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day (the “Expiration Date”)); provided, however, that this Letter of Credit may be extended at the written request of the Applicant(s) but at our option for a period of one or more Years per extension, effective upon the then applicable Expiration Date (each such extended expiration date being referred to as the “New Expiration Date”) upon written notice of such extension given by us to you. Such notice of extension must be given not less than forty-five (45) days prior to the Expiration Date or any New Expiration Date and if such notice of extension is not given at such time, this Letter of Credit expires on the Expiration Date or any New 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 or any New 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) either:

(i) 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; or

(ii) Beneficiary’s Certificate issued in the form of Annex II 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 Standby Letter of Credit No. \_\_\_\_\_\_\_\_\_, dated \_\_\_\_.”

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 properly submitted by Beneficiary. Any purported transfer or assignment other than in accordance with our Transfer Certificate 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 or any New Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the “International Standby Practices ISP98” 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. 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, without regard to the principles of conflicts of laws thereunder.

[Issuing Bank Name]

By:

 Authorized Signature

Address: [                    ]

 [                    ]

 [                    ]

ANNEX I TO [Issuing Bank Name]

IRREVOCABLE 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 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 Energy Services Agreement dated as of [DATE] (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 $ , 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 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), permitting Beneficiary to draw the entire amount of the Letter of Credit.

[   ] 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:

ANNEX II TO [Issuing Bank Name]

IRREVOCABLE 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 [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Seller”)], with reference to Irrevocable 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 Energy Services Agreement dated as of [DATE] (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 has provided at least thirty (30) days’ prior written notice to the Applicants of the Bank’s intent not to renew the Letter of Credit following the present Expiration Date or any New Expiration Date.

4. The Applicants have failed to provide the Beneficiary with a substitute letter of credit substantially in the same form as the Letter of Credit within the thirty (30) day period referred to in Paragraph 3 above.

5. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS & /100ths (U.S. $ ).

6. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 5 above, which amount does not exceed the Available Amount as of the date hereof. The date of the sight draft is the date of this Certificate, which is not later than the Expiration Date or any New Expiration Date.

7. 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:

**APPENDIX 12**

**FORM OF CONSENT AND AGREEMENT**

This CONSENT AND AGREEMENT (this “Consent”), dated as of [\_\_\_\_\_\_\_\_\_\_\_\_\_] among LONG ISLAND POWER AUTHORITY, a corporate municipal instrumentality of the State of New York (the “Consenting Party”), [SELLER], a [STATE] [ENTITY] (the “Company”), and [\_\_\_\_\_\_\_\_\_\_\_], as collateral agent (together with its successors in such capacity, the “Collateral Agent”) under the Security Documents (as defined below) for the benefit of the Financing Parties (as defined below). Capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Assigned Agreement (as defined below).

RECITALS

WHEREAS the Company intends to develop, site, construct, install, operate, maintain and finance generating facility and all related and ancillary facilities to be used in connection with the generation, metering and transmission of the energy produced by generating facility located in [CITY, STATE];

WHEREAS the Company intends to finance the development, siting, construction (if applicable), purchase, installation and operation of the Project through senior or subordinated construction (if applicable), interim or long-term debt or equity financing or refinancing, which may take 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 the Company), including any equity and tax investor directly or indirectly providing financing or refinancing for the Project, any Person providing any interest rate protection agreements to hedge any of the foregoing obligations, and any trustee or agent acting on behalf of one or more of the foregoing Persons (the “Financing”);

WHEREASall of the obligations of the Company with respect to the Financing and any other agreements related thereto (collectively, the “Financing Documents”) to the Collateral Agent and each other Person that becomes a party to whom Finance Obligations (as defined below) are owed under any Financing Documents (with the Collateral Agent, collectively, the “Financing Parties”) will be secured by one or more security agreements, pledge agreements, or other document providing for any lien on, pledge of, encumbrance on, mortgage of or security interest in the Company’s property or assets and any related documentation including third-party consents (collectively, the “Security Documents”);

WHEREAS the Collateral Agent is the representative of the Financing Parties;

WHEREAS the Company and the Consenting Party have entered into that certain Energy Services Agreement, dated as of [DATE] (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Assigned Agreement”);

WHEREAS the Company has notified the Consenting Party that all of the Company’s right, title and interest in, to and under the Assigned Agreement is to be assigned to the Collateral Agent as security pursuant to one or more of the Security Documents; and

WHEREAS it is a condition precedent to the Financing Parties’ obligation to make the Financing available to the Company under the Financing Documents that the Consenting Party execute and deliver this Consent for the benefit of the Financing Parties;

NOW, THEREFORE, as an inducement to the Collateral Agent and the Financing Parties to enter into the Financing Documents and the Security Documents and to make the Financing available to the Company, and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Consenting Party hereby agrees as follows:

ARTICLE I

CONSENT TO ASSIGNMENT, ETC.

Section 1.01 Consent to Assignment. Each of the Company and the Consenting Party (a) acknowledges that the Collateral Agent and the Financing Parties are entering into the Financing Documents and the Security Documents and making the Financing available to the Company in reliance upon the execution and delivery by the Consenting Party of the Assigned Agreement and this Consent, (b) consents in all respects to the pledge and collateral assignment to the Collateral Agent of all of the Company’s right, title and interest in, to and under the Assigned Agreement pursuant to one or more of the Security Documents and (c) acknowledges the right, but not the obligation, of the Collateral Agent or the Collateral Agent’s designee, in the exercise of the Collateral Agent’s rights and remedies under the Security Documents, to make all demands, give all notices, cure all defaults, take all actions and exercise all rights of the Company in accordance with the Assigned Agreement, and upon the Collateral Agent providing written notice to the Consenting Party, the Consenting Party shall recognize all such demands, notices, actions and exercises of rights as actions of the Company under the Assigned Agreement, may consider such actions as superseding any contrary actions taken by the Company and shall accept and respond to such actions as if such actions had been taken by the Company. In any such event, the Consenting Party agrees that it shall continue to perform its obligations under the Assigned Agreement.

Section 1.02 Substitute Owner. The Consenting Party and Company each agree that, if the Collateral Agent shall notify the Consenting Party that an event of default under any of the Financing Documents has occurred and is continuing and that the Collateral Agent has exercised its rights (a) to have itself or its designee substituted for the Company under the Assigned Agreement or (b) to sell, assign, transfer or otherwise dispose of the Assigned Agreement to any Person, including, without limitation, any purchaser or grantee at a judicial or non-judicial foreclosure sale or by a conveyance by the Company in lieu of foreclosure, then the Collateral Agent, the Collateral Agent’s designee or such Person (each, a “Substitute Owner”) shall be substituted for the Company under the Assigned Agreement and that, in such event, the Consenting Party will continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner, provided that any Substitute Owner under this Section 1.02 will cause the Project to be operated by an experienced, qualified operator of generating facilities.

Section 1.03 Right to Cure. The Consenting Party agrees that in the event of a default by the Company in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Consenting Party to terminate or suspend its obligations or exercise any other right or remedy under the Assigned Agreement or under applicable legal requirements (hereinafter a “default”), the Consenting Party will continue to perform its obligations under the Assigned Agreement and will not exercise any such right or remedy until it first gives prompt written notice of such default to the Collateral Agent and affords the Collateral Agent, the Collateral Agent’s designee and the Financing Parties a period of at least ten (10) Days (or if such default is a non-monetary default, such longer period not to exceed thirty (30) Days as is required so long as any such party has commenced and is diligently pursuing appropriate action to cure such default) from receipt of such notice to cure such default; provided, however, that (i) Collateral Agent shall have the right, but not the obligation, to cure such default, (ii) cure of any default by the Collateral Agent, if timely performed by Collateral Agent, shall be effective to prevent or cure a default as if done by the Company, and (iii) if any such party is prohibited from curing any such default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Company, then the time periods specified in this Section 1.03 for curing a default shall not include the period of such prohibition. Neither Collateral Agent nor any lender or third party to any Financing Documents or Security Documents shall be obligated to perform any obligation of the Company under the Assigned Agreement or have any obligation or liability to the Consenting Party except and to the extent the Collateral Agent or such party has expressly assumed such obligation, provided that the Consenting Party shall be entitled to exercise all its rights under the Assigned Agreement in the event that Collateral Agent or such other party fails to perform Company’s obligations. Section 1.04 No Termination, Assignment or Material Amendment.

(a) The Consenting Party will not, without the prior written consent of the Collateral Agent enter into any consensual cancellation or termination of the Assigned Agreement (which consent shall not be unreasonably withheld, delayed or conditioned), or assign or otherwise transfer, any of its right, title and interest thereunder except to the extent permitted by the Assigned Agreement, or consent to any such assignment or transfer by the Company other than this Consent.

(b) The Consenting Party will not enter into any material amendment, restatement, supplement or other modification of the Assigned Agreement (an “Amendment”) until after the Collateral Agent has been given twenty (20) Days prior written notice of the proposed Amendment by the Company (a copy of which notice will be provided to the Consenting Party by the Company), and will not then enter into such Amendment if the Consenting Party has, within such twenty (20) Day period, received a copy of (a) the Collateral Agent’s objection to such Amendment (not to be unreasonable) or (b) the Collateral Agent’s request to the Company for additional information with respect to such Amendment.

Section 1.05 Replacement Agreement. In the event that the Assigned Agreement is terminated as a result of any bankruptcy or insolvency proceeding affecting the Company, the Consenting Party will, at the option of the Collateral Agent, within ninety (90) Days after such termination, enter into a new agreement with the Substitute Owner on the same terms as the terms of the Assigned Agreement (including prices) except for any conforming changes to designate the Substitute Owner and to establish the term of the replacement agreement which shall be for the remainder of the term of the Assigned Agreement on the date of execution of the replacement agreement provided that any Substitute Owner will cause the Project to be operated by an experienced, qualified operator of generating facilities such as the Project.

Section 1.06 No Liability. The Consenting Party acknowledges and agrees that none of the Collateral Agent, the Collateral Agent’s designee or the Financing Parties shall have any liability or obligation under the Assigned Agreement solely as a result of this Consent or the Security Documents, nor shall the Collateral Agent, the Collateral Agent’s designee or the Financing Parties be obligated or required to (a) perform any of the Company’s obligations under the Assigned Agreement, except, in the case of the Collateral Agent or the Collateral Agent’s designee, during any period in which the Collateral Agent or the Collateral Agent’s designee is a Substitute Owner pursuant to Section 1.02, in which case (i) the obligations of such Substitute Owner shall be no more and no less than those of the Company under the Assigned Agreement and (ii) such Substitute Owner shall cure any continuing defaults under the Assigned Agreement (including, for the avoidance of doubt, any defaults for failure to pay amounts owed), or (b) take any action to collect or enforce any claim for payment assigned under the Security Documents.

Section 1.07 Performance under Assigned Agreement. The Consenting Party shall perform and comply with all material terms and provisions of the Assigned Agreement to be performed or complied with by it to the extent provided therein and shall maintain the Assigned Agreement in full force and effect in accordance with its terms.

Section 1.08 Delivery of Notices. The Consenting Party shall deliver to the Collateral Agent, concurrently with the delivery thereof to the Company, a copy of each notice of default given by the Consenting Party pursuant to the Assigned Agreement.

ARTICLE II

PAYMENTS UNDER THE ASSIGNED AGREEMENT.

Section 2.01 Payments. The Consenting Party will pay all amounts payable by it under the Assigned Agreement, if any, in the manner required by the Assigned Agreement directly into the account specified on Exhibit A hereto, or to such other Person or account as shall be specified from time to time by the Collateral Agent to the Consenting Party in writing upon forty-five (45) Days’ prior notice.

Section 2.02 No Offset, etc. All payments required to be made by the Consenting Party under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, except as specifically permitted under the Assigned Agreement.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE CONSENTING PARTY

In order to induce the Collateral Agent and the Financing Parties to enter into the Financing Documents and the Security Documents and to make the Financing available to the Company, the Consenting Party makes the following representations and warranties, which shall survive the execution and delivery of this Consent and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby.

Section 3.01 Organization; Power and Authority. The Consenting Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, [and has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.] [Subject to confirmation at time of execution.]

Section 3.02 Authorization. The execution, delivery and performance by the Consenting Party of this Consent and the Assigned Agreement have been duly authorized by all necessary action on the part of the Consenting Party and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (a) the Consenting Party or (b) any other Person, in each case except for [Deferred Approvals and] approvals or consents which have previously been obtained. The Consenting Party has all regulatory authorizations necessary for it to legally perform its obligations under this Consent and the Assigned Agreement [other than the Deferred Approvals].

Section 3.03 Execution and Delivery; Binding Agreements. [Subject to the Deferred Approvals,] each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of the Consenting Party by the appropriate officers of the Consenting Party, and constitutes the legal, valid and binding obligation of the Consenting Party, enforceable against the Consenting Party in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

Section 3.04 Litigation. There is no litigation, action, suit, proceeding or investigation pending or (to the Consenting Party’s knowledge) threatened against or involving the Consenting Party before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (a) is reasonably expected to materially adversely affect the performance by the Consenting Party of its obligations hereunder or under the Assigned Agreement, or which could modify or otherwise materially adversely affect the Approvals (as defined in Section 3.06), (b) questions the validity, binding effect or enforceability hereof or of the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby or (c) is reasonably likely to have a material adverse effect upon (i) the operations, properties, assets, or condition (financial or otherwise) of the Consenting Party, (ii) the ability of the Consenting Party to perform under the Assigned Agreement or this Consent, (iii) the operations, properties, assets or condition (financial or otherwise) of the Project, (iv) the value, validity, perfection and enforceability of the liens granted to the Collateral Agent under the Security Documents or (v) the ability of the Collateral Agent or the Financing Parties to enforce any of their material rights and remedies under the Assigned Agreement or this Consent (collectively, a “Material Adverse Effect”).

Section 3.05 Compliance with Other Instruments, etc. The Consenting Party is not in violation of its charter or by-laws, and [upon receipt of the Deferred Approvals] the execution, delivery and performance by the Consenting Party of this Consent and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby will not result in any violation of, breach of or default under any term of its charter or by-laws, or of any contract or agreement to which it is a party or by which it or its property is bound, or of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation applicable to it, except for any such violations which, individually or in the aggregate, would not have a Material Adverse Effect.

Section 3.06 Government Consent. No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any Person, board or body, public or private (collectively, the “Approvals”), is required to be obtained by the Consenting Party in connection with the execution, delivery or performance of the Assigned Agreement or the consummation of the transactions contemplated thereunder, except as listed on Exhibit B hereto. All such Approvals listed on Exhibit B, except for those set forth in Part II thereof (the “Deferred Approvals”), are Final (as defined below). An Approval shall be “Final” if it has been validly issued, is in full force and effect, is not subject to any condition (other than compliance with the terms thereof), does not impose restrictions or requirements inconsistent with the terms of the Assigned Agreement, and is final and not subject to any appeal. The Consenting Party reasonably believes that each Deferred Approval will be obtained in the ordinary course of business.

Section 3.07 No Default or Amendment. Neither the Consenting Party nor, to the Consenting Party’s knowledge, any other party to the Assigned Agreement is in default of any of its obligations thereunder. To its knowledge, the Consenting Party has no existing counterclaims, offsets or defenses against the Company. [The Assigned Agreement is in full force and effect] [subject to confirmation at time of execution] and, to the Consenting Party’s knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Consenting Party or the Company to terminate or suspend its obligations under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented. [Subject to confirmation at time of execution.]

Section 3.08 No Previous Assignments. The Consenting Party has no notice of, and has not consented to, any previous assignment of all or any part of its rights under the Assigned Agreement.

Section 3.09 Representations and Warranties. All representations, warranties and other statements made by the Consenting Party in the Assigned Agreement were true and correct as of the date when made [and, unless made as of a specified date, are true and correct as of the date of this Consent.] [Subject to confirmation at time of execution.]

ARTICLE IV

OPINION OF COUNSEL

The Consenting Party shall deliver to the Collateral Agent an opinion of counsel relating to the Assigned Agreement and this Consent, which opinion shall be in form and substance reasonably satisfactory to the Collateral Agent. The Company agrees to pay for the Consenting Party’s reasonable attorney’s fees and expenses incurred in providing such opinion of counsel.

ARTICLE V

MISCELLANEOUS

Section 5.01 Notices. All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the party or parties to whom such notice is addressed, shall refer on their face to the Assigned Agreement (although failure to so refer shall not render any such notice of communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed as follows:

If to the Consenting Party: Long Island Power Authority

333 Earle Ovington Blvd., Suite 403

Uniondale, New York 11553

Attention: Vice President of Power Markets

Telephone: (516) 222-7700

Fax: (516) 222-9137

With a copy to:

Long Island Power Authority

333 Earle Ovington Blvd., Suite 403

Uniondale, New York 11553

Attention: General Counsel

Telephone: (516) 222-7700

Fax: (516) 222-9137

If to the Company: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[ADDRESS]

Attention:

Telephone:

Fax:

If to the Collateral Agent: [\_\_\_\_\_\_\_\_\_\_]

[ADDRESS]

Attention:

Telephone:

Fax:

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

Section 5.02 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW EXCEPT SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(b) Any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the Supreme Court of the State of New York located in Nassau County or Suffolk County or in the Federal court of the United States of America for the Eastern District of New York, and, by execution and delivery of this Consent, each of the Consenting Party, the Company and the Collateral Agent hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each of the Consenting Party, the Company and the Collateral Agent irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Consenting Party at its notice address provided pursuant to Section 5.01 hereof. Each of the Consenting Party, the Company and the Collateral Agent hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of the Collateral Agent or its designees to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Consenting Party in any other jurisdiction.

Section 5.03 Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

Section 5.04 Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

Section 5.05 Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 5.06 Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Consenting Party, the Company and the Collateral Agent. Notwithstanding the foregoing, the Company shall not have any right to consent to or approve any amendment, modification, termination or waiver of any provision of this Consent except to the extent its rights are directly affected.

Section 5.07 Termination.

(a) The Consenting Party’s obligations hereunder are absolute and unconditional, and the Consenting Party has no right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until all obligations under the Financing Documents (the “Finance Obligations”) have been satisfied in full, notice of which shall be provided by or on behalf of the Collateral Agent when all such obligations have been so satisfied (the “Termination Notice”).

(b) In the event that the Termination Notice is delivered to the Consenting Party pursuant to this Section 5.07, this Consent shall terminate for all purposes as to the Collateral Agent, the Financing Documents and the Security Documents, and the Collateral Agent and the Financing Parties (and if the proviso at the end of this sentence is not applicable, the Consenting Party) shall have no further rights or obligations under this Consent; provided, however, that the Consenting Party agrees that this Consent shall continue to apply for the benefit of the Company and the providers of new credit facilities under the documentation for the new credit facilities (the “New Lender”), if concurrently with the delivery by or on behalf of the Collateral Agent to the Consenting Party of the Termination Notice pursuant to this Section 5.07, (i) the New Lender or an agent, trustee or other representative of the New Lender shall have agreed in a writing sent to the Consenting Party that it assumes the rights and the prospective obligations of the “Collateral Agent” under this Consent, and shall have supplied substitute notice address information for Section 5.01 and new payment instructions (countersigned by the Company) for Exhibit A and (ii) the amount of the new credit facilities does not exceed the original amount of commitments by the Financing Parties to make loans and extend other credit facilities under the original Financing Documents. In such event, thereafter, (A) the term “Finance Obligations” under this Consent shall be deemed to refer to the new credit facilities, (B) the terms “Collateral Agent” or “Financing Parties” shall be deemed to refer to the New Lender or any agent or trustee for the New Lender (as appropriate), (C) the term “Financing Documents” shall be deemed to refer to the credit agreement, indenture or other instrument providing for the new credit facilities, and (D) the term “Security Documents” shall be deemed to refer to the security agreements and related documents under which the Assigned Agreement is assigned as collateral to secure performance of the obligations of the Company under the new credit facilities.

Section 5.08 Successors and Assigns. This Consent shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns. Any corporation or association into which the Collateral Agent may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Collateral Agent shall be a party, or any corporation or association to which all or substantially all of the corporate business of the Collateral Agent may be sold or otherwise transferred, shall be the successor collateral agent hereunder following notice given by such entity to the Consenting Party.

Section 5.09 Further Assurances. Each party hereto agrees to execute and deliver all such acknowledgments or such other instruments and take such other actions as another party hereto shall reasonably request in connection with the transactions provided for in this Consent.

Section 5.10 Waiver of Trial by Jury. TO THE EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, THE CONSENTING PARTY, THE COMPANY AND THE COLLATERAL AGENT HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT.

Section 5.11 Survival. All agreements, statements, representations and warranties made by any party herein shall be considered to have been relied upon by the other parties and shall survive the execution and delivery of this Consent.

Section 5.12 No Waiver; Remedies Cumulative. No failure or delay on the part of the Collateral Agent in exercising any right, power or privilege hereunder and no course of dealing between the Consenting Party and the Collateral Agent shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which the Collateral Agent would otherwise have.

Section 5.13 Entire Agreement. This Consent embodies the complete agreement between the parties hereto with respect to the matters covered herein and supersedes all other oral or written understandings or agreements with respect to such matters.

IN WITNESS WHEREOF, the Consenting Party, the Company and the Collateral Agent have caused this Consent to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

LONG ISLAND POWER AUTHORITY

By:
Name:
Title:

[SELLER]

By:
Name:
Title:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_],

as Collateral Agent

By:
Name:
Title:

Exhibit A to
Consent and Agreement

**Payment Instructions**

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] Exhibit B to
Consent and Agreement

**Approvals**

Part I – Final Approvals:

Part II – Deferred Approvals:

**APPENDIX 13**

**RESERVED**

**APPENDIX 14**

**DELIVERY POINT [IF APPLICABLE]**

SUPPLEMENT 1: STANDARD CLAUSES FOR LIPA’S CONTRACTS

**Attachment A**

For the purposes of this Supplement 1, (a) Buyer and Connecting Transmission Owner are hereinafter referred to as “LIPA,” and (b) Seller is hereinafter referred to as “Contractor.”

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 (as defined below), 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”), if this contract exceeds $50,000 and is not deemed a service contract, it 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.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract 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, or national origin: (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 hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (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 hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**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. This provision shall survive the expiration or earlier termination of this Agreement.

**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. This provision shall survive the expiration or earlier termination of this Agreement.

**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, 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.

**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 Appendix A, the terms of this Appendix A 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.

**SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules (“CPLR”), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor’s actual receipt of process or upon the State’s receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**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. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime 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 the 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

30 South Pearl St – 7th Floor

Albany, New York 12245

Telephone: 518-292-5220

Fax: 518-292-5884

http://www.empire.state.ny.us

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

30 South Pearl St – 2nd Floor

Albany, New York 12245

Telephone: 518-292-5250

Fax: 518-292-5803

http://www.empire.state.ny.us

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

1. 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;
2. Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92–261), as amended;
3. 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; and
4. 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. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**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.

**PROCUREMENT LOBBYING.** To the extent this agreement is a “procurement contract” as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**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.

**COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** 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.** By signing this contract, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that Contractor 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 shall be utilized as a subcontractor on this contract.

**Attachment B**

**PARTICIPATION BY MINORITY GROUP MEMBERS, WOMEN AND NEW YORK STATE SERVICE-DISABLED VETERANS WITH RESPECT TO STATE CONTRACTS:**

**REQUIREMENTS AND PROCEDURES**

1. **General Provisions**
2. The Long Island Power Authority (“LIPA”) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) and Article 17-B with regard to Service-Disabled Veteran-Owned Businesses for all State 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.
3. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to LIPA, to fully comply and cooperate with LIPA in the implementation of New York State Executive Law Article 15-A and 17-B. 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”) and Service-Disabled Veteran-Owned Businesses (collectively, “M/WBE/VET”). 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.
4. 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 Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

**II. Contract Goals**

1. For purposes of this procurement, LIPA hereby establishes an overall goal of 30% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). LIPA has also established for this Agreement a New York State Service-Disabled Veteran-Owned Business (“SDVOBs”) goal of 6%.
2. For purposes of providing meaningful participation by M/WBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <http://www.esd.ny.gov/mwbe.html>. For purposes of providing meaningful participation by SDVOBs, Contractor should reference the New York State Office of General Services webpage at: <http://www.ogs.ny.gov/Core/SDVOBA.asp>.

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 the Contract or the Division of Service-Disabled Veterans' Business Development at (844) -579-7570 to discuss additional methods of maximizing participation by SDVONs.

1. Where M/WBE/VET goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by M/WBE/VETs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the M/WBE/VET participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to LIPA for liquidated or other appropriate damages, as set forth herein.

**III. Equal Employment Opportunity (EEO)**

1. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women’s Business Development of the Department of Economic Development and Article 17-B and the guidelines of the Division of Service-Disabled Veterans' Business Development. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
2. Contractor shall comply with the following provisions of Article 15-A:
3. Contractor and Subcontractors 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.
4. The Contractor shall submit an EEO policy statement to LIPA within seventy-two (72) hours after the date of the notice by LIPA to award the Contract to the Contractor.
5. If Contractor or Subcontractor does not have an existing EEO policy statement, LIPA may provide the Contractor or Subcontractor a model statement (see Form 102 – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement below).
6. The Contractor’s EEO policy statement shall include the following language:
	1. 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.
	2. 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.
	3. 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.
	4. 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.
7. Form 101 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan (the “Staffing Plan”) to document the composition of the proposed workforce to be utilized in the performance of the Contract 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, but no later than the time of award of the contract.

1. Form 103 - Workforce Employment Utilization Report (“Workforce Report”)
2. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to LIPA of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
3. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract
4. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor’s and/or subcontractor’s total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor’s and/or subcontractor’s total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor’s total workforce during the subject time frame, not limited to work specifically under the contract.
5. 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.
6. Pursuant to Article 17-B of the Executive Law, Seller is required to consider SDVOBs in the fulfillment of the requirements of the Agreement. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at: <http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf>. Seller is required to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Buyer expects Seller to provide maximum assistance to SDVOBs in their contract performance.

**IV. M/WBE/VET Utilization Plan**

* + 1. The Contractor represents and warrants that Contractor has submitted an M/WBE/VET Utilization Plan either prior to, or at the time of, the execution of the contract.
		2. Contractor agrees to use such M/WBE/VET Utilization Plan for the performance of M/WBE/VETs on the Contract pursuant to the prescribed M/WBE/VET goals set forth in Section III-A of this Appendix.
		3. Contractor further agrees that a failure to submit and/or use such M/WBE/VET Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, LIPA shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

**V. Waivers**

1. For Waiver Requests, Contractor should use Form 104 – Waiver Request.
2. If the Contractor, after making good faith efforts, is unable to comply with M/WBE/VET 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, LIPA shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
3. If LIPA, upon review of the M/WBE/VET 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, LIPA 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 M/WBE/VET Contractor Compliance Report**

Contractor is required to submit a Quarterly M/WBE/VET Contractor Compliance Report (Form 105, or such other forms as LIPA may prescribe) to LIPA by the tenth (10th) day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the M/WBE/VET goals of the Contract.

**VII. Liquidated Damages – M/WBE/VET Participation**

1. Where LIPA determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the M/WBE/VET participation goals, Contractor shall be obligated to pay to LIPA liquidated damages.
2. Such liquidated damages shall be calculated as an amount equaling the difference between:
3. All sums identified for payment to M/WBE/VETs had the Contractor achieved the contractual M/WBE/VET goals; and
4. All sums actually paid to M/WBE/VETs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by LIPA, Contractor shall pay such liquidated damages to LIPA within sixty (60) days after they are assessed by LIPA unless prior to the expiration of such sixtieth (60th) 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 LIPA.

**FORM 102**

**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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

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| --- |
| **M/WBE** |

|  |
| --- |
| **EEO** |

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.

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/VET Contract Goals**

\_\_\_\_\_\_ Minority and Women’s Business Enterprise Participation

15% Minority Business Enterprise Participation

15% Women’s Business Enterprise Participation

6% New York State Service-Disabled Veteran-Owned Business Participation

**EEO Contract Goals**

\_\_\_\_\_\_\_\_% Minority Labor Force Participation

\_\_\_\_\_\_\_\_% Female Labor Force Participation

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

 (Authorized Representative)

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

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

**SUPPLEMENT 2: LIPA’S STANDARD PROCUREMENT FORMS**

Non-Collusive Bidding Certification

**Required by Section 2878 of the Public Authorities Law**

By submission of this bid, bidder and each person signing on behalf of bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

[1] The prices in this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

**[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]**

**Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 as the act and deed of said corporation of partnership.**

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS LEGAL RESIDENCE

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IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAMES LEGAL RESIDENCE

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**President**

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**Secretary**

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**Treasurer**

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**President**

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**Secretary**

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**Treasurer**

Identifying Data:

**Potential Consultant: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Street Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**City, Town, etc. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Telephone**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Title**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

 If applicable, Responsible Corporate Officer Name

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

 Title

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

 Signature

**Joint or combined bids by companies or firms must be certified on behalf of each participant:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Legal name of person, firm or corporation Legal name of person, firm or corporation

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name) … (Name)

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Title Title

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**NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:**

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with section 165 of the State Finance Law, the bidder, by submission of this bid certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the bidder, either: (answer yes or no to one or both of the following, as applicable),

(1) has business operations in Northern Ireland;

Yes\_\_\_ or No\_\_\_

If yes:

(2) shall take lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes\_\_\_ or No\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Signature

**Offerer Disclosure of Prior Non-Responsibility Determinations**

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address:

Name and Title of Person Submitting this Form:

Contract Procurement Number:

Date:

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the procurement contract in the previous four years? (Please circle):

 No Yes

2. If yes, was the basis for the finding of non-responsibility due to a violation of State Finance Law § 139-j? (Please circle):

 No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

 No Yes

4. If yes, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Finding of Non-Responsibility: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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5. Has any Governmental Entity or other governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

 No Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Offeror certifies that all information provided to the Long Island Power Authority with respect to State Finance Law § 139-k in complete, true and accurate.

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

 Signature

**CONTINGENT FEE CERTIFICATION**

In accordance with section F.2 of Article II of the Long Island Power Authority “Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Procurement Contracts” (the “Guidelines”), Proposer, by submission of this proposal certifies the following with respect to the payment of contingent fees:

1. Proposer has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any Long Island Power Authority 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
2. Proposer will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by the Long Island Power Authority.

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

FAILURE TO PROVIDE THIS CERTIFICATION WILL BE GROUNDS FOR DISQUALIFICATION IN THE PROCUREMENT PROCESS.

VIOLATION OF EITHER (1) OR (2) OF THIS CERTIFICATION SHALL RESULT IN:

1. disqualification of Proposer from the procurement process; and
2. prohibition of the Proposer from being awarded any contract for a period of three years from the commencement of the procurement process.

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

Certified as of the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Name of person, firm or corporation

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Name and Title)