

**POWER PURCHASE AGREEMENT  
FOR THE FUEL CELL FEED-IN TARIFF**

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

Seller Address: \_\_\_\_\_

\_\_\_\_\_

Facility Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This Fuel Cell Power Purchase Agreement for the Fuel Cell Feed-In Tariff (the "PPA") is made by and between the "Seller" and the Long Island Lighting Company d/b/a LIPA ("LIPA" or "Buyer"), a corporation organized under the laws of the State of New York and a wholly-owned subsidiary of the Long Island Power Authority ("Authority"), which is a corporate municipal instrumentality and political subdivision of the State of New York, each with its principal place of business at 333 Earle Ovington Boulevard, Suite 403, Uniondale, New York 11553. Seller and Buyer are hereinafter referred to individually as a "Party" and collectively as the "Parties".

**RECITALS**

**WHEREAS**, Buyer is engaged in, among other things, the distribution and sale of electricity for heat, light and power to the public in the State of New York; and

**WHEREAS**, Buyer desires to purchase fuel cell electric capacity and energy ("Fuel Cell Generation") and other products and services associated with such Fuel Cell Generation, from fuel cell electric generating facilities to be constructed on customer premises pursuant to a feed-in tariff as defined and provided in Service Classification No. 11 in LIPA's Tariff for Electric Service (the "Tariff"); and

**WHEREAS**, such products and services include electric capacity and energy, Ancillary Services (as defined herein), and Environmental Attributes (as defined herein), which are collectively referred to as the "Fuel Cell Products"; and

**WHEREAS**, Seller desires to develop, design, construct, own and operate a fuel cell electric generating facility with an expected rated capacity of approximately \_\_\_\_\_ net kilowatts [**minimum output of greater than or equal to 1000 kW and maximum output of no more than 20,000 kW**] alternating current ("AC") ("Nameplate Capacity") that is located in the Town/City of \_\_\_\_\_ [**TOWN/CITY**], New York, which is further described in Section 2.13 below as the "Facility"; and

**WHEREAS**, Seller desires to sell to Buyer one hundred percent (100%) of the Fuel Cell Products produced by the Facility and deliver such Fuel Cell Products to LIPA's Electrical System (as defined herein) in accordance with the terms and conditions set forth in this PPA;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

**ARTICLE 1 - MILESTONE DATES**

1.1 "Effective Date" means the date by which all required signatures to this PPA have been received.

1.2 "Target Commercial Operation Date" or "Target COD" is \_\_\_\_\_, 20\_\_.  
**[NOTE: Parties to insert date as further defined in Section 12.2.]**

1.3 "Termination Date" is the date on which this PPA is terminated as provided by Article 12.

## ARTICLE 2 - DEFINITIONS

2.1 "AC" – means alternating current, as set forth in the fourth (4<sup>th</sup>) paragraph of the Recitals.

2.2 "Arbitrators" has the meaning set forth in Section 9.2(iii).

2.2A "Ancillary Services" means any or all of the following services, as defined in the NYISO Open Access Transmission Tariff: (i) Scheduling, System Control and Dispatch; (ii) Voltage Support Service; (iii) Regulation Service; (iv) Energy Imbalance; (v) Operating Reserves Service; (vi) Black Start Service; and any other services that FERC has either authorized or required as an ancillary service.

2.3 "Authority" has the meaning set forth in the Preamble, including its successors and assigns as permitted hereunder.

2.4 "Authorized COD Extension" has the meaning set forth in Section 12.2.

2.5 "Business Day" means Monday through Friday, except for federal or New York State holidays, 9:00 AM to 5:00 PM eastern time.

2.6 "Buyer" has the meaning set forth in the Preamble, including its successors and assigns as permitted hereunder.

2.7 "Commercial Operation Date" or "COD" means the date on which both of the following conditions have been met: (i) the Facility is substantially complete, operational and capable of delivering Fuel Cell Generation, and Seller has accepted such Facility from its equipment supplier(s) and installer(s); and (ii) the Facility has been interconnected with LIPA's Electrical System in full compliance with the Interconnection Procedures, and applicable law.

2.8 "COD Notice" has the meaning set forth in Section ~~3.6~~ 3.7.

2.9 "Completion Notice" has the meaning set forth in Section ~~3.6~~ 3.7.

2.10 "Delivery Point" is the point at which Seller's interconnection facilities are connected to Buyer's interconnection facilities and where Buyer's metering facilities are located, which is identified in Exhibit 2 to Attachment A in the three-line diagram/sketch.

2.11 "Environmental Attributes" means any and all current and future regulatory credits, benefits, emissions reductions, offsets, and allowances, or market value accrued, howsoever entitled, statutory or voluntary, as the result of generating fuel cell energy from the Facility, including but not limited to (i) renewable energy credits and certificates; (ii) certificates or offsets for avoided emissions of pollutants regulated by the Clean Air Act and greenhouse gases that have 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; or (iv) other emission offsets, and any other environmental benefits, reductions, offsets, allowances, certificates, or green tags resulting from generation of Fuel Cell Products.

2.12 "Event of Default" has the meaning set forth in Section 8.1.

2.13 "Facility" means Seller's newly manufactured and installed fuel cell electric generating equipment having the Nameplate Capacity set forth in the Recitals above and the address identified in the heading of the first page of this PPA, which produces Fuel Cell Products in accordance with this PPA. The Facility will include equipment or other tangible assets necessary for the operation and maintenance of the Facility,

including but not limited to the fuel cell(s), wiring harnesses, conduits, inverters, transformers, breakers, lightning protection, and grounding apparatus, together with any easements or leases Seller needs for the construction operation and maintenance of the Facility and the delivery of Fuel Cell Generation to the Delivery Point. Any Facility covered by this PPA will be owned or leased, operated and maintained by Seller at Seller's sole cost and expense, for Seller's benefit as legal and beneficial owner of the Facility.

- 2.14 "Facility Address" is the address identified in the heading of the first page of this PPA, at which the Facility will be installed.
- 2.15 "~~FERC~~" ~~has the meaning set forth in Section 3.9.~~ means the Federal Energy Regulatory Commission or any successor thereto.
- 2.16 "FOIL" has the meaning set forth in Section 6.1.
- 2.17 "Forced Outage" means an unplanned outage of one or more of the Facility's components that results in a reduction of the ability of the Facility to produce Fuel Cell Generation.
- 2.18 "Force Majeure" means an event or circumstance, which prevents a Party from performing its obligations under this PPA, and which is not in the reasonable control of, or the result of negligence of, the Party claiming Force Majeure, and which by the exercise of due diligence the claiming Party is unable to overcome or cause to be avoided. Force Majeure shall include (i) an act of nature, riot, insurrection, war, explosion, labor dispute, fire, flood, earthquake, storm, ice, lightning, tidal wave, backwater caused by flood, act of the public enemy, terrorism, or epidemic; (ii) interruption of transmission or distribution services as a result of a physical emergency condition (and not congestion-related or economic curtailment) not caused by the fault or negligence of the Party claiming Force Majeure and reasonably relied upon and without a reasonable source of substitution to make or receive deliveries hereunder, civil disturbances, strike, labor disturbances, labor or material shortage, national emergency, restraint by court order or other public authority or governmental agency, actions taken to limit the extent of disturbances on the electrical grid; or (iii) other similar causes beyond the control of the Party affected, which causes such Party could not have avoided by the exercise of due diligence and reasonable care. A Party's financial incapacity, Seller's ability to sell the Fuel Cell Products at a more favorable price or under more favorable conditions, or Buyer's ability to acquire the Fuel Cell Products at a more favorable price or under more favorable conditions or other economic reasons shall not constitute an event of Force Majeure. Force Majeure does not include a Forced Outage to the extent such event is not caused or exacerbated by an event of Force Majeure, as described above, and does not include Seller's inability to obtain financing, permits, or other equipment and instruments necessary to plan for, construct, operate or maintain the Facility.
- 2.19 "Fuel Cell Generation" has the meaning set forth in the second (2nd) paragraph of the Recitals.
- 2.20 "Fuel Cell Products" has the meaning set forth in the third (3<sup>rd</sup>) paragraph of the Recitals.
- 2.21 "Interconnection Procedures" means the Smart Grid Small Generator Interconnection Procedures incorporated by reference in LIPA's Tariff, including the relevant interconnection agreement appended thereto, which will be between LIPA and Seller setting forth the terms and conditions under which Seller's Facilities are interconnected with LIPA's Electrical System, which by this reference is incorporated herein- and, as applicable, the NYISO Small Generator Interconnection Procedures.
- 2.22 "Interest Rate" has the meaning set forth in Section 6.2.
- 2.23 "Nameplate Capacity" means the expected rated capacity of the Facility, as set forth in the fourth (4<sup>th</sup>) paragraph of the Recitals.
- 2.24 "LIPA" has the meaning set forth in the Preamble, including its successors and assigns.
- 2.25 "LIPA's Electrical System" means the electric transmission and distribution system owned and operated

by LIPA and consisting of all real and personal property, equipment, machinery, tools and materials and other similar items (including LIPA's interconnection facilities) now or hereafter comprising LIPA's system for transmission and/or distribution of electricity, as modified or expanded from time to time.

- 2.25A "New York Control Area" has the meaning set forth in Section 1.14 of the NYISO Open Access Transmission Tariff, as amended or recodified.
- 2.26 "NYISO" means the New York Independent System Operator Inc., or any successor or assignee thereof.
- 2.27 "Party" or "Parties" has the meaning set forth in the Preamble, including the successors and assigns as permitted hereunder.
- 2.28 "Peak Summer Period" is defined as the months of May through September inclusive.
- 2.29 "PPA" has the meaning identified in the Preamble and shall include all attachments, exhibits, schedules, appendices and other attachments hereto and amendments thereto that may be made from time to time pursuant to the terms of this PPA.
- ~~2.292.30~~ "PURPA" means the Public Utility Regulatory Policies Act of 1978, as may be amended from time to time.
- ~~2.30~~ ~~[Reserved]~~
- 2.31 ~~[Reserved]~~ "Scheduled Maintenance Outage" shall mean the hours of a planned partial or complete interruption or reduction of the Facility's generating capability that has been coordinated and scheduled in advance with the Buyer and the NYISO, as required, with a mutually agreed start date, time and duration.
- 2.32 "Seller" has the meaning set forth in the preamble, including its successors and assigns as permitted hereunder.
- 2.33 "Target COD" has the meaning set forth in Section 1.2.
- 2.34 "Tariff" means LIPA's Tariff for Electric Service (as set forth in the second (2<sup>nd</sup>) paragraph of the Recitals), as it may be modified or superseded from time to time.
- 2.35 "Term" has the meaning set forth in Section 4.1.
- 2.36 "Termination Date" has the meaning set forth in Section 1.3.
- 2.37 "T&D Manager" means the entity, or any successor or assignee thereof providing certain operation, maintenance and other services to LIPA related to LIPA's electrical transmission and distribution system, pursuant to that Amended and Restated Operations Services Agreement, dated as of December 31, 2013, as amended from time to time, or any other similar agreement or arrangement.

### ARTICLE 3 - GENERAL PROVISIONS

- 3.1 Applicability. This PPA shall only apply to the Facility approved pursuant to Attachment A that is to be installed by Seller at the aforementioned Facility Address. This PPA shall only apply to Fuel Cell Products produced by the Facility and Seller shall not have the right under this PPA to sell to Buyer any Fuel Cell Products procured by Seller from sources other than the Facility.
- 3.2 Interconnection Requirements. At all times during the Term, commencing with the COD, Seller and the Facility shall comply with the Interconnection Procedures for the Facility and Seller's failure to do so shall be an Event of Default. If any conflict arises between any portion of this PPA and the requirements of the Interconnection Procedures, the Interconnection Procedures shall take precedence. Disconnection of

the Facility from LIPA's Electrical System for any contractual, operational or safety reason shall not obligate Buyer to replace any revenues thus lost by Seller.

- 3.3 Metering. Seller shall, at Seller's sole cost and expense, provide and install the meter socket approved by Buyer. Except as provided in the Interconnection Procedures, Buyer shall provide a revenue meter to be read by Buyer at approximately monthly intervals for determination of payment due to Seller. Seller will incur monthly maintenance charges as imposed by LIPA pursuant to the Interconnection Procedures in accordance with the applicable Service Classification in the Tariff (currently Service Classification No. 11), and shall pay Buyer the amount of such charges no later than the thirtieth (30th) day of each calendar month. Any request by Seller to test the metering accuracy shall be conducted at Seller's cost pursuant to Buyer's prevailing rates, practices and policies for testing retail revenue meters. In the event that upon examination any meter is found to be inaccurate by more than one percent (1%), prior readings of the meter for billing purposes going back to the date from which the error arose (or if not known halfway to the date of the last inspection from which the meter was found to be accurate) shall be adjusted accordingly.
- 3.4 No Electric Supply to the Facility. The Parties recognize that this PPA does not provide for the supply of any electric service by LIPA to Seller or to Seller's Facility, and Seller must enter into separate arrangements for the supply of electric services to the Facility. Should the Facility need any electric service, LIPA will identify a connection point, to which Seller shall make the appropriate connection arrangements. Seller shall pay LIPA for power consumed and customer service charges in accordance with the prevailing rates set forth in LIPA's Tariff.
- 3.5 Facility Operation. Seller shall provide staff as may be needed to control, operate and maintain the Facility in a manner consistent at all times with Attachment A. Personnel employed by Seller capable of energizing, operating, maintaining and de-energizing the Facility shall be reachable by mobile telephone or other communication device at all times. Seller shall provide Buyer with and maintain a current emergency contact list for the duration of this PPA. Seller is solely responsible for all operations of the Facility, including asset retirement obligations at the end of the Facility's useful life, including dismantling and decommissioning, and Buyer shall have no responsibility or liability whatsoever for such Facility operation, maintenance, replacement or disposal costs.
- 3.6 Coordination of Scheduled Maintenance Outages. Seller shall maintain the Facility in a manner consistent with prudent utility practice and in accordance with the operating instructions and manufacturer's warranties. However, the Seller shall not schedule outages during the Summer Peak Period with the exception of outages which are required to prevent damage to equipment and/or injury to persons. -
- 3.7 Information Requirements. Upon completion of the Facility, as defined in Section 2.7(i), Seller shall send Buyer a written notice accompanied by a copy of the results of any required tests stating that the conditions specified in Section 2.7(i) have been met ("Completion Notice"). Upon interconnection of the completed Facility to LIPA's Electrical System, as defined in Section 2.7(ii), LIPA shall send Seller a written notice stating that the conditions specified in Section 2.7(ii) have been met and that COD has occurred ("COD Notice"). Within thirty (30) days after COD, Seller shall provide documentation signed by Seller's equipment provider(s) and installer(s) of the installed Nameplate Capacity of the Facility covered by this PPA.
- ~~3.7.3.8~~ Title, Risk of Loss. Title and risk of loss of Fuel Cell Products passes from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Fuel Cell Products free and clear of all liens, security interests, claims, encumbrances or any interest therein or thereto by any person, arising prior to the Delivery Point.
- ~~3.8.3.9~~ Adherence to Program Rules. Seller agrees to abide by the Interconnection Procedures and all applicable feed-in tariff program rules and guidelines promulgated by LIPA which are in effect in or pursuant to the Tariff (currently in Service Classification No. 11 in LIPA's Tariff) or otherwise on and after the Effective Date of this PPA.

3.93.10 Time for Performance. Time is of the essence for performance of all obligations under this PPA. In the event a Party's performance is delayed or prevented by Force Majeure, provided such affected Party gives prompt notice to the other Party and commences and diligently continues commercially reasonable efforts to resolve or overcome such Force Majeure, except as otherwise expressly provided in this PPA such obligation shall be suspended until such Force Majeure is resolved or overcome, following which such affected Party shall perform such obligation as soon as reasonably practicable.

#### ARTICLE 4 - TERM OF AGREEMENT

4.1 Term. The term hereof ("Term") shall begin on the Effective Date and shall, unless sooner terminated or amended as provided herein, end on the Termination Date as defined in Section 1.3.

#### ARTICLE 5 - SALE AND PURCHASE OF FUEL CELL PRODUCTS

5.1 Sale and Purchase Obligation. During the Term and subject to the provisions of this PPA, Seller shall sell and deliver or cause to be delivered, and Buyer shall purchase and receive or cause to be received, one hundred percent (100%) of the Fuel Cell Products generated by the Facility up to the Nameplate Capacity. Buyer is not obligated to purchase Fuel Cell Products from any replacement facility or Fuel Cell Products delivered to any point other than the Delivery Point. Buyer shall have the right to resell the Fuel Cell Products. If and to the extent that Buyer requests the Facility to provide Ancillary Services within its capability, Buyer and Seller acknowledge and agree that such provision of Ancillary Services may result in a reduction of the amount of other ~~Solar~~Fuel Cell Products generated by the Facility. Seller shall not receive reimbursement or any other compensation for such reduction.

5.2 Fuel Exclusivity. Seller shall not sell or deliver Fuel Cell Products to the Buyer generated from any source other than the Facility.

5.3 Fuel Cell Products Price. For all Fuel Cell Generation that is produced and delivered by Seller to the Delivery Point, Buyer shall pay Seller a price established using the following formula:

$$\text{Price} = (\$/\text{kWh}) + (\text{HR} \times \text{Index})/1,000,000$$

Where:

HR is the heat rate that the applicant specified in its bid to participate in the Fuel Cell Feed-In Tariff, expressed in Btu/kWh to the nearest whole number; and

Index is the gas price index calculated daily at the Flow date midpoint price from the Daily Price Survey published in Platts Gas Daily, for either (1) Iroquois, zone 2, (2) Transco, zone 6 N.Y., or (3) a simple average of index (1) and index (2), as specified by the applicant in its bid to participate in the Fuel Cell Feed-In Tariff.

The Fuel Cell Products Price established in this section 5.3 above shall be the total consideration for all Fuel Cell Products produced and delivered by Seller to the Delivery Point. The amount of electricity will be measured using the dedicated meter for the Facility. This rate will remain in effect for the entire Term without adjustment or escalation for any reason. Any energy flowing back to the Facility on the Facility's dedicated stand-alone meter will be deducted from the amount flowing to Buyer at the same rate as the purchase price. If Buyer determines that more than one percent (1%) of the Facility's gross output is flowing to the Facility, then purchases and payments may be terminated until such time as the cause of the amount flowing to the customer can be determined and remedied by the generator to the Authority's satisfaction.

5.4 Taxes and Fees. Seller shall have sole responsibility for paying any taxes or fees applicable to the Facility or to the sale of Fuel Cell Products to Buyer, including any federal, state or local income, production, gross receipts and sales tax. These fees include the monthly service administrative charge

required by the Tariff.

- 5.5 Environmental Attributes. Should Buyer create, sanction, adopt or begin participation in a tracking system of accounting for generation-related Environmental Attributes or certificates associated with renewable generation in the New York Control Area, Buyer shall give Seller written notice thereof, together with instructions and any necessary forms, and thereafter Seller shall deliver such attributes or certificates associated with each Environmental Attribute at the earliest time such certificates or attributes become available for delivery to Buyer. Seller will take all other steps to execute and deliver all such instruments or documents to ensure availability of Environmental Attributes to Buyer.

## ARTICLE 6 - BILLING AND PAYMENT

- 6.1 Records, Invoices and Payments. Each Facility shall be treated as a unique account in Buyer's or its T&D Manager's accounting system which shall record the amount of Fuel Cell Generation delivered by Seller and which will produce the invoice of payment due from Buyer. The meter at the Delivery Point of the Facility shall be read as part of Buyer's normal meter reading procedures, which is approximately once a month. Buyer shall pay Seller's invoices for Fuel Cell Products received in good order on a monthly basis. Prior invoices may be reissued to correct meter inaccuracies in accordance with Section 3.3. Subject to Article 16, all documents received or created by Buyer shall be subject to disclosure under the Freedom of Information Law of New York ("FOIL") as may be amended from time to time.
- 6.2 Billing Disputes. Either Party may dispute invoiced amounts, but shall pay to the other Party the undisputed portion of invoiced amounts on or before the invoice due date. To resolve any billing dispute, the Parties shall use the procedures set forth in Section 9.2. When a billing dispute is resolved, the Party owing shall pay within thirty (30) Business Days of the date of such resolution, with late payment interest computed at the effective interest rate as established by Section 2880 of the Public Authorities Law of the State of New York, and any successor thereto ("Interest Rate").

## ARTICLE 7 - SUCCESSORS AND ASSIGNS

- 7.1 Assignment by Seller. This PPA shall not be freely assignable by Seller to any third party without written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed, and, provided said third party assignee executes a written undertaking acceptable in form to Buyer by which assignee agrees to be bound by all the terms and conditions of this PPA; and further provided, that Seller may collaterally assign its interest in this PPA, with the consent of the Buyer, to any lender or any financial institution or institutions participating in the financing of the Facility. No such assignment shall alter or impair the rights of any surety. Provided that Seller reimburses Buyer for Buyer's reasonable legal fees, Buyer agrees upon reasonable request of Seller to provide such legal opinions and consents as may be reasonably requested by Seller and Seller's lender in connection with such financing.
- 7.2 Assignment by Buyer. This PPA shall not be assigned by Buyer without the prior written consent of Seller, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that Buyer may, without the consent of Seller (i) collaterally transfer, sell, pledge, encumber or assign this PPA or the account, revenues, or proceeds hereof in connection with any financing, (ii) transfer or assign this PPA to an affiliate of Buyer, or (iii) transfer or assign this PPA to any person or entity succeeding to all or substantially all of the transmission and distribution assets of Buyer.
- 7.3 Successors and Assigns. This PPA shall bind and inure to the benefit of the Parties to this PPA and any permitted successor or assignee acquiring an interest hereunder consistent with Sections 7.1 and 7.2 hereof. LIPA is not obligated to continue to purchase Fuel Cell Products until Seller's successor has accepted and complied with all conditions of this PPA.

## ARTICLE 8 - EVENTS OF DEFAULT; DAMAGES

- 8.1 Events of Default. The following shall constitute an event of default, unless excused by Force Majeure

("Event of Default"):

(a) Failure of either Party to comply with any terms, provisions and conditions set forth in this PPA and such failure continues more than thirty (30) days after receiving written notice of the same; or

(b) (i) any Seller breach or inaccuracy of representations or warranties as and when made; (ii) wrongful termination of this PPA by Seller; (iii) failure by Seller to maintain insurance as required by Article 10; (iv) failure by Seller to comply with the Interconnection Procedures causing LIPA's termination of the interconnection, as set forth in Section 12.4; or (v) any form of diversion and/or theft of electricity from the Buyer by Seller.

8.2 Damages. Upon an Event of Default by Seller, Buyer may, upon written notice, at Buyer's option:

(a) Suspend performance or payments pending Seller's remediation of the circumstances constituting the Event of Default;

(b) Terminate this PPA;

(c) Recover from Seller the damages Buyer incurred as a direct result of the Event of Default; and

(d) Except as may be limited under the terms of this PPA, exercise any other right or remedy Buyer may have at law or equity, including specific performance.

8.3 Limitation of Remedies. Neither Party shall be liable to the other Party for consequential, exemplary or punitive damages, except and to the extent Seller is liable to indemnify Buyer and/or T&D Manager with respect to any claim by a third party pursuant to Article 11.

**ARTICLE 9 - CONTRACT ADMINISTRATION AND NOTICES; DISPUTE RESOLUTION**

9.1 Notices in Writing. Except as provided below, notices required by this PPA shall be addressed to the other Party at the addresses as noted below:

Seller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

T&D Manager (on behalf of Buyer):

Manager, Power Asset Management  
PSEG Long Island LLC  
175 E. Old Country Road  
EOB, 2nd Floor  
Hicksville, New York 11801  
Phone: (516) ~~545-4820949-8295~~  
Fax: (516) ~~806-6130949-8345~~

For the purpose of making emergency or other communications relating to the operation of the Facility under the provisions of this PPA, the Parties designate the following for said notification:

Seller: \_\_\_\_\_  
\_\_\_\_\_

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T&D Manager (on behalf of Buyer):

Manager, Power Asset Management  
PSEG Long Island LLC  
175 E. Old Country Road  
EOB, 2nd Floor  
Hicksville, New York 11801  
Phone: (516) ~~545-4820949-8295~~  
Fax: (516) ~~806-6130949-8345~~

## 9.2 Dispute Resolution.

- (i) This Section 9.2 shall constitute the sole and exclusive procedures for the resolution of disputes with respect to interpretation and enforcement of this PPA.
- (ii) The Parties shall use commercially reasonable efforts to settle promptly any disputes or claims through negotiation in good faith between representatives with final authority to reach settlement. Either Party may, by written notice to the other Party, refer any such dispute or claim to a suitable mediator chosen by mutual agreement. If the Parties are unable to agree, each shall designate a qualified mediator, who together shall choose a single mediator. If not resolved by mediation within thirty (30) days, the matter shall be referred to arbitration as set forth below. Discussions and offers pursuant to this Section 9.2 shall be confidential, subject to applicable law, and shall be treated as compromise and settlement negotiations for purposes of Federal Rule of Evidence 408 and applicable New York State rules of evidence.
- (iii) Any dispute not subject to the FERC's jurisdiction and not resolved within thirty (30) days from the date that either negotiations or mediation have been requested by a Party or commenced shall be settled exclusively by arbitration in accordance with the then current commercial rules of the American Arbitration Association before three (3) arbitrators (the "Arbitrators"), selected within thirty (30) days in accordance with such rules. The Arbitrators shall be experts in the electric utility industry, qualified in the subject area of the issue in dispute. Judgment on the award rendered by the Arbitrators may be entered in any court having competent jurisdiction.
- (iv) Buyer may, without prejudice, proceed in the courts of the State of New York to obtain provisional judicial relief if necessary, in Buyer's sole discretion, to protect public safety, avoid imminent irreparable harm, or provide uninterrupted electrical and other services. Except for temporary injunctive relief under this Section, neither Party shall bring any action at law or in equity to enforce or interpret this PPA without first complying with the provisions of this Section 9.2; provided, however, that if the Arbitrators fail to issue a decision within one hundred eighty (180) days after the commencement of arbitration then either Party may bring such action at law or in equity.
- (v) The Arbitrators shall have no authority to make any award inconsistent with this PPA or award damages aside from the prevailing Party's actual, direct damages plus interest at the Interest Rate for each day commencing on the date such damages were incurred through date of payment. The award shall be in writing setting forth factual and legal bases thereof. The Parties shall each bear their own expenses for the arbitration and shall evenly divide the common costs of the arbitration.
- (vi) The Arbitrators shall have the discretion to order a pre-hearing exchange of information, including, without limitation production of requested documents, exchange of summaries of testimony, and examination by deposition. The Parties will produce all such information as ordered by the Arbitrators and certify that such information is true, accurate and complete.
- (vii) The site of any arbitration brought pursuant to this PPA shall be in Nassau County, New York.

## ARTICLE 10 - INSURANCE

- 10.1 Coverage. Seller shall maintain in full force and effect, general liability insurance for personal injury and property damage of at least \$1,000,000 per occurrence per Facility. A home or business owner's policy that provides at least this level of coverage is acceptable for meeting the insurance requirement of this PPA.
- 10.2 Certificate of Insurance. Seller shall provide a Certificate of Insurance documenting the required coverage as set forth in Section 10.1 hereof to Buyer, naming Buyer and T&D Manager as additional named insureds, and the certificate shall become a part of this PPA. Automatic notification to Buyer must be established for both annual renewals and, if appropriate, any termination of such insurance . Certificate Holder will be the T&D Manager for LIPA (PAM).

## ARTICLE 11 - INDEMNIFICATION; LIABILITY LIMITATION; REPRESENTATIONS AND WARRANTIES

- 11.1 Seller Indemnification. Seller shall indemnify, hold harmless and defend Buyer and T&D Manager, their affiliates, directors, trustees, officers, employees, and agents from and against any and all liability, proceedings, suits, cost or expense for loss, damage or injury to persons or property, including the Facility, in any manner directly or indirectly connected with, or arising out of the installation, operation or maintenance of Seller's Facility, except in those cases where loss occurs due solely to the negligence or willful misconduct of Buyer and/or T&D Manager or their officers or employees.
- 11.2 Tariff ~~Indemnification~~Limitation of Liability Provisions. In addition to the foregoing, Section 1.C.7. of LIPA's Tariff (See Leaf Nos. 27-29), is incorporated by reference and shall apply with respect to limitations of liability and other provisions of Section 1.C.7.
- 11.3 Representations and Warranties. Seller makes the representations and warranties set forth in Attachment A Exhibit 1, which are incorporated herein by reference as if set forth herein in full.

## ARTICLE 12 - TERMINATION OF AGREEMENT

- 12.1 Automatic Termination.
- (a) Expiration of Term. This PPA will terminate automatically without notice on the date that is twenty (20) years from the COD.
- (b) Failure to Become Operational by Target COD. Subject to Section 12.2 and except in the event of Force Majeure, this PPA will terminate automatically without notice or opportunity to cure if Seller's Facility as described in Exhibit 2 of Attachment A is not fully completed and operational by the Target Commercial Operation Date specified in Section 1.2, unless Buyer grants an extension in writing. A single extension may be granted by Buyer in its sole discretion pursuant to Section 12.2. In the event of Force Majeure, the Target Commercial Operation Date will be extended day for day for each day in which the Force Majeure event or circumstance is continuing.
- 12.2 Authorized COD Extension. The Target Commercial Operation Date has been calculated to be (i) 24 months after the Effective Date. In the event that Seller cannot achieve the Target Commercial Operation Date specified herein and seeks an authorized extension thereof pursuant to this paragraph ("Authorized COD Extension"), Seller shall deliver written notice to Buyer, before the Target Commercial Operation Date, requesting the Authorized COD Extension provided herein and pledging to achieve commercial operation by the Authorized COD Extension date as provided herein. Buyer shall grant such Authorized COD Extension provided that Seller demonstrates to Buyer's reasonable satisfaction that Seller can meet such date. The Authorized COD Extension date shall be twelve (12) months from the Target COD.
- 12.3 Force Majeure After COD. If a Force Majeure event completely preventing delivery of Fuel Cell Products

continues for more than one (1) year, the Party not claiming the Force Majeure will be entitled to terminate this PPA upon written notice.

- 12.4 Audit/Disconnection. Buyer may perform periodic audits and testing of the Facility, including meters, at such intervals as it may deem proper. In the event that LIPA has, pursuant to the provisions of any interconnection agreement, disconnected the Facility, LIPA shall provide written notice thereof as soon as practicable to Seller of the issue or deficiency causing LIPA to disconnect the Facility and all payments shall cease as of the date of disconnection. If after thirty (30) days from the receipt of the aforementioned notice the issue which caused the disconnection is not remedied to Buyer's satisfaction, Buyer may terminate this PPA and provide written notification to Seller.
- 12.5 Right to Lock Out. Upon termination of this PPA for any reason, Buyer may pursuant to the Interconnection Procedures padlock the manual disconnect switch in the open (disconnected) position and may modify or remove any Buyer installed equipment.
- 12.6 Post-Termination Purchases of Fuel Cell Products. After any termination of the PPA, Buyer will have no obligation to extend or re-enter this PPA or a similar feed-in tariff agreement with Seller and in the event such termination results from a Seller Event of Default in accordance with Section 8.2, or an unremedied disconnection as set forth in Section 12.4, this Facility will not be eligible for any net metering program of Buyer.

#### **ARTICLE 13 - NO THIRD PARTY BENEFICIARIES**

Nothing in this PPA confers, is intended to confer, or shall be deemed to confer upon any party other than the Parties hereto and their permitted successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this PPA except as expressly provided in this PPA.

#### **ARTICLE 14 - COMPLETE AGREEMENT**

- 14.1 Complete Agreement. The terms and provisions contained in this PPA constitute the entire agreement between Buyer and Seller and supersede any prior agreement between the Parties regarding the subject matter hereof. There will be no amendments to this PPA.
- 14.2 Severability. In the event any provision hereof is determined by a final, non-appealable judgment to be invalid or unenforceable, the remainder of this PPA shall continue in effect in the absence of such invalid or unenforceable provisions, provided that if performance or enforcement of this PPA in the absence of such provision would be inequitable or deprive a Party of a material element of its original bargain, the Parties will reform the PPA in good faith to reflect the original intent of the Parties as closely as possible.

#### **ARTICLE 15 - CONTROLLING LAW; VENUE**

The validity, performance, and all matters relating to the interpretation and effect of this PPA shall be governed by the laws of the State of New York, without regard to conflicts of laws principles thereof, and the exclusive jurisdiction and venue for any dispute not subject to resolution by adjudication by the FERC or arbitration in the manner provided in Section 9.2 shall be the courts in and for Nassau County, New York, having subject matter jurisdiction. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this PPA.

#### **ARTICLE 16 – MISCELLANEOUS PROVISIONS**

New York State Freedom of Information Law. Each Party expressly acknowledges that LIPA is subject to the requirements of FOIL and must comply therewith. If LIPA is requested by a third party to disclose proprietary technical or personal information, LIPA will (i) promptly 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 Seller's request for confidential treatment, and (iv) determine if the information is

subject to disclosure under FOIL. If LIPA determines that the information is subject to disclosure, it will provide prompt written notice of such determination to Seller so that Seller may seek to appeal LIPA's determination or seek another appropriate remedy, or both, and the Parties may pursue their respective rights and remedies pursuant to NYS Public Officers' Law § 89(5).

New York State 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 Seller'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, and Seller 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.

**IN WITNESS WHEREOF**, the Parties have executed this PPA.

Seller: \_\_\_\_\_  
Name of Company if Applicable

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Buyer: **Long Island Lighting Company d/b/a LIPA  
by and through its agent, Long Island Electric Utility Servco LLC**

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



## ATTACHMENT A

### EXHIBIT 1

#### REPRESENTATIONS AND WARRANTIES

**Seller's Representations and Warranties.** As of the Execution Date, Seller represents and warrants to Buyer that:

1. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
2. it has all regulatory authorizations necessary for it to execute this PPA;
3. the execution, delivery and performance of this PPA are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
4. this PPA, constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;
5. it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;
6. there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this PPA;
7. no Event of Default has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this PPA;
8. it is acting for its own account, has made its own independent decision to enter into this PPA and as to whether this PPA is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of Buyer in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this PPA;
9. it has all real property and contractual rights necessary for it to perform this PPA for its entire Term and no party to any contract or lease is in default, and no circumstances exist which with the passage of time would constitute such default;
10. it has entered into this PPA in connection with the conduct of its business and it has the capacity or ability to make delivery of the Fuel Cell Products;
11. it has not received a research and development funding from the Authority and/or the New York State Energy Research and Development Authority, regardless of whether such payments were made to the current customer or a previous customer at the same location;
12. with respect to any sale of Fuel Cell Products as of the COD it will be a producer, processor or merchant handling the Fuel Cell Products, and it is entering into this PPA for purposes related to its business as such.

**EXHIBIT 2**

**LIST OF FACILITIES SCHEDULES AND POINTS OF INTERCONNECTION** Seller will, at its own cost and expense, operate, maintain, repair, and inspect, and shall be fully responsible for its Facilities in full compliance with LIPA's Interconnection Procedures, unless otherwise specified on this Exhibit 2 and accepted in writing by LIPA. The following information is to be specified for each Point of Interconnection, if applicable.

**SECTION ONE - Owner Information** (to be supplied by applicant)

**1. System Owner**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, ZIP \_\_\_\_\_  
Phone \_\_\_\_\_  
Email \_\_\_\_\_

**2. System Installer/Contractor Name**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, ZIP \_\_\_\_\_  
Phone \_\_\_\_\_  
Email \_\_\_\_\_

**3. Location of system**

Storefront name (if applicable) \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, ZIP \_\_\_\_\_  
Phone \_\_\_\_\_

**4. Fuel Cell System Specifications**

DC Power Rating (Watts) \_\_\_\_\_ No. Phases: 1 3  
AC Power Rating (Watts) \_\_\_\_\_

**5. Three-Line Diagram/System Sketch**

Attach diagram for proposed system with all major components, both DC and AC. Diagram must be dated and ~~initialed~~ sealed by a NYS licensed Professional Engineer.

**SECTION TWO - Interconnection Requirements** *(to be completed by LIPA)*

**1. Engineering Review of Fuel Cell System Information Provided By Seller**

- A) Site Plan \_\_\_\_\_
- B) 3-line Diagram with Point of Interconnection & Metering Location \_\_\_\_\_
- Date Approvals Completed: \_\_\_\_\_

**2. Determination of Point of Interconnection**

- A) Summary of required ~~distribution system~~LIPA's Electrical System additions or modifications:
- B) Cost estimate of additions/modifications above:
- C) Graphic depicting Point of Interconnection
- D) Point of Interconnection detail:
  - Padmount transformer no. (if known) \_\_\_\_\_
  - Overhead transformer at pole no. (if known) \_\_\_\_\_

**3. Metering Requirements**

- A) Voltage \_\_\_\_\_
- B) Meter installation description C) Communication protocol (including Seller's access to data)
- D) Summary of required metering infrastructure and costs:

**4. Summary of Required Upgrades and Estimated Costs to Seller**

ESTIMATED TOTAL COST \$ \_\_\_\_\_

5. Supplemental terms and conditions attached (check one): / \_\_\_\_\_ Yes / \_\_\_\_\_ No

**SIGNATURES INDICATING ENGINEERING APPROVAL ON NEXT PAGE REQUIRED BEFORE PPA CAN BE EXECUTED**

***Acknowledged By Seller***

Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

***Acknowledged by Buyer***

Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

***Acknowledged by Buyer's T&D Manager for Power Asset Management Purposes***

Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

***Acknowledged by Buyer's T&D Manager for Interconnection Purposes***

*Based on the information contained herein, Seller's Facility will meet LIPA's Interconnection Procedures*

Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT 3**  
**FUEL CELL INSTALLER'S INFORMATION**

**Please provide names and contact information for all installation contractors and subcontractors. If any of the Parties are to be determined at a later date, signify this with "TBD" in the appropriate line.**

System designer:

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

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Certification: \_\_\_\_\_ Attached \_\_\_\_\_ On File

Electrical contractor:

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

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Certification: \_\_\_\_\_ Attached \_\_\_\_\_ On File

RoofingConstruction contractor:

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

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Certification: \_\_\_\_\_ Attached \_\_\_\_\_ On File