

AMENDED and RESTATED

OPERATIONS SERVICES AGREEMENT

between

LONG ISLAND LIGHTING COMPANY d/b/a LIPA

and

PSEG LONG ISLAND LLC

Dated as of

December 31, 2013

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## TABLE OF CONTENTS

		Page
ARTICLE 1	DEFINITIONS; INTERPRETATION.....	3
Section 1.1	DEFINITIONS; INTERPRETATION.....	3
(A)	Defined Terms .....	3
(B)	References.....	3
(C)	Gender and Plurality .....	3
(D)	Headings .....	3
(E)	Costs, Cost Substantiation and Cost Disputes .....	3
(F)	References to Transmission and Distribution of Power .....	4
(G)	Actions Taken Pursuant to Agreement .....	4
(H)	Prudent Utility Practice.....	4
(I)	Delivery of Documents in Digital Format .....	4
(J)	Counterparts.....	4
(K)	Applicable Law .....	4
(L)	Severability .....	5
(M)	References to Days .....	5
(N)	Negotiated Agreement .....	5
(O)	Good Faith Obligation .....	5
ARTICLE 2	TERM; EFFECTIVE DATE.....	5
Section 2.1	TERM .....	5
(A)	Term.....	5
(B)	Term Extension Option.....	6
Section 2.2	EFFECTIVE DATE; BINDING EFFECT .....	6
(A)	Effective Date .....	6
(B)	IRS Ruling .....	6
(C)	Service Commencement Date.....	7
(D)	Outside Date.....	7
ARTICLE 3	OWNERSHIP OF THE TRANSMISSION AND DISTRIBUTION SYSTEM.....	8
Section 3.1	OWNERSHIP OF THE T&D SYSTEM .....	8
(A)	LIPA Ownership.....	8
(B)	Engagement of Service Provider .....	8

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
(C) Use of LIPA Assets.....	8
(D) Encumbrances.....	8
(E) Surrender of the T&D System.....	9
(F) Right of Access.....	9
ARTICLE 4 OPERATION OF THE T&D SYSTEM.....	9
Section 4.1 T&D SYSTEM GENERALLY.....	9
(A) Reliance.....	9
(B) Limitations on Service Provider Rights.....	9
(C) Curtailments and Shutdowns.....	9
Section 4.2 OPERATIONS SERVICES.....	10
(A) Scope of Services.....	10
(B) Contract Administration Manual.....	24
(C) Operations Manual.....	24
(D) Consequence of Review of Manuals by LIPA.....	25
(E) No Legal Representation.....	25
Section 4.3 PERFORMANCE METRICS.....	25
Section 4.4 RIGHTS AND RESPONSIBILITIES OF LIPA.....	25
(A) Generally.....	25
(B) T&D System Access Policies and Prices.....	27
Section 4.5 SERVCO; STAFFING AND LABOR ISSUES.....	27
(A) Organization.....	27
(B) Ownership Maintenance.....	27
(C) Employees.....	27
(D) Employee Plans.....	29
Section 4.6 GOVERNANCE.....	32
Section 4.7 SAFETY.....	32
Section 4.8 COMPLIANCE WITH APPLICABLE LAW.....	33
Section 4.9 OPERATING PERIOD INSURANCE.....	33
(A) Required Operating Period Insurance.....	33
(B) Required Service Provider Insurance.....	34

**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
Section 4.10	INSURANCE, THIRD PARTY PAYMENTS AND WARRANTIES .....	34
	(A) Insurance and Other Third Party Payments .....	34
	(B) Warranties .....	34
Section 4.11	INFORMATION.....	35
	(A) System Information and Computer Database .....	35
	(B) Ownership of System Information and LIPA Personal Information .....	35
	(C) Information Access .....	35
	(D) Restrictions .....	35
Section 4.12	INVENTORY CONTROL .....	36
Section 4.13	CAPITAL IMPROVEMENTS; CAPITAL ASSET CONTROL.....	36
	(A) Capital Improvements .....	36
	(B) Capital Asset Control.....	36
Section 4.14	TECHNICAL ASSISTANCE.....	37
Section 4.15	SERVICE PROVIDER AS LIPA’S AGENT.....	37
Section 4.16	OTHER SERVICES .....	37
	(A) Bill Payments .....	37
	(B) Attendance at Meetings.....	37
	(C) Implied Services.....	37
Section 4.17	HAZARDOUS WASTE .....	38
Section 4.18	CONFLICT OF INTEREST .....	38
ARTICLE 5	COMPENSATION AND BUDGETS .....	38
Section 5.1	MANAGEMENT SERVICES COMPENSATION .....	38
	(A) General.....	38
	(B) Annual Fixed Compensation Component.....	39
	(C) Annual Incentive Compensation Component .....	39
Section 5.2	PASS-THROUGH EXPENDITURES; BUDGETS.....	40
	(A) Pass-Through Expenditures .....	40
	(B) Budgets .....	41
Section 5.3	STORM COSTS; DISALLOWED COSTS.....	44

**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
(A)	General.....	44
(B)	Storm Events.....	45
(C)	Disallowed Costs .....	45
Section 5.4	LIPA’S PAYMENT OBLIGATIONS.....	45
(A)	Invoices; Source of Payments.....	45
(B)	Disputes.....	46
(C)	LIPA’s Right to Review and Audit.....	46
ARTICLE 6	DPS REVIEW.....	46
Section 6.1	GENERAL.....	46
Section 6.2	THREE YEAR RATE PLAN.....	46
(A)	General.....	46
(B)	Preparation of Preliminary Three Year Rate Plan .....	46
(C)	LIPA Comments .....	47
(D)	Submission.....	47
(E)	DPS Rate Proceeding.....	47
Section 6.3	CUSTOMER RATE CHANGES .....	48
Section 6.4	MANAGEMENT AND OPERATIONS AUDITS .....	49
(A)	General.....	49
(B)	DPS Process .....	50
Section 6.5	ADDITIONAL DPS REVIEWS.....	50
Section 6.6	NO RELIEF .....	50
Section 6.7	AUTHORITY TO FIX RATES.....	50
ARTICLE 7	ALLOCATION OF RISK OF CERTAIN COSTS AND LIABILITIES .....	50
Section 7.1	GENERAL.....	50
Section 7.2	LIMITATIONS ON LIABILITY .....	51
Section 7.3	SURVIVAL .....	51
Section 7.4	CREDIT SUPPORT.....	52
ARTICLE 8	DEFAULT, REMEDIES AND DISPUTE RESOLUTION .....	52
Section 8.1	EVENTS OF DEFAULT BY THE SERVICE PROVIDER.....	52
(A)	Events of Default .....	52

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
(B) LIPA’s Remedies for Service Provider Default.....	53
Section 8.2 EVENTS OF DEFAULT BY LIPA .....	53
(A) Events of LIPA Default .....	53
(B) Service Provider Remedies for LIPA Default .....	54
Section 8.3 ADDITIONAL REMEDIES FOR BREACH.....	54
(A) General.....	54
(B) Continuing Payment Obligations.....	55
(C) Transition Services Agreement.....	55
Section 8.4 ADDITIONAL LIPA TERMINATION RIGHTS.....	55
(A) Change of Control.....	55
(B) T&D System Sale or Transfer.....	55
(C) Metrics Failure .....	55
(D) LIPA Termination Notice Period.....	56
Section 8.5 ADDITIONAL TERMINATION RIGHTS AND CERTAIN OBLIGATIONS OF THE SERVICE PROVIDER .....	56
(A) Service Provider Termination Upon T&D System Sale or Transfer .....	56
(B) Service Provider Termination Upon Change in Regulatory Law .....	56
(C) Compensation Upon Termination.....	58
(D) Termination by LIPA .....	58
(E) Obligations on Termination or Expiration.....	59
(F) Transfer Obligation.....	61
(G) Additional Obligations.....	61
Section 8.6 DISPUTE RESOLUTION .....	62
(A) Dispute Resolution.....	62
(B) Negotiation.....	62
(C) Arbitration.....	62
(D) Provisional Relief.....	63
(E) Information Exchange.....	63
(F) Site of Arbitration .....	63
(G) Awards .....	63

**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
	(H) Obligation to Repair; Termination Notice .....	64
	(I) Certain Expedited Matters .....	64
	(J) IRS Ruling Dispute .....	65
	(K) Grounds for Judicial Review .....	65
	(L) Submission to Jurisdiction .....	66
Section 8.7	WAIVER OF CERTAIN DEFENSES .....	66
Section 8.8	LIABILITY LIMITATION FOR CERTAIN DAMAGES .....	66
Section 8.9	LIPA EMERGENCY POWERS.....	66
ARTICLE 9	FUTURE SERVICE PROVIDERS; BACK-END TRANSITION SERVICES.....	67
Section 9.1	SELECTION OF FUTURE SERVICE PROVIDERS .....	67
Section 9.2	BACK-END TRANSITION SERVICES .....	67
	(A) General.....	67
Section 9.3	EXIT TEST.....	68
	(A) Exit Test.....	68
ARTICLE 10	GENERAL.....	69
Section 10.1	FORCE MAJEURE GENERALLY .....	69
	(A) Performance Excused.....	69
	(B) Notice, Mitigation.....	69
	(C) Conditions to Relief on Account of Force Majeure.....	69
Section 10.2	INDEMNIFICATION.....	70
	(A) Indemnification by the Service Provider .....	70
	(B) Indemnification by LIPA .....	71
Section 10.3	INTELLECTUAL PROPERTY .....	73
	(A) LIPA Owned Intellectual Property .....	73
	(B) Pre-Existing Intellectual Property.....	74
	(C) Utility Intellectual Property .....	74
	(D) Assignment of Work Product.....	74
	(E) License of Work Product and LIPA Licensed Intellectual Property .....	75
	(F) Prohibitions on Registration or Changes to LIPA Markings .....	75

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
(G) Service Provider Restricted Uses.....	76
(H) Reverse Engineering .....	76
(I) Service Provider Sublicensee Approval.....	76
(J) Third Party Beneficiary.....	76
(K) Intellectual Property Enforcement Cooperation .....	76
(L) Third-Party Intellectual Property .....	77
(M) Prohibitions on Registration or Changes to Service Provider Markings .....	77
(N) LIPA Sublicensee Approval .....	77
(O) Return of Intellectual Property.....	78
(P) LIPA Trademark License Grant.....	78
(Q) Service Provider Trademark License Grant.....	79
(R) Other .....	79
Section 10.4 PROPRIETARY INFORMATION .....	79
(A) Confidential Information .....	79
(B) Service Provider Requests and LIPA Non-Disclosure .....	80
(C) Permitted Disclosures .....	80
(D) Customer Information.....	80
(E) Security .....	81
Section 10.5 RELATIONSHIP OF THE PARTIES.....	81
Section 10.6 ASSIGNMENT AND TRANSFER.....	81
Section 10.7 INTEREST ON OVERDUE OBLIGATIONS.....	81
Section 10.8 NON-DISCRIMINATION .....	81
Section 10.9 SUBCONTRACTORS .....	82
(A) Service Provider Obligations .....	82
(B) Reporting Obligation .....	82
Section 10.10 AMENDMENTS .....	83
Section 10.11 NOTICES.....	83
Section 10.12 ENTIRE AGREEMENT.....	84
Section 10.13 FURTHER ASSURANCES .....	84



**TABLE OF CONTENTS**

(continued)

		<b>Page</b>
Section 10.14	NO WAIVERS.....	84
Section 10.15	NO THIRD PARTY BENEFICIARIES.....	84
Section 10.16	STATE LAW REQUIREMENTS .....	84
Section 10.17	ATTORNEY-CLIENT PRIVILEGE.....	85
ARTICLE 11	REPRESENTATIONS AND WARRANTIES.....	85
Section 11.1	REPRESENTATIONS AND WARRANTIES OF LIPA.....	85
(A)	Existence and Power .....	85
(B)	Due Authorization and Binding Obligation.....	85
(C)	No Conflict.....	85
(D)	No Litigation.....	85
(E)	No Legal Prohibition.....	86
(F)	No Consent.....	86
(G)	Intellectual Property .....	86
Section 11.2	REPRESENTATIONS AND WARRANTIES OF SERVICE PROVIDER.....	86
(A)	Existence and Power .....	86
(B)	Due Authorization and Binding Obligation.....	86
(C)	No Conflict.....	86
(D)	No Litigation.....	86
(E)	No Legal Prohibition.....	87
(F)	No Consent.....	87
(G)	Intellectual Property .....	87
(H)	T&D System Familiarity.....	87

## APPENDICES

- APPENDIX 1 — Definitions
- APPENDIX 2 — Creditworthiness Standards
- APPENDIX 3 — State Law Requirements
- APPENDIX 4 — Contract Administration Manual Outline
- APPENDIX 5 — Operations Manual Outline
- APPENDIX 6 — Term Extension Option Criteria
- APPENDIX 7 — Power Supply, Fuel Procurement and Related Services
- APPENDIX 8 — Optional Capital Additions
- APPENDIX 9 — Performance Metrics Chart
- APPENDIX 10 — Storm Events
- APPENDIX 11(A) — Required Operating Period Insurance
- APPENDIX 11(B) — Required Service Provider Insurance
- APPENDIX 12 — LIPA Termination Fee Amounts
- APPENDIX 13 — Major Storm Performance Metric and Minimum Performance Level Metric
- APPENDIX 14 — LIPA Marks and Service Provider Marks

ANNEX I — Third Party Infringements

ANNEX II — Open Source Software

EXHIBIT A — Form of Guaranty

**AMENDED AND RESTATED  
OPERATIONS SERVICES AGREEMENT**

THIS AMENDED AND RESTATED OPERATIONS SERVICES AGREEMENT (this “Agreement”) is made and dated as of December 31, 2013 between the LONG ISLAND LIGHTING COMPANY d/b/a LIPA, a New York corporation (“LIPA”), a wholly-owned subsidiary of the LONG ISLAND POWER AUTHORITY, a corporate municipal instrumentality of the State of New York and a body corporate and politic and a political subdivision of the State of New York (the “Authority”), and PSEG Long Island LLC, a New York limited liability company (the “Service Provider”, which term includes the Service Provider’s subsidiary service company, ServCo, unless the context otherwise requires). The Service Provider and LIPA are sometimes hereinafter referred to individually as a “Party” and together as the “Parties.”

**RECITALS**

WHEREAS, the Parties have heretofore entered into an Operations Services Agreement, dated as of December 28, 2011, as amended by Amendment No. 1 thereto and Amendment No. 2 thereto, and a certain Letter Agreement, dated June 22, 2012 (as amended from time to time the “Existing OSA”), in order to provide for the operation and maintenance of, and Capital Improvements to, the T&D System; and

WHEREAS, LIPA and the Service Provider have simultaneously with the Existing OSA entered into a Transition Services Agreement, dated as of December 28, 2011, as amended by Amendment No. 1 thereto (the “Transition Services Agreement”); and

WHEREAS, on June 21, 2013, the New York State Assembly and Senate passed, and on July 29, 2013 the Governor signed into law, legislation (the “LIPA Reform Act”) which, among other things, amends the Public Service Law and the Public Authorities Law to provide for the restructuring of LIPA and its relationship with the service providers and the establishment of a Long Island office of the DPS with authority, among other things, to review and make recommendations with respect to LIPA’s customer rates and charges and certain aspects of the provision of Operations Services hereunder; and

WHEREAS, the LIPA Reform Act further provides for a significant reduction in LIPA’s size and role in the operation and management of the T&D System (as hereinafter defined) in order to provide for more efficient, effective and economic delivery of electric service to customers in the Service Area; and

WHEREAS, in anticipation of the enactment of the LIPA Reform Act, the Parties have negotiated a non-binding Term Sheet, dated June 6, 2013, which sets forth the material, substantive terms of proposed amendments to the Existing OSA in order, among other things, to reflect a realignment of the rights and responsibilities of the Parties thereunder such that the Service Provider has, to the extent legally permissible and subject to the terms of LIPA’s Bond Resolutions and bond and other financing agreement covenants, contractual and legal obligations and oversight responsibilities, autonomy and responsibility to operate and maintain the T&D System and establish the related plans, policies, procedures and programs; and

WHEREAS, the Parties therefore desire to enter into this Agreement in order to amend

and restate, in its entirety, the Existing OSA on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and other agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

## ARTICLE 1 DEFINITIONS; INTERPRETATION

### SECTION 1.1 DEFINITIONS; INTERPRETATION.

In this Agreement, unless the context otherwise requires:

(A) Defined Terms. All initially capitalized terms used and not otherwise defined herein are used as defined in Appendix 1 hereto. The definitions set forth in Appendix 1 hereof shall control in the event of any conflict with the definitions used in the recitals hereto.

(B) References. The terms “hereby,” “hereof,” “herein,” “hereto”, “hereunder” and any similar terms refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the Effective Date. Whenever any of the words “include”, “includes” and “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation” or equivalent words. Unless otherwise specifically indicated, all references to “Dollars” or “\$” shall refer to the lawful money of the United States. Any reference to an “approved” Operating Budget or Capital Budget shall include any such Budget contained in a Consolidated LIPA Budget that has been approved by the LIPA Board of Trustees. Any reference to a disagreement, Dispute or determination relating to a Consolidated LIPA Budget shall include a disagreement, Dispute or determination relating to any Budget contained therein or any other portion thereof.

(C) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(E) Costs, Cost Substantiation and Cost Disputes. Any cost proposed or incurred by the Service Provider which is directly or indirectly chargeable to LIPA and which, in whole or in part, will be a Pass-Through Expenditure hereunder shall be no greater than the fair market price, to the extent available, for the good or service provided, or, if there is no market, shall be a fair and reasonable price; provided, however, that use of Service Provider inventory in connection therewith shall be charged to LIPA at the cost the Service Provider paid for such inventory (excluding any inter-company profit); and provided further, that wages, salaries and other labor and labor-related costs of the General Workforce shall be deemed to be no greater than the fair market price thereof. The Service Provider shall maintain and, at LIPA’s reasonable (as to timing and format) request, and consistent with LIPA’s rights and access to information otherwise provided in Section 4.11 hereof, provide cost substantiation and, at LIPA’s request, such additional relevant information for all such costs invoiced to LIPA hereunder, and for all budgets, estimates and quotations furnished to LIPA hereunder for the purpose of reviewing and approving costs for Operations Services or any other additional work or costs incurred for which LIPA is responsible hereunder. The Service Provider agrees to use all commercially reasonable efforts to limit the costs incurred under this Agreement consistent with the Contract Standards.

LIPA may object to any cost or to the payment of any cost on the grounds that such cost or the amount being charged to LIPA was improperly computed, that the costs incurred by the Service Provider were unreasonable for the work performed, or that the costs incurred were not properly approved by LIPA to the extent such approval is required by this Agreement.

(F) References to Transmission and Distribution of Power. The phrases “transmit”, “transmitted”, “transmitting” and “transmission” and any similar phrases herein, when used with respect to Power and Energy, shall mean and refer to the operation of the T&D System in accordance with this Agreement to transmit Power and Energy. The phrases “distribute”, “distributed”, “distributing” and “distribution” and any similar phrases herein, when used with respect to Power and Energy, shall mean and refer to the operation of the T&D System in accordance with this Agreement to distribute Power and Energy.

(G) Actions Taken Pursuant to Agreement. The Parties acknowledge that this Agreement sets forth procedures and intended results with respect to various circumstances which may arise during the Term (as defined below). Such circumstances include, without limitation, the “wheeling”, “transmission” or “distribution” of Power and Energy; Changes in Law and other Force Majeure events; the preparation, revision and updating of Budgets, operating plans and schedules; revisions and modifications to the Performance Metrics; the preparation, revision and updating of the Operations Manual and the Contract Administration Manual; the provision of Back-End Transition Services; and the assignment and transfer of this Agreement. Unless otherwise agreed to by the Parties, any such correspondence, report, submittal, revision update, consent or other document or communication given pursuant hereto on account of such a circumstance shall be considered as between the Parties to be an action taken pursuant to this Agreement and not an amendment hereto.

(H) Prudent Utility Practice. Prudent Utility Practice shall be utilized hereunder, among other things, to implement and in no event lower or diminish, the Contract Standards.

(I) Delivery of Documents in Digital Format. In this Agreement, the Service Provider is obligated to deliver reports, records, drawings, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Service Provider agrees that all such documents shall be submitted to LIPA both in printed form (in the number of copies indicated) and, to the extent reasonably available, in digital form, unless LIPA otherwise agrees. Electronic copies shall consist of computer readable data submitted in consistent standard interchange format to facilitate the administration and enforcement of this Agreement.

(J) Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same original Agreement. Execution and delivery of this Agreement may be effected by means of an exchange of facsimile or other electronic copies.

(K) Applicable Law. This Agreement shall be governed by and construed in accordance with the law of the State of New York without regard to any applicable principles of conflicts of law that would require this Agreement to be governed by and construed in accordance with the laws of a different state or jurisdiction.

(L) Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid, unenforceable or in conflict with Applicable Law in any Legal Proceeding, then the Parties shall: (1) promptly meet and negotiate in good faith a substitute for such clause, provision, subsection, Section or Article which shall, to the greatest extent legally permissible, effect the intent of the Parties therein; (2) if necessary or desirable to accomplish item (1) above, apply for such substitution to the court, arbitral body or other authority, as applicable, having declared such invalidity, unenforceability or legal conflict of the invalidated portion of this Agreement; and (3) negotiate in good faith such changes in, substitutions for, or additions to, the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the Parties reflected in the invalid, unenforceable or legally conflicting provision. The invalidity, unenforceability or legal conflict of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist. Notwithstanding the foregoing, in the event the Service Provider exercises its right to terminate this Agreement due to an OSA Change (as hereinafter defined) or a FERC Regulatory Change (as hereinafter defined), the provisions of Section 8.5(B)(1) shall control.

(M) References to Days. All references to days herein are references to calendar days unless specified as Business Days.

(N) 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.

(O) Good Faith Obligation. In the performance of any and all of their respective obligations and responsibilities hereunder, LIPA and the Service Provider shall be required to do so in good faith and with due diligence.

## ARTICLE 2 TERM; EFFECTIVE DATE.

### SECTION 2.1 TERM.

(A) Term. The term of this Agreement (the “Term”) will, unless sooner terminated pursuant to the terms hereof, extend for a period of twelve (12) years from the Service Commencement Date (as defined below), and may be extended in accordance with Section 2.1(B) hereof. All rights, obligations and liabilities of the Parties hereto shall commence on the Effective Date (except as otherwise provided in Section 2.2(A) hereof) subject to the terms and conditions hereof. Notwithstanding the expiration or termination of the Term, the rights and obligations of the Parties hereto pursuant to (i) Sections 1.1(K), 1.1(L), 3.1(E), 4.10, 4.11(D) and 4.16 hereof, Articles 5, 7 and 8 hereof, Sections 9.3, 10.1, 10.2, 10.3(B), 10.3(O), 10.4(C), 10.7, 10.10, 10.11, 10.12, 10.13 and 10.15 hereof, and the Set Off Rights and Records provisions described in Appendix 3 hereto shall survive indefinitely, (ii) Sections 10.4(A), 10.4(B) and 10.4(D) hereof relating specifically to LIPA Personal Information with respect to LIPA customers shall survive indefinitely, and (iii) Sections 10.4(A), 10.4(B) and 10.4(D) hereof not otherwise relating to LIPA Personal Information with respect to LIPA customers shall

survive for five (5) years; in each case with respect to the respective rights and obligations of the Parties hereto accrued prior to the date of such expiration or termination, which rights and obligations shall not be affected or limited by such expiration or termination. In addition, Section 9.2 hereof, and the other provisions identified in Section 8.5(B)(5) hereof, shall survive the expiration or termination of the Term in accordance with the terms of Section 8.5(B)(5) hereof. At the expiration or termination of the Term, all other obligations of the Parties hereunder shall terminate unless otherwise agreed or provided for in this Section 2.1(A).

(B) Term Extension Option. In the event that the Service Provider achieves the level of performance with respect to the criteria set forth in Appendix 6 hereto during the first ten (10) years of the Term, the Parties shall negotiate in good faith an extension of the Term to twenty (20) years from the Service Commencement Date on substantially similar terms and conditions as set forth herein.

## SECTION 2.2 EFFECTIVE DATE; BINDING EFFECT.

(A) Effective Date. This Section 2.2, Sections 5.2(A)(13) and 5.2(B)(1) hereof and Sections 8.6, 10.4, 10.5, 10.11, 10.12, 10.14 and 10.15 hereof (in each case as applicable to the rights and obligations set forth in this Section 2.2 and in Sections 5.2(A)(13) and 5.2(B)(1) hereof) and the rights and obligations thereunder shall become effective as of the date of this Agreement. Except as set forth in the preceding sentence, the amendment and restatement of the Existing OSA in the form of this Agreement and the rights and obligations of each Party hereunder shall not become effective until the date on which each of the following conditions precedent shall have been satisfied (or waived by the Party entitled to the benefit of such condition) (the “Effective Date”):

(1) receipt by the Service Provider of an order or declaration from the FERC satisfactory to the Service Provider in its sole discretion disclaiming jurisdiction over the Service Provider, ServCo and any Affiliates of the Service Provider providing Operations Services or management services associated with the T&D System under the Agreement (other than with respect to the power supply, fuel procurement and related services set forth in Section 4.2(A)(6) hereof and Appendix 7 hereto);

(2) approval by the LIPA Board of Trustees of an agreement by the Service Provider to the Operating Budgets and Capital Budgets for 2014 and 2015; and

(3) receipt by LIPA of a favorable private letter ruling from the Internal Revenue Service (the “IRS”) satisfactory to LIPA in its sole discretion, to the effect that this Agreement is a “Qualified Management Contract” or will not cause the portion of the T&D System financed by LIPA’s tax exempt bonds to be used for private business purposes under Section 141(b) of the Internal Revenue Code (the “IRS Ruling”).

The Service Provider shall notify LIPA promptly after receipt of such order or declaration described in clause (1) above, and each Party shall promptly notify the other Party of its approval or agreement, as applicable, described in clause (2) above.

(B) IRS Ruling.



(1) As promptly as practicable following the Parties' execution of this Agreement, LIPA shall submit to the IRS a request for the IRS Ruling (the "Ruling Request") and thereafter prosecute such Ruling Request in good faith in order to obtain an IRS Ruling at the earliest possible date. The Service Provider shall provide LIPA with such information and assistance as LIPA may reasonably request in connection with the Ruling Request. LIPA shall (i) provide the Service Provider with a copy of the IRS Ruling (which shall be deemed Confidential Information hereunder) promptly following LIPA's receipt thereof and (ii) advise the Service Provider either (x) that the IRS Ruling is satisfactory to LIPA or (y) that the IRS has raised objections to LIPA's Ruling Request or the IRS Ruling otherwise contains provisions or conditions which LIPA considers objectionable (the "IRS Objections").

(2) If the IRS Ruling contains IRS Objections the Parties hereby agree as follows: (a) the Parties shall enter into good faith negotiations as promptly as possible to make such mutually agreeable modifications to this Agreement as may be necessary to overcome any IRS Objections and to the fullest extent consistent therewith, preserve the full range of economic results, benefits and obligations with respect to each Party hereto; provided, however, that (i) neither Party shall be required to agree to any modification to the terms of this Agreement relating to the Term, the Compensation or other economic benefits (including the optional capital additions described in Section 4.2(A)(7) hereof), the Performance Metrics, the Major Storm Performance Metric, the Minimum Performance Level Metric and the Term Extension Option Criteria, the treatment and funding of costs including Pass-Through Expenditures, Dispute resolution, the DPS review process or the decision-making authority of either Party (such terms, the "Fundamental Terms") and (ii) any matter relating to proposed modification of the Fundamental Terms shall not be subject to Dispute resolution under Section 8.6 hereof or otherwise; (b) LIPA shall submit to the IRS a supplemental Ruling Request together with the modifications to this Agreement's terms as agreed upon by the Parties promptly following such agreement and shall promptly advise the Service Provider when LIPA has received a satisfactory IRS Ruling; and (c) in the event, however, that within thirty (30) days after commencing negotiations pursuant to clause (a) above, the Parties are unable to agree upon such modifications that do not relate to any Fundamental Terms (an "IRS Ruling Dispute"), then the Parties shall submit the IRS Ruling Dispute to binding arbitration pursuant to the expedited dispute resolution provisions as set forth in Sections 8.6(I) and 8.6(J) hereof and LIPA shall promptly submit to the IRS a supplemental Ruling Request incorporating the Arbitrators' decision.

(C) Service Commencement Date. The Service Provider shall begin rendering Operations Services under this Agreement upon the last to occur of the following: (i) 12:00 a.m. on January 1, 2014, (ii) the Effective Date and (iii) the Service Provider having achieved Substantial Completion of the Front End Transition Plan (as defined in the Transition Services Agreement) (the "Service Commencement Date").

(D) Outside Date. If the Effective Date has not occurred by June 30, 2014 or such later date as the Parties may mutually agree in writing, (i) the Sections of this Agreement in effect as of such date (including this Section 2.2) will automatically terminate, and (ii) the amendment and restatement of the Existing OSA as set forth in this Agreement shall not occur.

ARTICLE 3 OWNERSHIP OF THE TRANSMISSION AND DISTRIBUTION SYSTEM

SECTION 3.1 OWNERSHIP OF THE T&D SYSTEM.

(A) LIPA Ownership. The T&D System is owned, leased or otherwise controlled by LIPA and the Service Provider shall not have any legal, equitable, tax, beneficial or other ownership or leasehold interest in the T&D System. Except for such capital investments as the Service Provider may make pursuant to Section 4.2(A)(7) hereof, all additions to the T&D System purchased or constructed directly or indirectly by the Service Provider in conjunction or for the use with any part of the T&D System during the Term shall be the property of LIPA.

(B) Engagement of Service Provider. LIPA hereby engages the Service Provider as an independent contractor (except where the Service Provider is appointed as LIPA's agent as specifically provided herein) to furnish the Operations Services described in this Agreement at and for the Compensation provided for hereunder. The Service Provider hereby accepts such engagement upon the terms and conditions provided for herein. All monies collected by the Service Provider or its Subcontractors pursuant to this Agreement (other than Compensation paid by LIPA to the Service Provider hereunder) shall be the property of LIPA and shall be deposited by the Service Provider daily in such account as LIPA shall specify. In collecting such monies, the Service Provider and any Subcontractor shall act solely as an agent for LIPA and shall have no right or claim to such monies and, without limiting the generality of the foregoing, shall have no right to assert a claim of set-off, recoupment, abatement, counterclaim or deduction for any amounts which may be owed to the Service Provider hereunder or with respect to any other matter in dispute hereunder. The Service Provider is unconditionally and absolutely obligated to pay or deposit all such monies as directed by LIPA.

(C) Use of LIPA Assets. During the Term hereof, the Service Provider and its Subcontractors may enter upon, occupy and operate the T&D System to perform the Operations Services for LIPA in accordance herewith and for no other purpose unless otherwise directed or approved by LIPA. LIPA will own, lease or otherwise control substantially all material assets necessary for the provision of the Operations Services except for such assets of the Service Provider or of its Affiliates which the Service Provider utilizes to achieve efficiency savings, and such capital investments as the Service Provider may make pursuant to Section 4.2(A)(7) hereof. The Service Provider shall have the right to utilize LIPA's assets at no additional charge, but only to perform Operations Services hereunder, unless LIPA otherwise agrees; provided, however, that LIPA will not make available any tax-exempt bond financed assets for use in connection with any non-LIPA activities. If and to the extent that the Service Provider believes any of its own or its Affiliates' assets are more efficient or cost-effective in the Service Provider's performance of Operations Services hereunder and should therefore be used in place of LIPA's assets, the Service Provider shall, to the extent it determines in good faith that it is commercially and legally practicable to do so, inform LIPA and seek its approval to use such assets. If LIPA so approves, the Service Provider shall seek to utilize such assets, whereupon LIPA will compensate the Service Provider therefor as provided in Article 5 hereof.

(D) Encumbrances. The Service Provider shall not, without LIPA's prior written consent, directly or indirectly, create or permit to be created or to remain, and will promptly discharge, at its expense, any Encumbrance on the T&D System, other than

(1) Encumbrances existing as of the Service Commencement Date, and (2) any Encumbrance affecting the T&D System (i) resulting or arising from any action or failure to act by LIPA or anyone claiming by, through or under LIPA (other than the Service Provider and persons claiming by, through or under the Service Provider) or (ii) created by Subcontractors, carriers, warehousemen, mechanics, materialmen, or repairmen arising in the ordinary course of business. Nothing in this Agreement shall be deemed to create any Lien or Encumbrance in favor of the Service Provider on any asset of LIPA, including the T&D System, as security for the obligations of LIPA hereunder.

(E) Surrender of the T&D System. At the expiration or earlier termination of the Term hereof, the Service Provider and, if and to the extent LIPA requests, its Subcontractors shall peaceably leave and surrender the T&D System to LIPA in a condition consistent with the Service Provider's Operations Services responsibilities hereunder. In conjunction with such surrender, the Exit Test shall be conducted in accordance with Section 9.3 hereof.

(F) Right of Access. Notwithstanding any other provision of this Agreement, LIPA, as the owner or lessor of the T&D System, shall have a right of unrestricted access to the T&D System for itself and its Representatives at such times and for such purposes as it deems necessary or desirable. LIPA, its Representatives and the DPS shall have, at LIPA's request, a dedicated on-site office space and access to and use of office facilities and equipment located at ServCo's facilities in Long Island or another suitable site mutually agreed upon and a separate work space adequate to enable LIPA to exercise its oversight rights and responsibilities under this Agreement. LIPA shall pay, as a Pass-Through Expenditure, the Service Provider's reasonable costs of providing such facilities and equipment. LIPA shall also have a right of reasonable access to the T&D System for other visitors upon reasonable notice to the Service Provider. LIPA and its Representatives also shall have a right of access to ServCo facilities at all times.

#### ARTICLE 4 OPERATION OF THE T&D SYSTEM

##### SECTION 4.1 T&D SYSTEM GENERALLY.

(A) Reliance. The Service Provider acknowledges that LIPA, in meeting the Power and Energy requirements of the Service Area, is providing an essential public service, and in complying with Applicable Law, will rely on the performance by the Service Provider of its obligations hereunder.

(B) Limitations on Service Provider Rights. The Service Provider shall not transmit or distribute Power and Energy using the T&D System other than Power and Energy obtained by, on behalf of, or with the approval of LIPA, and shall not use the T&D System (i) for any purpose other than the purposes contemplated hereby or (ii) to serve or benefit any person other than LIPA and its retail and wholesale customers.

(C) Curtailments and Shutdowns. If deliveries of Power and Energy through the T&D System are temporarily reduced, curtailed or shut down for any reason, including due to a Major Storm (as defined herein) or Storm Event (as defined herein), the Service Provider shall, with due consideration of its responsibility for safety and system reliability, as promptly as

possible advise LIPA as to the nature, reason and probable duration thereof and the expected effect thereof on the operation of the T&D System. Such notices shall be given as provided in the Contract Administration Manual. Any announcement concerning such events made to the public or the media shall be made by the Service Provider in accordance with the provisions of Section 4.2(A) hereof.

## SECTION 4.2 OPERATIONS SERVICES.

(A) Scope of Services. The Service Provider shall provide Operations Services for the T&D System on behalf of LIPA at all times in accordance with the Contract Standards. The scope of services to be provided by the Service Provider (the "Scope of Services") will include the following, it being understood and agreed that it is the Parties' intent that except for the rights and responsibilities reserved to LIPA as set forth in Section 4.4 hereof or as may otherwise be expressly provided in this Agreement, the Service Provider shall assume and undertake the rights and responsibilities for management, operation and maintenance of the T&D System (and such additional rights and responsibilities as it may assume pursuant to Section 4.2(A)(6) hereof) and the establishment of policies, programs and procedures with respect thereto, including the following:

(1) T&D System. The Service Provider will be responsible for all electric transmission, distribution, and load serving activities for the safe and reliable operation and maintenance of the T&D System, including expansions and replacements to meet the Contract Standards and LIPA's then current Electric Resource Plan; management and performance of construction of improvements thereto; and delivery of Power and Energy to Service Area customers, including but not limited to the implementation of the following activities:

(a) day-to-day operation of the T&D System, including: satisfying customer concerns; physical operation of the T&D System; maintaining T&D System configuration; maintenance of an Open Access Same-Time Information System ("OASIS"); optimization of reliability performance goals, cost of generation, cost and impact of planned maintenance and use of load shedding; and producing, reviewing and maintaining all operating logs and maintenance records to meet regulatory requirements;

(b) engineering activities, including: analyses related to, and maintenance of records and standards for design and engineering, design standards, construction standards, system mapping and related information, system performance, reliability, root cause analysis, equipment ratings, customer contact and needs assessment; administration of customer contribution in aid of construction; managing an effective environmental health and safety program; maintenance of environmental and regulatory compliance and the documentation thereof;

(c) maintenance of revisions to all T&D System drawings, specifications, construction manuals, equipment diagrams and other technical documentation; management of T&D System interconnection permit applications and processing thereof (including negotiation and administration of generation interconnection agreements); and preparing capital project close-out reports;

(d) preparation of a monthly operations report; development and implementation of asset management strategies and risk optimization for combined technical performance, life cycle cost, customer satisfaction, and regulatory compliance; real estate management, easements, leases and agreements, pole attachments (including billing and collection for pole attachment fees, as well as maintaining a complete inventory of type and location of each attachment and plans for revenue optimization), joint use agreements, and telecommunications for the provision of electric service; meter maintenance; fleet management; materials and services procurement and inventory management; T&D System security to protect the system from vandalism, terrorism, or other acts; emergency preparedness and planning; and warehousing;

(e) preparation of: recommended capital plans and monitoring of the approved annual Capital Budget (including a review thereof by persons familiar with capitalization criteria as prescribed by FERC); risk assessments and analyses in support of capital projects prioritization and planning which shall take into account LIPA's Electric Resource Plan and the goals and objectives set forth in the Long Range Plan (as hereinafter defined); load and energy forecasts; fuel price and quantity forecasting; long and short range system plans, including integrated electric resource plans; proposed annual operating and maintenance plan; and input into LIPA's long-term financial plan;

(f) preparation of long and short range transmission and distribution planning analyses and forecasts to determine the need for Capital Improvements, including introduction of smart grid and other emerging technologies and project management services to ensure the technical performance and reliability of the T&D System and to meet the goals and objectives set forth in the Long Range Plan;

(g) preparation, maintenance and ongoing updating of the Operations Manual and capital planning procedures for use by the Service Provider, including the preparation of a maintenance matrix of preventive and diagnostic maintenance tasks as part of the development of a reliability centered maintenance program;

(h) performance of Capital Improvements and supervision of capital projects including engineering and related design and construction management services and repair or modification activities required due to Public Works Improvements;

(i) cooperation, regarding the Service Provider's performance under this Agreement, with third parties providing services to LIPA with respect to LIPA's provision of electric service in the Service Area;

(j) maintenance, during the Term, of the Contract Administration Manual;

(k) maintenance of mutual aid agreements to support the workforce in restoration response; and

(l) other activities necessary, appropriate or advisable, including research and development, to safely, reliably and efficiently operate and maintain the T&D System in accordance with the Contract Standards.

(2) Customer Services. The Service Provider will be responsible for the performance of customer service functions related to the provision of electric service, except as otherwise provided herein, including the following, and as more fully described in the Contract Administration Manual:

(a) achieving a high level of customer satisfaction, including: determining the approach and methodology for measuring, monitoring, and optimizing customer satisfaction; monitoring customer satisfaction results; overseeing the performance of perception-based and transactional-based customer satisfaction surveys for other service providers; interpreting and communicating the results of customer surveys; coordinating initiatives aimed at improving the product portfolio, service delivery mechanisms, and overall customer satisfaction across the full spectrum of services provided, such as system operations and electronic transaction and self help options, customer interactions and back-office functions;

(b) maintaining customer contact through call centers with toll free service numbers, customer offices, authorized payment centers, maintaining and overseeing a customer website and other electronic media, inbound and outbound customer communication systems, management of customer loyalty and satisfaction programs, customer services field operations, and customer care and institutional communications and responding to customer inquiries regarding services;

(c) marketing and sales for retail system expansion, retail customer retention, and customer care and service programs, including all aspects of marketing planning and implementation activities, promotion and communications; market research; account relationship management; economic development; field sales; trade ally relations; and demand response, renewable and energy efficiency programs;

(d) managing the billing and revenue cycle processes associated with retail and wholesale electric sales and other services, including: meter reading; customer billing; payment processing; credit and collections; and revenue protection; assuring billing accuracy and investigating and resolving in a timely manner, all billing errors and disputes; issuing customer refunds and credits; and setting new customer billing cycles to promote even cash flow throughout each month;

(e) managing the rates, tariffs and load forecasting functions, including: performance of system revenue requirement and class cost of service studies; rate case preparation, participation and prosecution before the DPS as provided in Article 6 hereof and the LIPA Reform Act, including the Three Year Rate Plan; participating in and prosecuting with respect to transmission facilities to be owned by LIPA as part of its transmission system transmission siting proceedings as provided in Article VII of the New York State Public Service Law; proposing and evaluating rate designs and tariff changes; tariff administration and enforcement; monitoring of regulatory trends and developments; performance of load research; and preparation of load and sales forecasts; and

(f) other activities necessary, appropriate or advisable to implement customer service programs in accordance with the Contract Standards or as the LIPA Reform Act may require.

(3) Finance, Accounting, Budgeting and Financial Forecasting and Treasury Operations. The Service Provider will be responsible for all finance, accounting, budgeting, longer-term financial forecasting and treasury operations related to the T&D System, including the following activities:

(a) Accounting and Reporting.

(i) maintenance of a complete and separate set of financial and accounting records relating to the Operations Services, in accordance with GAAP and other applicable standards;

(ii) maintenance of a general ledger and all subledgers in accordance with the FERC chart of accounts necessary to support the preparation of monthly financial statements and management reports for ServCo;

(iii) on a monthly basis, provision of (x) a balance sheet, an income statement (including a revenue analysis) and a direct method cash flow statement for ServCo, and (y) variation analyses to explain the month's results with explanations; in each case not later than one (1) Business Day following Service Provider's receipt thereof from NGES until the expiration or earlier termination of the NGES TSA, and thereafter, within five (5) Business Days after the end of each month in the case of the items referred to in the preceding clause (x) and within ten (10) Business Days after the end of each month in the case of the items referred to in the preceding clause (y);

(iv) year-end financial statements for ServCo within forty-five (45) days after the end of each fiscal year;

(v) analysis of all accounts, providing variance analysis of and explanations for both actual period-to-period variances (on a monthly basis) and budget versus actual variances (on a monthly basis) to the extent requested by LIPA;

(vi) (x) performance of all accounting and reporting functions necessary to support the T&D System operations, (y) performance of tax and PILOT reporting functions (including monitoring, reviewing and verifying all tax billings), provision of information to LIPA in connection with LIPA's contesting of tax and PILOT-related assessments and the payment of tax and PILOT-related invoices authorized by LIPA and (z) the maintenance of the fixed assets records in accordance with FERC and other applicable regulatory or accounting requirements;

(vii) preparation from time to time as requested by LIPA, but no less frequently than every five (5) years, of a depreciation study, the goal of which is to determine consolidated annual depreciation accrual rates and factors that relate to the fair and timely recovery of capital invested in the assets of LIPA, including general plant;

(viii) preparation of the monthly EIA form 826 and the Annual EIA form 861, including supporting schedules;

(ix) separate accounting and reporting that may be required from time to time for any federal and state grants received by the Authority;

(x) billing, tracking, reporting, managing, and collecting of all attachment fees, rents and other “non-product” revenues due to LIPA associated with services provided or related to lighting, telecommunications and other equipment attached to or located on the T&D System Site;

(xi) provision of accounting memorandum documenting procedures used in creating journal entries related to the T&D System;

(xii) accounting for and documenting the costs and revenues resulting from the Service Provider’s performance under this Agreement in accordance with GAAP, GASB, FERC, NYSPSC and any other applicable accounting requirements as determined necessary by LIPA; and

(xiii) reconciliations (including bank account reconciliations), which will be performed monthly, quarterly or annually based on the risk associated with the account being reconciled, in each case (x) if the month in which the reconciliation is being performed is a quarter-ending month (other than December), by the end of the subsequent month or (y) if the month in which the reconciliation is being performed is a non-quarter ending month or December, within forty-five (45) days after the end of such month.

(b) Budgeting and Financial Forecasting.

(i) preparing and monthly monitoring of budgets necessary for both capital and operating expenses for the services provided by the Service Provider under this Agreement;

(ii) analyzing monthly and year-to-date budget to actual variances, and explanations thereof and formulating financial projections based on the variance analyses;

(iii) analyzing revenue and expenditure projections for the annual or multi-year period beyond the period of actual results; and

(iv) preparing and delivering sales, revenues and costs budget input data for the annual budgeting processes, the Three Year Rate Plan and LIPA’s five year and other long-range financial planning process.

(c) Auditing.

(i) auditing of attachment fees, rents and other revenues due to LIPA associated with services provided on or related to lighting, telecommunications and other equipment attached to or located on the T&D System Site;

(ii) internal audit function to perform annual risk assessment related to the T&D System for the purpose of developing the appropriate risk based



audit universe and associated annual audit plan as well as performing financial, regulatory and third party contract compliance and operational audits and reviews, including review of the associated internal controls, based on the results of the annual risk assessment and associated annual audit plan;

(iii) provision of all necessary information and assistance to LIPA's external auditors in connection with their audit of the financial statements and underlying financial records maintained by the Service Provider related to the services provided under this Agreement; and

(iv) provision of copies of, and reasonable access to, the risk based audit universe and associated annual audit plan referenced in clause (ii) above; and the right of LIPA to inspect, during normal business hours and upon reasonable prior notice, internal audit reports and recommendations of ServCo and management responses thereto; it being agreed, however, that the foregoing information shall be deemed to be Confidential Information subject to Section 10.4 hereof and shall therefore not be used by LIPA except with respect to any fraudulent conduct or willful misconduct identified in such reports and recommendations.

(d) Treasury Operations.

(i) timely and accurate collection of customer remittances and other "non-product" revenue on LIPA's behalf through lockbox operations, customer centers and other sources;

(ii) monthly or as requested cash flow projections (including daily, weekly and monthly forecasts of customer cash receipts) and cash management services; and

(iii) monthly reconciliations of LIPA bank accounts that are managed on behalf of LIPA by the Service Provider for the provision of Operations Services.

(e) Other.

(i) provision of information and data (both financial and operational) to support LIPA's financing activities and the administration by LIPA of its debt service and required periodic filing requirements;

(ii) provision of assistance (including provision of information and data (both financial and operational)) to LIPA in connection with LIPA's preparation of reports and other documents to satisfy LIPA's reporting requirements including: quarterly and annual (year-end) financial reporting; monthly and annual federal agency reporting requirements; Federal ARRA and other federal and state stimulus program reporting requirements; Department of Energy reporting requirements; and filings relating to Operations Services in compliance with New York State and other Applicable Laws;

(iii) record keeping in compliance with New York State and other Applicable Laws; and

(iv) any other accounting and finance related activities necessary or advisable to support the operations of a stand-alone electric transmission and distribution business as LIPA may request from time to time.

(4) General Activities. The Service Provider will be responsible for the following general activities with respect to the provision of electric service to customers of the T&D System:

(a) Governance

(i) assigning a full-time, core Senior Management team from the Service Provider with defined responsibilities (each a “Senior Manager”) to carry out in a timely manner the Service Provider’s obligations under this Agreement and from which one such Senior Manager, located on Long Island, shall be designated as the Service Provider’s single point of contact for LIPA with decision making authority and overall oversight responsibility related to the Operations Services;

(ii) assigning and supervising the Service Provider, ServCo and Subcontractor workforce consistent with the day-to-day requirements of this Agreement; and

(iii) assigning and allocating physical resources consistent with the day-to-day and special occasion operational requirements of this Agreement.

(b) Information Technology

(i) as more fully described in Section 4.11 hereof, providing information technology systems maintenance support and improvements in accordance with strategic goals of achieving interoperability and “near plug and play” flexibility of open design and standard-based data architecture and in compliance with requirements for technical architecture, data modeling and software development life cycle; and safeguarding the system software and data.

(c) Human Resources

(i) providing all personnel and human resource-related services and personnel training for the Service Provider and ServCo personnel and providing emergency and other training to LIPA personnel consistent with the other services provided by the Service Provider under this Agreement, including preparing, maintaining and providing to LIPA staffing and training plans;

(ii) developing and maintaining System Policies and Procedures and any other procedures necessary, appropriate or advisable relating to the provision of Operations Services hereunder, and training the Service Provider and ServCo workforce in accordance therewith;

(iii) interfacing with the labor union representing any ServCo employees and management of ServCo’s labor and employee relations;

Benefit Plans;

- (iv) administration and management of the ServCo

- (v) recruiting, retaining, deploying, and supervising ServCo and subcontract labor and resources; and

- (vi) developing safety programs, safety reports, and written procedures and practices for the Service Provider's staff.

(d) Procurement

- (i) procuring from third parties, including MWBEs, other goods and services and managing such procurement and implementation and reporting activities relating to the Scope of Services in accordance with applicable LIPA, New York State and federal procurement requirements, as necessary or appropriate.

(e) Implementation of Emergency Response and Reporting

To the extent required by the LIPA Reform Act and the Contract Standards, the Service Provider, will be responsible for developing (in consultation with LIPA) and implementing business continuity, disaster recovery and emergency response plans, and all necessary emergency response, reporting and communication functions relating to the T&D System and other assets, and coordinating such plans with the plans of LIPA's other service providers for business continuity and disaster recovery, including but not limited to, response, reporting and public communications relating to storms, other unusual weather occurrences and other emergencies as follows, including the following activities:

- (i) (x) timely reporting to such Governmental Bodies as may be necessary, appropriate or advisable of such emergency conditions including regular updates as to the courses of action taken in response thereto or in anticipation thereof and progress made in responding to such emergency conditions and (y) periodic reporting to LIPA of such emergency conditions as necessary or appropriate to permit LIPA to exercise proper oversight of the Service Provider's response to emergency conditions;

- (ii) storm monitoring and mobilization of the Service Provider or Subcontractor's workforce (including workforce available under any mutual assistance agreements) in connection with anticipated storms and other electrical system emergencies;

- (iii) media, fire, police and government coordination;

- (iv) customer communications, including all inbound and outbound customer communication systems;

- (v) system condition monitoring;

- (vi) repair and replacement of damaged components of the T&D System, including due to Non-Storm Emergency Events;

- (vii) public safety activities;
- (viii) restoration of the T&D System to pre-emergency conditions;
- (ix) conducting periodic drills (including as required by the LIPA Reform Act) to test the validity of emergency response plans and strategies, conduct post-event analysis and incorporate lessons learned from drills and actual events to improve the overall state of readiness; and
- (x) preparation and analysis of all information and data to support claims for reimbursement from FEMA for costs incurred due to Storm Events.

(f) Continuous Improvement

(i) development and administration of research and development, the goal of which is to increase operational efficiency and effectiveness and improve maintenance practices;

(ii) establishing and conducting a continuous improvement program designed to enhance the Service Provider's performance, operational efficiency and the cost effective delivery of services to customers; and

(iii) monitoring industry advancements and technological changes in the operation, maintenance, repair and expansion of transmission and distribution systems, including customer care and related services, by electric utilities.

(g) Communications

(i) staffing public events and presenting workshops, seminars, and similar activities during normal business hours, evenings, weekends, and holidays; and

(ii) conducting government, community and media relations with respect to the management, operation and maintenance of the T&D System in accordance with such policies and procedures as the Service Provider may from time to time adopt in its sole discretion.

(h) Environmental, Health and Safety

(i) managing an environmental, health and safety program to meet specified performance standards;

(ii) maintaining environmental and regulatory compliance of the T&D System, including documentation thereof;

(iii) providing coordination, oversight and maintenance of environmental compliance (including compliance by power suppliers);

(iv) monitoring emerging federal, state and local government environmental and utility commission regulations to ensure future and ongoing compliance and operational efficiencies; performing analyses of proposed regulations;

(v) providing environmental permitting services to support operations; and

(vi) maintaining the corporate environmental profile with stewardship, reporting, and best practices relating to environmental endeavors.

(i) NMP2 Oversight

(i) administering, managing and providing strategic advice, as requested, in connection with LIPA's co-ownership interest in NMP2, including: participating in meetings of the joint owners of NMP2; on site representation; budget versus actual analysis of these operations (including both O&M and capital); developing bi-monthly call for funds reports, monitoring and reviewing the Nuclear Regulatory Commission required ARO (Asset Retirement Obligation) calculation (prepared every five (5) years); reviewing the monthly reporting package to assist LIPA's financial staff in understanding the operations of the facility; providing assistance in determining the annual funding requirements for LIPA's nuclear decommissioning trust funds; and providing financial data for LIPA financial statements and reporting requirements.

(j) Regulatory

(i) monitoring the regulatory environment and general marketplace for changes or trends that could impact the T&D System.

(k) Legal

(i) day-to-day legal responsibilities relating to the Operations Services, in coordination with LIPA in accordance with processes set forth in the Contract Administration Manual.

(l) Energy Markets

(i) representation of LIPA (conducting business as LI Power Supply or other trade name) before NERC, NYISO, NY State Reliability Council, ISO-NE, NPCC and PJM and other similar regulatory or industry bodies, in each case if requested by LIPA and subject to Sections 4.18 and 10.4 hereof; provided, however, that: (x) this paragraph (l) shall not apply to representation before FERC; and (y) nothing in this paragraph (l) or otherwise in this Section 4.2, except as specifically provided in Section 4.2(A)(2)(e) hereof, shall apply to representation before the DPS or the NYSPSC, which is subject only to Article 6 hereof; and

(ii) assistance with LIPA's development of the Electric Resource Plan, provided, however, that, upon the Service Provider's assumption of direct responsibilities for the electric planning functions of the LIPA Power Supply Group in

accordance with Section 4.2(A)(6) hereof, the Service Provider shall have the direct responsibility to develop the Electric Resource Plan.

(m) Contract Administration

(i) providing contract administration of all generation and transmission under contract to LIPA, as well as consumer-owned generation resources including: billing and collection of all fees and charges in connection with the use or availability of the T&D System for transmission and distribution services; reviewing invoices to, and preparing invoices from, LIPA for generation and transmission services provided or received by LIPA; interfacing with daily operation of contract counterparties; providing accounting for, reporting of, and general contract administration (including billing and collection services on behalf of LIPA) for pole attachments, contributions in aid of construction, and sales of emission credits; and developing, operating and maintaining an electronic system to manage and monitor contract administration.

(n) Performance Measurement and Reporting

(i) producing and delivering to LIPA information as LIPA may reasonably request to determine the Service Provider's performance under this Agreement.

(o) Government Relations

(i) coordinating, conducting and formulating communications with municipal, local, state and federal representatives and organizations relating to operation and maintenance of the T&D System and provision of utility-related services by the Service Provider, in accordance with such policies and procedures as the Service Provider may from time to time adopt in its sole discretion,

(p) Fleet Management, Refueling

(i) as more fully described in the Contract Administration Manual, providing fleet management and vehicle refueling operations, including scheduling of vehicle replacements, specification of technical requirements, compliance with state and federal alternative fuel environmental compliance programs, performance of maintenance activities, maintenance of vehicle signage, and other similar functions.

(q) Facilities Management (Maintenance, Utilities, Communications)

(i) contracting for and maintaining services, including utilities, communication systems, and internet and intranet services to fulfill the Service Provider's obligations under this Agreement.

(r) Records Management

(i) developing and maintaining a comprehensive document management program with records storage, retention and destruction guidelines and procedures, in accordance with applicable state and federal guidelines and regulations.

(s) Insurance Procurement, Maintenance and Management

(i) as and to the extent provided in Section 4.9 hereof, obtaining and maintaining insurance policies covering the T&D System; and

(ii) as more fully described in Sections 4.9 and 4.10 hereof and in the Contract Administration Manual, providing insurance management services, placing insurance with carriers, and claims management and processing.

(t) Necessary Equipment and Systems

(i) determining, acquiring, deploying, and maintaining tools, equipment, and information systems necessary to perform all Operations Services under this Agreement.

(u) Energy Efficiency and Renewable Sources of Energy

(i) promoting, administering, planning, developing and implementing energy efficiency, demand response, load management, and renewable energy programs and policies, including research and demonstration projects for the T&D System and LIPA's customers, coordination with third parties or other resources necessary or desirable to develop and implement such programs and responding to customer inquiries with respect to such programs or service;

(ii) implementing the Energy Efficiency Programs pursuant thereto; and

(iii) forming, in conjunction with LIPA, and providing appropriate resources to an advisory committee comprised of no more than five (5) stakeholders not affiliated with the Service Provider or LIPA (and who shall not receive compensation for their service on the advisory committee) on clean and renewable energy programs, which committee will (until such time as the Parties may agree that the desired market transformation has been sufficiently achieved) hold periodic public meetings to provide input and recommendations to the Service Provider on demand reduction goals, renewable program goals established under various state initiatives by the DPS for New York utilities and similar matters. The committee will provide input on the role and scope of these resources in meeting resource needs.

(v) Branding and Customer and Public Communications

(i) Commencing not later than the Service Commencement Date, the Service Provider and its management shall become the name and face of the T&D System electric utility service in the Service Area for the Term. To that end, beginning immediately on the Service Commencement Date, the Service Provider Marks will as

promptly as practicable replace the LIPA Marks, including on all signage, customer bills, vehicles, equipment, uniforms, letterhead, and on utility-related communications, advertisements, public announcements, websites and similar areas for the Term and the Service Provider shall have full authority to determine policies and procedures with respect to the use the Service Provider Marks. Upon the expiration or earlier termination of this Agreement, the Service Provider shall no longer be the name or face of the T&D service in the Service Area and the Service Provider Marks shall, as promptly as practicable and in any event within thirty (30) days, be removed from the aforementioned areas, and all rights to the Service Provider Marks granted by the Service Provider to LIPA (or to any entity other than the Service Provider and its Affiliates) under this Agreement, including any licenses or sublicenses with respect thereto, subject to the foregoing phase-out period, will terminate, in each case unless otherwise agreed to in writing by the Service Provider.

(ii) It is the Parties' intention that to enable the Service Provider to effectively communicate with the customers and government officials regarding Service Area T&D System matters, the Service Provider shall have direct responsibility for media and other public communications on all utility-related matters, including communications with public officials and local municipalities and counties regarding storm preparation, management, coordination and response, customer communications, programs and complaints and related matters. Accordingly, the Service Provider shall have full authority to determine all communications policies and procedures relating to its provision of Operation Services under this Agreement. Notwithstanding the foregoing, except as otherwise specifically provided herein, to the extent the Service Provider incurs costs that are for the purpose of generally promoting or advertising its name or brand in the Service Area (other than as specifically contemplated in this Agreement or to satisfy a requirement of a Governmental Body as agreed to by the Service Provider), such costs shall not be reimbursable as a Pass-Through Expenditure unless approved in writing by LIPA.

(5) Utility 2.0. Not later than July 1, 2014, and annually thereafter, the Service Provider shall submit to the DPS and LIPA for their review a proposed long range capital and operating plan (the "Long Range Plan") to improve the T&D System's long run flexibility, service and value to customers and move the T&D System toward a customer-centric model. The Long Range Plan shall, among other things, be designed to:

(a) provide greater (i) customer flexibility for distributed energy resources and management, (ii) system-wide benefits in energy affordability and improved service and (iii) system resiliency and reliability;

(b) incorporate, where cost effective, programs to reduce or defer significant capital expenditures associated with the traditional T&D System and smooth peak demand, including programs related to energy efficiency, demand response, distributed generation, energy storage, micro-grid systems and vehicle recharging;

(c) incorporate, where cost effective, advanced power controls for transmission and distribution facilities, technology-based energy efficiency and load management programs, real-time power monitoring equipment and integrated communications systems; and



(d) identify those portions of the T&D System for which unregulated, value-added services could be offered to customers by alternative energy providers, including the Service Provider's Affiliates.

The Parties agree to provide a public participation and comment process, and to hold at least one technical conference, related to the initial Long Range Plan. The Service Provider shall take into account the recommendations and comments of the DPS, LIPA and the public in developing the initial Long Range Plan and any annual revisions thereto. Thereafter, the Service Provider will endeavor to implement the Long Range Plan during the Term and shall report annually to LIPA and, as and to the extent the LIPA Reform Act requires, to the DPS, its progress against the Long Range Plan's objectives and goals.

(6) Power Supply Management, Fuel Procurement, Energy Markets and Related Services.

(a) Commencing January 1, 2015, the Service Provider or its designated Affiliate shall have the right, exercisable upon written notice to LIPA not later than ten (10) Business Days following the Effective Date, to provide LIPA, from January 1, 2015 to December 31, 2025, with certain power supply management, fuel procurement and related services as set forth and on the terms, conditions and performance criteria provided in Appendix 7 hereto, which services are hereby sourced by LIPA under this Agreement.

(b) Promptly following the date of this Agreement, LIPA shall, with respect to its wholesale power markets operations currently conducted by the LIPA Power Supply Group, establish a separate trade name referred to for convenience as "LI Power Supply" and thereafter conduct such wholesale power markets operations thereunder.

(c) It is the Parties' understanding and agreement that as soon as practicable following the Service Commencement Date (but in any event not later than December 31, 2014), LIPA shall transfer to the Service Provider or its designated Affiliates, and the Service Provider or such Affiliates shall assume, the functions and responsibilities of the LIPA Power Supply Group as of the date of this Agreement, including its electric planning function (but excluding wholesale power markets policy and decision-making responsibilities, which LIPA shall retain, but with the Service Provider's support and assistance with respect thereto, as provided in Section 4.4(A)(3) hereof), which transfer and assumption may be effected in phases; provided, however, that no such functions or responsibilities shall be transferred to or assumed by the Service Provider to the extent such transfer or assumption would subject the Service Provider or ServCo to substantive rate or similar jurisdiction by FERC or require a filing pursuant to Section 203 of the Federal Power Act. The Parties shall work in good faith to effect such transfer or assumption under this Section 4.2(A)(6)(c).

(7) Optional Capital Additions. The Service Provider shall from time to time during the Term have the opportunity to propose to LIPA capital investments which would be made and owned by the Service Provider or its designated Affiliate in those programs and projects set forth in Appendix 8 hereto, which investments are hereby deemed to be within the Scope of Services and are expected to result in meaningful reduction in customer energy usage and the overall cost of energy in the Service Area; provided, however, that no such

investments may be made which (i) would in any manner jeopardize, in LIPA's sole discretion, the tax exempt status of LIPA's bonds or violate the Bond Resolutions or related bond covenants, (ii) would violate any of LIPA's related local franchise agreements. The Service Provider shall provide LIPA with a description in sufficient detail to enable LIPA to make a fully informed assessment and analysis of any such proposed capital investment together with the reasons and cost justification therefor. If LIPA decides to accept the Service Provider's proposal and the Service Provider should make any such capital investments, the Service Provider shall have the opportunity to earn a reasonable rate of return thereon consistent with the returns permitted to be earned on such investments by New York State electric transmission and distribution utilities. The Parties shall agree on the structure and rate of return at the time the Service Provider agrees to make any such capital investment.

(8) Additional Services. If requested by LIPA, the Service Provider will perform additional services reasonably related to the T&D System and other assets and not included within the Scope of Services based upon terms and conditions agreed to by the Parties.

(9) NGES TSA. The Parties acknowledge that the Service Provider's delivery of certain finance, accounting, budgeting, financial forecasting and treasury information and data may be dependent upon the effectiveness of, and NGES' performance under, the NGES TSA. Accordingly, notwithstanding anything to the contrary in this Agreement, the Service Provider shall not be obligated to deliver to LIPA any such information or data that NGES is obligated to deliver to the Service Provider under the NGES TSA, anytime earlier than one (1) Business Day after the Service Provider's receipt of such information. The exemption in the immediately preceding sentence shall terminate upon the expiration or earlier termination of the NGES TSA.

(B) Contract Administration Manual. Not less than ninety (90) days prior to the Service Commencement Date, the Service Provider shall deliver the completed Contract Administration Manual subject to LIPA's review and approval which shall not be unreasonably withheld or delayed. The Contract Administration Manual will set forth documentation, reporting and other procedures for all aspects of the administration of this Agreement, measurement and reporting of administrative information as required by this Agreement, protocols and similar matters. The Service Provider shall be responsible for maintaining the Contract Administration Manual by making necessary updates, supplements, or revisions thereto from time to time to reflect applicable Contract Standards and such policies and procedures as the Service Provider may adopt from time to time as provided in this Agreement consistent with the Contract Standards.

(C) Operations Manual. Not less than ninety (90) days prior to the Service Commencement Date, the Service Provider shall deliver updates, supplements or revisions (with LIPA's participation) to the Operations Manual as necessary to reflect the provision of the Operations Services to be performed under this Agreement. The content of the Operations Manual shall be consistent with the terms and conditions of this Agreement, shall provide for the management and operation of the T&D System in accordance with the Contract Standards and shall otherwise be sufficiently detailed to permit the management and operation of the T&D System by LIPA or a successor service provider reasonably experienced in electricity transmission and distribution operations. The Service Provider shall ensure that, during the

Term, LIPA will have a complete and current copy of the Operations Manual by promptly supplying LIPA with any such updates, supplements or revisions thereto.

(D) Consequence of Review of Manuals by LIPA. Neither the review of or comment on by LIPA, nor the failure of LIPA to comment on, the Contract Administration Manual or the Operations Manual shall relieve the Service Provider of any of its responsibilities under this Agreement or impose any liability upon LIPA.

(E) No Legal Representation. In performing the Scope of Services described herein, nothing in this Section 4.2 shall require, or shall be construed as requiring, the Service Provider to act as legal counsel to, or to provide legal advice or representation to, LIPA.

#### SECTION 4.3 PERFORMANCE METRICS.

The Parties have established certain performance metrics, as set forth in Appendix 9 hereto, to measure the Service Provider's performance against specified operational and customer satisfaction goals (the "Performance Metrics"). Pursuant to these Performance Metrics, the Service Provider shall be eligible to earn Incentive Compensation and may in certain circumstances be assessed a penalty against the fixed component of the Management Services Fee based on the Service Provider's performance during a Contract Year as measured against the relevant Performance Metrics. The Parties may mutually agree to amend or otherwise adjust the Performance Metrics under certain circumstances as contemplated in Sections 5.2(B) and 5.3 hereof. The Performance Metrics, as amended from time to time, shall form the basis for establishing the Minimum Performance Level Metric and the Term Extension Option Criteria as provided in Appendix 13 hereto and Appendix 6 hereto, respectively.

#### SECTION 4.4 RIGHTS AND RESPONSIBILITIES OF LIPA.

(A) Generally. As the owner, lessor or controlling entity of the T&D System, LIPA retains the ultimate authority and control over the assets comprising the T&D System. In connection therewith, LIPA has continuing oversight responsibilities and obligations with respect to the operation and maintenance of the T&D System and the Service Provider's provision of the Operations Services hereunder. Without limiting the generality of the foregoing, LIPA's specific rights and responsibilities with respect to the T&D System shall include:

- (1) the right to determine all T&D System rates and charges;
- (2) the right to review and approve the Consolidated LIPA Budget pursuant to the procedures outlined in this Agreement, the Contract Administration Manual and the LIPA Reform Act;
- (3) the right and responsibility to (a) conduct with the Service Provider's support and assistance the functions and responsibilities of the LIPA Power Supply Group unless and to the extent any function or responsibility thereof is transferred to and assumed by the Service Provider in accordance with Section 4.2(A)(6)(c) hereof and (b) represent its interests in coordination with the Service Provider, in connection with NERC, NPCC, the NYISO, the NYSPSC, the ISO-NE, PJM and any other similar industry or regulatory institutions or organizations;

(4) the right to review the power resource model and plan developed for the T&D System and the load forecasts developed by the Service Provider;

(5) the responsibility for financing the business and operations of the Authority and LIPA and for compliance with LIPA Board of Trustees resolutions and management of financial resources including (i) determination of the sources of financing, (ii) communications and reporting to, and filings with, lenders, rating agencies and Governmental Bodies as necessary or appropriate with respect to the foregoing and (iii) preparation of documents related to (x) the capital market activities and the management of the financial resources of the Authority and LIPA or (y) any of the foregoing;

(6) the responsibility for compliance with Bond Resolution provisions and the administration of debt service for all debt of LIPA or the Authority;

(7) overall responsibility for LIPA's and the Authority's legal matters, including their reporting and related legal compliance;

(8) the right to approve (which approval shall not be unreasonably withheld or delayed) the Service Provider's decisions regarding the appointment or replacement of its president/chief operating officer and four most senior executive managers responsible for operations, customer care, power supply/wholesale marketing and administration;

(9) the responsibility to (a) respond in a timely and adequate manner to all requests of the Service Provider for action or decision by LIPA with respect to all matters requiring the approval, review or consent of LIPA hereunder and as to such other matters relating to the obligations of the Service Provider hereunder as to which the Service Provider shall reasonably request the response of LIPA in accordance with the provisions of this Agreement and (b) provide the Service Provider with such information, data and assistance as may be reasonably necessary or appropriate for the Service Provider to perform its obligations (including with respect to any DPS rate or other proceeding or requirement) hereunder;

(10) (a) the right to review, with the Service Provider's assistance, and approve power and fuel supply agreements (other than any power and fuel supply agreements entered into in the performance of the services described in Section 4.2(A)(6)(a) hereof) and (b) the right to own and construct new generation;

(11) the responsibility to directly prosecute all tax or PILOT challenges, appeals and settlements and to directly make or authorize all appropriate tax payments and PILOTs;

(12) the right (including audit rights) to all information relating to all services provided under this Agreement by the Service Provider, ServCo and any Subcontractors and Affiliates;

(13) the right to coordinate and control the performance of the Exit Test subject to the provisions of Section 9.3 hereof;

(14) the responsibility to undertake the obligations imposed on LIPA as a co-owner of Nine Mile Point 2 and to directly make or authorize all appropriate payments relating to LIPA's ownership interest in Nine Mile Point 2;

(15) in conjunction with the Service Provider, development of the Electric Resource Plan, until such time as the Service Provider assumes direct responsibilities for the electric planning function of the LIPA Power Supply Group in accordance with Section 4.2(A)(6)(c) hereof; and

(16) the right to (i) undertake such actions, (ii) receive additional information, (iii) consult with the representatives of the Service Provider and (iv) make recommendations to the Service Provider, in each case as may be reasonably necessary or appropriate to perform LIPA's oversight responsibilities and obligations with respect to the provision of Operations Services under this Agreement and as may otherwise be necessary or appropriate to comply with LIPA's legal, contractual and fiduciary obligations; provided, however, that notwithstanding anything in the lead-in paragraph of Section 4.2(A) hereof, this Section 4.4(A)(16) shall be subject to and shall not be in limitation of the rights, authority and responsibilities of the Service Provider under Section 4.2 hereof.

(B) T&D System Access Policies and Prices. LIPA has established and will maintain in effect non-discriminatory prices and policies for access to, and use of, its transmission facilities for its customers, the Service Provider or its Affiliates, and other parties providing similar services, in a manner which is designed to enable LIPA to recover its costs and not inequitably shift costs among customers or classes of customers.

#### SECTION 4.5 SERVCO; STAFFING AND LABOR ISSUES.

(A) Organization. Pursuant to the terms of the Transition Services Agreement, the Service Provider shall form a subsidiary service company ("ServCo") to provide substantially all of the Operations Services required under this Agreement. ServCo will be organized as a New York limited liability company and a wholly-owned subsidiary of the Service Provider. Without LIPA's prior approval, ServCo may not engage in any other business or activity other than to provide Operations Services pursuant to this Agreement.

(B) Ownership Maintenance. During the Term hereof, the Service Provider will maintain ownership of all of the ServCo membership interests (the "Membership Interests") free and clear of any Encumbrances other than those created under this Agreement.

(C) Employees.

(1) Employment. Within a reasonable period of time (but not less than sixty (60) calendar days) prior to the Service Commencement Date, ServCo shall: (i) offer employment to employees of NGES who are covered by the IBEW Local 1049 collective bargaining agreement(s) with NGES (the "IBEW CBA(s)") and, at such time, are employed in positions that are required to provide on a full time equivalent basis services to LIPA under the MSA (collectively, "Union Employees," and each such person who becomes employed by ServCo pursuant to this Section 4.5(C) shall be referred to herein as a "Transitioned Union Employee"); and (ii) offer employment to certain other employees of NGES employed in

positions that are required to provide on a full time equivalent basis services to LIPA under the MSA and as determined during the Transition Period under the Transition Services Agreement as necessary for ServCo to provide Operations Services under this Agreement; (collectively, “Non-Union Employees”, and each such person who becomes employed by ServCo pursuant to this Section 4.5(C) shall be referred to herein as a “Transitioned Non-Union Employee.”) The Transitioned Union Employees and the Transitioned Non-Union Employees are sometimes collectively referred to as “Transitioned Employees.” ServCo shall, during the Term, employ such additional employees (“New Employees” and together with the Transitioned Employees, the “ServCo Employees”) as are necessary to supplement the Transitioned Employees to provide Operations Services. New Employees shall not be subject to this Section 4.5(C). Following acceptance of offers of employment to Transitioned Employees as described in this paragraph, ServCo shall obtain permission from each Transitioned Employee for ServCo’s review of the Transitioned Employee’s files and records, and shall provide written notice thereof to NGES. LIPA shall use commercially reasonable efforts to require NGES to provide ServCo with reasonable access to the files and records of such Transitioned Employees. ServCo may offer employment to LIPA employees whose positions at the Authority will be eliminated as required by the LIPA Reform Act. Transitioned Employees shall not include LIPA employees who accept offers of employment with ServCo. LIPA employees who are employed by ServCo shall be eligible to participate in the ServCo Benefit Plans that non-union or union New Employees, as the case may be, shall be eligible to participate. Such LIPA employees shall receive credit under the applicable ServCo Benefit Plans for their LIPA years of service for purposes of eligibility and vesting.

(2) Individuals who are otherwise Union Employees but who on the Service Commencement Date are not actively at work due to a leave of absence covered by federal or state law, a leave of absence authorized by the IBEW CBA or applicable company policy, or out of work receiving short-term disability benefits or long-term disability benefits, shall nevertheless be treated as “Union Employees” on such date if they are able (i) to return to work within the protected period under the leave (whether provided for by law, the IBEW CBA or company policy) or within the period of time for which they are eligible to receive short-term or long-term disability benefits, whichever is applicable, and (ii) to perform the essential functions of their job, with or without a reasonable accommodation upon their intended return to work date.

(3) Offers of employment made to Union Employees shall be made at initial terms and conditions of employment comparable to those set forth in IBEW CBA(s). ServCo shall recognize each Transitioned Union Employee’s service and seniority with NGES and any affiliate of NGES for all non-pension purposes, including the determination of eligibility and extent of service or seniority-related welfare benefits such as vacation and sick pay benefits. Such offers of employment shall remain open for a period of ten (10) Business Days. Any such offer which is accepted within such ten (10) Business Day period shall thereafter be irrevocable, except for just cause (as defined under the IBEW CBA), until the Service Commencement Date.

(4) Offers of employment made to Non-Union Employees shall (i) be made at terms and conditions of employment set by ServCo, provided that such offers shall be designed to attract and retain the employees necessary to provide the services required by this Agreement and to maximize continuity in the workforce providing services under the MSA,

(ii) be competitive with offers being made by other similarly situated companies to employees for similar positions and (iii) consider, among other things, each Non-Union Employees years of service, salary or wage level and bonus opportunity to which they were entitled immediately prior to the Service Commencement Date.

(5) During the period January 1, 2014 through December 31, 2015, ServCo may offer employment to Non-Union Employees and Union Employees. Such Non-Union Employees and Union Employees who accept employment with ServCo on or prior to December 31, 2015 shall be treated as Transitioned Employees under this Agreement, provided, however, that (i) the Effective Date for such Transitioned Employees shall be their date of employment with ServCo, and (ii) such Non-Union Employee or Union Employee shall be treated as a Transitioned Employee only if the Non-Union Employee or Union Employee will perform the same services in the same capacity as he or she did at NGES.

(6) Effective on or prior to the Service Commencement Date, the Service Provider will cause ServCo to assume the existing IBEW CBA(s) with respect to the Transitioned Union Employees. ServCo shall comply with any bargaining obligations it may have with the IBEW as a result of employing Transitioned Union Employees.

(7) The Service Provider may not, without LIPA's prior written approval, utilize ServCo or its employees for any purpose other than providing Operations Services under this Agreement, nor may it hire, for any other business of Service Provider or an Affiliate, any existing ServCo employees without LIPA's prior written consent.

(8) Prior to commencing negotiations with the IBEW with respect to any new, amended or extended CBA or related agreement or memorandum of understanding, as in effect on the date hereof, the Service Provider shall advise LIPA of the Service Provider's negotiating objectives and any financial terms such as wages, compensation, and/or benefits to be contained in the CBA.

During the CBA negotiation process, the Service Provider shall update LIPA with respect to the status of the negotiations, the principal issues under discussion with the IBEW and the progress in achieving the Service Provider's expressed objectives.

(D) Employee Plans.

(1) Covered Employees. ServCo shall provide Benefits to ServCo Employees, and, subject to the terms of the plans created by ServCo to provide benefits to ServCo Employees (collectively, the "ServCo Benefit Plans"), including spouses, dependents and beneficiaries of ServCo Employees as may be described in the ServCo Benefit Plans. Except as may be required by Applicable Law, ServCo shall have no obligation to provide Benefits to any other individual, including NGES retirees and their spouses, dependents and beneficiaries, and other individuals who terminated employment from NGES with a vested or non-vested benefit under a NGES benefit plan but do not become ServCo Employees. From and after the Service Commencement Date, except as required by Applicable Law or an applicable NGES plan, Transitioned Employees shall accrue no additional benefits under any employee benefit plan, policy, program or arrangement of NGES or its Affiliates. All NGES employees,

retirees and beneficiaries currently receiving benefits under existing NGES benefit plans, shall continue to participate in those NGES benefit plans. Neither ServCo nor Service Provider shall have any responsibility for maintaining, administering or funding any NGES benefit plans.

(2) Level of Benefits. During the Term, ServCo will provide: (i) with respect to ServCo Union Employees, Benefits required by the applicable collective bargaining agreement (a “CBA”) then in effect, as may be amended from time to time; and (ii) with respect to ServCo Non-Union Employees, Benefits that are competitive with those provided by other similarly situated companies to employees for similar positions (as determined by ServCo). Except as may be required by Applicable Law, ServCo shall not without LIPA’s written approval, terminate ServCo’s thrift plans, pension plans or retiree medical plans, or make amendments to ServCo’s thrift plans, pension plans or retiree medical plans that would result in an increase of more than five (5%) percent in LIPA’s annual monetary obligation to fund any such plan. All other termination, amendment or other changes to the ServCo Benefit Plans or other programs shall not require LIPA’s approval, but ServCo shall provide LIPA with notice thereof reasonably far in advance to enable LIPA to review and comment thereon.

(3) Credit for NGES Service and Payments. The ServCo Benefit Plans shall credit the Transitioned Employees for service prior to the Service Commencement Date with NGES (or which NGES granted as past service with any other entity), and any other entity which together with NGES would be considered a single employer for purposes of Section 414 of the Code, for purposes of eligibility, participation, vesting, company match levels, subsidies (including any type of early retirement subsidy), attainment of retirement dates, entitlement to optional forms of payment, and, with respect to any cash balance pension plan for which an employee’s annual rate of benefit accrual depends on prior years of service, for purposes of determining the annual cash balance pension accrual, but not for any other benefit accrual purposes under defined benefit pension plans. For purposes of any life-time maximum benefit limit payable to a participant under any ServCo welfare plan, to the extent permitted by Applicable Law, the ServCo welfare plans will recognize any expenses paid or reimbursed by a NGES welfare plan with respect to such participant on or prior to the Service Commencement Date to the same extent such expense payments or reimbursements would be recognized in respect of an active plan participant under that NGES welfare plan.

(4) Separate Plans. ServCo shall be the “plan sponsor” (as defined in ERISA section 3(16)(B)), of the ServCo Benefit Plans, which shall not include any individuals other than ServCo Employees and their eligible dependents and beneficiaries. An individual or committee appointed by ServCo shall be the “administrator” (as defined in ERISA section 3(16)) and “named fiduciary” (as defined in ERISA section 402(a)(2)) of the ServCo Benefit Plans. The ServCo Benefit Plans’ assets will not be invested in a master trust or otherwise commingled with other plans sponsored or maintained by the Service Provider and will otherwise be administered or operated in a manner that will facilitate the assumption of the ServCo Benefit Plans by a successor service provider that acquires ServCo. If requested by LIPA, and subject to the applicable collective bargaining agreement then in effect, ServCo will create, sponsor and maintain one or more separate ServCo Benefit Plans for Transitioned Union Employees.

(5) Benefit Plan Expenses. Notwithstanding anything to the contrary in this Agreement, (i) Benefit Plan Expenses shall be Pass-Through Expenditures; provided,



however, that nothing shall obligate LIPA to pay for any liabilities, losses, penalties, expenses, taxes, excise taxes or other similar amounts, to the extent arising from any violation of ERISA or the Code, or from the failure to operate a plan in accordance with its terms or the failure to maintain a plan in accordance with Applicable Law (except with respect to any plan qualification or operational failure arising as a result of actions taken during the 2014 plan year or a subsequent year solely as a result of the ServCo defined benefit pension plan being treated as a new plan under Treasury Regulations Section 1.436-1(a)(3)) and (ii) the Parties acknowledge and agree that the Service Provider (including ServCo) shall have no obligation to fund, and the Service Provider (distinguished from ServCo) shall not assume the liabilities of, any unfunded employee benefit arrangements including, but not limited to, pension and post-retirement health and life insurance benefits arrangements.

(6) Transitional Matters.

(a) Waiver of Limitations. The ServCo Welfare Plans shall waive all limitations as to pre-existing conditions and actively-at-work exclusions and waiting periods for Transitioned Employees (and their eligible dependents); provided that the ServCo Welfare Plans may, require any ServCo Employee or any dependent to meet an eligibility waiting period of no longer duration than as set forth in the applicable NGES welfare plan in effect on the Service Commencement Date.

(b) Treatment of Claims Incurred. ServCo shall not be responsible for any unpaid covered claims and eligible expenses incurred by any Transitioned Employee prior to the Service Commencement Date under any NGES welfare plans. For purposes of this Section, a claim or liability is deemed to be incurred (A) with respect to medical, dental, vision and/or prescription drug benefits, upon the rendering of health services giving rise to such claim or liability; (B) with respect to life insurance, accidental death and dismemberment and business travel accident insurance, upon the occurrence of the event giving rise to such claim or liability; (C) with respect to long-term disability benefits, upon the date of an individual's disability, as determined by the disability benefit insurance carrier or claim administrator, giving rise to such claim or liability; and (D) with respect to a period of continuous hospitalization, upon the date of admission to the hospital, unless otherwise provided under the terms of the applicable NGES welfare plan.

(c) COBRA. ServCo shall not be responsible for extending COBRA continuation coverage to any employees and former employees of NGES, including Transitioned Employees, or to any qualified beneficiaries of such employees and former employees, who become or became entitled to COBRA continuation coverage on or before the Service Commencement Date, including those for whom the Service Commencement Date occurs during their COBRA election period, and those for whom the eligibility to COBRA continuation coverage occurs in connection with Service Provider's assuming responsibility for the T&D System.

(7) Post-Retirement Health and Life Insurance. Transitioned Employees who, immediately prior to the Service Commencement Date, could have become eligible to participate in the NGES post-retirement health and life insurance benefit plans upon satisfaction of the applicable eligibility conditions of the NGES post-retirement health and life

insurance plans shall be entitled to receive substantially equivalent post-retirement health and life insurance benefits under a post-retirement health and life insurance plan established by ServCo.

(8) Nothing in this Agreement is intended to amend any employee benefit plan, or affect the applicable plan sponsor's right to amend or terminate any employee benefit plan pursuant to the terms of such plan except as otherwise provided in paragraph (D)(2) above.

(9) Disclosure. With respect to all ServCo Benefit Plans, ServCo will provide LIPA with copies of all plan documents, amendments, trust agreements, periodic statements of plan assets, annual reports on IRS Form 5500 with all schedules, audited plan financial statements and statements of plan assets, actuarial valuation reports and accounting reports (including any reports prepared in accordance with Topics ASC 715-30, ASC 715-60, ASC 715-20 and ASC 715-70), information regarding claims paid in accordance with welfare plans including plans providing post-retirement health and life benefits, and all other material reports, documents and agreements or other information reasonably requested by LIPA relating to the ServCo Benefit Plans. With respect to group health plans, information provided to LIPA shall be de-identified information (in accordance with the standards prescribed under the Health Insurance Portability and Accountability Act of 1996).

(10) For purposes of this Section 4.5, the term "Benefits" means any bonus, incentive compensation, deferred compensation, pension, profit sharing, retirement, stock purchase, stock option, stock ownership, stock appreciation rights, phantom stock, leave of absence, layoff, vacation, day or dependent care, legal services, cafeteria, life, health, accident, disability, worker's compensation or other insurance, severance, separation or other employee benefit plan, practice, policy or arrangement of any kind, whether written or oral, or whether for the benefit of a single individual or more than one individual including, but not limited to, any "employee benefit plan" within the meaning of Section 3(3) of ERISA.

#### SECTION 4.6 GOVERNANCE.

Not later than the Service Commencement Date, the Parties shall establish a Management Review Board (the "MRB") comprised of such senior executives of the Service Provider and LIPA as the Parties may from time to time deem appropriate. The function of the MRB shall be to provide a forum for the Parties to review and consider each Party's recommendations with respect to the Service Provider's performance of Operations Services and the overall administration of this Agreement. Among other things, the MRB will review policy, operations, financial, customer satisfaction and regulatory matters. The MRB shall meet not less often than monthly during the first Contract Year and at least quarterly thereafter; provided that more frequent or other meetings of the MRB may be held as either Party may consider necessary.

#### SECTION 4.7 SAFETY.

The Service Provider shall maintain the T&D System with due regard for public safety and at a safe level at least consistent with the Contract Standards. Without limiting the foregoing, the Service Provider shall: (1) take all reasonable precautions in the performance of Operations Services (a) for the safety of all employees working at the T&D System and all other

persons who may be involved with the operation or maintenance of the T&D System, (b) to prevent damage, injury or loss to the T&D System and all materials and equipment under the care, custody or control of the Service Provider on the T&D System Site, and (c) to prevent damage, injury or loss to other property on the T&D System Site, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities; (2) establish and enforce all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations; (3) give all notices and comply with all Applicable Laws relating to the safety of persons or property or their protection from damage, injury or loss; and (4) designate a qualified and responsible employee at ServCo whose duty shall be the supervision of plant safety, the prevention of fires and accidents and the coordination of such activities as shall be necessary with federal, New York State and local officials.

#### SECTION 4.8 COMPLIANCE WITH APPLICABLE LAW.

The Service Provider shall operate and maintain the T&D System and otherwise perform all of its obligations hereunder in accordance with Applicable Law. In the event that the Service Provider fails at any time to comply with any Applicable Law, then the Service Provider shall immediately remedy such failure and shall promptly notify LIPA in writing thereof. Notwithstanding whether a Governmental Body has undertaken a regulatory enforcement action, LIPA shall have an independent right to require the Service Provider to comply with all applicable Legal Entitlements and Applicable Law.

#### SECTION 4.9 OPERATING PERIOD INSURANCE.

(A) Required Operating Period Insurance. Throughout the Term, the Service Provider shall on LIPA's behalf obtain and maintain, or cause to be obtained and maintained, in effect the insurance policies in LIPA's name with the types and amounts of coverage and deductible amounts as specified annually by LIPA in accordance with the annual election by LIPA made in such form as detailed in Appendix 11(A) hereto (the "Required Operating Period Insurance") to the extent that such insurance remains available on commercially reasonable terms; provided, however, that LIPA shall specify during the Term types and amounts of coverage and deductible amounts which are substantially consistent with those obtained for similar electric transmission and distribution systems and with Prudent Utility Practice. If, as a result of material changes in the market for insurance products, one or more Required Operating Period Insurance policies is or are not generally available or appears to be available only on terms not considered to be commercially reasonable, the Service Provider will promptly notify LIPA, in writing, but in no event less than sixty (60) days prior to the expiration of any Required Operating Period Insurance.

The Service Provider and the Service Provider Indemnified Parties shall be included as additional named insureds, where applicable, along with waivers of subrogation on any Required Operating Period Insurance policies, which policies shall require thirty (30) days prior written notice to LIPA prior to the effective date of any change in or non-renewal or cancellation of such policies. Insurance coverage required pursuant to this Section shall be maintained with generally recognized financially responsible insurers and qualified and authorized to insure risks in New York State.

(B) Required Service Provider Insurance. Throughout the Term, the Service Provider shall also obtain and maintain, or cause to be maintained in effect, the insurance policies in the name of the Service Provider and ServCo with the types and amounts of coverage and deductible amounts identified in Appendix 11(B) hereto or as otherwise specified by LIPA (the “Required Service Provider Insurance”) to the extent that such insurance remains available on commercially reasonable terms; provided, however, that LIPA shall specify during the Term types and amounts of coverage and deductible amounts which are substantially consistent with those obtained for similar electric transmission and distribution systems and with Prudent Utility Practices. If, as a result of material changes in the market for insurance products, one or more Required Service Provider Insurance policies is or are not generally available or appears to be available only on terms not considered to be commercially reasonable, the Service Provider will promptly notify LIPA, in writing, but in no event less than sixty (60) days prior to the expiration of any Required Service Provider Insurance.

The LIPA Indemnified Parties shall be included as additional named insureds, where applicable, along with waivers of subrogation on all Required Service Provider Insurance policies. All such policies shall require thirty (30) days prior written notice to LIPA prior to the effective date of any change in or non-renewal or cancellation of such policies and shall be maintained with generally recognized financially responsible insurers qualified and authorized to insure risks in New York State.

#### SECTION 4.10 INSURANCE, THIRD PARTY PAYMENTS AND WARRANTIES.

(A) Insurance and Other Third Party Payments. To the extent that any costs or losses incurred under this Agreement can be recovered from any insurer providing the Required Operating Period Insurance, Required Service Provider Insurance or from another third party, the Parties shall exercise with due diligence such rights as they may have to effect such recovery. The Service Provider or LIPA, as applicable, shall give prompt written notice to the other Party of the receipt of any such recovery which shall be applied to the incurred cost or loss, including as appropriate, to the restoration or reconstruction of the T&D System in accordance with the Bond Resolutions. The Service Provider or LIPA, as applicable, shall provide the other Party with copies of all documentation, and shall afford the other Party a reasonable opportunity to participate in and, if the other Party so determines, to direct all conferences, negotiations and litigation, regarding insurance claims which materially affect the other Party’s interest under this Agreement. All applicable insurance recoveries shall be applied to the cost or losses incurred under this Agreement, including as appropriate, to reducing the cost of restoration or reconstruction. The Service Provider shall be subrogated to any claim that LIPA may have against any insurer or other third party for any damages it suffers under this Agreement, including, as appropriate, to the T&D System which the Service Provider is obligated hereunder to repair to the extent the cost of such repair is not reimbursable by LIPA to the Service Provider hereunder or otherwise. LIPA agrees to waive and to cause the insurance companies providing any Required Operating Period Insurance to waive subrogation rights it or they may have under any Required Operating Period Insurance policies with respect to claims against the Service Provider Indemnified Parties.

(B) Warranties. The Service Provider shall maintain and enforce any warranties or guarantees on any facilities, vehicles, equipment or other items owned or leased by

LIPA (to the extent made known to the Service Provider), or purchased or leased on behalf of LIPA and used by the Service Provider in performing Operations Services under this Agreement. The Service Provider shall not, by act or omission, negligently or knowingly invalidate in whole or part such warranties or guarantees without the prior approval of LIPA.

#### SECTION 4.11 INFORMATION.

(A) System Information and Computer Database. The Service Provider shall establish and maintain an information system to record, provide and, to the extent practicable, provide real time retrieval for LIPA's review and copying of T&D System operating and financial data, including all information necessary to verify calculations made pursuant to this Agreement. Such information shall include information about the T&D System (including information in physical formats such as diagrams, flow charts, and schematics related to the T&D System), reports (and all supporting data) regarding the performance of the T&D System, and information regarding management (including planning, design, engineering, operation, maintenance, and customer contact) of the T&D System (collectively, "System Information"). The Service Provider shall also maintain for LIPA a computer database containing information related to customers served by the T&D System (the "Customer Database") which, at a minimum, specifies each customer served by the T&D System, the service classification applicable to each customer, and any special services provided to each customer. Subject to the provisions of Section 10.3 hereof, all System Information and the Customer Database shall constitute Intellectual Property of LIPA.

(B) Ownership of System Information and LIPA Personal Information. Any System Information or any LIPA Personal Information in existence as of the Effective Date of this Agreement shall be considered LIPA Pre-Existing Intellectual Property (as defined in Section 10.3(B) hereof) and shall at all times remain the property of LIPA. Any System Information or any LIPA Personal Information created during the Term shall constitute Work Product (as defined in Section 10.3(A) hereof).

(C) Information Access. The Service Provider shall provide LIPA and its Representatives, with full, unrestricted and timely access to all information regarding the System Information and all LIPA Personal Information that is contained either in the Customer Database or any other database created by Service Provider at no additional expense to LIPA. To the extent that the Service Provider has developed, compiled, collected, prepared or archived information in the conduct of its services under this Agreement, the Service Provider shall provide LIPA with full and complete access to such information. LIPA's access to information pursuant to this subsection (C) shall be no less than the access afforded by the Service Provider to its employees and executives.

(D) Restrictions. The Service Provider may not use any System Information or LIPA Personal Information for non-LIPA related purposes without LIPA's prior written permission. Such permission, if granted, will be granted on a non-discriminatory basis. Unless required by Applicable Law or by a Governmental Body (in which case the Service Provider shall provide LIPA with such advance notice as is practicable), the Service Provider, a Service Provider Related Party, or any Affiliate shall not, and shall not authorize any third party to, (1) use the Customer Database or other customer information systems of LIPA to extract, sort or

otherwise use any information related to customers of the T&D System (including, without limitation, name, address, telephone number and energy usage, or any other information contained in the Customer Database) or (2) use mechanisms for customer access (including, without limitation, meter reading, customer representatives and service call centers), available solely as a result of the Service Provider's role hereunder, to market any services to customers served by the T&D System. To the extent information related to customers of the T&D System is available from other sources, neither the Service Provider nor its Affiliates shall be precluded by this Agreement from using in its business such data obtained from other sources.

#### SECTION 4.12 INVENTORY CONTROL.

The Service Provider shall, consistent with the Contract Standards and this Agreement: (a) maintain an inventory of equipment, spare parts, materials and supplies and shall maintain and document an inventory control program; (b) comply with the inventory policy provided in the Operations Manual; (c) purchase, maintain and store inventory in a manner also consistent with the System Policies and Procedures; and (d) complete, on an agreed-upon cycle count basis, a physical inventory of the equipment, spare parts, materials and supplies and reconcile the same with the inventory assets carried on the balance sheet and provide the information to LIPA.

#### SECTION 4.13 CAPITAL IMPROVEMENTS; CAPITAL ASSET CONTROL.

(A) Capital Improvements. LIPA hereby sources Capital Improvements under this Agreement from the Service Provider as contemplated by the Capital Budget in effect from time to time during the Term. LIPA acknowledges and agrees that the Service Provider may hire Subcontractors to perform any such Capital Improvement project. Amounts payable by the Service Provider to the Subcontractor for performance under its contract with the Service Provider shall be a Pass-Through Expenditure and invoiced by the Service Provider to LIPA in accordance with Section 5.4(A) hereof, subject, however, to cost substantiation as provided in Section 1.1(E) hereof. In preparing a Capital Budget pursuant to Section 5.2(B) hereof, the Service Provider shall consider, consistent with maintaining system reliability, renewable generation and energy efficiency program results and options. The Service Provider shall include in each such Capital Budget a description of each capital project constituting Capital Improvements in sufficient detail to enable LIPA to make a fully informed analysis and assessment thereof including (i) the project location, (ii) the planned initiation date and expected duration, (iii) an estimate of the amount of the costs including the dollar amount per year if the project requires more than a year to complete, (iv) an explanation of the relationship to other planned or subsequently required Capital Improvements, (v) the anticipated useful life of each Capital Improvement and (vi) the economic and engineering justifications for such project.

(B) Capital Asset Control. In each Contract Year, the Service Provider shall conduct an audit of the Capital Improvements made in the prior Contract Year. Such audit shall measure the accuracy of the plant records, maps and maintenance databases concerning capital assets. Also, from time to time, the Service Provider shall conduct a physical inventory of all capital assets. All vehicles and equipment shall be purchased or leased in the name of LIPA and title to purchased vehicles and equipment shall be issued in LIPA's name. As vehicles or other equipment are acquired for LIPA, the Service Provider shall forward all title documents to LIPA within thirty (30) days after they are received by the Service Provider.

SECTION 4.14 TECHNICAL ASSISTANCE.

The Service Provider may contract for the services of outside consultants, suppliers, manufacturers, or experts in accordance with the Contract Standards, provided that the Service Provider shall remain responsible for the performance of Operations Services pursuant to the terms of this Agreement.

SECTION 4.15 SERVICE PROVIDER AS LIPA'S AGENT.

The Service Provider is hereby designated and appointed as LIPA's agent, and the Service Provider hereby accepts such designation and appointment, (a) to enter into purchase, rental and other contracts on behalf of and for the account of LIPA necessary or appropriate to properly operate and maintain the T&D System and to maintain the records of LIPA, and to make such additions and extensions (other than those made pursuant to Section 4.2(A)(7)) hereof to the T&D System and (b) to enter into certain customer related contracts under LIPA's tariff, all as may be required from time to time by LIPA.

In such capacity as LIPA's designated agent, the Service Provider shall have full power and authority to act on LIPA's behalf and to legally bind LIPA, subject, however, to LIPA's control and the other conditions and limitations set forth in this Agreement, including those provided in this Section 4.15. The Service Provider and LIPA shall implement such policies and procedures as may be necessary or appropriate to effect the activities contemplated by this Section 4.15 and to separately identify and segregate the equipment, material, supplies and services which the Service Provider is purchasing as agent for LIPA from those the Service Provider may be purchasing for its own or another Person's account. Where necessary, appropriate or advisable, or required by the New York State Department of Taxation and Finance or other Governmental Body or Person, the Service Provider and LIPA shall execute and deliver such instruments, agreements, certificates or other evidence confirming the Service Provider's designation, appointment and authority to act as LIPA's agent as aforesaid.

SECTION 4.16 OTHER SERVICES.

(A) Bill Payments. The Service Provider shall timely pay all bills related to the T&D System which are proper, appropriate and not otherwise disputed and which it has authority to pay and shall assure that, to the extent within the Service Provider's control, no mechanics' or similar Liens are filed against any portion of the T&D System. In the event that the Service Provider fails to timely pay any such bill and such failure is not due to a LIPA Fault, LIPA shall have the right, but not the obligation, to pay such bill and deduct an administrative fee in an amount of \$500 from the Incentive Compensation (as defined below) otherwise due to the Service Provider.

(B) Attendance at Meetings. The Service Provider shall attend meetings of the LIPA Board of Trustees, with customers of LIPA, suppliers of LIPA and others as may be conducted from time to time as reasonably required in connection with the provision of Operations Services and related matters.

(C) Implied Services. If any services, functions, or responsibilities not specifically described in this Agreement are required for the proper performance and provision

of the Operations Services, they shall be deemed to be implied by and included within the Scope of Services, except to the extent they are rights and responsibilities reserved to LIPA as set forth in Section 4.4 hereof or as may otherwise be expressly provided in this Agreement.

#### SECTION 4.17 HAZARDOUS WASTE.

With respect to the performance of its obligations hereunder and to the extent required by the provisions of the System Policies and Procedures relating to unusual events in connection with the handling, transporting or disposing of Hazardous Waste, the Service Provider shall give notice to LIPA, and to any other Governmental Body as may be required by Applicable Law, of its intention to handle, transport or dispose of such Hazardous Waste. The Service Provider shall cause such Hazardous Waste to be handled, transported and disposed of at a Disposal Facility in accordance with the Contract Standards.

#### SECTION 4.18 CONFLICT OF INTEREST.

The Parties acknowledge that the Service Provider's representation of LIPA (conducting business as LI Power Supply or other trade name) before regulatory or industry bodies pursuant to this Agreement may give rise to certain conflicts of interest between the Service Provider and its Affiliates. Accordingly, promptly following the date of this Agreement, the Parties shall use good faith efforts to identify and attempt to resolve in advance any actual, material, positional conflicts of interest (a "Positional Conflict"), including by LIPA, in its discretion, modifying its position, not participating in or withdrawing from the relevant proceeding, or obtaining substitute representation (collectively, a "Conflict Resolution"). If, notwithstanding such good faith efforts, a Conflict Resolution is not reached within a reasonable period of time, upon notice from the Service Provider, LIPA shall obtain substitute representation and the Service Provider shall not be required to represent LIPA with respect to such matter. If, during the course of any proceeding before a regulatory or industry body, the Service Provider determines in good faith that a Positional Conflict exists or is reasonably likely to arise as a result of its representation of LIPA, the Parties shall engage in good faith discussions to reach a Conflict Resolution. If, notwithstanding such good faith discussions, a mutually acceptable Conflict Resolution is not promptly reached, the Service Provider shall, upon notice to LIPA, cease representation of LIPA and LIPA shall obtain substitute representation. In each such case, the Service Provider shall provide to LIPA and its representatives cooperation of and access to relevant Service Provider personnel and information, documents and other materials as LIPA and its representatives may request as necessary or appropriate.

### ARTICLE 5 COMPENSATION AND BUDGETS

#### SECTION 5.1 MANAGEMENT SERVICES COMPENSATION

(A) General. The Service Provider shall receive a service fee to compensate it for (i) Senior Management wages and benefits; (ii) the Service Provider's corporate overhead costs; and (iii) a fixed management fee or profit (collectively "Management Services Fee"). The Management Services Fee shall consist of a fixed component and an Incentive Compensation component as described below.



**Index Series.** Consumer Price Index for All Urban Consumers (CPI-U), New York - Northern New Jersey - Long Island (1982-84 = 100) (the “CPI”).

**Formula.** (CPI for Current Period less CPI for January 2011 = 242.639) divided by CPI for January 2011 = 242.639 (result multiplied by 100 or percent change).

**Application.** A calculation will be performed at the beginning of each Contract Year (including the initial Contract Year) and the percent change will be applied to the Management Services Fee and the result of this adjustment would be the Management Services Fee to be charged for the current Contract Year. If the result of the percentage change is negative, there would be no change in the Management Services Fee from the previous Contract Year.

(B) Annual Fixed Compensation Component.

(1) The fixed component of the Management Services Fee expressed in 2011 Dollars, shall be (i) \$36.3 million, annually, for each of the 2014 and 2015 Contract Years and (ii) \$58 million annually for each Contract Year thereafter, prorated as appropriate for a partial Contract Year.

(2) The Management Services Fee shall be paid in twelve (12) equal monthly installments. The Service Provider shall submit an invoice for each monthly installment on the first Business Day of each month for which the monthly installment applies. LIPA shall pay the invoice for the monthly installment within ten (10) Business Days of receipt of such invoice from the Service Provider.

(3) Should any month be less than a full month, the monthly installment shall be prorated as provided for in the definition of Contract Year.

(C) Annual Incentive Compensation Component.

(1) An amount of (i) \$5.44 million, annually, for each of the 2014 and 2015 Contract Years and (ii) \$8.7 million, annually, for each Contract Year thereafter, in each case expressed in 2011 Dollars and prorated as appropriate for a partial Contract Year, shall comprise the “Incentive Compensation Pool” to be earned based on favorable performance relative to the Performance Metrics. The Performance Metrics are set forth in Appendix 9 hereto and may be modified from time to time as provided elsewhere herein and updated as appropriate in the Contract Administration Manual.

(2) The portion of the Incentive Compensation Pool to be paid to the Service Provider (the “Incentive Compensation”) shall be determined annually based on performance during the prior Contract Year. No later than ninety (90) days following the end of a Contract Year, the Service Provider shall submit to LIPA and, to the extent required by the LIPA Reform Act, the DPS, supporting performance data, information and reports for that Contract Year and a calculation based thereon of its proposed Incentive Compensation for that Contract Year. Within ninety (90) days after its receipt thereof, LIPA shall notify the Service Provider of its acceptance or of any disagreement it may have with the Service Provider’s Incentive Compensation calculation, and shall (i) pay any undisputed amount due the Service Provider and (ii) if there is any amount subject to a disagreement, notify the Service Provider

that a Dispute exists, in which event the Service Provider may submit the Dispute for resolution pursuant to Section 8.6 hereof. Notwithstanding the foregoing, if the DPS subsequently recommends that a lower amount of Incentive Compensation should be paid, LIPA shall promptly notify the Service Provider. If LIPA advises the Service Provider that it agrees with the DPS recommendation, the Service Provider shall either promptly refund the excess Incentive Compensation payment or alternatively notify LIPA that a Dispute exists and submit the Dispute for resolution pursuant to Section 8.6 hereof. To the extent LIPA prevails in the arbitration process under Section 8.6 hereof, the Service Provider shall promptly refund the excess Incentive Compensation payment to LIPA together with interest thereon at the Default Interest Rate. In no circumstance shall the annual amount of Incentive Compensation earned by the Service Provider exceed the lesser of (x) the Incentive Compensation Pool, or (y) 20% of the total Management Services Fee for such year.

SECTION 5.2 PASS-THROUGH EXPENDITURES; BUDGETS.

(A) Pass-Through Expenditures. “Pass-Through Expenditures” shall be those costs and expenses incurred by the Service Provider (without any mark-up or profit, including inter-company profit except as provided in Section 5.2(A)(7) below) in the course of providing the Operations Services including the following items:

(1) wages, salaries, benefits, pensions, other post-employment benefits and other labor and labor related costs of the General Workforce, including ServCo Benefit Plan Expenses incurred by ServCo in performing Operations Services, including Capital Improvements;

(2) costs incurred by ServCo in performing Operations Services, including the cost of Capital Improvements, for all goods and services (including, but not limited to all materials, supplies, spare parts, vehicles, purchased services, and other costs (and Subcontractor costs) and the costs and fees incurred or payable with respect to bank accounts, leases, easements, licenses, permits, consents and similar instruments;

(3) except as otherwise provided in Sections 7.1, 7.2 and 7.3 hereof and subject to Section 10.2 hereof, claims, lawsuits, litigations, losses, fines, penalties, costs and expenses, judgments, liens, settlements, appeals, disbursements and similar expense (including, without limitation, external attorney’s fees) (collectively, “Claims”), incurred in connection with each such Claim or related Claims;

(4) except as otherwise provided in Section 5.3(C) hereof, costs related to Storm Events and Non-Storm Emergencies (costs related to all events other than Storm Events shall be provided for in the annual Operating Budget and Capital Budget);

(5) real property taxes, special franchise taxes, other taxes and fees and any PILOTs related to LIPA-owned, leased or licensed assets or revenues (collectively, “Taxes”) and costs incurred in connection with any tax audits of LIPA or of the Service Provider;

(6) customer refunds (including construction advances);

(7) (i) in the case of transactions with an Affiliate under which the Affiliate agrees to provide an Operations Service set forth in Section 4.2 hereof as a Shared Service, the Service Provider's Total Costs incurred in connection with such transaction (including reasonable and demonstrated costs incurred which are necessary to integrate ServCo with such Affiliate, subject, however, to cost substantiation as provided in Section 1.1(E) hereof), which will not include a profit or mark-up component for the Affiliate and (ii) in the case of transactions with an Affiliate under which the Affiliate agrees to provide a service relating to the T&D System not included in clause (i) above and which have been approved by LIPA, the Service Provider's cost incurred in connection with such transaction, which may include any profit or mark-up paid or payable to the Affiliate;

(8) costs to obtain and maintain in effect Required Operating Period Insurance and Required Service Provider Insurance;

(9) costs incurred in connection with Intellectual Property under Section 10.3;

(10) costs incurred in connection with the Service Provider's performance of its obligations under Section 8.5(E) hereof and each of the Back-End Transition Services as provided in Section 9.2 hereof and the Exit Test as provided in Section 9.3 hereof;

(11) the costs of compliance with DPS and other regulatory requirements to which the Service Provider or LIPA is subject, including as provided in the LIPA Reform Act;

(12) initial and ongoing costs necessary to achieve efficiency savings for the benefit of Service Area customers;

(13) (a) demonstrated transition costs reasonably incurred in connection with implementing the amendments to the Existing OSA as set forth in this Agreement, subject to LIPA's approval in accordance with the same standards and processes as are applicable under the TSA, and (b) costs payable by the Service Provider under the NGES TSA;

(14) costs incurred in connection with the advisory committee to be formed under Section 4.2(A)(4)(u)(iii) hereof;

(15) costs incurred in connection with branding and customer and public communications under Section 4.2(A)(4)(v) hereof;

(16) costs incurred in connection with the Long Range Plan under Section 4.2(A)(5) hereof; and

(17) demonstrated transition costs incurred to achieve efficiency savings and costs of providing Operations Services related thereto on an ongoing basis.

(B) Budgets.

(1) 2014 and 2015 Contract Years. The Parties acknowledge that prior to the date hereof, pursuant to the Existing OSA, the Service Provider has prepared and submitted to LIPA an Operating Budget and Capital Budget (together, the “Budgets”, and individually, a “Budget”) for each of the 2014 and 2015 Contract Years, including all related anticipated Pass-Through Expenditures. Together therewith, the Service Provider has also provided a proposed monthly Operating Budget and Capital Budget for each such Contract Year, including a proposed drawdown schedule for funding payment of Pass-Through Expenditures (together with the Budgets for such Contract Year, the “Service Provider Budget Portion”). In preparing the Service Provider Budget Portion, the Service Provider has consulted with LIPA with respect thereto. As promptly as practicable following the date hereof, LIPA shall prepare for consolidation with each relevant Budget the LIPA Budget Portion (together with the Service Provider Budget Portion, the “Consolidated LIPA Budget”) sufficiently in advance, but not later than October 1, 2013, to allow the Consolidated LIPA Budgets for the 2014-2015 Contract Years to be submitted for consideration by the LIPA Board of Trustees not later than December 15, 2013.

Within forty-five (45) days following its receipt of the 2014-2015 Consolidated LIPA Budgets, LIPA shall advise the Service Provider whether it will recommend approval by the LIPA Board of Trustees of the proposed Consolidated LIPA Budgets or of any modifications thereto which LIPA believes are necessary or appropriate. The Parties shall use good faith efforts to resolve any differences with respect to the 2014-2015 proposed Consolidated LIPA Budgets as promptly as practicable. Any matter relating to the 2014-2015 Consolidated LIPA Budgets shall not be subject to dispute resolution under Section 8.6 or otherwise.

(2) 2016 – 2018 Contract Years. No later than October 1, 2014, the Service Provider shall prepare a preliminary Service Provider Budget Portion for the Contract Years 2016-2018. In preparing such Service Provider Budget Portion, the Service Provider will consult with, but shall not be required to obtain agreement from, LIPA with respect thereto. LIPA shall, with support from the Service Provider with respect to calculations for taxes, tax matters, PILOTs and depreciation, as may be necessary, no later than November 1, 2014, prepare and deliver to the Service Provider a preliminary LIPA Budget Portion for the 2016-2018 Contract Years. The Service Provider shall thereafter prepare a preliminary Consolidated LIPA Budget for the 2016-2018 Contract Years, utilizing the information contained in the preliminary Service Provider Budget Portion and the preliminary LIPA Budget Portion, which preliminary Consolidated LIPA Budget shall be included in the Three Year Rate Plan in accordance with Section 6.2 hereof.

(3) Subsequent Budgets. Beginning in 2018, the Service Provider shall prepare the Service Provider Budget Portion, and LIPA shall prepare, with support from the Service Provider with respect to calculations for taxes, tax matters, PILOTs and depreciation, as may be necessary, and deliver to the Service Provider the LIPA Budget Portion, in each case for each Contract Year (or a multiple Contract Year period as the Parties may agree upon) no later than 210 days prior to the first Contract Year of the applicable budget period. The Service Provider shall thereafter submit the proposed Consolidated LIPA Budget for LIPA’s review, revision and approval no later than 180 days prior to the first Contract Year of the applicable budget period. Within ninety (90) days following its receipt of such proposed Consolidated LIPA Budget, LIPA shall advise the Service Provider whether such proposed Consolidated LIPA

Budget is acceptable or requires any modification thereto. If LIPA advises that a modification is required, any disagreement regarding the proposed modification shall be subject to dispute resolution under Section 8.6(I) hereof.

(4) Flexibility to Reallocate. The Service Provider shall have complete flexibility, subject to compliance with the Contract Standards and prior consultation with, but not subject to approval by, LIPA, to (i) reallocate or postpone expenditures within the approved Operating Budget, (ii) reallocate or postpone expenditures within the approved Capital Budget and (iii) reallocate between the approved Operating Budget and the approved Capital Budget in order to address changed operational or commercial circumstances or new legal or regulatory requirements. Any such reallocated amounts will be treated as if initially budgeted in the relevant Budget in all respects, including with respect to the Performance Metric associated with the Cost Management category set forth in Appendix 9 (the “Cost Management Performance Metric”).

(5) Flexibility to Overrun. Any Excess Expenditures (as hereinafter defined) incurred by the Service Provider during a Contract Year will be treated as if initially budgeted in all respects for that Contract Year, including with respect to the related Cost Management Performance Metric.

(6) Default Budget. In the event the LIPA Board of Trustees has not approved a Consolidated LIPA Budget by the beginning of a Contract Year, the approved Consolidated LIPA Budget for the immediately preceding Contract Year (as the same may have been amended) as adjusted for inflation (such Consolidated LIPA Budget, a “Default Budget”) will remain in effect until such time as a Consolidated LIPA Budget for that Contract Year is so approved by the Parties or effected in accordance with Section 8.6(G)(3) hereof. Expenditures made pursuant to a Default Budget, and any related Excess Expenditures, shall be deemed as if made in accordance with an approved Consolidated LIPA Budget.

(7) Non-Storm Emergencies.

(a) If an event or condition, other than a Storm Event, that is beyond the reasonable control of the Service Provider (a “Non-Storm Emergency Event”) occurs, and if the Service Provider determines that certain non-budgeted expenditures are required in order for it to provide Operations Services in accordance with the Contract Standards or repair, replace or restore damaged components of the T&D System, the Service Provider shall have the right to elect, in its sole discretion, to treat any such expenditures made as either (i) reallocations between different Budget items, pursuant to subparagraph (4) above, (ii) Excess Expenditures or (iii) “Non-Storm Emergency Expenditures”.

(b) If the Service Provider elects to treat the expenditures as Non-Storm Emergency Expenditures, the Service Provider shall submit a request to LIPA to approve the Non-Storm Emergency Expenditures and approve a Budget amendment (pursuant to Section 5.2(B)(8) hereof) to the then-current approved Budget to cover such expenditures.

(c) If LIPA agrees that such expenditures are required in order for the Service Provider to provide Operations Services in accordance with the Contract Standards,

such expenditures shall then qualify as Non-Storm Emergency Expenditures, whereupon LIPA shall either (i) approve as promptly as practicable the proposed Budget amendment (as adjusted to exclude any amounts disallowed in accordance with Section 5.3(C) hereof, if applicable, and subject to such other changes the Parties may agree) in which case the Non-Storm Emergency Expenditures shall be treated as if initially budgeted) or (ii) permit the Service Provider to include in the relevant Budgets for subsequent Contract Years a separate account sufficient to provide for the Non-Storm Emergency Expenditures over the remainder of the Term (including early termination). In any event, without regard to whether the Non-Storm Emergency Expenditure is reflected in a Budget pursuant to the preceding clauses (i) or (ii), LIPA shall promptly fund the Operating Account to provide for such Non-Storm Emergency Expenditure.

(8) Budget Policy. The Operating Budget and the Capital Budget and the related ServCo staffing levels for each Contract Year shall be designed to be adequate in both scope and amounts to reasonably assure that the Service Provider is able to carry out the related Operations Services in accordance with the Contract Standards and have a reasonable opportunity to earn Incentive Compensation under the Performance Metrics. The Parties further acknowledge and agree that it may, from time to time, be necessary or appropriate to amend or otherwise adjust a Consolidated LIPA Budget, as well as the Performance Metrics, as a result of Force Majeure, LIPA Fault, Non-Storm Emergency Events, other reasonably unanticipated events or additional requirements imposed by LIPA on the Service Provider after approval of the relevant Budget, which have resulted (or are expected to result) in schedule delays or increased work scope or costs.

(9) Disputes. If and to the extent that the Service Provider following discussions with LIPA reasonably concludes that an annual Operating Budget, Capital Budget or Default Budget or any proposed modification or amendment thereto is not consistent with the criteria set forth under this Section 5.2 or disagrees with any determination made by LIPA or the LIPA Board of Trustees relating to a Consolidated LIPA Budget or any other matter under this Section 5.2, including any Consolidated LIPA Budget which is the subject of or forms the underlying basis for a DPS rate proceeding as described in Article 6 hereof, the Service Provider may submit the Dispute for resolution pursuant to Section 8.6(I) hereof.

(10) Unfunded Amounts. Notwithstanding anything contained in this Agreement to the contrary, the Parties acknowledge and agree that the Service Provider shall have no obligation or responsibility to incur or pay any costs or make expenditures in providing Operations Services hereunder (other than those costs for which the Service Provider is liable pursuant to Sections 7.1, 7.2 and 7.3 hereof) (i) that are not Pass-Through Expenditures or (ii) to the extent such costs or expenditures are not Budgeted or funds to pay such costs or expenditures are not available for withdrawal by the Service Provider from the Operating Account or the Storm Reserve, as applicable.

### SECTION 5.3 STORM COSTS; DISALLOWED COSTS.

(A) General. The Service Provider shall be entitled to withdraw funds from the Operating Account for weather-related costs that are not Storm Events and for Non-Storm Emergency Expenditures as permitted under Section 5.2(B)(7) hereof, in accordance with Section 5.4(A) hereof.

(B) Storm Events. The Service Provider shall be entitled access to withdraw funds LIPA deposits in the Storm Reserve, which LIPA shall establish and replenish from time to time as provided in Appendix 10 and the Contract Administration Manual, to pay for costs it incurs in connection with a Storm Event. The Service Provider shall provide LIPA with an invoice for each such withdrawal promptly after it is made.

(C) Disallowed Costs. In the event that (i) all or a portion of certain costs incurred by the Service Provider in connection with a Major Storm (defined below) (such costs, “Major Storm Costs”) or Non-Storm Emergency Expenditures were incurred unreasonably and imprudently, applying the same scope of review and standards as those the DPS applies to investor owned utilities, and/or (ii) FEMA denies reimbursement of all or a portion of certain Major Storm Costs or Non-Storm Emergency Expenditures incurred by the Service Provider on the grounds that actions taken by the Service Provider were in violation of FEMA standards for reimbursement and such denial becomes final, the Service Provider shall be liable for such costs (and such costs shall not be treated as Pass-Through Expenditures) up to an amount of (x) \$5 million in each of Contract Year 2014 and 2015 and (y) \$10 million in each Contract Year after 2015, in each case in the aggregate for Major Storm Costs and Non-Storm Emergency Expenditures; provided, however, that the Service Provider will have no such liability for the relevant Contract Year in the event LIPA terminates this Agreement due to a Major Storm Performance Metric failure by the Service Provider as provided in Section 8.4(C) hereof and, in such circumstances, all such Major Storm Costs and Non-Storm Emergency Expenditures will be reimbursed by LIPA as provided herein.

#### SECTION 5.4 LIPA’S PAYMENT OBLIGATIONS.

(A) Invoices; Source of Payments. No later than ten (10) Business Days prior to the Service Commencement Date, LIPA will establish one or more operating accounts from which the Service Provider shall draw funds from time to time to pay for actual Pass-Through Expenditures incurred (collectively, the “Operating Account”) other than for Storm Events for which the Service Provider shall be entitled to withdraw funds from the Storm Reserve as described in Section 5.3(B) hereof. Subject to the restrictions provided in this Section 5.4(A), the Service Provider shall be entitled to withdraw funds from the Operating Account from time to time as necessary to fund payment for actual Pass-Through Expenditures as and to the extent incurred. Simultaneous with each such withdrawal, the Service Provider shall provide LIPA with written notice of such withdrawal, including a summary of Pass-Through Expenditures being paid. Not later than ten (10) Business Days following each month end, the Service Provider shall furnish LIPA with a full accounting setting forth in reasonable detail (and in the format and with supporting documentation as specified in the Contract Administration Manual) the actual Pass-Through Expenditures incurred and paid during the prior month. In each Contract Year, the Service Provider shall be entitled to withdraw funds from the Operating Account for actual Pass-Through Expenditures incurred under the approved Operating Budget and Capital Budget for that Contract Year, as the case may be, plus up to a maximum of 2% in excess of the total amount of the Operating Budget and Capital Budget, as the case may be (“Excess Expenditures”); provided, however, that the Service Provider shall notify LIPA at least ten (10) Business Days in advance of any Excess Expenditure withdrawal, providing the details thereof and recommendations to mitigate any additional excess costs. Except for Excess Expenditures and Non-Storm Emergency Expenditures, in no event may the Service Provider

withdraw funds from the Operating Account for Pass-Through Expenditures which are not included in the then currently approved Operating Budget or Capital Budget (as the same may be amended or adjusted) or the Default Budget then in effect without LIPA's prior written approval. No later than one (1) Business Day before the Service Commencement Date, LIPA will fund the Operating Account with three (3) months of anticipated expenses based on the then currently approved Operating Budget and Capital Budget or the Default Budget then in effect. Thereafter, no later than the tenth (10th) Business Day of each month (beginning with the month in which the Service Commencement Date occurs), LIPA shall replenish the Operating Account so as to maintain a funding level equal to three (3) months of anticipated Pass-Through Expenditures under the then currently approved Operating Budget and Capital Budget or the Default Budget then in effect.

(B) Disputes. As provided in Section 1.1(E) hereof, if LIPA objects to any invoiced costs, it shall advise the Service Provider thereof, and all such disputes which the Parties are unable to resolve shall be submitted for resolution as provided in Section 8.6 hereof. If a Dispute arises between LIPA and the Service Provider as to any Pass-Through Expenditure, or whether a particular cost constitutes a Pass-Through Expenditure, notwithstanding the existence of such Dispute and in accordance with Section 8.6(H) hereof, LIPA shall continue to fund the Operating Account to pay the disputed amount during the pendency of such Dispute.

(C) LIPA's Right to Review and Audit. At any time and from time to time during and until the expiration of six (6) years following the end of the Term, LIPA may, upon reasonable notice and at its own cost, audit (or cause to be audited) the Service Provider's and all Subcontractor books and records in connection with any requests for payment and cost reimbursement together with the supporting vouchers and statements, and the calculation of such payments and reimbursements. Each payment made by LIPA hereunder shall be subject to subsequent adjustment for amounts that do not constitute allowable cost or for additional amounts determined to be due to the Service Provider on the basis of such audit. Following the determination that any such payment adjustment is required, the Party required to make payment shall do so within thirty (30) days of the date of such determination.

## ARTICLE 6 DPS REVIEW

### SECTION 6.1 GENERAL.

As more specifically provided in the LIPA Reform Act, the DPS has certain statutory rights and responsibilities with respect to LIPA and the Service Provider.

### SECTION 6.2 THREE YEAR RATE PLAN.

(A) General. The LIPA Reform Act provides that, on or before February 1, 2015, LIPA and the Service Provider shall submit for review by the DPS a three (3) year rate proposal (the "Three Year Rate Plan") to take effect on or after January 1, 2016.

(B) Preparation of Preliminary Three Year Rate Plan. Following the preparation of a preliminary Consolidated LIPA Budget for the Contract Years 2016-2018 pursuant to Section 5.2(B)(2) hereof, LIPA shall as promptly as practicable provide to the Service Provider additional information requested by the Service Provider that relates to LIPA's



responsibilities under this Agreement and that is required to be included in the Three Year Rate Plan but not covered by the preliminary Consolidated LIPA Budget (such information, in relation to any rate plan being submitted to the DPS in a proceeding under this Section 6.2 or Section 6.3(B)(1) hereof, the “Additional LIPA Rate Plan Portion” and, together with the LIPA Budget Portion, the “LIPA Rate Plan Portion”). The Service Provider shall thereafter prepare a preliminary Three Year Rate Plan utilizing the information contained in the preliminary Consolidated LIPA Budget and the Additional LIPA Rate Plan Portion and such other information as may be necessary or appropriate to support the rate proposal or as otherwise may be required for the Three Year Rate Plan to be sufficient and complete, in form and substance, for submission to the DPS. The preliminary Three Year Rate Plan shall be designed in a manner to ensure that, if adopted by LIPA and subject to the forecast assumptions specified therein, LIPA and the Service Provider are able to provide safe and adequate transmission and distribution service in the Service Area at rates which are (i) at the lowest level consistent with sound fiscal operating practices and (ii) sufficient to generate revenues necessary to satisfy LIPA’s obligations to its LIPA’s bondholders, lenders and other creditors and contract counterparties including the Service Provider.

(C) LIPA Comments. Subject to the Parties entering into an appropriate joint defense agreement or other similar arrangement on mutually agreeable terms and conditions in order to protect to the fullest extent possible attorney-client privilege or any applicable privilege and the confidentiality of each Party’s Confidential Information (a “Joint Defense Arrangement”), the Service Provider shall provide the preliminary Three Year Rate Plan (as described in paragraph (B) above, which will be subject to updates prior to submission to the DPS) to LIPA for its review and comment. LIPA shall provide any recommendations, proposed modifications or objections to the preliminary Three Year Rate Plan within thirty (30) days following its receipt thereof.

(D) Submission. Prior to submission of the Three Year Rate Plan to the DPS, LIPA and the Service Provider shall work diligently and negotiate in good faith to reach agreement on a mutually acceptable Three Year Rate Plan, which shall be submitted by the Service Provider before February 1, 2015. If the Parties are unable to reach such agreement (which shall not constitute a Dispute subject to resolution pursuant to Article 8 hereof), the Service Provider shall nevertheless submit its Three Year Rate Plan to the DPS on the Business Day immediately preceding February 1, 2015.

(E) DPS Rate Proceeding.

(1) In any proceeding before the DPS, (a) LIPA (i) shall be responsible for providing evidentiary and other support for information in the LIPA Rate Plan Portion and (ii) shall otherwise have the right to submit to the DPS its own views and positions with respect to the Three Year Rate Plan and other information introduced in that proceeding and (b) the Service Provider (i) shall be responsible for providing evidentiary and other support for all other information in the Three Year Rate Plan and (ii) shall otherwise have the right to submit to the DPS its own views and positions with respect to the LIPA Rate Plan Portion.

(2) Prior to the submission by the DPS of a final recommendation associated with the Three Year Rate Plan, if a draft recommendation associated with the Three

Year Rate Plan is delivered or proposed to either Party or either Party becomes aware of a full or partial settlement of matters under review by the DPS that is proposed by any party to the DPS proceeding, such Party shall promptly notify the other Party of such draft recommendation or proposed settlement. Thereafter, the Parties shall work diligently and negotiate in good faith to reach agreement on whether such draft recommendation or proposed settlement is consistent with this Agreement and LIPA's statutory obligations. If the Parties are unable to reach such agreement, in the event the draft recommendation or proposed settlement is presented to the LIPA Board of Trustees for action, the Service Provider shall have the opportunity to present its views at any meeting of the LIPA Board of Trustees held for such purpose.

(3) Upon receipt by LIPA or the LIPA Board of Trustees of a final recommendation submitted by the DPS associated with the Three Year Rate Plan, LIPA shall transmit such recommendation to the Service Provider no later than the Business Day following such receipt. For at least twenty-one (21) days following such transmission, the Parties shall work diligently and negotiate in good faith to finalize the Consolidated LIPA Budget for the Contract Years 2016-2018 (if it has not already been finalized) or agree on modifications to the Consolidated LIPA Budget for the Contract Years 2016-2018 (if it has already been finalized), in each case in light of such recommendation and all other relevant facts. If the Parties are unable to agree on a final Consolidated LIPA Budget for the Contract Years 2016-2018, or modifications thereto prior to the end of such twenty-one (21) day period, all items in the preliminary Consolidated LIPA Budget for the Contract Years 2016-2018, or proposed modifications thereto, upon which the Parties have not reached agreement may be submitted by either Party for expedited arbitration under Section 8.6(I) hereof. The LIPA Board of Trustees shall not, subject to compliance with LIPA's bond covenants and Applicable Law, take any final action with respect to such recommendation until the end of such twenty-one (21) day period. The Consolidated LIPA Budget for the Contract Years 2016-2018 shall become final and deemed approved under this Agreement following the earlier of (x) mutual agreement in writing by the Parties and (y) the issuance of an arbitration award under Section 8.6 hereof regarding all items submitted by either Party for arbitration pursuant to this Section 6.2(E)(3).

### SECTION 6.3 CUSTOMER RATE CHANGES.

(A) Rate Change. Either Party may from time to time notify the other Party that it believes in good faith that a change in customer rates or charges is necessary, appropriate or advisable under the standards set forth in Section 6.2(B) hereof, whereupon the Parties shall engage in good faith negotiations to reach agreement on whether such rate change is necessary, appropriate or advisable in light of the Parties' rights and obligations hereunder. Upon the conclusion of such negotiations, subject to the Joint Defense Arrangement, the Service Provider shall promptly, but in any event within thirty (30) days, prepare a detailed proposal for such proposed rate change for LIPA's review; provided, however, that if the Service Provider is proposing such change, it will provide LIPA with a detailed supporting proposal together with its notification set forth above. The Parties shall engage in good faith discussions to reach mutual agreement on a rate change proposal during the thirty (30) day period following LIPA's receipt of the related proposal from the Service Provider. Thereafter, LIPA shall have the right to implement a change in rates or charges that otherwise is consistent with the rights and obligations of the Parties under this Agreement and subject to compliance with the requirements of the LIPA Reform Act.

(B) DPS Rate Proceeding.

(1) The LIPA Reform Act requires that after January 1, 2016 any rate proposal that would, after the end of the period covered by the Three Year Rate Plan, increase the rates and charges to customers and thus increase LIPA's aggregate annual revenues by more than two and one-half percent (2.5%) measured on an annual basis, shall be submitted to the DPS for its review and recommendation. The preliminary and final rate increase proposal to be submitted pursuant to the immediately preceding sentence or otherwise under the LIPA Reform Act, including any rate case submission to the DPS that is permitted but not required under the LIPA Reform Act, shall be prepared and submitted to the DPS under the same requirements and processes set forth in Sections 6.2(B), 6.2(C) and 6.2(D) hereof for the Three Year Rate Plan. The subsequent DPS rate proceeding and the Parties' rights and responsibilities (including with respect to dispute resolution) thereunder shall be the same as set forth in Section 6.2(E) hereof for the Three Year Rate Plan.

(2) Neither Party shall (a) voluntarily submit a rate change to the DPS for its review and recommendation (i) before the final approval by the LIPA Board of Trustees of the 2016-2018 Consolidated LIPA Budget agreed upon by the Parties or determined pursuant to Section 8.6 hereof ; provided, however, that notwithstanding the foregoing but subject to the following clause (ii), LIPA may voluntarily submit a rate increase proposal to the DPS for its review and recommendation if, as a result of a Major Storm or in order to comply with its bond covenants, the LIPA Board of Trustees concludes that such a rate increase and submission to the DPS is necessary or appropriate, in the best interests of the Authority and its customers and necessary for the provision of safe and adequate electric service; and (ii) before such Party has given notice to the other Party of the proposed voluntary filing and engaged in good faith negotiations to reach agreement on whether such voluntary filing is necessary, appropriate or advisable in light of the Parties' rights and obligations hereunder nor (b) voluntarily submit to the DPS for its review and recommendation a rate decrease for a period covered by an approved Consolidated LIPA Budget unless the portion of the rate plan to be submitted to the DPS that relates to the other Party's portion of such Consolidated LIPA Budget (that is, in the case of LIPA, the Service Provider Budget Portion, and, in the case of the Service Provider, the LIPA Budget Portion) is commensurate with and sufficient to satisfy the revenue requirements generated by such portion of the Consolidated LIPA Budget.

(3) Pending any required DPS review and recommendation with respect to a proposed increase in customer rates or charges, LIPA may place into effect any proposed increase in rates or charges on an interim basis, subject to prospective adjustment by LIPA following any required review and recommendation by DPS and public hearings and any applicable rights and obligations of the Parties hereunder.

SECTION 6.4 MANAGEMENT AND OPERATIONS AUDITS.

(A) General. As provided in the LIPA Reform Act, LIPA and the Service Provider shall cooperate in comprehensive and regular management and operations audits by the DPS or an independent auditor retained by LIPA.

(B) DPS Process. No later than the Business Day following receipt by the LIPA Board of Trustees of any recommendations submitted by the DPS or the independent auditor retained by LIPA concerning the management and operations audit described above in Section 6.4(A) hereof, LIPA shall transmit such recommendation to the Service Provider. The Parties shall thereafter work diligently and negotiate in good faith for at least twenty-one (21) days to reach agreement on whether the implementation by LIPA of any such recommendation is consistent with this Agreement.

#### SECTION 6.5 ADDITIONAL DPS REVIEWS.

With respect to any recommendations the DPS provides under Sections 1020-f (cc), (dd), (ee), (ff), (gg) and (hh) of the Act, LIPA will provide good faith consideration to such recommendations in consultation with the Service Provider.

#### SECTION 6.6 NO RELIEF.

Notwithstanding anything to the contrary contained in this Agreement, a DPS finding, determination or recommendation issued pursuant to the LIPA Reform Act or otherwise, or LIPA's implementation thereof, shall neither relieve either Party of any obligations or responsibility it has under this Agreement nor grant any new right or authority to either Party under this Agreement unless otherwise mutually agreed upon in writing by the Parties.

#### SECTION 6.7 AUTHORITY TO FIX RATES

Nothing in this Agreement is intended, nor shall it in any way impair or restrict, LIPA's right to fix final rates and charges to its customers as provided in Section 1020-f of the Act.

### ARTICLE 7 ALLOCATION OF RISK OF CERTAIN COSTS AND LIABILITIES.

#### SECTION 7.1 GENERAL.

Subject to the liability assumption and limitation provisions of Sections 8.8 and 10.2 hereof and Section 7.2 below, the Service Provider shall be responsible and liable to the LIPA Indemnified Parties, and shall not be entitled to payment from LIPA as a Pass-Through Expenditure or otherwise only to the extent of:

(1) any Loss-and-Expense incurred or suffered by a LIPA Indemnified Party attributable to a Third Party Claim, resulting from or arising out of any negligent act or omission or willful misconduct by the Service Provider during the Term in performing its obligations hereunder;

(2) any Loss-and-Expense incurred or suffered by a LIPA Indemnified Party (other than with respect to any Third Party Claim for which the Service Provider is otherwise responsible hereunder) due to a breach of any representation, warranty or covenant, or Event of Default by the Service Provider; and

(3) disallowed Major Storm Costs and Non-Storm Emergency Expenditures as provided, but subject to the limitations set forth, in Section 5.3(C) hereof.

## SECTION 7.2 LIMITATIONS ON LIABILITY.

Notwithstanding anything contained in this Agreement to the contrary:

(1) Under Section 7.1(1) hereof (other than for any Loss-and-Expense attributable to the Service Provider's gross negligence or willful misconduct for which there shall be no limitation on the Service Provider's liability), the Service Provider shall not be liable for any Loss-and-Expense attributable to Third Party Claims incurred or suffered by a LIPA Indemnified Party unless and until the aggregate amount of such Loss-and-Expense in a given Contract Year exceeds \$2,500,000, in which event the Service Provider shall then be liable for all such Loss-and-Expense in excess of \$2,500,000 up to a maximum aggregate amount of \$2,500,000 of such Loss-and-Expense incurred in any given Contract Year; and

(2) Under Section 7.1(2) hereof, the Service Provider's liability shall be limited for each Contract Year to Loss-and-Expense incurred or suffered by a LIPA Indemnified Party (other than for (a) Third Party Claims outside the liability limitation amounts in clause (1) above for which LIPA shall be responsible and (b) the Service Provider's willful or bad faith breach of this Agreement for which there shall be no limitation on the Service Provider's liability) to a maximum of (i) \$15 million for an Event of Default by the Service Provider which results in LIPA exercising its right to terminate this Agreement and (ii) \$5 million during a Contract Year for (x) each breach of a representation or warranty, (y) or for each breach of covenant; provided, however, that the Service Provider shall be liable for a breach of a covenant, relating to its performance of the Operations Services only if such breach arises out of or is attributable to the Service Provider's gross negligence or willful misconduct, or (z) for each Event of Default by the Service Provider; subject, however, to an annual limitation of \$15 million for all such Loss-and-Expense incurred or suffered in any given Contract Year.

(3) LIPA's liability for any Loss-and-Expense incurred or suffered by a Service Provider Indemnified Party (other than for (a) any Third Party Claim for which LIPA is otherwise responsible hereunder and (b) LIPA's willful or bad faith breach of this Agreement for which there shall be no limitation on LIPA's liability) shall be limited to (i) \$15 million for an Event of Default by LIPA which results in the Service Provider exercising its right to terminate this Agreement and (ii) \$5 million during a Contract Year for each breach of a representation, warranty or covenant or for an Event of Default by LIPA, subject, however, to an aggregate limitation of \$15 million for all such Loss-and-Expense incurred or suffered in any given Contract Year; provided, however, that the foregoing limitations on liability shall not apply with respect to the amount of any Management Services Fee or Incentive Compensation payments earned by the Service Provider or for the payment of any Pass-Through Expenditures which LIPA is obligated to pay hereunder.

## SECTION 7.3 SURVIVAL.

Notwithstanding anything contained in Section 7.1 or 7.2 hereof or otherwise in this Agreement to the contrary, following the expiration or earlier termination of the Term, but subject to the monetary limitations set forth in Section 7.2 above, any Loss-and-Expense arising following the Termination Date of this Agreement attributable to a Third Party Claim or breach of representation, warranty or covenant or Event of Default arising from or attributable to an act

or omission occurring prior to the Termination Date shall be deemed to be a Loss-and-Expense incurred or suffered during the final Contract Year of the Term.

SECTION 7.4 CREDIT SUPPORT.

Effective not later than the Service Commencement Date, the Service Provider shall provide LIPA with the required Credit Support in the Credit Support Amount. Other than as provided in this Section 7.4 or Section 3.1(D) hereof, the Service Provider is not required under this Agreement to provide any credit support or guarantee for LIPA in connection with any bank account or otherwise in connection with the T&D System.

ARTICLE 8 DEFAULT, REMEDIES  
AND DISPUTE RESOLUTION

SECTION 8.1 EVENTS OF DEFAULT BY THE SERVICE PROVIDER.

(A) Events of Default. Each of the following shall constitute an Event of Default on the part of the Service Provider:

(1) Involuntary Bankruptcy. The filing of an involuntary petition under the Federal Bankruptcy Code against either the Service Provider, ServCo or the Guarantor which petition has not been either dismissed, discharged or stayed within forty-five (45) days after its filing;

(2) Voluntary Bankruptcy. The written admission by the Service Provider, ServCo or the Guarantor, that it is bankrupt, or the filing by the Service Provider, ServCo or the Guarantor of a voluntary petition under the Federal Bankruptcy Code, or the consent by the Service Provider, ServCo or the Guarantor to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or the making by the Service Provider, ServCo or the Guarantor of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of the Service Provider's, ServCo's or the Guarantor's property or business;

(3) Transition Services Agreement Termination. Termination by LIPA of the Transition Services Agreement due to a Service Provider Event of Default thereunder;

(4) Credit Support. Failure of the Service Provider to provide and maintain in full force and effect the required Credit Support in the Credit Support Amount as in effect from time to time, which failure has not been cured within ten (10) Business Days following its occurrence by providing LIPA with either (a) a Guaranty Agreement from a Guarantor for the then required Credit Support Amount or (b) a Letter of Credit for the Credit Support Amount then in effect in support of the existing Guaranty Agreement which in such case shall remain in full force and effect but without duplication;

(5) Failure Otherwise to Comply with this Agreement or Any Guaranty. Any failure or refusal by the Service Provider to perform any material obligation

under this Agreement or of the Guarantor to perform any material obligation under the Guaranty (in each case other than a payment obligation as provided in clause (6) below) which failure or refusal is not otherwise excused by Force Majeure or LIPA Fault and has not been cured within thirty (30) days following receipt of written notice thereof from LIPA; provided, however, that as long as the Service Provider or the Guarantor, as the case may be, is diligently attempting in good faith to cure such failure or refusal and it is reasonably expected that such failure is subject to cure, then the Service Provider or the Guarantor, as the case may be, shall have an additional thirty (30) days to cure such default; and

(6) Failure to Pay or Credit. The failure of the Service Provider or the Guarantor to pay or credit undisputed amounts owed to LIPA under this Agreement or the Guaranty, as the case may be, within forty-five (45) days following the due date for such payment or credit.

(B) LIPA's Remedies for Service Provider Default.

(1) Upon the occurrence of an Event of Default by the Service Provider under paragraphs (A) (1), (2), or (3) of this Section 8.1, this Agreement shall immediately terminate without further action by LIPA.

(2) Upon the occurrence of an Event of Default by the Service Provider under paragraph (A)(4) or (A)(6) of this Section 8.1, LIPA may terminate this Agreement upon not less than fifteen (15) Business Days written notice to the Service Provider.

(3) Following any other Event of Default by the Service Provider, LIPA may terminate this Agreement upon not less than ninety (90) Business Days' written notice thereof to the Service Provider, provided, however, that the Service Provider or the Guarantor, as applicable, has neither challenged in an appropriate forum LIPA's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time, but not more than sixty (60) days, from receipt of the notice given pursuant to this clause (3) (but if the Service Provider or the Guarantor shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the Service Provider or the Guarantor cures such default within one hundred and twenty (120) days from its receipt of such notice).

SECTION 8.2 EVENTS OF DEFAULT BY LIPA.

(A) Events of LIPA Default. Each of the following shall constitute an Event of Default on the part of LIPA:

(1) Involuntary Bankruptcy. The filing of an involuntary petition under the Federal Bankruptcy Code against LIPA which petition has not been either dismissed, discharged or stayed within forty-five (45) days after its filing;

(2) Voluntary Bankruptcy. The written admission by LIPA that it is bankrupt, or the filing by LIPA of a voluntary petition under the Federal Bankruptcy Code, or the consent by LIPA to the appointment by a court of a receiver or trustee for all or a substantial

portion of its property or business, or the making by LIPA of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of LIPA's property or business;

(3) Transition Services Agreement Termination. Termination by the Service Provider of the Transition Services Agreement pursuant to the terms thereof;

(4) Failure to Pay. The failure of LIPA to pay (or provide sufficient funds in the Operating Account or Storm Reserve, as the case may be, to pay) undisputed amounts owed to the Service Provider under this Agreement within forty-five (45) days following the due date for such payment; and

(5) Failure to Comply with Agreement. A failure or refusal by LIPA to perform any material obligation (other than a payment obligation as provided in clause (4) above) under this Agreement which failure or refusal is not otherwise excused by Force Majeure and has not been cured within thirty (30) days following receipt of notice thereof from the Service Provider; provided, however, that as long as LIPA is diligently attempting in good faith to cure such failure or refusal and it is reasonably expected that such failure or refusal is subject to cure, then LIPA shall have an additional thirty (30) days to cure such default.

(B) Service Provider Remedies for LIPA Default.

(1) Upon the occurrence of an Event of Default by LIPA under paragraphs (A)(1), (2) or (3) of this Section 8.2, this Agreement shall immediately terminate without further action by the Service Provider.

(2) Upon the occurrence of an Event of Default under paragraph (A)(4) of this Section 8.2, the Service Provider may terminate this Agreement upon not less than fifteen (15) Business Days written notice to LIPA.

(3) Following any other Event of Default by LIPA, the Service Provider may terminate this Agreement upon not less than ninety (90) Business Days' written notice thereof to LIPA, provided, however, that LIPA has neither challenged in an appropriate forum the Service Provider's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time, but not more than sixty (60) days, from receipt of the notice given pursuant to this clause (3) (but if LIPA shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as LIPA cures such default within one hundred and twenty (120) days from its receipt of such notice).

SECTION 8.3 ADDITIONAL REMEDIES FOR BREACH.

(A) General. Subject to the provisions of Sections 7.1, 7.2, 7.3, 8.1, 8.2, 8.6 and 8.8 hereof, the Parties agree that, in addition to the other remedies they may have hereunder, in the event that either Party breaches any obligation under this Agreement or any representation or warranty made by either Party hereunder is untrue in any material respect, the other Party shall have the right to take any action at law or in equity it may have to enforce the payment of



any damages recoverable in accordance with this Agreement or the specific performance of such obligation hereunder and such right to recover damages or to be reimbursed as provided herein will ordinarily constitute an adequate remedy for any breach of such other obligation or any material untruth in any such representation or warranty. Either Party may seek to enforce by an action for specific performance the other Party's obligations hereunder in the event a material breach thereof has occurred and is continuing.

(B) Continuing Payment Obligations. In the event LIPA terminates this Agreement under Section 8.1 hereof, the Service Provider shall be entitled to payment of any Management Services Fees and Incentive Compensation earned, as well as recoverable expenses under this Agreement for all Pass-Through Expenditures incurred through the Termination Date. Any such termination of this Agreement shall not affect any monies owing or obligations incurred hereunder by any of the Parties prior to the Termination Date.

(C) Transition Services Agreement. Notwithstanding anything contained in this Agreement to the contrary, in the event of a termination of this Agreement due to an Event of Default under Section 8.1(A)(3) hereof, the Service Provider's sole liability to LIPA shall be as set forth in the Transition Services Agreement.

#### SECTION 8.4 ADDITIONAL LIPA TERMINATION RIGHTS.

(A) Change of Control. In the event a Change of Control of the Service Provider, the Guarantor or the Parent Company shall have occurred on or after the Service Commencement Date, LIPA may terminate this Agreement upon not less than thirty (30) days written notice to the Service Provider; provided, however, that such notice must be given not later than thirty (30) days following LIPA's receipt of written notice from the Service Provider of the occurrence of such Change of Control. If LIPA fails to give such notice to the Service Provider within such thirty (30) day period, LIPA's termination rights with respect to such Change of Control under this Section 8.4(A) (but not with respect to any other or future Change of Control) shall expire and be of no further force or effect.

(B) T&D System Sale or Transfer. LIPA shall have the further right to terminate this Agreement upon not less than six (6) months prior written notice to the Service Provider in the event (i) the T&D System is sold, transferred or assigned, in whole or in part, to a federal, state or municipal governmental entity or to a private entity (a "Privatization") or (ii) LIPA has determined to operate and maintain the T&D System with its own employees (a "Municipalization"). The Termination Date shall be (x) the closing date of any such sale, transfer or assignment, or (y) the effective date of LIPA's employment of the T&D System operating and maintenance personnel or LIPA's acquisition of the ServCo Membership Interests, whichever first occurs, as the case may be.

(C) Metrics Failure. LIPA shall have the further right to terminate this Agreement upon not less than six (6) months prior written notice to the Service Provider in the event that the Service Provider fails to meet either the (i) Minimum Performance Level Metric or (ii) Major Storm Performance Metric (as further described in Appendix 13 hereto). In the event LIPA wishes to exercise such termination right, it shall provide written notice to the Service Provider not later than six (6) months following the determination (including pursuant to an

arbitration proceeding) of such metric failure. LIPA's right to terminate this Agreement due to the occurrence of the events in clauses (i) and (ii) above shall be its sole and exclusive remedy for any failure by the Service Provider to meet the Minimum Performance Level Metric or the Major Storm Performance Metric.

(D) LIPA Termination Notice Period. If LIPA exercises the right to terminate this Agreement pursuant to Section 8.4 hereof, it shall set forth in its written termination notice a termination date which shall not exceed twelve (12) months following the date of such notice (the "LIPA Termination Notice Period").

#### SECTION 8.5 ADDITIONAL TERMINATION RIGHTS AND CERTAIN OBLIGATIONS OF THE SERVICE PROVIDER.

(A) Service Provider Termination Upon T&D System Sale or Transfer. The Service Provider shall have the further right to terminate this Agreement by written notice to LIPA in the event of either a (i) Privatization or (ii) Municipalization. The Termination Date shall be (i) the closing date of the sale, transfer or assignment of the T&D System in the case of a Privatization or (ii) the effective date of LIPA's employment of the T&D System operating and maintenance personnel or LIPA's acquisition of the ServCo Membership Interests, whichever first occurs in the case of a Municipalization. The Service Provider shall provide LIPA with no less than six (6) months prior written notice of termination under this Section 8.5(A), provided, however, that such prior notice may be less than six (6) months to the extent the Service Provider receives less than six (6) months notice from LIPA of the Privatization or Municipalization, as applicable.

(B) Service Provider Termination Upon Change in Regulatory Law.

(1) Termination. The Service Provider shall have the further right to terminate this Agreement upon a Change in Regulatory Law. In the case of a termination based on a Regulatory Oversight Change, this Agreement shall automatically terminate without notice or further action of the Parties one (1) day prior to the effective date of such Regulatory Oversight Change, unless the Service Provider agrees in writing to waive its termination right relating thereto. In the case of a termination based on any other Change in Regulatory Law, the Service Provider may terminate this Agreement by written notice to LIPA and the Termination Date shall be the later of (a) the effective date of such Change in Regulatory Law and (b) the date specified in such notice. The date specified in such notice shall be (i) with respect to a termination based on an OSA Change or a FERC Regulatory Change, at least fourteen (14) months after LIPA's receipt of such notice or (ii) with respect to a termination based on a DPS Authority Change, at least twelve (12) months after LIPA's receipt of such notice. Upon LIPA's receipt of a notice delivered under clause (i) above, the Parties shall, for a period of two (2) months, negotiate in good faith to restructure this Agreement in a manner that, (x) in the case of an OSA Change, maintains, to the fullest extent practicable, the Service Provider in the same position as it would have been without regard to the OSA Change or (y) in the case of a FERC Regulatory Change, leads or results in the rescission or elimination of the FERC jurisdiction constituting such FERC Regulatory Change, including by the Service Provider transferring functions or responsibilities.

(2) Optional Extension. LIPA shall be entitled to extend the Termination Date under Section 8.5(B)(1) hereof on a month-by-month basis up to a maximum of six (6) months on condition that LIPA pays the Service Provider, for each month of such extension, an extension fee equal to the product of (a) the Management Services Fee amount otherwise payable in accordance with Section 5.1(B) hereof and (b) 1.175. The extension fee payable under this Section 8.5(B)(2) will be in addition to the amounts otherwise payable by LIPA under Sections 8.5(C)(1) and 8.5(C)(3) hereof. This Section 8.5(B)(2) shall not apply to termination in connection with a Regulatory Oversight Change.

(3) Arbitration. In the case of a FERC Regulatory Change, LIPA shall have the right, prior to termination of this Agreement, to submit the question of whether a delay in the termination of this Agreement beyond the Termination Date under Section 8.5(B)(1) hereof (as extended pursuant to Section 8.5(B)(2) hereof, if applicable) would be (a) in the public interest and (b) fair and equitable to the Parties. If LIPA prevails in such arbitration, termination of this Agreement shall be delayed beyond such Termination Date only to the extent the Arbitrators find necessary under the standard set forth in the immediately preceding sentence. Such arbitration shall be the sole forum for either Party to seek a delay in termination beyond the Termination Date provided under Section 8.5(B) hereof.

(4) Termination Delay. If, for any reason other than the Service Provider's failure or refusal to comply with its obligations under this Agreement that is not otherwise excused by Force Majeure or LIPA Fault, termination of this Agreement upon a Change in Regulatory Law is delayed beyond the Termination Date under Section 8.5(B)(1) hereof (as extended pursuant to Section 8.5(B)(2) hereof, if applicable) the Service Provider shall be entitled to a delay fee equal to the product of (a) the Management Services Fee amount otherwise payable in accordance with Section 5.1(B) hereof and (b) 1.55. The delay fee payable under this Section 8.5(B)(4) will be in addition to the amounts otherwise payable by LIPA under Sections 8.5(C)(1) and 8.5(C)(3) hereof.

(5) Back-End Transition Services. The Service Provider shall perform Back-End Transition Services in accordance with Section 9.2 hereof from the date of any notice delivered under Section 8.5(B)(1) hereof (or, if applicable, from the date the two (2) months period set forth therein expires) until the later of (a) the termination of this Agreement and (b) twenty-four (24) months after such date of notice (or, if applicable, after such date of expiration of the two (2) months period). To the extent necessary to give effect to the immediately preceding sentence, the provisions of Section 9.2 hereof and Articles 5, 7, 8 and 10 hereof, shall survive the termination of this Agreement. This Section 8.5(B)(5) shall not apply to termination in connection with a Regulatory Oversight Change. Prior to termination of this Agreement pursuant to Section 8.5(B)(1) hereof, the Parties shall negotiate in good faith, together with the successor service provider, a transition services agreement that would take effect after such termination.

(6) Notification of Prospective Change in Regulatory Law. Each Party covenants and agrees to notify the other Party as promptly as practicable upon becoming aware of a prospective adoption of or change to law, regulation or regulatory action which, if adopted or implemented, is reasonably likely to result in any Change in Regulatory Law.

(C) Compensation Upon Termination.

(1) General. In the event of a termination of this Agreement pursuant to Section 8.2, 8.4 or 8.5 hereof, the Service Provider shall be entitled to receive payment from LIPA for (i) its Wind-down Expenses, (ii) any Pass-Through Expenditures (including those incurred relating to any Change in Regulatory Law and in satisfying the requirements of Sections 8.5(D)-(G) hereof, subject to cost substantiation), (iii) its Management Services Fee and (iv) any Incentive Compensation earned (it being understood and agreed that the Service Provider shall be deemed to have satisfied any Performance Metric affected by a Change in Regulatory Law), in each such case through the applicable Termination Date.

(2) LIPA Termination Fee. If LIPA exercises its option under Section 8.4(A) hereof to terminate this Agreement due to a Change of Control, the Service Provider shall pay or cause to be paid to LIPA on the Termination Date the applicable termination fee set forth on Appendix 12 hereto.

(3) Service Provider Termination Fee. The Service Provider shall be entitled to a termination fee (the “Service Provider Termination Fee”) payable by LIPA upon early termination of this Agreement (i) by LIPA or by the Service Provider due to a Privatization (unless the Service Provider or an Affiliate is a purchaser of the T&D System or LIPA in such transaction or enters into a replacement agreement with the successor owner to operate the T&D System or LIPA, in which case no Service Provider Termination Fee shall be payable) or a Municipalization, (ii) by the Service Provider for an Event of Default by LIPA or (iii) by the Service Provider due to a Change in Regulatory Law (other than a FERC Regulatory Change, for which no Service Provider Termination Fee shall be payable).

The Service Provider Termination Fee shall be equal to \$66.7 million (in 2011 Dollars escalated by CPI). Commencing in the 2021 Contract Year and ending in the Contract Year 2025 irrespective of any extension of the Term, the Service Provider Termination Fee, prior to any CPI escalation, shall be reduced by \$6.67 million (in 2011 Dollars) for each Contract Year so that by the 2025 Contract Year, the Service Provider Termination Fee amount will be equal to \$33.35 million (in 2011 Dollars). The Service Provider Termination Fee will be in addition to the amounts otherwise payable by LIPA under Sections 8.5(B)(2), 8.5(B)(4) and 8.5(C)(1) hereof.

(D) Termination by LIPA.

(1) Access. During the LIPA Termination Notice Period, LIPA shall have unrestricted access to all areas of, and all information, data and records concerning, the T&D System and to the Service Provider’s and its Affiliates’ personnel necessary to monitor the performance of the Service Provider and to ensure that the Service Provider complies with the provisions of this Agreement during the LIPA Termination Notice Period.

(2) Assumption of Responsibilities. At LIPA’s sole option, LIPA may elect at any time during the LIPA Termination Notice Period and for a period not to exceed six (6) months (even if LIPA elected to provide advance notice in excess of six (6) months under Section 8.2 or 8.4 hereof) to direct the Service Provider and its employees in the day-to-day

performance of the Service Provider's obligations under this Agreement. LIPA shall reimburse the Service Provider for its resulting substantiated incremental costs incurred, and the Service Provider shall neither be subject to the Performance Metrics nor eligible for Incentive Compensation thereunder, accruing from and after such date, but shall be entitled to payment from LIPA of all other payments under Section 8.5(C)(1) hereof; provided, however, that the Service Provider shall continue to be subject to the Performance Metrics and eligible for Incentive Compensation for the period preceding and following such direction of day-to-day operations.

(3) Successor Service Provider. Following the commencement of the LIPA Termination Notice Period or LIPA's receipt of the Service Provider's termination notice under this Article 8 (and the expiration of the two (2) months period under Section 8.5(B)(1) hereof, if applicable), LIPA shall initiate efforts, including such procurement process as may be required, to identify and select a successor service provider as promptly as practicable.

(E) Obligations on Termination or Expiration. Upon notice of a termination of this Agreement under Section 8.1, 8.2, 8.4 or 8.5 hereof (subject to the terms therein) or nine (9) months prior to the expiration of this Agreement in accordance with its terms, the Service Provider shall, perform the Back-End Transition Services as provided in Section 9.2 hereof and in the Contract Administration Manual and shall otherwise facilitate the smooth transition to the successor service provider and, without limiting the generality of the foregoing:

(1) transfer all records (other than proprietary Service Provider financial information) relating to the provision of Operations Services hereunder (including employee records to the extent permitted by Applicable Law), customer lists and account information, the Operations Manual and Contract Administration Manual and personnel information to the successor service provider;

(2) transfer all documentation and material associated with work in progress and provide a comprehensive status report on each such item;

(3) sell all existing materials and supplies utilized by the Service Provider in the operation and maintenance of the T&D System to LIPA or the successor service provider, as LIPA shall direct, at the Service Provider's cost;

(4) stop the Operations Services on the date or dates and to the extent specified by LIPA, provided that in so doing the Service Provider shall cooperate and coordinate with LIPA and any successor service provider so as to assure an orderly and smooth transition and continued safe and reliable operation of the T&D System;

(5) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property;

(6) promptly remove from the T&D System Site all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Service Provider which are not to be transferred to any successor service provider or LIPA, and repair any damage caused by such removal;

(7) leave the T&D System in a neat, safe, orderly and fully operational condition;

(8) promptly remove all employees of the Service Provider (other than ServCo employees) and, at LIPA's request, any Subcontractors and vacate the T&D System Site, subject to subsection (D) of this Section and further subject to the requirement that all employees of ServCo shall be permitted by the Service Provider to accept offers of employment with LIPA or a successor service provider;

(9) promptly deliver to the successor service provider or LIPA, as LIPA shall direct, copies of all Subcontracts, together with a statement of

(a) the items and services ordered and not yet delivered pursuant to each agreement,

(b) the expected delivery date of all such items and services,

(c) the total cost of each agreement and the terms of payment, and

(d) the estimated cost of canceling and assigning each agreement;

(10) deliver to the successor service provider or LIPA, as LIPA shall direct, promptly a list of:

(a) all special order items previously delivered or fabricated by the Service Provider or any Subcontractor but not yet incorporated in the Operations Services,

(b) all service contracts including detailed scope of work and progress reports, and

(c) all other supplies, materials, machinery, equipment and other property previously delivered or fabricated by the Service Provider or any Subcontractor but not yet incorporated in the Operations Services;

(11) advise LIPA promptly of any special circumstances which might limit or prohibit cancellation of any Subcontract;

(12) as LIPA directs, terminate or assign to the successor service provider or LIPA all Subcontracts and make no additional agreements with Subcontractors without the prior written approval of LIPA;

(13) as directed by LIPA, transfer to LIPA by appropriate instruments of title, and deliver to such place as LIPA may specify, all special order items;

(14) furnish to LIPA all information used in the preparation of reports and other data necessary for LIPA (or any successor service provider) to operate the T&D System, and use all commercially reasonable efforts to obtain the consent of any third party required to fulfill such obligation;

(15) notify LIPA promptly in writing of any Legal Proceedings against the Service Provider by any Subcontractor relating to the termination of the Operations Services (or any Subcontracts); and

(16) take such other actions, and execute such other documents, as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize LIPA's costs, and take no action which will increase any amount payable by LIPA under this Agreement.

(F) Transfer Obligation. Immediately upon the expiration or any earlier termination of this Agreement, the Service Provider will transfer all the Membership Interests in ServCo and all ServCo corporate books and records to LIPA or, at LIPA's direction, its designee free and clear of all Liens and Encumbrances and LIPA shall accept such transfer at no cost to LIPA or its designee. The Parties shall mutually agree upon such instruments, agreements and other documents as may be reasonably necessary to effect such transfer. Following such transfer of the ServCo Membership Interests, the Service Provider shall have no further legal or financial responsibility with respect to the performance of any contracts, leases or licenses held by or in the name of ServCo, or in relation to any pension, "other post-employment benefits" and other employee and vendor obligations, other than for liabilities or obligations which the Service Provider (distinguished from ServCo) may have assumed for periods prior to such transfer which remain outstanding.

(G) Additional Obligations.

(1) The Service Provider shall cause its Affiliates then providing any of the Operations Services to provide technical advice and support to LIPA (or any successor service provider designated by LIPA) if then providing or supporting Operations Services hereunder, and otherwise provide, assist and support the Back-End Transition Services as necessary to facilitate a smooth transition. Such advice and support shall be for a period of six (6) months and shall include providing any plans, drawings, renderings, blueprints, operating and training manuals for all facilities, personnel information, specifications or other information useful or necessary for LIPA or any successor service provider designated by LIPA to perform the Operations Services. In addition, to the extent requested by LIPA, the Service Provider shall use reasonable efforts to retain any or all senior management employees and make them available following termination or expiration of this Agreement to provide on-site, real-time consulting advice to a successor service provider for the T&D System or LIPA, such services to be made available for up to six (6) months. LIPA shall compensate the Service Provider for the provision of such services on the basis of the Service Provider's fully allocated time and materials charges;

(2) Unless otherwise agreed by the Parties, upon expiration or the earlier termination of this Agreement, all licenses and sublicenses granted hereunder shall terminate and be of no further force or effect, except to the extent any such license or sublicense (other than those relating to the Service Provider Marks, which, except for any phase-out rights set forth in this Agreement, including in Section 4.2(A)(3)(v)(i), shall not be subject to this exception) is required for the performance of the Service Provider's services pursuant to this Section 8.5, which license or sublicense shall then terminate upon completion of such services.

If, upon termination hereof, LIPA is to perform the Service Provider's obligations under this Agreement, the Service Provider will reasonably cooperate, at LIPA's request and expense, to assist LIPA in obtaining such necessary licenses with such vendors or transferring the Service Provider's licenses to LIPA; provided, however, that the Service Provider shall have no further liability, obligation or cost with respect thereto except with respect to the period prior to the termination of this Agreement in accordance with the terms hereof. The Service Provider shall not agree with vendors providing services on its behalf under this Agreement that such vendors cannot contract directly with LIPA to provide such services.

#### SECTION 8.6 DISPUTE RESOLUTION.

(A) Dispute Resolution. Any dispute arising out of or relating to this Agreement or the interpretation, breach, termination or validity thereof including any disagreement relating to a Consolidated LIPA Budget (including the Budgets contained therein but excluding the 2014-2015 Consolidated LIPA Budgets) (a "Dispute") shall be resolved in accordance with the procedures below, which shall constitute the sole and exclusive procedures for the resolution of such Disputes, including as to the validity of any termination or effective date of any termination.

(B) Negotiation. The Parties shall attempt to resolve any Dispute promptly by negotiation. Any Party may give the other Party written notice of any Dispute not resolved in the normal course of business. Within five (5) days after receipt of the notice, the receiving Party shall submit to the other Party a written response. The notice and response shall include a statement of that Party's position and a summary of arguments supporting that position. Within five (5) days after receipt of the initial notice, designated senior executives of each Party shall meet at a mutually acceptable time and place, and thereafter as often as each Party reasonably deems necessary, to attempt through diligent, good faith negotiations to resolve the Dispute. The Parties shall endeavor to complete the negotiation process within ten (10) days after the receipt of the Dispute notice. All negotiations and discussions pursuant to this Section 8.6(B) shall be confidential and shall be treated as compromise settlement discussions and negotiations for purposes of Federal Rule of Evidence 408 and any applicable New York state evidence rules and shall not be used or offered as evidence in any subsequent proceeding.

(C) Arbitration. (i) Any Dispute which has not been resolved by negotiation as provided in subsection (B) within twenty (20) days after the receipt of the Dispute notice above shall be finally resolved by binding arbitration within sixty (60) days after the appointment of arbitrators (or as soon thereafter as practicable) in accordance with the CPR Rules for Non-Administered Arbitrations ("CPR Rules") then currently in effect, except to the extent such rules are inconsistent with the terms of this Agreement, in which case the provisions of this Agreement shall govern. Either Party may commence arbitration of a Dispute by delivering written notice in accordance with the CPR Rules to the other Party which includes a statement of that Party's position and a summary of arguments supporting that position. The arbitration shall be conducted by three arbitrators (the "Arbitrators"). LIPA hereby designates Robert B. Davidson as its arbitrator or, in the event he is unavailable, Michael D. Young as its alternate arbitrator. The Service Provider hereby designates [\_\_\_\_\_] as its arbitrator or, in the event he is unavailable, Harold G. Levison as its alternate arbitrator. In the event that a Party's designee is no longer able or is unwilling to serve as an arbitrator for a Dispute, a Party may



appoint a substitute or replacement arbitrator and shall promptly notify the other Party thereof. The Parties' designated arbitrators are hereinafter referred to as the "Party Appointed Arbitrators." The Party Appointed Arbitrators, within two (2) Business Days of receiving notice of their appointment will select a third arbitrator (the "Chair"), who will be one of the following individuals: Bud D. Holman; James Carter; John Bissell; and Patrick Hobbs. The Chair shall be the chairperson of the panel of Arbitrators. In the event that none of the above-listed individuals is able or is willing to serve or continue to serve as the Chair, the Party Appointed Arbitrators will confer and agree on a replacement Chair within three (3) Business Days. In the event no such agreement can be reached, the CPR Rules shall govern the appointment of the Chair.

(ii) Notwithstanding anything to the contrary in this Agreement or in the CPR Rules, the Parties agree: (1) the Arbitrators shall not be bound by substantive principles of New York law; (2) the Arbitrators shall decide all matters de novo (including matters that have previously been the subject of determinations by the LIPA Board of Trustees, any court in proceedings under Article 78 of the New York CPLR or any other Governmental Body); and (3) neither Party will assert the principles of collateral estoppel or res judicata in the arbitration, other than with respect to matters previously decided under this Section 8.6.

(D) Provisional Relief. Either Party may, without prejudice to any negotiation or arbitration procedures commenced pursuant to subsections (B) or (C) above, proceed in the New York State Supreme Court, Nassau County or the U.S. District Court for the Eastern District of New York, to seek to obtain provisional judicial relief if, in the such Party's sole discretion, such action is necessary to avoid imminent irreparable harm, to provide uninterrupted electrical and other services, or to preserve the status quo pending the conclusion of such negotiation or arbitration.

(E) Information Exchange. The Arbitrators shall have the discretion to order a prehearing exchange of information by the Parties, including production of requested documents, the exchange of witness statements of proposed witnesses, and the examination by deposition of Parties. The Parties hereby agree timely to produce all such information as ordered by the Arbitrators.

(F) Site of Arbitration. The site of any arbitration brought pursuant to the terms hereof shall be Uniondale, New York, or such other site as the Parties may agree.

(G) Awards.

(1) The Arbitrators shall have no authority to award damages other than the prevailing Party's damages specifically recoverable under and subject to the liability limitations provided in this Agreement plus interest at the Default Interest Rate from the date such damages were incurred.

(2) The Arbitrators may award reasonable attorneys' fees and costs of the arbitration. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1-16 (the "FAA"), and judgment upon the award rendered by the Arbitrators may be entered by any court having jurisdiction thereof.

(3) Any arbitration award will be final and binding on LIPA and the Service Provider (including with respect to any determination to be made by either Party in a DPS proceeding) notwithstanding the outcome of any Legal Proceeding regarding LIPA's obligation to follow the recommendation of the DPS or other Governmental Body. Upon the issuance of an arbitration award regarding a Dispute over a Budget, the LIPA Board of Trustees shall, as promptly as practicable and legally permissible, adopt a resolution formally approving the Budget effected by such arbitration award.

(H) Obligation to Repair; Termination Notice. The Parties will continue to perform their respective obligations hereunder, including the Service Provider's performance of the Operations Services in accordance with the terms hereof, notwithstanding the existence of any Dispute, including without limitation, responsibility for the costs thereof. Such performance by the Parties shall in no case prejudice their rights thereafter to dispute their responsibility for the costs. During such arbitration process, any termination notice delivered pursuant to this Agreement shall be tolled and this Agreement shall not terminate until the later of (a) the end of the period provided in such termination notice, and (b) the issuance of a final, binding ruling by the Arbitrators that the termination of this Agreement was proper.

(I) Certain Expedited Matters. Any (x) IRS Dispute and (y) other Dispute arising with respect to (i) any Operating Budget, Capital Budget or Default Budget or any proposed amendment or modification thereto or other matters under Section 5.2 or Article 6 hereof, (ii) information access under Section 4.11 hereof, (iii) any reporting requirements described in the Contract Administration Manual, (iv) the Exit Test under Section 9.3 hereof, (v) the right of a Party to terminate this Agreement pursuant to Article 8 hereof or (vi) proposed implementation of a DPS recommendation issued pursuant to the LIPA Reform Act (such Disputes set forth in clauses (x) and (y) above, collectively, the "Expedited Dispute Matters"), shall be immediately subject to arbitration pursuant to subsection (C) above and the following procedural rules shall apply:

(1) Within five (5) days after the Chair is appointed, the Arbitrators shall meet with the Parties in a first preliminary conference to (a) establish a schedule for the exchange of information, pre-hearing submissions, if any, and the date and location of the final hearing on the merits, and (b) consider any other issues relevant to the Dispute that the Parties or Arbitrators deem relevant;

(2) Unless the Parties agree otherwise, the final hearing on the merits shall be conducted on consecutive Business Days until concluded, but in no event shall the final hearing on the merits last more than five (5) Business Days. The final hearing of any Dispute shall be held within thirty (30) days (or, in the case of a Dispute under Section 6.2, 6.3 or 6.4 hereof, fifteen (15) days) after the first preliminary conference;

(3) The Arbitrators shall render their final award within fifteen (15) days after the close of the final hearing on the merits or, if a final hearing on the merits has been waived, within fifteen (15) days after receipt by the Arbitrators of all materials required by the Arbitrators;

(4) The Parties may agree to modify the time limits set out herein. The Arbitrators, on their own initiative, may not extend the time limits (except at the request of a Party due to the other Party's failure to timely comply with the Arbitrators' orders), but may shorten the time limits;

(5) Notwithstanding the above time limits, either Party may request the Arbitrators at any time to grant a temporary restraining order or other appropriate injunctive relief with respect to any Expedited Dispute Matter, and the Arbitrators may grant such relief, but only if the Party so requesting would be entitled to such relief from a court applying the applicable standards of the law of New York with respect to the granting of such relief.

(6) LIPA agrees that, subject to its obligations to comply with its bond covenants and requirements of Applicable Law, if a Dispute is submitted for resolution pursuant to this Section 8.6 by the Service Provider under Section 6.2, 6.3 or 6.4 hereof, neither LIPA nor the LIPA Board of Trustees shall, until fifteen (15) days after the completion of the first preliminary conference referenced in Section 8.6(I)(1) above, implement the relevant change to the Consolidated LIPA Budget, or take any action or omit to take any action that would result in LIPA being required to implement the relevant change to the Consolidated LIPA Budget under the LIPA Reform Act.

(J) IRS Ruling Dispute. Regarding an IRS Ruling Dispute stemming from a failure of the Parties to agree under Section 2.2(A)(3) hereof to revisions to this Agreement in response to IRS Objections, each Party shall submit to the Arbitrators its respective proposed resolution (which shall not contain any modification to a Fundamental Term) to address the specific IRS Objection in reasonable detail (being the last written proposal submitted by one Party to the other, each a "Final IRS Proposal"). In resolving the Dispute, the Arbitrators shall be required to proceed as follows:

First: The Arbitrators shall select a Final IRS Proposal which is reasonably likely to overcome the IRS Objections and thus to protect the exemption of interest on tax exempt bonds issued by LIPA to finance the T&D System.

Second: The Arbitrators shall select the Final IRS Proposal which best preserves as nearly as possible the terms as first executed.

Third: The Arbitrators in rendering their award shall be limited to choosing in its entirety either the Service Provider's Final IRS Proposal or LIPA's Final IRS Proposal, and shall have no discretion to revise or modify the positions of the Parties or render an award otherwise inconsistent with one or the other Party's submission to the Arbitrators. The Arbitrators' decision resolving such Dispute shall be incorporated in LIPA's supplemental Ruling Request but shall not take effect until receipt of a favorable IRS Ruling.

(K) Grounds for Judicial Review. Any award made by the Arbitrators with respect to any Dispute pursuant to the dispute resolution procedures in this Section 8.6 may be vacated, modified or corrected by a court only on the grounds permitted under the provisions of Sections 10 and 11 of the FAA.

(L) Submission to Jurisdiction. Each Party hereto irrevocably submits to the exclusive jurisdiction of any New York State court located in Nassau County and the U.S. District Court for the Eastern District of New York for the purposes of any action to compel arbitration, in aid of arbitration or for provisional relief in accordance with Section 8.6(D) hereof, and agrees to commence any such action only in such courts, except in the case of a termination due to a bankruptcy or insolvency which may be subject to the exclusive jurisdiction of the bankruptcy courts. Each Party further agrees that service of any process, summons, notice or document by U.S. registered mail to such Party's respective address set forth herein shall be effective service of process for any such action. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action arising out of this Agreement or the transactions contemplated hereby in such courts, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action brought in any such court has been brought in an inconvenient forum. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY SUCH ACTION.

SECTION 8.7 WAIVER OF CERTAIN DEFENSES.

The Service Provider acknowledges that it is responsible for the Operations Services and agrees that, unless otherwise permitted pursuant to the provisions of this Agreement with respect to the occurrence of Force Majeure events, and without limiting such provisions, it shall not assert (i) impossibility or impracticability of performance, (ii) lack of fitness for use or operation of the T&D System, (iii) the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of the Service Provider, (iv) commercial frustration of purposes or (v) contract of adhesion, as a defense against any claim by LIPA against the Service Provider.

SECTION 8.8 LIABILITY LIMITATION FOR CERTAIN DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER THE SERVICE PROVIDER INDEMNIFIED PARTIES NOR THE LIPA INDEMNIFIED PARTIES SHALL BE LIABLE, WHETHER IN CONTRACT, INDEMNITY, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE, AND STRICT LIABILITY), OR OTHERWISE, FOR ANY SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHICH ARISE FROM, RELATE TO OR ARE CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE OF OR FAILURE TO PERFORM THEIR RESPECTIVE OBLIGATIONS HEREUNDER EXCEPT FOR SUCH DAMAGES PAYABLE TO A THIRD PARTY IN RESPECT OF A THIRD PARTY CLAIM, SUBJECT, HOWEVER, TO THE LIMITATIONS ON LIABILITY PROVIDED IN SECTIONS 7.1, 7.2, 7.3 AND 10.2 HEREOF.

SECTION 8.9 LIPA EMERGENCY POWERS.

Should the Service Provider, due to a Force Majeure event or any other reason whatsoever (other than a LIPA Fault), fail, refuse or be unable to provide any or all Operations Services contemplated hereby and LIPA or any Governmental Body finds that such failure endangers or menaces the public health, safety or welfare, then, in any of those events and to the extent of such failure, LIPA shall have the right, upon notice to the Service Provider, during the

period of such emergency, to take possession and control of and use any or all of the Operating Assets necessary to transmit and distribute Power and Energy which the Service Provider would otherwise be obligated to transmit and distribute. The Service Provider agrees that in such event it will fully cooperate with LIPA to effect such a temporary transfer of possession of the Operating Assets for LIPA's use of the same. The Parties acknowledge that if LIPA takes emergency possession of the Operating Assets, any applicable cure period provided for in this Agreement for the Service Provider's benefit shall be tolled until such time as the Service Provider resumes possession of the Operating Assets. LIPA may operate the Operating Assets with LIPA employees, or cause the Operating Assets to be operated by subcontractors to LIPA or through the use of the Service Provider's or ServCo's employees, and the Service Provider shall make its employees and those of ServCo available for such purposes. It is further agreed that LIPA may at any time, at its discretion, relinquish possession of any or all of the Operating Assets to the Service Provider and thereupon demand that the Service Provider resume the operations as provided in this Agreement. It is specifically understood and agreed that: (1) LIPA's exercise of its rights under this Section does not constitute a taking of private property for which payment must be made other than as specifically provided for in this Section, (2) LIPA's exercise of its rights under this Section shall not create any liability on the part of LIPA to the Service Provider, (3) the indemnity provisions of Section 10.2 hereof covering LIPA and the Service Provider are meant to include circumstances arising under this Section; (4) LIPA's payment obligations to the Service Provider arising under this Agreement shall continue; and (5) the period that LIPA takes possession and control of and use of any or all of the Operating Assets under this Section 8.9 shall not be taken into account for any purpose in calculating any Performance Metric. LIPA's right to retain temporary emergency possession of the Operating Assets and to operate the T&D System shall terminate at the earlier of: (1) the time when such services can, in the judgment of LIPA, be resumed by the Service Provider, or (2) the time when LIPA no longer reasonably requires such Operating Assets, as determined by LIPA.

## ARTICLE 9 FUTURE SERVICE PROVIDERS; BACK-END TRANSITION SERVICES

### SECTION 9.1 SELECTION OF FUTURE SERVICE PROVIDERS.

The Service Provider hereby acknowledges that LIPA may conduct a procurement for Operations Services to be provided following the expiration or earlier termination of this Agreement. The Service Provider shall have the right to submit a proposal in such procurement on the same basis as other proposers. The Service Provider shall fully cooperate with LIPA during any such procurement process.

### SECTION 9.2 BACK-END TRANSITION SERVICES.

(A) General. Prior to the expiration or earlier termination of this Agreement, the Service Provider will be required to provide the Back-End Transition Services specified in the Contract Administration Manual. The Back-End Transition Plan and services shall include specific activities, budgets, schedules and milestones necessary to accomplish the back-end transition, including planning for the performance of the Exit Test under Section 9.3 hereof. Such activities shall include the following:

(1) identification of the Service Provider's team, by position, for the Back-End Transition Services, including an overall transition manager responsible for managing all Back-End Transition Services;

(2) cooperation with the successor service provider, including the provision of assistance familiarizing the successor service provider with any facilities, furnishings, material, supplies, and equipment owned by LIPA but used by ServCo in the delivery of Operations Services;

(3) assistance familiarizing the successor service provider with Intellectual Property to be transitioned for its use;

(4) assistance familiarizing the successor service provider with the records management program;

(5) assistance familiarizing the successor service provider with the functional areas associated with the Operations Services;

(6) preparation and delivery of information to the successor service provider relative to the staffing of ServCo as well as associated benefits programs, work rules and labor contracts;

(7) transfer of the Contract Administration Manual and the Operations Manual and any pertinent supporting information and records to the successor service provider;

(8) assistance familiarizing the successor service provider with the IT systems and infrastructure;

(9) assistance familiarizing the successor service provider with storm and emergency response plan;

(10) assistance familiarizing the successor service provider with all third-party contracts; and

(11) cooperation in the performance of the comprehensive Exit Test in accordance with the provisions of Section 9.3 hereof.

### SECTION 9.3 EXIT TEST.

(A) Exit Test. An exit test (the "Exit Test") will be commenced at least six (6) months prior to the expiration or, to the extent practicable, termination of this Agreement to confirm (1) that the Service Provider has performed or will perform the maintenance and Capital Improvement activities which were provided for in the approved or Default Budget for the final year of this Agreement or as otherwise previously approved by LIPA, in such final year and (2) that the Service Provider has completed or will complete any remedial activities to cure maintenance deficiencies or Capital Improvements which were previously determined to be incomplete as noted by LIPA pursuant to the most recently conducted review of the condition of the T&D System which review may be conducted periodically. LIPA shall have the right and

responsibility in consultation with the Service Provider to establish the specific requirements and parameters of the Exit Test which will be conducted in accordance with the policies and procedures mutually agreed to by the Parties. If, as a result of such Exit Test, an independent engineer selected by LIPA and reasonably acceptable to the Service Provider finds that maintenance, Capital Improvement, replacement, or remedial activities described in (1) and (2) above have not been performed in accordance with this Agreement, then the Service Provider shall perform such incomplete maintenance, Capital Improvement, replacement, or remedial activities prior to the expiration of this Agreement. Any Dispute arising under this Section 9.3 shall be subject to the dispute resolution procedures in Section 8.6(I) hereof.

## ARTICLE 10 GENERAL

### SECTION 10.1 FORCE MAJEURE GENERALLY.

(A) Performance Excused. Except as otherwise specifically provided in this Agreement, neither LIPA nor the Service Provider shall be liable to the other for any failure or delay in performance of any obligation under this Agreement (other than any payment at the time due and owing), including any obligation with respect to the Performance Metrics, to the extent due to the occurrence of a Force Majeure event.

(B) Notice, Mitigation. The Party claiming a Force Majeure event (the “Claiming Party”) shall notify the other Party in writing, on or promptly after the date the Party experiencing such Force Majeure event first knew of the commencement thereof, followed within fifteen (15) days by a written description of (1) the Force Majeure event and the cause thereof (to the extent known), (2) the date the Force Majeure event began and the cause thereof, its estimated duration, the estimated time during which the performance of the Claiming Party’s obligations hereunder will be delayed, and the impact, if any, on any scheduled completion dates for Capital Improvements, (3) its estimated impact on the other obligations of the Claiming Party under this Agreement and (4) potential mitigating actions which might be taken by the Claiming Party and any areas where costs might be reduced and the approximate amount of such cost reductions. The Claiming Party shall provide prompt written notice to the other Party of the cessation of such Force Majeure event. Whenever such act, event or condition shall occur, the Claiming Party shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefor, reduce costs and resume performance under this Agreement. While the Force Majeure event continues, the Claiming Party shall give notice to the other Party before the first day of each succeeding month updating the information previously submitted. The Claiming Party shall furnish promptly (if and to the extent available to it) any additional documents or other information relating to the Force Majeure event reasonably requested by the other Party.

(C) Conditions to Relief on Account of Force Majeure. If and to the extent a Force Majeure event interferes with or delays the Service Provider’s performance of the Operations Services in accordance herewith, and the Service Provider has given timely notice and description as required by Section 10.1(B) hereof, the Service Provider shall be excused from performance (and also excused with respect to the achievement of any affected Performance Metrics) and be entitled to schedule relief and to recovery of the increased costs thereof as a Pass-Through Expenditure, subject, however, to cost substantiation. In the event that the Service Provider believes it is entitled to schedule or other performance relief hereunder on

account of any Force Majeure event, it shall furnish LIPA written notice of the specific relief requested and detailing the event giving rise to the claim within forty-five (45) days after the giving of notice delivered pursuant to Section 10.1(B) hereof. Within forty-five (45) days after receipt of such a timely submission from the Service Provider, LIPA shall issue a written determination as to the extent, if any, it concurs with the Service Provider's claim for relief, and the reasons therefor.

## SECTION 10.2 INDEMNIFICATION.

### (A) Indemnification by the Service Provider.

(1) Subject to the limitations on liability provided in Sections 7.1, 7.2, 7.3, 8.8 and this Section 10.2, the Service Provider agrees that to the fullest extent permitted by law, it will defend, indemnify and hold harmless LIPA, the Authority, their Affiliates, and Subcontractors, and their respective Representatives, trustees, directors, officers, and employees (as applicable in the circumstances), (the "LIPA Indemnified Parties") from and against (and pay the full amount of) any Loss-and-Expense and will defend the LIPA Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property and for any Loss-and-Expense arising out of (i) any breach by the Service Provider of any representation, warranty or covenant of the Service Provider in this Agreement, (ii) any Third Party Claims for which the Service Provider has assumed responsibility under this Agreement, (iii) the gross negligence or willful misconduct of any Service Provider Indemnified Party, or (iv) any claim that LIPA's use of any Service Provider Pre-Existing Intellectual Property, provided by or on behalf of the Service Provider or the Service Provider Related Parties or Service Provider Licensed Intellectual Property, infringes or otherwise violates Intellectual Property rights of any third party. The Service Provider shall not, however, be required to reimburse or indemnify any LIPA Indemnified Party for any Loss-and-Expense to the extent any such Loss-and-Expense is due to (a) any matter for which LIPA is responsible under this Agreement, (b) the negligence or willful misconduct of any LIPA Indemnified Party, (c) any Force Majeure event or LIPA Fault, (d) any act or omission of any LIPA Indemnified Party determined to be responsible for or contributing to the Loss-and-Expense, (e) any act or omission with respect to the ownership, operation, maintenance or environmental condition of the T&D System occurring prior to the Service Commencement Date, (f) any customer claim brought by a retail or wholesale electric customer of LIPA, or (g) claims brought by ServCo employees or former employees with respect to entitlements or benefits under ServCo's pension or other employee benefit plans.

(2) A LIPA Indemnified Party shall promptly notify the Service Provider of the assertion of any Third-Party Claim against it for which it is entitled to be indemnified hereunder, shall give the Service Provider the opportunity to defend such claim, and shall not settle the claim without the approval of the Service Provider. The Service Provider shall be entitled to control the handling of any such Third-Party Claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing that is acceptable to the LIPA Indemnified Parties; provided, however, that, in the case of any such settlement, the Service Provider shall also obtain written release of all liability of the LIPA Indemnified Parties, in form and substance reasonably acceptable to the LIPA Indemnified Parties. Notwithstanding the foregoing, each LIPA Indemnified Party shall have the right to employ its own separate counsel



in connection with, and to participate in (but, except as provided below, not control) the defense of, such claim, but the fees and expenses of such counsel incurred after notice to the Service Provider of its assumption of the defense thereof shall be at the expense of such LIPA Indemnified Party unless:

(i) the employment of counsel by such LIPA Indemnified Party has been authorized by the Service Provider;

(ii) counsel to such LIPA Indemnified Party shall have reasonably concluded that there may be a conflict on any significant issue between the Service Provider and such LIPA Indemnified Party in the conduct of the defense of such claim; or

(iii) the Service Provider shall not in fact have employed counsel reasonably acceptable to the LIPA Indemnified Party to assume the defense of such claim within twenty (20) days following the receipt by the Service Provider of the notice from the LIPA Indemnified Party regarding the assertion of the applicable claim, in each case the fees and expenses of counsel for such LIPA Indemnified Party shall be at the expense of the Service Provider; provided, however, that, with respect to clauses (ii) and (iii) of this sentence, the Service Provider shall not be obligated to pay the fees and expenses of more than one law firm, plus local counsel if necessary in each relevant jurisdiction, for all such LIPA Indemnified Parties with respect to any claims arising out of the same events or facts or the same series of events or facts. The Service Provider shall not be entitled, without the consent of such LIPA Indemnified Party, to assume or control the defense of any claim as to which counsel to such LIPA Indemnified Party shall have reasonably made the conclusion that there may be a conflict on any significant issue between the Service Provider and such LIPA Indemnified Party in the conduct of the defense of such claim as set forth in clause (ii) above, provided that the foregoing limitation shall apply only with respect to those issues for which there may be such a conflict. These indemnification provisions are for the protection of the LIPA Indemnified Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this Section 10.2(A) shall survive termination of this Agreement.

(3) Direct Claims by LIPA Indemnified Parties. In the event that LIPA believes it has suffered or incurred Loss-and-Expense attributable to or arising out of a breach by the Service Provider of a representation, warranty or covenant for which the Service Provider has assumed liability pursuant to Section 7.1(2) hereof (a "LIPA Direct Claim"), LIPA shall provide written notice thereof to the Service Provider. Such notice shall include a description in reasonable detail of the claimed breach, together with the amount of the Loss-and-Expense incurred or suffered, to the extent then reasonably determinable. If the Parties are unable to resolve the claim following good faith negotiations, either Party may submit the matter for resolution pursuant to the dispute resolution provisions of Section 8.6 hereof.

(B) Indemnification by LIPA.

(1) Subject to the limitations on liability provided in Sections 7.1, 7.2, 7.3, 8.8 and this Section 10.2, LIPA agrees that to the fullest extent permitted by law, it will defend, indemnify and hold harmless the Service Provider, the Guarantor, the Parent Company and their respective Affiliates and Representatives, officers, directors, Subcontractors (as

applicable in the circumstances) and employees (the “Service Provider Indemnified Parties”) from and against (and pay the full amount of) any Loss-and-Expense, and will defend the Service Provider Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property and for any Loss-and-Expense arising out of (i) any breach by LIPA of any representation, warranty or covenant of LIPA in this Agreement, (ii) any Third Party Claims for which LIPA has assumed responsibility under this Agreement, (iii) the gross negligence or willful misconduct of any LIPA Indemnified Party, (iv) any Loss-and-Expense to the extent attributable to actions or omissions with respect to the ownership, operation, maintenance or environmental condition of the T&D System occurring prior to the Service Commencement Date, (v) any customer claim brought by a retail or wholesale electric customer of LIPA, (vi) claims brought by ServCo employees or former employees with respect to benefits under ServCo’s pension or other employee benefit plans, and (vii) any claim that (x) the Service Provider’s use of any LIPA Pre-Existing Intellectual Property, provided by or on behalf of LIPA or LIPA Related Parties or LIPA Licensed Intellectual Property, except LIPA Licensed Intellectual Property procured by or selected based upon the recommendation of the Service Provider in accordance with this Agreement, or (y) the Service Provider’s use of the LIPA Marks in accordance with this Agreement, infringes or otherwise violates Intellectual Property rights of any third party. LIPA shall not, however, be required to reimburse or indemnify any Service Provider Indemnified Party for any Loss-and-Expense to the extent any such Loss-and-Expense is due to (A) any matter for which the Service Provider is responsible under this Agreement, (B) the negligence or willful misconduct of any Service Provider Indemnified Party, (C) any Force Majeure event, or (D) any act or omission of any Service Provider Indemnified Party determined to be responsible for or contributing to the Loss-and-Expense.

(2) A Service Provider Indemnified Party shall promptly notify LIPA of the assertion of any Third Party Claim against it for which it is entitled to be indemnified hereunder, shall give LIPA the opportunity to defend such claim, and shall not settle the claim without the approval of LIPA. LIPA shall be entitled to control the handling of any such Third Party Claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing that is reasonably acceptable to the Service Provider Indemnified Party; provided, however, that, in the case of any such settlement, LIPA shall obtain written release of all liability of the Service Provider Indemnified Parties, in form and substance reasonably acceptable to the Service Provider Indemnified Parties. Notwithstanding the foregoing, each Service Provider Indemnified Party shall have the right to employ its own separate counsel in connection with, and to participate in (but, except as provided below, not control) the defense of, such claim, but the fees and expenses of such counsel incurred after notice to LIPA of its assumption of the defense thereof shall be at the expense of such Service Provider Indemnified Party unless:

(i) the employment of counsel by such Service Provider Indemnified Party has been authorized by LIPA;

(ii) counsel to such Service Provider Indemnified Party shall have reasonably concluded that there may be a conflict on any significant issue between LIPA and such Service Provider Indemnified Party in the conduct of the defense of such claim; or

(iii) LIPA shall not in fact have employed counsel reasonably acceptable to the Service Provider Indemnified Party to assume the defense of such claim within twenty (20) days following the receipt by LIPA of the notice from the Service Provider Indemnified Party regarding the assertion of the applicable claim, and in each case the fees and expenses of counsel for such Service Provider Indemnified Party shall be paid by LIPA; provided, however, that, with respect to clauses (ii) and (iii) of this sentence, LIPA shall not be obligated to pay the fees and expenses of more than one law firm, plus local counsel if necessary in each relevant jurisdiction, for all such Service Provider Indemnified Parties with respect to any claims arising out of the same events or facts or the same series of events or facts. LIPA shall not be entitled, without the consent of such Service Provider Indemnified Party, to assume or control the defense of any claim as to which counsel to such Service Provider Indemnified Party shall have reasonably made the conclusion that there may be a conflict on any significant issue between LIPA and such Service Provider Indemnified Party in the conduct of the defense of such claim as set forth in clause (ii) above, provided that the foregoing limitation shall apply only with respect to those issues for which there may be such a conflict. These indemnification provisions are for the protection of the Service Provider Indemnified Parties only and shall not establish, of themselves, any liability to third parties.

(3) Direct Claims by Service Provider Indemnified Parties. In the event that the Service Provider believes it has suffered or incurred Loss-and-Expense attributable to or arising out of a breach by LIPA of a representation, warranty or covenant for which LIPA has assumed liability pursuant to Section 7.2(3) hereof (a “Service Provider Direct Claim”), the Service Provider shall provide written notice thereof to LIPA. Such notice shall include a description in reasonable detail of the claimed breach, together with the amount of the Loss-and-Expense incurred or suffered, to the extent then reasonably determinable. If the Parties are unable to resolve the claim following good faith negotiations, either Party may submit the matter for resolution pursuant to the dispute resolution provisions of Section 8.6 hereof.

### SECTION 10.3 INTELLECTUAL PROPERTY.

(A) LIPA Owned Intellectual Property. The Parties hereby acknowledge and agree that, as between them, and whether or not specifically recognized or perfected under any Applicable Law, LIPA shall own all right, title, and interest in and to all Intellectual Property (other than Service Provider Pre-Existing Intellectual Property, Affiliate Pre-Existing Intellectual Property, Subcontractor Pre-Existing Intellectual Property or Utility Intellectual Property), and derivatives thereof, regardless of format, first created or produced under this Agreement by Service Provider and its Affiliates and, to the extent the applicable third party contracts so provide, any of their Subcontractors (“Work Product”), all of which shall to the fullest extent under Applicable Law be considered works made for hire. The Service Provider shall use commercially reasonable efforts to ensure that relevant third-party contracts with Subcontractors properly reflect LIPA’s ownership of Work Product pursuant to the preceding sentence. If any Subcontractor refuses to include such a provision in a relevant third-party contract, the Service Provider shall notify LIPA and, at LIPA’s request, the Service Provider shall not use such Subcontractor for the provision of Operations Services. Whether or not any Work Product constitutes a work made for hire, all Work Product shall be the Intellectual Property of LIPA, which shall have the sole right to obtain or claim Patent (pursuant to Section 10.3(D) hereof),

Copyright Rights, Trademark and any other Intellectual Property rights therein, and to otherwise preserve its rights in and to the Work Product.

(B) Pre-Existing Intellectual Property. Any Intellectual Property that is not first created or produced under this Agreement and is embedded in or otherwise necessary for the Work Product shall remain the Intellectual Property of the owner, contributing party (and shall be referred to as “LIPA Pre-Existing Intellectual Property”, “Service Provider Pre-Existing Intellectual Property”, “Affiliate Pre-Existing Intellectual Property” or “Subcontractor Pre-Existing Intellectual Property”, as the case may be). For purposes of any LIPA representation, warranty or indemnification made under this Agreement, LIPA Pre-Existing Intellectual Property shall not include any Transition Services Work Product, as defined in the Transition Services Agreement, created by the Service Provider under the Transition Services Agreement. Except as the Parties may otherwise mutually agree, LIPA and the Service Provider hereby grant to each other, non-exclusive, fully paid-up, royalty-free, worldwide licenses to make, have made, use, sell, offer for sale, export, import, reproduce, distribute, perform, display, execute and create derivative works from LIPA Pre-Existing Intellectual Property and Service Provider Pre-Existing Intellectual Property, respectively, in connection with the T&D System and related facilities or any successors thereto. The foregoing licenses are granted solely as necessary for the Parties to perform their obligations pursuant to this Agreement and shall continue throughout the Term. Except as the Parties may otherwise mutually agree, Service Provider shall cause its Affiliates to grant and shall use commercially reasonable efforts to cause any of its Subcontractors to grant to LIPA, non-exclusive, fully paid-up, royalty-free, worldwide licenses to make, have made, use, execute, sell, offer for sale, export, import, reproduce, distribute, perform, display, and create derivative work from Affiliate Pre-Existing Intellectual Property (excluding any Utility Intellectual Property) and Subcontractor Pre-Existing Intellectual Property to the extent such Intellectual Property is embedded in or otherwise necessary for the Work Product.

(C) Utility Intellectual Property. Nothing contained in this Agreement shall be construed as a sale, lease, mortgage or other disposal or encumbrance by the Service Provider or any of its Affiliates of public utility property under N.J.S.A. 48:3-7. The Parties agree that any sale, lease, mortgage, or other disposal or encumbrance of public utility property shall require a written agreement signed and approved by the State of New Jersey Board of Public Utilities and neither Party is obligated under this Agreement to take any action that would require such signature or approval. None of the licenses or assignments granted hereunder (including those granted under Sections 10.3(A), 10.3(B) and 10.3(Q) hereof) grant to any party any right, title or interest in or to any Intellectual Property owned or created by an Affiliate of the Service Provider (i) which is a public utility or (ii) using ratepayer funds not paid to the Service Provider by LIPA hereunder (“Utility Intellectual Property”). The Service Provider shall not, without LIPA’s advance written consent, use non-commercially available Utility Intellectual Property (other than Know-How) in the provision of Operations Services hereunder if such non-commercially available Utility Intellectual Property is material in any reasonable manner to the operation of the T&D System. As used in this Section 10.3, “non-commercially available” means, with respect to any Intellectual Property, Intellectual Property that is, as used by the Service Provider for the T&D System, not available as an off-the-shelf product in the commercial marketplace.

(D) Assignment of Work Product. To the extent that ownership in any Work Product does not automatically vest in LIPA, then the Service Provider shall transfer and assign

and shall cause its Affiliates to transfer and assign and shall use commercially reasonable efforts to cause any of their Subcontractors to transfer and assign, and the Service Provider does hereby assign all right, title and interest (including all Intellectual Property rights, including any related Copyright Rights) in and to such Work Product to LIPA. The Service Provider shall, and shall cause its Affiliates and shall use commercially reasonable efforts to cause any applicable Subcontractors to, execute all documents and take all actions requested by LIPA to transfer such ownership and otherwise assist LIPA to register, patent and otherwise maintain and protect LIPA's Intellectual Property rights in and to such Work Product anywhere in the world. The Service Provider shall promptly and fully disclose in writing to LIPA all patentable Work Product created during the Term. Upon notification, LIPA shall have the right, in its sole discretion and at its sole cost and expense, to patent such Work Product (the resulting Patents shall be "LIPA Patents"). Pursuant to this Section 10.3(D), the Service Provider shall provide all necessary assistance for LIPA to obtain, sustain, and, from time to time, enforce such LIPA Patents. Such assistance shall be at LIPA's sole cost and expense. LIPA shall not assert LIPA Patents against the Service Provider or its Affiliates or their Subcontractors in connection with the operation of their business operations or the performance of services for the Service Provider or its Affiliates or LIPA. If LIPA notifies the Service Provider of its intent not to patent any particular patentable Work Product, the Service Provider shall have the right, in its sole discretion and at its sole cost and expense, to patent such Work Product (the resulting Patents shall be "Service Provider Patents"). The Service Provider shall not assert Service Provider Patents against LIPA or LIPA Related Parties or their contractors or Subcontractors in connection with the operation of their business operations or the performance of services for LIPA or LIPA Related Parties. The Parties agree to enter into license agreements as appropriate consistent with the foregoing.

(E) License of Work Product and LIPA Licensed Intellectual Property.

Subject to the terms and conditions of this Agreement, LIPA hereby grants, and shall cause its Affiliates to grant, to the Service Provider and its Affiliates a fully paid-up, royalty-free, non-exclusive, non-transferable, sub-licensable (to Subcontractors) limited license during the Term, including for purposes of performing services under Section 8.5(D)-(G) hereof, to make, have made, use, execute, sell, offer for sale, export, import, reproduce, distribute, perform, display, and create derivative work from the Work Product, and to the extent sublicenseable, the LIPA Licensed Intellectual Property, solely as necessary to perform their obligations pursuant to this Agreement. The use of LIPA Licensed Intellectual Property shall be subject to the license terms governing such use of third-party Intellectual Property to the extent the Service Provider has access to or knowledge of such terms. LIPA shall notify the Service Provider of all such license terms, to the fullest extent permitted by the applicable contract. To the extent any LIPA Licensed Intellectual Property cannot be licensed to the Service Provider or its Affiliates or their Subcontractors for any reason, or the relevant contract cannot be disclosed to the Service Provider, then the Service Provider or its Affiliates or their Subcontractors must promptly obtain their own third party license for the relevant Intellectual Property at LIPA's sole cost and expense.

(F) Prohibitions on Registration or Changes to LIPA Markings. The Service Provider shall not and shall ensure that its Affiliates do not register, attempt to register, patent, or assist any third party to register or patent (except as provided in Section 10.3(D) hereof), any of the LIPA Owned Intellectual Property anywhere in the world, or otherwise take any action that

may jeopardize LIPA's proprietary rights or cause the Service Provider or its Affiliates to acquire any rights in the LIPA Owned Intellectual Property (including any translations, derivations, modifications, or updates thereof), except for the limited use rights specified in this Agreement. The Service Provider shall not and shall cause its Affiliates to not remove, change, or obliterate any copyright, confidential, or proprietary notices incorporated in, marked on, or fixed to the LIPA Owned Intellectual Property or LIPA Licensed Intellectual Property.

(G) Service Provider Restricted Uses. The Service Provider shall not and shall ensure that its Affiliates do not sublicense, rent, lease, distribute or otherwise authorize the use of the LIPA Owned Intellectual Property or LIPA Licensed Intellectual Property to or by or on behalf of anyone other than the Service Provider and its Affiliates, and the Subcontractors, for purposes of this Agreement, and otherwise shall not use LIPA Owned Intellectual Property or LIPA Licensed Intellectual Property for any other purpose.

(H) Reverse Engineering. The Service Provider shall not and shall ensure that its Affiliates do not and shall use commercially reasonable efforts to ensure that the Subcontractors do not decompile, disassemble, or reverse engineer any Software that is part of any LIPA Owned Intellectual Property or LIPA Licensed Intellectual Property without LIPA's advance written consent, which may be withheld in LIPA's sole discretion.

(I) Service Provider Sublicensee Approval. The Service Provider shall be responsible for compliance by all of its Affiliates and the Subcontractors with the terms and conditions of this Section 10.3. Any sublicensee of the Service Provider or any of its Affiliates with respect to LIPA Owned Intellectual Property or LIPA Licensed Intellectual Property must be approved in advance in writing by LIPA, and such consent shall not be unreasonably withheld or delayed. LIPA may require a sublicensee to expressly agree in writing to be bound by any applicable terms of this Agreement.

(J) Third Party Beneficiary. The Service Provider agrees to enforce, and shall cause all of its Affiliates to enforce, the terms of the sublicense agreement with respect to LIPA Owned Intellectual Property or LIPA Licensed Intellectual Property against the sublicensee. It is understood and agreed, however, that LIPA shall be a third party beneficiary of all sublicense agreements relating to LIPA Owned Intellectual Property and LIPA Licensed Intellectual Property, with the power to enforce relevant terms against any sublicensee. Each sublicense will include a provision that, in the event the sublicense agreement terminates, at LIPA's option, the sublicense shall become a direct license with LIPA or LIPA's designees.

(K) Intellectual Property Enforcement Cooperation. If the Service Provider or any of its Affiliates learns of any infringement or unauthorized use of the LIPA Owned Intellectual Property or LIPA Licensed Intellectual Property, then the Service Provider will promptly notify and shall cause its Affiliates to promptly notify LIPA thereof in writing and will provide commercially reasonable assistance and cooperation as may be requested by LIPA, but at LIPA's sole cost and expense. Any sublicense entered into between the Service Provider or any of its Affiliates and a Subcontractor pursuant to this Agreement with respect to LIPA Owned Intellectual Property or LIPA Licensed Intellectual Property shall contain a notification provision consistent with the foregoing.

(L) Third-Party Intellectual Property. To the extent the Service Provider wishes to use any non-commercially available Intellectual Property of any third party in the provision of Operations Services, to the extent LIPA may need to use such Intellectual Property, the Service Provider shall identify to LIPA, in writing in advance of any use of any such Intellectual Property, whether or not the Service Provider has a right to sublicense same to LIPA under the same terms as the Service Provider licenses the Service Provider Pre-Existing Intellectual Property to LIPA pursuant to Section 10.3(B) hereof. If the Service Provider does not have that sublicense right, it will use all commercially reasonable efforts to promptly secure such right. If the Service Provider cannot secure such sublicense rights with thirty (30) days of first request, or such extended time as LIPA may grant in writing, then the Service Provider will (at LIPA's option) (i) assist LIPA to obtain any necessary license directly from such third party, or (ii) not use such Intellectual Property (to the extent LIPA may also need to use it) and instead use or create a non-infringing alternative capable of accomplishing the same purpose in substantially the same manner. In no event will the Service Provider's inability to obtain a right to sublicense any non-commercially available Intellectual Property excuse the Service Provider's inability to perform or meet any deadline under this Agreement. To the extent permitted by the terms of such license, LIPA may examine any applicable license of the Service Provider or its Affiliates in connection with any non-commercially available third party Intellectual Property relevant to the provision of Operations Services hereunder. To the extent LIPA or LIPA Related Parties or their subcontractors sublicense any such Intellectual Property from the Service Provider or its Affiliates, LIPA, LIPA Related Parties, or their subcontractors' use of such non-commercially available third-party Intellectual Property shall be subject to the license terms governing such non-commercially available third-party Intellectual Property to the extent LIPA has access to or knowledge of such terms.

(M) Prohibitions on Registration or Changes to Service Provider Markings. LIPA shall not, and cause LIPA Related Parties to not, register, attempt to register, patent, or assist any third party to register or patent, any of the Service Provider Pre-Existing Intellectual Property, Affiliate Pre-Existing Intellectual Property or Subcontractor Pre-Existing Intellectual Property anywhere in the world, or otherwise take any action that may jeopardize the Service Provider's, Affiliates' or Subcontractors' proprietary rights or cause LIPA or the LIPA Related Parties to acquire any rights in the Service Provider Pre-Existing Intellectual Property, Affiliate Pre-Existing Intellectual Property or Subcontractor Pre-Existing Intellectual Property (including any translations, derivations, modifications, or updates thereof), except the limited use rights specified in this Agreement. LIPA shall not, and shall cause the LIPA Related Parties to not, remove, change, or obliterate any copyright, confidential, or proprietary notices incorporated in, marked on, or fixed to the Service Provider Pre-Existing Intellectual Property, Affiliate Pre-Existing Intellectual Property or Subcontractor Pre-Existing Intellectual Property or any Service Provider Licensed Intellectual Property, Affiliate Licensed Intellectual Property or Subcontractor Licensed Intellectual Property.

(N) LIPA Sublicensee Approval. LIPA shall not, and shall cause LIPA Related Parties to not, sublicense, rent, lease, distribute or otherwise authorize the use of the Service Provider Pre-Existing Intellectual Property, Affiliate Pre-Existing Intellectual Property or Subcontractor Pre-Existing Intellectual Property or Service Provider Licensed Intellectual Property, Affiliate Licensed Intellectual Property or Subcontractor Licensed Intellectual Property

to or by or on behalf of anyone other than LIPA and LIPA Related Parties or their subcontractors.

(O) Return of Intellectual Property. The Service Provider shall return and shall cause its Affiliates to return LIPA Owned Intellectual Property and LIPA Licensed Intellectual Property to LIPA at the end of the Term and shall have no rights with respect to LIPA Owned Intellectual Property or LIPA Licensed Intellectual Property thereafter. Unless otherwise agreed to by the Parties, except for any Service Provider Pre-Existing Intellectual Property, Affiliate Pre-Existing Intellectual Property (excluding any Utility Intellectual Property), or Subcontractor Pre-Existing Intellectual Property that is embedded in or otherwise necessary for the Work Product for which LIPA's license shall survive termination of this Agreement pursuant to Section 10.3(B), LIPA shall return (including by removal of the Service Provider Marks pursuant to Section 4.2(A)(4)(v) hereof) Service Provider Pre-Existing Intellectual Property, Affiliate Pre-Existing Intellectual Property, Subcontractor Pre-Existing Intellectual Property to the Service Provider at the end of the Term and shall have no rights thereafter with respect to Service Provider Pre-Existing Intellectual Property, Affiliate Pre-Existing Intellectual Property, Subcontractor Pre-Existing Intellectual Property.

(P) LIPA Trademark License Grant. Subject to the terms and conditions of this Agreement, LIPA hereby grants to the Service Provider a fully paid-up, royalty-free, non-exclusive, non-transferable, sub-licensable (to its Affiliates and Subcontractors), limited license during the Term to use the LIPA Marks to perform its obligations hereunder in accordance with the terms and conditions of this Agreement. Such license shall be subject to the following:

(1) The LIPA Marks are owned solely and exclusively by LIPA, and all use of the LIPA Marks by the Service Provider, its Affiliates and any Subcontractor, and all goodwill associated with the LIPA Marks, shall inure to the benefit of LIPA.

(2) The Service Provider shall use all commercially reasonable efforts, and shall cause its Affiliates to use all commercially reasonable efforts and shall use commercially reasonable efforts to cause Subcontractors to use all commercially reasonable efforts, to adhere to all quality control standards as established from time to time by LIPA. The Service Provider shall and shall cause its Affiliates and shall use commercially reasonable efforts to cause Subcontractors to: (a) comply with Applicable Law in performing the services under the LIPA Marks; and (b) not modify the LIPA Marks.

(3) The Service Provider shall, and shall cause its Affiliates to, police any sublicensee's use of the LIPA Marks, promptly notify LIPA of any noncompliance, and enforce the terms of the sublicense agreement relating to the LIPA Marks against the sublicensee at the Service Provider's own expense. It is understood and agreed, however, that LIPA shall be a third party beneficiary of all sublicense agreements relating to LIPA Marks, with the power to enforce the terms of this Subsection (P) directly against any sublicensee.

(4) If the Service Provider or any of its Affiliates learns of any infringement or unauthorized use of the LIPA Marks, then the Service Provider shall promptly notify LIPA in writing and shall provide commercially reasonable assistance and cooperation as may be requested by LIPA, but at LIPA's sole cost and expense.



(Q) Service Provider Trademark License Grant. Subject to the terms and conditions of this Agreement, the Service Provider hereby grants to LIPA a fully paid-up, royalty-free, non-exclusive, non-transferable, sub-licensable limited license during the Term to use the Service Provider Marks, in accordance with policies and procedures determined by the Service Provider pursuant to Section 4.2(A)(4)(v) hereof, to perform its obligations hereunder in accordance with the terms and conditions of this Agreement. Such license shall be subject to the following:

(1) The Service Provider Marks are owned solely and exclusively by the Service Provider, and all use of the Service Provider Marks by LIPA, and all goodwill associated with the Service Provider Marks, shall inure to the benefit of the Service Provider.

(2) LIPA shall use all commercially reasonable efforts to adhere to all quality control standards as established from time to time by the Service Provider. LIPA shall: (a) comply with Applicable Law in performing the services under the Service Provider Marks; and (b) not modify the Service Provider Marks.

(3) LIPA shall police any sublicensee's use of the Service Provider Marks, promptly notify the Service Provider of any noncompliance, and enforce the terms of the sublicense agreement relating to the Service Provider Marks against the sublicensee at LIPA's own expense. It is understood and agreed, however, that the Service Provider shall be a third party beneficiary of all sublicense agreements relating to Service Provider Marks, with the power to enforce the terms of this Subsection (Q) directly against any sublicensee.

(4) If LIPA learns of any infringement or unauthorized use of the Service Provider Marks, then LIPA shall promptly notify the Service Provider in writing and shall provide commercially reasonable assistance and cooperation as may be requested by the Service Provider, but at the Service Provider's sole cost and expense.

(R) Other. Notwithstanding anything to the contrary in this Agreement any non-compliance, error or mistake of either Party with respect to any of its obligations under Section 4.11 hereof or this Section 10.3 shall not constitute an event of default or a breach under this Agreement if such non-compliance, error or mistake is (1) inadvertent, (2) does not have, or would not reasonably be expected to have, a material and adverse effect on the performance by the either Party of its obligations under this Agreement and (3) is cured within thirty (30) days of such Party becoming aware of such non-compliance, error or mistake. Costs incurred by the Service Provider in curing such non-compliance, error or mistake shall be Pass-Through Expenditures under Section 5.2(A)(9) hereof.

#### SECTION 10.4 PROPRIETARY INFORMATION.

(A) Confidential Information. The Parties hereby acknowledge that they may have a proprietary interest in certain information that may be furnished pursuant to the provisions of this Agreement, including, but not limited to, any non-public Know-How, System Information, the information described in Section 4.2(A)(3)(c)(iv) hereof, and LIPA Personal Information ("Confidential Information"). Subject to the terms of this Agreement (including the permitted disclosures described below), each Party shall maintain in confidence all Confidential

Information provided by the other Party, and shall not disclose such Confidential Information to any third party except to those related parties (as applicable, the LIPA Related Parties and Service Provider Related Parties) and subcontractors as are necessary to the disclosing Party's activities under this Agreement, and strictly on a need-to-know basis. In maintaining confidentiality of another Party's Confidential Information, each Party shall exercise the same degree of care that it exercises with its own confidential information and in no event less than a reasonable degree of care.

(B) Service Provider Requests and LIPA Non-Disclosure. The Service Provider acknowledges that LIPA may be required to disclose information upon request under Applicable Law. The Service Provider shall have the right to request LIPA in writing not to publicly disclose any information which the Service Provider believes to be Confidential Information and not subject to public disclosure under Applicable Law, any such request to be accompanied by an explanation of its reasons for such belief. Any information which is the subject of such a request shall be clearly marked on all pages, shall be bound, and shall be physically separate from all non-proprietary information. At the Service Provider's request, LIPA and its Representatives given access to such information shall execute and comply with the terms of a confidentiality agreement in a mutually acceptable form, subject to Applicable Law.

In the event LIPA receives a request from the public for the disclosure of any information designated as Confidential Information by the Service Provider pursuant to subsection (A) of this Section, LIPA (1) shall use reasonable efforts, consistent with Applicable Law, to provide notice to the Service Provider of the request prior to any disclosure, and (2) shall use reasonable efforts, consistent with Applicable Law, to keep in confidence and not disclose such information unless it is entitled to do so pursuant to the provisions of subsection (B) of this Section. The Service Provider shall indemnify, hold harmless and defend LIPA against all Loss-and-Expense incurred from the withholding from public disclosure of information designated as Confidential Information by the Service Provider or otherwise requested by the Service Provider to be withheld.

(C) Permitted Disclosures. Notwithstanding any confidential or proprietary designation thereof by a Party, a Party may disclose the following: (1) information which is known to that Party without any restriction as to disclosure or use at the time it is furnished, (2) information which is or becomes generally available to the public without breach of any agreement, (3) information which is received from a third party without limitation or restriction on such third party or at the time of disclosure, or (4) following notice to the disclosing Party pursuant to subsection (B) of this Section, information which, in the opinion of counsel, is required to, be or may be, disclosed under any Applicable Law, including the New York Freedom of Information Law, an order of a court of competent jurisdiction, or a lawful subpoena.

(D) Customer Information. Notwithstanding anything contained in this Section 10.4 or otherwise in this Agreement to the contrary, the Parties agree that the Service Provider shall not, and shall ensure that the Service Provider Related Parties do not, use or disclose any LIPA Personal Information except as directed by LIPA or as may be required by Applicable Law.

(E) Security. The Service Provider shall comply with and shall cause all Service Provider Related Parties and all Subcontractors to comply with any safety and security policies and procedures of LIPA that LIPA has previously disclosed or made available to the Service Provider in writing and all requirements of Applicable Law, regarding data security, cyber security and information security, including notification of security breaches or attempted breaches, with respect to LIPA Personal Information and the Confidential Information of LIPA or LIPA Related Parties. The Service Provider shall immediately notify, and shall cause all Service Provider Related Parties and Subcontractors to immediately notify, LIPA (if possible, in writing) of any breaches in security or attempted breaches in security or any breach of data security of which it has knowledge, and at LIPA's direction shall perform an analysis of the cause, shall use commercially reasonable efforts to remedy such breach and shall cooperate fully with any civil or criminal authority in any investigation or action relating to such breach or attempted breach.

#### SECTION 10.5 RELATIONSHIP OF THE PARTIES.

Except as otherwise expressly provided in this Agreement, nothing in this Agreement shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create any fiduciary relationship between the Parties.

#### SECTION 10.6 ASSIGNMENT AND TRANSFER.

This Agreement may be assigned by either Party hereto only with the prior written consent of the other Party, except that (a) without the consent of the Service Provider (1) LIPA may make such assignments, create such security interests in its rights hereunder and pledge such monies receivable hereunder as may be required in connection with issuance of Revenue Bonds; and (2) LIPA may assign its rights, obligations and interests hereunder, or transfer such rights and obligations by operation of law, to any other governmental entity or to a subsidiary of LIPA or the Authority provided that the successor entity gives reasonable assurances to the Service Provider that it will be able to fulfill LIPA's obligations hereunder, and (b) LIPA hereby consents to an assignment of this Agreement by the Service Provider to an Affiliate thereof which is a wholly-owned direct or indirect subsidiary of the Parent Company who assumes in writing all of the Service Provider's obligations hereunder.

#### SECTION 10.7 INTEREST ON OVERDUE OBLIGATIONS.

All amounts due hereunder, whether as damages, credits, revenue or reimbursements, that are not paid when due shall bear interest at the Default Interest Rate on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and all such interest accrued at any time shall, to the extent permitted by law, be deemed added to the amount due, as accrued. The Parties agree that the Default Interest Rate will apply to payments under this Agreement as specified herein in lieu of any different rate that would otherwise apply generally to late payments by LIPA.

#### SECTION 10.8 NON-DISCRIMINATION.

The Service Provider shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of age, race, color,

religion, national origin, sex, sexual orientation or, with respect to otherwise qualified individuals, disability. The Service Provider will take all actions reasonably necessary to ensure that applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, sexual orientation, national origin or, with respect to otherwise qualified individuals, disability. Such action shall include, recruitment and recruitment advertising; layoff or termination; upgrading, demotion, transfer, rates of pay or other form of compensation; and selection for training, including apprenticeship. The Service Provider shall impose the non-discrimination provisions of this Section 10.8 by contract on all Subcontractors hired to perform work related to the T&D System and shall take all reasonable actions necessary to enforce such provisions. The Service Provider will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Section 10.8.

#### SECTION 10.9 SUBCONTRACTORS.

##### (A) Service Provider Obligations.

(1) The Service Provider shall, subject to appropriate or applicable confidentiality restrictions, provide LIPA not later than ninety (90) days prior to the Service Commencement Date with a list in electronic format of vendor agreements of the Service Provider or Service Provider Related Parties material to the Service Provider's performance under this Agreement and provide copies of any such agreement upon request if permitted under the terms of such agreement, or if not so permitted, information with respect to such agreement to the extent permitted by the confidentiality terms thereof.

(2) Subject to the provisions of Section 10.3 hereof, the Service Provider shall, and shall cause Service Provider Related Parties to, use commercially reasonable efforts to ensure that all agreements with third parties entered into after the Contract Date which are material to the Service Provider's performance of its obligations hereunder, grant LIPA the right to own or license the goods and services to be provided thereunder. The Service Provider shall also use its commercially reasonable efforts to ensure that all material vendor agreements be assignable to LIPA upon expiration or termination of this Agreement, if such provision can be obtained from the applicable party for no additional charge to the Service Provider (or if such charge is reimbursed by LIPA), and provided that upon any such assignment, the Service Provider shall have no further liability obligation or cost with respect to any such agreements (other than for periods prior to such assignment). The Service Provider shall use commercially reasonable efforts to include provisions in any future agreement with a sublicensee requiring such sublicensee to notify the Service Provider and LIPA if the grant of a sublicense to such sublicensee would create a conflict of interest for LIPA or any of LIPA Related Parties due to the disclosure of LIPA Owned Intellectual Property to the sublicensee. In such event, the Parties shall agree upon a course of action to avoid such conflict of interest. The Service Provider shall further require the sublicensees to be bound by the license terms and related confidentiality restrictions.

(B) Reporting Obligation. In accordance with the LIPA Reform Act, LIPA and the Service Provider shall provide to the Office of the State Comptroller on March 31 and September 30 of each Contract Year a report documenting each contract in excess of \$250,000

per year entered into with a third party and related to the management and Operations Services associated with the T&D System, which such report shall include the name of the third party, the term of the contract and a description of the services or goods to be procured and LIPA and the Service Provider shall each post such report on their respective websites.

SECTION 10.10 AMENDMENTS.

Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by all Parties. Any such amendment hereto shall not be effective until approved by the Office of the State Comptroller and the New York State Attorney General.

SECTION 10.11 NOTICES.

Any notices or communications required or permitted hereunder shall be in writing and shall be sufficiently given if sent by registered or certified mail return receipt requested, postage prepaid, by nationally recognized overnight delivery service, signature required upon signed receipt or by facsimile transmission to the following:

If to Service Provider: PSEG Long Island LLC  
80 Park Plaza – T20  
Newark, NJ 07102  
Attention: President  
Facsimile No: 973-643-8349

With copy to: PSEG Services Corporation  
80 Park Plaza T-5  
Newark, NJ 07102  
Attention: Executive Vice President &  
General Counsel  
Facsimile No: 973-639-0741

If to LIPA: Long Island Power Authority  
333 Earle Ovington Boulevard  
Uniondale, New York 11553  
Attention: Chief Operating Officer  
Facsimile No: 516-719-9818

With copy to: Long Island Power Authority  
333 Earle Ovington Boulevard  
Uniondale, New York 11553  
Attention: General Counsel  
Facsimile No: 516-719-9812

Changes in the respective addresses to which such notices may be directed may be made from time to time by any Party by written notice to the other Party. Notices and communications

given by mail hereunder shall be deemed to have been given five (5) days after the date of dispatch; all other notices shall be deemed to have been given upon receipt.

**SECTION 10.12 ENTIRE AGREEMENT.**

This Agreement, together with the appendices, annexes and exhibits attached hereto, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior oral or written agreements, understandings, proposals, representations or warranties relating to this Agreement.

**SECTION 10.13 FURTHER ASSURANCES.**

Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other Party in order to give full effect to this Agreement. LIPA and the Service Provider, in order to carry out this Agreement, each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

**SECTION 10.14 NO WAIVERS.**

No exercise of rights or failure to exercise rights by a Party hereunder shall be construed as such Party's acceptance of any performance that is defective, incomplete, or otherwise not in compliance with this Agreement, as a release of the other Party from any obligation under this Agreement, as an estoppel, or as acceptance of any claim by the other Party. No action of LIPA or the Service Provider pursuant to this Agreement (including, any investigation or payment), and no failure to act, shall constitute a waiver by either Party of the other Party's compliance with any term or provision of this Agreement. No course of dealing or delay by LIPA or the Service Provider in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such Party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of LIPA or the Service Provider under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver of a right, power, remedy or obligation hereunder must be in writing and signed by each of the Parties hereto.

**SECTION 10.15 NO THIRD PARTY BENEFICIARIES.**

Unless specifically set forth herein, neither Party to this Agreement shall have any obligation to any third party other than Indemnified Parties as a result of this Agreement.

**SECTION 10.16 STATE LAW REQUIREMENTS.**

The provisions set forth in Appendix 3 relate to requirements imposed upon and/or applicable to LIPA and the Service Provider by New York State law and policies. These provisions are hereby deemed incorporated in this Agreement at this place. To the extent of any

conflict between any other provision of this Agreement and Appendix 3, Appendix 3 shall control. The Service Provider shall comply with such terms and conditions during the Term.

#### SECTION 10.17 ATTORNEY-CLIENT PRIVILEGE.

Notwithstanding anything contained in this Agreement, except to the extent required by Applicable Law neither Party nor their respective Affiliates shall be required to deliver, or provide access to, such portions of documents or information which are subject to attorney-client privilege and the provision of which, as determined by the providing Party's counsel, is reasonably likely to waive the privilege pertaining to such documents. No action of a Party or its Affiliate delivering or providing access to such documents or information shall constitute or operate as a waiver of such privilege.

### ARTICLE 11 REPRESENTATIONS AND WARRANTIES

#### SECTION 11.1 REPRESENTATIONS AND WARRANTIES OF LIPA.

LIPA represents and warrants to the Service Provider that:

(A) Existence and Power. LIPA is a corporation duly organized and validly existing under the laws of the State of New York and a wholly-owned subsidiary of the Authority. On and after the Effective Date, LIPA will have full legal right, power and authority to enter into and perform its obligations under this Agreement.

(B) Due Authorization and Binding Obligation. LIPA has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by LIPA and on and after the Effective Date, will constitute a legal, valid and binding obligation of LIPA, enforceable against LIPA in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

(C) No Conflict. Neither the execution nor the delivery by LIPA of this Agreement nor the performance by LIPA of its obligations hereunder nor the consummation by LIPA of the transactions contemplated hereby (1) as of the date hereof, conflicts with, violates or results in a breach of any law or governmental regulation applicable to LIPA or as of the Effective Date will conflict with, violate or result in a breach thereof, or (2) as of the date hereof conflicts with, violates or results in a breach of any term or condition of LIPA's certificate of incorporation or by-laws or of any judgment, decree or material contract, agreement or instrument (including, without limitation, LIPA's organizational documents) to which LIPA is a party or by which LIPA or any of its properties or assets are bound, or constitutes a default under any such judgment, decree or material contract, agreement or instrument.

(D) No Litigation. As of the date hereof, there is no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Body pending against LIPA or the Authority or to LIPA's knowledge, threatened against LIPA or the Authority, which if adversely determined to LIPA or the Authority would materially and adversely affect the validity or enforceability of this Agreement, or which would materially and adversely affect the performance by LIPA or the Authority of its obligations hereunder.

(E) No Legal Prohibition. There is no Applicable Law in effect on the date hereof which would prohibit the execution, delivery or performance by LIPA of this Agreement and the transactions contemplated hereby.

(F) No Consent. No consent or authorization of, filing with, notice to, or other act by or in respect of any Governmental Body or any other Person is required in connection with the execution and delivery by LIPA or, as of the date hereof the performance by LIPA of its obligations hereunder except for submission of this Agreement to the DPS for its review.

(G) Intellectual Property. LIPA and the LIPA Related Parties have good title to all LIPA Marks and LIPA Owned Intellectual Property provided by, or on behalf of LIPA, or LIPA Related Parties, or all rights necessary to grant to the Service Provider and the Service Provider Related Parties the licenses and other rights as provided herein and to perform their obligations hereunder.

#### SECTION 11.2 REPRESENTATIONS AND WARRANTIES OF SERVICE PROVIDER.

The Service Provider hereby represents and warrants to LIPA that:

(A) Existence and Power. The Service Provider is duly organized and validly existing as a limited liability company under the laws of the State of New York, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(B) Due Authorization and Binding Obligation. The Service Provider has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the Service Provider and constitutes the legal, valid and binding obligation of the Service Provider, enforceable against the Service Provider in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

(C) No Conflict. Neither the execution nor the delivery by the Service Provider of this Agreement nor the performance by the Service Provider of its obligations hereunder (1) as of the date hereof conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Service Provider or as of the Effective Date will conflict with, violate or result in a breach thereof, (2) as of the date hereof conflicts with, violates or results in a breach of any term or condition of the Service Provider's organizational documents or of any judgment, decree or material contract, agreement or instrument to which the Service Provider is a party or by which the Service Provider or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, material contract, agreement or instrument or (3) will result in the creation or imposition of any Encumbrance of any nature whatsoever upon any of the properties or assets of the Service Provider.

(D) No Litigation. As of the date hereof, there is no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Body, pending or, to the Service Provider's knowledge, threatened against the Service Provider which, if determined adversely to the Service Provider, would materially and adversely affect the validity or



enforceability of this Agreement, or which would materially and adversely affect the performance by the Service Provider of its obligations hereunder.

(E) No Legal Prohibition. There is no Applicable Law in effect on the date hereof which would prohibit the execution, delivery or performance by the Service Provider of this Agreement and the transactions contemplated hereby.

(F) No Consent. No consent or authorization of, filing with, notice to, or other act by or in respect of any Governmental Body or any other Person is required in connection with the execution and delivery by the Service Provider or, as of the date hereof, the performance by the Service Provider of its obligations hereunder.


(G) Intellectual Property. The Service Provider and the Service Provider Related Parties own the entire right, title and interest to, or possess or otherwise have all necessary rights in and to all Service Provider Marks, Service Provider Pre-Existing Intellectual Property and Service Provider Licensed Intellectual Property and all rights necessary to grant to LIPA and LIPA Related Parties the licenses and other rights as provided herein and to perform their obligations hereunder. The Service Provider Pre-Existing Intellectual Property and any Work Product is not and will not be subject to any agreements containing any covenant or other provision that in any way limits or restricts the ability of LIPA or any LIPA Related Parties to use or exploit any Service Provider Pre-Existing Intellectual Property or the Work Product anywhere in the world for use in connection with providing the Operations Services hereunder. Except as scheduled on Annex I (Third Party Infringements), as of the Effective Date, to the Service Provider's knowledge, no third party has infringed, misappropriated, diluted or otherwise violated, or is infringing, misappropriating, diluting or otherwise violating, any Service Provider Pre-Existing Intellectual Property or the Work Product. None of the Service Provider Marks or Service Provider Pre-Existing Intellectual Property or, to the Service Provider's knowledge, the Work Product or the provision of Operations Services, shall infringe, misappropriate, dilute, or otherwise violate any Intellectual Property rights of any third party. Except as set forth on Annex II (Open Source Software), as of the Service Commencement Date, no Open Source Software (i) forms part of any Service Provider Pre-Existing Intellectual Property or Work Product; (ii) was, or is, used in connection with the operation of any Service Provider Pre-Existing Intellectual Property or Work Product; or (iii) was, or is, incorporated or distributed, in whole or in part, in conjunction with any Service Provider Pre-Existing Intellectual Property or Work Product.

(H) T&D System Familiarity. As of the Service Commencement Date: (1) the Service Provider will be sufficiently familiar with, and will continue throughout the Term to remain sufficiently familiar with, the entire T&D System in order to perform the Operations Services hereunder in accordance with the Contract Standards; and (2) the Service Provider will be familiar with local conditions which may be material to the Service Provider's performance of its obligations under this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized officers or representatives as of the date first above written.

LONG ISLAND LIGHTING COMPANY d/b/a LIPA

By

  
Name: JOHN D MUMATOV  
Title: Chief operating officer

PSEG LONG ISLAND LLC

By


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

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized officers or representatives as of the date first above written.

LONG ISLAND LIGHTING COMPANY d/b/a LIPA

By \_\_\_\_\_  
Name:  
Title:

PSEG LONG ISLAND LLC

By  \_\_\_\_\_  
Name:  
Title:

**DEFINITIONS**

“**Act**” means the Long Island Power Authority Act, N.Y. Pub. Auth. Law §1020 et seq.

“**Additional LIPA Rate Plan Portion**” has the meaning set forth in Section 6.2(B) hereof.

“**Affiliate**” means any person, corporation or other entity directly or indirectly controlling or controlled by another person, corporation or other entity or under direct or indirect common control with such person, corporation or other entity. A person shall be deemed to control another person if the first person possesses, directly or indirectly, the power to direct, or to cause the direction of, the management and policies of such other person, whether through the ownership of voting securities, by contract or otherwise.

“**Affiliate Licensed Intellectual Property**” means any Intellectual Property licensed by an Affiliate of the Service Provider from a third party not a party to this Agreement.

“**Affiliate Pre-Existing Intellectual Property**” has the meaning set forth in Section 10.3(B) hereof.

“**Applicable Law**” means any law, rule, regulation, condition or requirement, guideline, ruling, ordinance or order of, or any Legal Entitlement issued by, any Governmental Body and applicable from time to time to the performance of the obligations of the Parties hereunder.

“**Arbitrators**” has the meaning set forth in Section 8.6(C) hereof.

“**ARRA**” means the American Relief and Recovery Act of 2009.

“**Authority**” means Long Island Power Authority, a corporate municipal instrumentality of the State of New York and a body corporate and politic and a political subdivision of the State of New York.

“**Back-End Transition Plan**” has the meaning described in the Contract Administration Manual.

“**Back-End Transition Services**” means services provided under this Agreement to complete the Back-End Transition Plan, including but not limited to those services listed in Section 9.2(A).

“**Benefit Plan Expense**” means for any Contract Year, any liabilities, costs and expenses incurred by ServCo with respect to creating, maintaining, administering and funding the ServCo Benefit Plans, specifically including, but not limited to, (i) ServCo contributions during the year to ServCo “Thrift Plans”, (ii) ServCo payments during the year relating to welfare plan expenses such as the employer’s share of insurance premiums and payments of self-insured benefits to the extent not covered by employee contributions, (iii) any liabilities, costs and expenses incurred

with respect to ServCo pension plans, including amounts contributed during the year to ServCo pension plans, after consulting with LIPA, which shall not be less than the minimum required contributions, determined in accordance with section 430 of the Code; provided that ServCo will be required to fund over the minimum contribution amount to the extent necessary to avoid any plan being in “at risk” status (at least 80% funded), (iv) non-qualified deferred compensation plan (defined benefit and defined contribution type deferred compensation plans) payments made during the year, (v) payments during the year relating to severance benefits, and (vi) amounts paid during the year with respect to post-retirement health and life insurance benefits, including amounts contributed, after consulting with LIPA, to a trust or trusts qualified under section 501(c)(9) of the Code. In connection with the initial liability as a result of the make whole provision under the ServCo defined benefit pension plan, the amount of contributions made with respect thereto (which amounts shall be at least sufficient to bring the adjusted funding target attainment percentage to 80%) shall be a Benefit Plan Expense and, therefore, a Pass-Through Expenditure. Benefit Plan Expenses, with respect to a Contract Year, shall be calculated by taking into account the net effects, if any, of any income, deductions or credits recognized by ServCo, Service Provider or any Affiliate in such year for purposes of any federal, state or local income tax, and any other surcharges, reimbursements (including those made by LIPA), subsidies or similar amounts (and the tax consequences of all of the foregoing) paid or received in accordance with this Agreement or Applicable Law, by ServCo, Service Provider or any Affiliate in such year, in respect of Benefit Plan Expenses and/or the treatment of such Benefit Plan Expenses as Pass Through Expenses hereunder.

“**Bond Resolutions**” means the bond resolutions adopted by the Authority, pursuant to which the Authority issued the Revenue Bonds or other indebtedness described therein to finance certain costs of the T&D System and other purposes of the Authority.

“**Budget**” or “**Budgets**” has the meaning set forth in Section 5.2(B) hereof.

“**Business Days**” means any day other than a Saturday, Sunday or a day on which banks in New York, New York are authorized or obligated by law or executive order to close.

“**Capital Improvement**” means any repair, replacement, improvement, removal and retirement, alteration and addition which constitutes a capital property unit in accordance with LIPA’s capitalization policy, consistently applied (other than any repair, replacement, improvement, removal and retirement, alteration and addition constituting repair or maintenance of the T&D System) contained in the approved Capital Budget, including all Public Works Improvements that have an expected useful service life of more than one year from the date of installation.

“**Capital Budget**” means the required annual Capital Budget concerning planned Capital Improvement and Energy Efficiency projects as the same may be amended or adjusted from time to time in accordance with the terms and conditions of this Agreement.

“**CBA**” has the meaning set forth in Section 4.5(D)(2) hereof.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

“**Chair**” has the meaning set forth in Section 8.6(C) hereof.

“**Change in Law**” means any of the following events or conditions having, or which may reasonably be expected to have, a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (other than payment obligations), or on the operation or maintenance of the T&D System:

(1) the adoption, promulgation, issuance, modification or written change in administrative or judicial interpretation on or after the Contract Date of Applicable Law, unless such Applicable Law was on or prior to the Contract Date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any Governmental Body or governmental official having jurisdiction;

(2) the order or judgment of any Governmental Body, issued on or after the Contract Date, to the extent such order or judgment is not the result of willful misconduct or negligent action or omission or lack of reasonable diligence of the Service Provider or of LIPA, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful misconduct or negligent action or omission or lack of reasonable diligence; or

(3) the denial of an application for, delay in the review, issuance or renewal of, or suspension, termination, interruption, imposition of a new condition in connection with the issuance, renewal or failure of issuance or renewal on or after the Contract Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition or failure interferes with the performance of this Agreement, and to the extent that such denial, delay, suspension, termination, interruption, imposition or failure is not the result of willful misconduct or negligent action or omission or a lack of reasonable diligence of the Service Provider or of LIPA, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition or failure shall not be construed as such a willful misconduct or negligent action or omission or lack of reasonable diligence.

A “Change in Law” shall not include a change in any tax or similar law regarding taxes or similar charges not chargeable to or reimbursable by LIPA under Article 5: Compensation and Budgets hereof.

“**Change in Regulatory Law**” means a change, amendment or modification (collectively, a “change”) to the New York State Public Service Law, adoption of or a change to any other New York state (or federal, in the case of clause (iv) below) law or any adoption of, or change to, any interpretation (having the force of law) of any of the foregoing or any regulation or regulatory action under the foregoing, in each case that occurs on or after the date of this Agreement and that (i) alters the scope, nature or level of the DPS statutory oversight and review authority over the Service Provider or LIPA in a manner which materially and adversely affects the Service Provider’s ability to perform its obligations under this Agreement, (ii) renders

unenforceable or invalid, in whole or in part, any material provision of this Agreement, (iii) subjects ServCo or the Service Provider (or any of their Affiliates that provides Operation Services hereunder) to rate or other substantive regulation by the DPS or other state utility commission or (iv) leads to or results in the FERC asserting jurisdiction (A) with respect to this Agreement or any rate schedule related thereto or (B) over ServCo or the Service Provider (or any of their Affiliates that provides Operations Services hereunder) by reason of its use, management or operation of the T&D System or any generation assets owned by LIPA.

**“Change of Control”** means (i) the acquisition of beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “1934 Act”)) of 50% or more of the outstanding shares of securities or membership interests the holders of which are generally entitled to vote for the election of directors of the Service Provider, the Guarantor or the Parent Company, as the case may be (including securities convertible into, or exchangeable for, such securities or rights to acquire such securities or securities convertible into, or exchangeable for such securities, “Voting Stock”), on a fully diluted basis, by any Person or group of Persons (within the meaning of Section 13 or 14 of the 1934 Act), other than, with respect to the Service Provider, by an Affiliate of the Service Provider which is a direct or indirect subsidiary of the Parent Company; (ii) any sale, transfer or other disposition of beneficial ownership of 50% or more of the outstanding shares of Voting Stock, on a fully diluted basis, of the Service Provider, the Guarantor or the Parent Company, as the case may be, other than, with respect to the Service Provider, to an Affiliate of the Service Provider which is a direct or indirect subsidiary of the Parent Company; (iii) any sale, lease, assignment, transfer or other disposition of the beneficial ownership in 50% or more of the property, business or assets of Service Provider, the Guarantor or the Parent Company, as the case may be, other than, with respect to the Service Provider, to an Affiliate of the Service Provider which is a direct or indirect subsidiary of the Parent Company; (iv) a Person other than the current shareholders or members of Service Provider, the Guarantor or the Parent Company, as the case may be, obtains, directly or indirectly, the power to direct or to cause the direction of the management or policies of the Service Provider, the Guarantor or the Parent Company, as the case may be, whether through the ownership of capital stock, by contract or otherwise; (v) during any period of twelve (12) consecutive calendar months, when individuals who were directors or members of Service Provider, the Guarantor or the Parent Company, as the case may be, on the first day of such period cease to constitute a majority of the board of directors of the Service Provider, the Guarantor or the Parent Company, as the case may be; or (vi) any liquidation, dissolution or winding up of the Service Provider, the Guarantor or the Parent Company, as the case may be.

**“Claiming Party”** has the meaning set forth in Section 10.1(B) hereof.

**“Claims”** has the meaning set forth in Section 5.2(A)(3) hereof.

**“COBRA”** means Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the Code, and any similar state Law.

**“Code”** means the United States Internal Revenue Code of 1986, as amended.

“**Compensation**” means the amounts payable to the Service Provider for provision of Operations Services hereunder as provided in Article 5 hereof.

“**Confidential Information**” has the meaning set forth in Section 10.4(A) hereof.

“**Conflict Resolution**” has the meaning set forth in Section 4.18 hereof.

“**Consolidated LIPA Budget**” has the meaning set forth in Section 5.2(B)(1) hereof.

“**Contract Administration Manual**” means the manual provided by the Service Provider that sets forth documentation, reporting and other procedures for all aspects of the administration of this Agreement, including but not limited to, the operation and procedures, measurement and reporting of administrative information as required by this Agreement, protocols and similar matters, substantially consistent with Appendix 4 hereto.

“**Contract Date**” means the date of delivery of this Agreement as executed by the Parties hereto.

“**Contract Standards**” means the terms, conditions, requirements, methods, techniques, standards and practices of (1) Applicable Law, (2) the System Policies and Procedures, (3) the substantive requirements and standards and guidelines established by the NYSPSC from time to time that apply generally to the operation and maintenance of electric transmission and distribution systems in the State of New York, except to the extent LIPA directs the Service Provider not to follow any such requirement, standard or guideline, (4) Prudent Utility Practice, (5) the Operations Manual, (6) applicable equipment manufacturer’s specifications and reasonable recommendations, (7) applicable insurance requirements under any insurance procured pursuant to this Agreement, (8) applicable provisions of LIPA’s or the Authority’s financing agreements relating to the tax exemption of the Authority’s or LIPA’s bonds under the Code, as in effect from time to time, copies of which shall be furnished by LIPA to the Service Provider, and (9) any other term, condition or requirement specifically provided in this Agreement to be observed by the Service Provider.

“**Contract Year**” means the period from January 1 through December 31 for each year during the Term; provided, however, that the initial Contract Year shall commence on the Service Commencement Date. Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365/366 days.

“**Cost Management Performance Metric**” has the meaning set forth in Section 5.2(B)(4) hereof.

“**CPR Rules**” has the meaning set forth in Section 8.6(C) hereof.

“**Credit Support**” means (a) an irrevocable, unconditional guaranty in substantially the form of the Guaranty from the Guarantor and (b) in the event that the Guarantor no longer satisfies the creditworthiness standards set forth in Appendix 2 hereto, a Letter of Credit.

“**Credit Support Amount**” means \$60 million.



**“Credit Support Provider”** means the Guarantor and any Letter of Credit Provider.

**“Customer Database”** has the meaning set forth in Section 4.11(A) hereof.

**“Default Budget”** has the meaning set forth in Section 5.2(B)(6) hereof.

**“Default Interest Rate”** means the rate established from time to time as the “overpayment rate” pursuant to Subsection (e) of Section 1096 of the New York State Tax Law by the New York State Commission of Taxation and Finance, as applicable to LIPA under Section 2880(7)(c) of the New York State Public Authorities Law and the related guidelines adopted by LIPA.

**“Disposal Facility”** means either a sanitary Hazardous Waste landfill or other Hazardous Waste disposal or management facility, selected by the Service Provider which (1) is operated in accordance with prudent industry practices (as applicable to Hazardous Waste disposal facilities) and the applicable Contract Standards and (2) is being operated at the time of disposal or delivery in accordance with Applicable Law as evidenced by the absence of any regulatory sanctions, notices of violations or other significant enforcement actions with respect to material environmental matters.

**“Dispute”** has the meaning set forth in Section 8.6(A) hereof.

**“DPS”** means the New York State Department of Public Service.

**“DPS Authority Change”** means a Change in Regulatory Law described in clause (i) of the definition of Change in Regulatory Law.

**“Effective Date”** has the meaning set forth in Section 2.2(A) hereof.

**“Electric Resource Plan”** means LIPA’s Electric Resource Plan for the Service Area as published from time to time.

**“Encumbrances”** means any Lien, lease, mortgage, security interest, charge, judgment, assessment, judicial award or encumbrance whether created by operation of law or otherwise (other than those associated with any retainage holdback on construction materials, supplies and equipment).

**“Energy Efficiency Programs”** means the customer energy efficiency programs and customer-sited renewable energy programs, as well as any other customer incentive programs that are intended to promote (i) customer adoption of energy and/or capacity saving measures; and/or (ii) customer-sited green and/or alternative generation or storage technologies within the Service Area.

**“ERISA”** means the Employee Retirement Income Security Act of 1974.

**“Event of Default”** has the meaning set forth in Section 8.1 or 8.2 hereof, as applicable.

**“Excess Expenditures”** has the meaning set forth in Section 5.4(A) hereof.

“**Existing OSA**” has the meaning set forth in the Recitals.

“**Expedited Dispute Matters**” has the meaning set forth in Section 8.6(I) hereof.

“**FAA**” has the meaning set forth in Section 8.6(G) hereof.

“**Fees-And-Costs**” means reasonable fees and expenses of employees, attorneys, architects, engineers, accountants, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses of any Legal Proceeding.

“**FEMA**” means the Federal Emergency Management Agency.

“**FERC**” means the Federal Energy Regulatory Commission.

“**FERC Regulatory Change**” means a Change in Regulatory Law described in clause (iv) of the definition of Change in Regulatory Law.

“**Final IRS Proposal**” has the meaning set forth in Section 8.6(J) hereof.

“**Force Majeure**” means (i) any act, event or condition, whether affecting the T&D System, the System Power Supply, LIPA, the Service Provider, or any of LIPA’s subcontractors or the Service Provider’s Subcontractors to the extent that it materially and adversely affects the ability of either Party to perform any obligation under the Transition Services Agreement or this Agreement (except for payment obligations), as the case may be, if such act, event or condition is beyond the reasonable control and is not also the result of the misconduct or negligent action or omission or failure to exercise reasonable diligence on the part of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under the Transition Services Agreement or this Agreement, as the case may be; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either Party or (ii) any failure by NGES to provide sufficient or adequate transition services as provided in the NGES TSA to the extent that (x) it materially and adversely affects the ability of either Party to perform any obligation under the Transition Services Agreement or this Agreement (except for payment obligations), as the case may be, (y) is not the result of the Claiming Party’s failure or refusal to comply with its obligations under the NGES TSA that is not otherwise excused by the terms of the NGES TSA or the Claiming Party’s willful misconduct or negligence in enforcing the NGES TSA.

(A) Inclusions. Subject to the foregoing, a Force Majeure may, but not necessarily will, include and shall not be limited to, the following acts, events or conditions:

(1) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the T&D System, other than Major Storm, Non-Storm Emergency Events and extreme weather events that constitute Storm Events), landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, computer sabotage or virus, acts of a public enemy or terrorist events, extortion, war, blockade or insurrection, riot or civil disturbance;

(2) a Change in Law;

(3) the failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the T&D System is located, to provide and maintain Non-Electric Utilities to any facility comprising part of the T&D System which are required for the performance of this Agreement and which failure directly results in a delay or curtailment of the performance of any of the services provided by the Service Provider under this Agreement;

(4) any failure of title to any portion of the T&D System Site or any enforcement of any Encumbrance on the T&D System Site or on any improvements thereon not consented to in writing by, or arising out of any action or agreement entered into by, the Party adversely affected thereby;

(5) the preemption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the T&D System;

(6) the presence of archeological finds, endangered species, Hazardous Waste or Hazardous Substances at the T&D System Site, except to the extent the Service Provider knew or should have known of such presence; and

(7) the failure to obtain cooperation from NGES (including reasonable access to relevant facilities, books, records, reports and personnel) necessary in order to enable the Service Provider to perform the Front End Transition Services during the Transition Period (as such terms are defined in the Transition Services Agreement).

(B) Exclusions. It is specifically understood that none of the following acts, events or conditions shall constitute a Force Majeure:

(1) general economic conditions, interest or inflation rates, or currency fluctuations, changes in LIPA's rates or exchange rates;

(2) the financial condition of LIPA, the Service Provider, the Credit Support Provider, any of their Affiliates or any Subcontractor;

(3) subject to clause (ii) in the first paragraph of this definition, the consequences of error, negligence or omissions by the Service Provider, any Subcontractor, any of their Affiliates or any other person in the performance of any work hereunder;

(4) any increase for any reason in premiums charged by the Service Provider's insurers or the insurance markets generally for the required insurance;

(5) the failure of the Service Provider to secure Patents or licenses in connection with the technology necessary to perform its obligations under this Agreement;

(6) equipment malfunction or failure (unless caused by an event that would otherwise constitute a Force Majeure);

(7) union work rules, requirements or demands which have the effect of increasing the number of employees employed at the T&D System, reducing the operating flexibility of the Service Provider or otherwise increase the cost to the Service Provider of operating and maintaining the T&D System;

(8) any impact of prevailing wage laws on the Service Provider's operation and maintenance costs with respect to wages and benefits;

(9) the failure of any Subcontractor or supplier to furnish labor, materials, services or equipment for any reason (unless caused by an event that would otherwise constitute a Force Majeure); or

(10) strikes, work stoppages or other labor disputes or disturbances with respect to the Service Provider's workforce.

**"Front End Transition Plan"** means those services to be provided by the Service Provider pursuant to the Transition Services Agreement.

**"Fundamental Terms"** has the meaning set forth in Section 2.2(B)(2) hereof.

**"GAAP"** means generally accepted accounting principles, as in effect in the United States of America from time to time applied on a consistent basis.

**"GASB"** means the Governmental Accounting Standards Board.

**"General Workforce"** means (i) management, professional, and union personnel employed by ServCo (excluding Senior Management even if also employed by ServCo) and (ii) personnel employed by an Affiliate of the Service Provider in positions relating to any service that such Affiliate is providing, as a Shared Service or otherwise, in relation to this Agreement.

**"Governmental Body"** means any federal, State or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body (including independent system operators, RTOs and FERC-designated Electric Reliability Organizations such as NERC) other than LIPA or the Authority, or any official thereof having jurisdiction with respect to any matter which is a subject of this Agreement.

**"Guarantor"** means PSEG Power LLC, and any subsequent guarantor named by the Service Provider who satisfies the creditworthiness standards for a Guarantor set forth in Appendix 2 hereto.

**"Guaranty Agreement" or "Guaranty"** means the document attached hereto as Exhibit A.

**"Hazardous Waste"** means any waste which by reason of its composition or characteristics is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time,

including, but not limited to, “Hazardous Substances” as defined in CERCLA and the regulations promulgated thereunder.

“**IBEW CBA(s)**” has the meaning set forth in Section 4.5(C) hereof.

“**Incentive Compensation**” has the meaning set forth in Section 5.1(C)(2) hereof.

“**Incentive Compensation Pool**” has the meaning set forth in Section 5.1(C)(1) hereof.

“**Indemnified Parties**” means LIPA Indemnified Parties or Service Provider Indemnified Parties, as applicable.

“**Intellectual Property**” means all (a) patents (including utility and design patents), patent applications, PCT filings, patent disclosures and all related extensions, continuations, continuations-in-part, divisions, reissues, and reexaminations, utility models, certificates of invention and design patents, and all extensions thereto (“Patents”), (b) trademarks, service marks, trade dress, brand names, certification marks, logos, slogans, rights in designs, industrial designs, corporate names, trade names, business names, geographic indications and other designations of source, origin, sponsorship, endorsement or certification, together with the goodwill associated with any of the foregoing, in each case whether registered or unregistered, and all applications and registrations therefor, including the trademarks listed in Appendix 14 (“Trademarks”), (c) domain names, URLs and any other addresses for use on the Internet or any other computer network or communication system, (d) copyrights and registrations and applications therefor, together with all renewals, extensions, translations, adaptations, derivations and combinations therefor, works of authorship, publications, documentation, website content, rights in fonts and typefaces, and database rights (“Copyright Rights”), (e) rights of publicity, rights of privacy, royal warrants and moral rights, (f) know-how, trade secrets, confidential and proprietary information, concepts, ideas, knowledge, rights in research and development, financial, marketing and business data, pricing and cost information, plans (including business and marketing plans), algorithms, formulae, inventions, processes, techniques, technical data, designs, drawings (including engineering and auto-cad drawings), specifications, databases, blue prints, and customer and supplier lists and information, in each case whether or not known to the public, whether patentable or not and whether or not reduced to practice (“Know-How”), (g) computer programs, proprietary software, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, operating systems, design documents, website code and specifications, flow-charts, user manuals and training materials relating thereto and any translations thereof (“Software”), (h) other intellectual property or similar corresponding or equivalent right to any of the foregoing or other proprietary or contract right relating to any of the foregoing (including remedies against infringements thereof and rights of protection of interest therein under the laws of all jurisdictions), and (i) copies and tangible embodiments thereof, in each case whether or not the same are in existence as of the date of this Agreement or developed after such date and in any jurisdiction throughout the world.

“**IRS**” has the meaning set forth in Section 2.2(A) hereof.

“**IRS Objections**” has the meaning set forth in Section 2.2(B)(1) hereof.

“**IRS Ruling**” has the meaning set forth in Section 2.2(A) hereof.

“**IRS Ruling Dispute**” has the meaning set forth in Section 2.2(B)(2) hereof.

“**ISO-NE**” means ISO New England, Inc.

“**Joint Defense Arrangement**” has the meaning set forth in Section 6.2(C) hereof.

“**Legal Entitlement**” means any permit, license, approval, authorization, consent and entitlement of whatever kind and however described which is required under Applicable Law to be obtained or maintained by any person with respect to the performance of any obligation under this Agreement.

“**Legal Proceeding**” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

“**Letter of Credit**” means an irrevocable standby bank letter of credit reasonably acceptable to LIPA in the Credit Support Amount issued by a Letter of Credit Provider.

“**Letter of Credit Provider**” means any letter of credit provider named by the Service Provider who satisfies the creditworthiness standards for a Letter of Credit Provider set forth in Appendix 2 hereto.

“**Lien**” means any and every lien against the T&D System, the T&D System Site, the Operations Services or against any monies due or to become due from LIPA to the Service Provider under this Agreement, for or on account of the Operations Services.

“**LIPA Board of Trustees**” means the board of trustees of the Authority.

“**LIPA Budget Portion**” means the portion of the relevant Consolidated LIPA Budget relating to property taxes, PILOTs, tax certiorari and other tax matters, LIPA general and administrative expenses, interest expense, grant income, other income and deductions, New York State Assessment charges, debt service and amortization, including regulatory asset amortizations and depreciation.

“**LIPA Fault**” means any breach, failure of compliance, or nonperformance by LIPA with its obligations hereunder or any negligence or willful misconduct by LIPA under this Agreement or the Transition Services Agreement, as the case may be, (whether or not attributable to any officer, trustee, member, agent, employee, representative, contractor, subcontractor of any tier, or independent contractor of LIPA other than the Service Provider and its Subcontractors) that materially and adversely affects the Service Provider’s performance or the Service Provider’s rights or obligations under this Agreement or the Transition Services Agreement, as the case may be.

“**LIPA Indemnified Parties**” has the meaning set forth in Section 10.2(A)(1) hereof.

“**LIPA Licensed Intellectual Property**” means any Intellectual Property licensed by LIPA from a third party not a party to this Agreement.

“**LIPA Marks**” means LIPA’s Trademarks listed in Appendix 14 hereto, as may be revised by LIPA from time to time.

“**LIPA Owned Intellectual Property**” means any Work Product and LIPA Pre-Existing Intellectual Property.

“**LIPA Patents**” has the meaning set forth in Section 10.3(D) hereof.

“**LIPA Personal Information**” means any and all personally identifiable information, in any form, provided by or to the Service Provider, Service Provider Related Parties or Subcontractors in connection with the provision of Operations Services or services under the Existing OSA or the Transition Services Agreement, and that alone or in combination with other information uniquely identifies a current, former or prospective director, trustee, officer, employee, supplier, retiree of LIPA, LIPA Related Party, or the Authority or a LIPA customer (e.g., names, addresses, telephone numbers, other information in the Customer Database, or any other personally identifiable information as otherwise defined under Applicable Law) including (i) copies of such information or materials to the extent containing such information and (ii) such information LIPA notifies the Service Provider in advance in writing is subject to a duty of confidence or secrecy that LIPA owes to LIPA’s customers or pursuant to contracts of LIPA or LIPA Related Parties.

“**LIPA Power Supply Group**” means the department in LIPA that is responsible for planning and managing LIPA’s power supply, including the following with respect to power supply planning and management: (i) resource procurement, contract negotiations and management and project development oversight, (ii) procurement and transportation of fuels for electricity generation; (iii) interconnection to the LIPA system, (iv) scheduling and trading of electric energy and capacity, (v) determination of wholesale power market policy, (vi) system dispatch planning and scheduling and (vii) representation of LIPA before regional transmission organizations and FERC.

“**LIPA Pre-Existing Intellectual Property**” has the meaning set forth in Section 10.3(B) hereof.

“**LIPA Rate Plan Portion**” has the meaning set forth in Section 6.2(B) hereof.

“**LIPA Reform Act**” has the meaning set forth in the Recitals to this Agreement.

“**LIPA Related Parties**” means LIPA, its Affiliates and any of their respective employees, directors, trustees and officers.

“**LIPA Termination Notice Period**” has the meaning set forth in Section 8.4(D) hereof.

“**Long Range Plan**” has the meaning set forth in Section 4.2(A)(5) hereof.

“**Loss-and-Expense**” means any and all losses, liabilities, obligations, damages, delays, fines, penalties, judgments, deposits, costs, claims, demands, charges, assessments, taxes, or expenses, including all Fees-And-Costs.

“**Major Storm Costs**” has the meaning set forth in Section 5.3(C) hereof.

“**Major Storm**” means a Major Storm as defined in Section 97.1 of the NYCRR.

“**Major Storm Performance Metric**” means the performance metric set forth in Appendix 13 to this Agreement.

“**Membership Interests**” has the meaning set forth in Section 4.5(B) hereof.

“**Minimum Performance Level Metric**” means the performance metric set forth in Appendix 13 to this Agreement.

“**MRB**” has the meaning set forth in Section 4.6 hereof.

“**MSA**” means that certain Amended and Restated Management Services Agreement, dated as of January 1, 2006, as amended, between LIPA and National Grid Electric Services LLC pursuant to which NGES is, among other things, providing operation and maintenance services for LIPA’s T&D System.

“**Municipalization**” has the meaning set forth in Section 8.4(B) hereof.

“**MWBEs**” means Minority and Women Business Enterprises which, in accordance with LIPA policy and Article 15-A of the New York Executive Law, are to be provided opportunities to participate in the Authority’s contracting activities for the procurement of goods and services, as further described the Contract Administration Manual and in Appendix 9 hereof.

“**NERC**” means the North American Electric Reliability Corporation.

“**NGES**” means National Grid Electric Services LLC.

“**NGES TSA**” means the transition services agreement to be entered into by and between the Service Provider and NGES, subject to LIPA’s approval not to be unreasonably withheld.

“**Nine Mile Point 2**” or “**NMP2**” means LIPA’s 18 percent ownership interest in Unit No. 2 of the Nine Mile Point Nuclear Power Generating Station located in Scriba, New York and operated pursuant to a joint operating agreement by Nine Mile Point Nuclear Station LLC.

“**NPCC**” means Northeast Power Coordinating Council.

“**NYCRR**” means the Compilation of Codes, Rules and Regulations of the State of New York.

“**NYISO**” means the New York Independent System Operator, Inc.

“**NYSPSC**” means the Public Service Commission of the State of New York.

“**New Employees**” has the meaning set forth in Section 4.5(C) hereof.

“**Non-Storm Emergency Event**” has the meaning set forth in Section 5.2(B)(7) hereof.



“**Non-Storm Emergency Expenditures**” has the meaning set forth in Section 5.2(B) hereof.

“**Non-Union Employees**” has the meaning set forth in Section 4.5(C) hereof.

“**NYCRR**” means the Compilation of Codes, Rules and Regulations of the State of New York.

“**OASIS**” has the meaning set forth in Section 4.2(A)(1)(a) hereof.

“**Open Source Software**” means any Software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software or similar licensing or distribution models, including software licensed or distributed under any licenses or distribution models similar to GNU’s General Public License or Lesser/Library General Public License or any other open source license listed by the Open Source Initiative at <http://www.opensource.org/licenses/alphabetical>.

“**Operating Account**” has the meaning set forth in Section 5.4(A)(1) hereof.

“**Operating Assets**” means the T&D System and all of the assets of LIPA and the Service Provider used in the operation and maintenance of the T&D System and the performance of the Service Provider’s obligations under this Agreement.

“**Operating Budget**” means the annual budget of Pass-Through Expenditures, exclusive of (i) costs of Capital Improvements and (ii) costs related to Storm Events, required to perform the Operations Services approved by LIPA as the same may be amended or adjusted from time to time by LIPA in accordance with the terms and conditions of this Agreement.

“**Operation Period**” means the period commencing on the Effective Date and ending on the date this Agreement expires in accordance with its terms, or if earlier, on the Termination Date.

“**Operations Manual**” means the manual provided by the Service Provider which contains provisions consistent with the terms and provisions of this Agreement, provides for the operation and maintenance of the T&D System and the training of employees in accordance with the Contract Standards, and is otherwise sufficiently detailed to permit the T&D System to be operated and maintained by a third party, reasonably experienced in electricity transmission and distribution operations.

“**Operations Services**” means services provided under this Agreement for the management, operation, maintenance, repair and expansion of the T&D System, including all services listed in Sections 4.2(A) and 4.8 through 4.17, customer care and related services, energy and fuel management and the LIPA Power Supply Group functions, to the extent assumed by the Service Provider in accordance with Section 4.2(A)(6) hereof, and the management of LIPA’s ownership interest in NMP2.

“**OSA Change**” means a Change in Regulatory Law described in clause (ii) of the definition of Change in Regulatory Law.

**“Outside Date”** has the meaning set forth in Section 2.2(E) hereof.

**“Parent Company”** means PSEG Energy Holdings, L.L.C., as holder of not less than a majority of the outstanding membership interests of the Service Provider, and any successor thereto permitted pursuant to the terms of this Agreement.

**“Party Appointed Arbitrators”** has the meaning set forth in Section 8.6(C) hereof.

**“Pass-Through Expenditures”** has the meaning set forth in Section 5.2(A)(2) hereof.

**“Performance Metrics”** has the meaning set forth in Section 4.3(A) hereof.

**“Person”** or **“Persons”** means words importing persons include firms, companies, associations, general partnerships, limited partnerships, limited liability companies, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

**“PJM”** means PJM Interconnection LLC.

**“PILOTs”** means payments in lieu of taxes.

**“Power and Energy”** means the electrical energy, capacity and ancillary services available from the System Power Supply.

**“Positional Conflict”** has the meaning set forth in Section 4.18 hereof.

**“Privatization”** has the meaning set forth in Section 8.4(B) hereof.

**“Prudent Utility Practice”** at a particular time means any of the practices, methods, and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto), which, in the exercise of reasonable judgment in light of the facts and the characteristics of the T&D System and System Power Supply known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition and good customer relations. Prudent Utility Practice is not intended to be limited to the optimum or minimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

**“Public Works Improvements”** means Capital Improvements performed as a result of requirements or requests of a Governmental Body.

**“Qualified Management Contract”** has the meaning in Section 2.2(A)(3) hereof.

**“Regulatory Oversight Change”** means a Change in Regulatory Law described in clause (iii) of the definition of Change in Regulatory Law.

“**Representatives**” means with respect to a Party, such Party’s officers, directors, trustees, employees, agents, attorneys, accountants and other consultants and advisers, employees and agents.

“**Required Operating Period Insurance**” has the meaning set forth in Section 4.9(A) hereof.

“**Required Service Provider Insurance**” has the meaning set forth in Section 4.9(B) hereof.

“**Revenue Bonds**” means any bonds, notes or other obligations issued or secured under the Bond Resolution.

“**RTO**” means any transmission operator or organization which is approved by the FERC pursuant to applicable FERC orders, which may administer associated wholesale capacity and energy markets in New York, New England, New Jersey or Pennsylvania.

“**Ruling Request**” has the meaning set forth in Section 2.2(B) hereof.

“**SAIDI**” means System Average Interruption Duration Index.

“**Scope of Services**” has the meaning set forth in Section 4.2(A) hereof.

“**Senior Management**” means the senior management level personnel employed by the Service Provider responsible for and dedicated to ServCo.

“**Senior Manager**” has the meaning set forth in Section 4.2(A)(4)(a)(i) hereof.

“**ServCo**” has the meaning set forth in Section 4.5(A) hereof.

“**ServCo Employees**” has the meaning set forth in Section 4.5(C) hereof.

“**Service Area**” means the counties of Suffolk and Nassau and that portion of the County of Queens constituting the Authority’s franchise area as of the effective date of the Act. “Service Area” does not include the Villages of Freeport, Greenport and Rockville Centre.

“**Service Commencement Date**” has the meaning set forth in Section 2.2(D) hereof.

“**Service Provider**” has the meaning set forth in the first paragraph hereof.

“**Service Provider Budget Portion**” has the meaning set forth in Section 5.2(B)(1) hereof.

“**Service Provider Indemnified Parties**” has the meaning set forth in Section 10.2(B)(1) hereof.

“**Service Provider Licensed Intellectual Property**” means any Intellectual Property licensed by the Service Provider from a third party not a party to this Agreement.

**“Service Provider Mark”** means the Service Provider’s Trademarks listed in Appendix 14 hereto, as may be revised by the Service Provider from time to time.

**“Service Provider Patents”** has the meaning set forth in Section 10.3(D) hereof.

**“Service Provider Pre-Existing Intellectual Property”** has the meaning set forth in Section 10.3(B) hereof.

**“Service Provider Related Parties”** means the Service Provider, ServCo, their Affiliates and any of their respective employees, directors and officers.

**“Service Provider Termination Fee”** has the meaning set forth in Section 8.5(C)(3) hereof.

**“Shared Service”** means an Operations Service provided by an Affiliate of the Service Provider that is comparable to a service generally made available by such Affiliate to other regulated transmission and distribution utilities that are Affiliates of the Service Provider.

**“Storm Event”** has the meaning assigned thereto in Appendix 10 hereof.

**“Storm Reserve”** has the meaning assigned thereto in Appendix 10 hereof.

**“Subcontractor”** means every person (other than employees of the Service Provider ) employed or engaged by the Service Provider or any person directly or indirectly in privity with the Service Provider (including every sub-subcontractor of whatever tier) for any portion of the Operations Services, whether for the furnishing of labor, materials, supplies, equipment, services, or otherwise.

**“Subcontractor Licensed Intellectual Property”** means any Intellectual Property licensed by a Subcontractor of the Service Provider from a third party not a party to this Agreement.

**“Subcontractor Pre-Existing Intellectual Property”** has the meaning set forth in Section 10.3(B) hereof.

**“Subcontracts”** means those agreements and contracts entered into by and between the Service Provider and any Subcontractor.

**“System Information”** has the meaning set forth in Section 4.11 hereof.

**“System Policies and Procedures”** means the system policies and procedures adopted from time to time by the Service Provider in accordance with Prudent Utility Practices and provided in writing to LIPA.

**“System Power Supply”** means electric capacity, energy and ancillary services from all power supply sources owned by or under contract to LIPA, LIPA’s rights and interests with respect to the Nine Mile Point 2, and LIPA’s interest in any future generating facilities, spot

market capacity, energy and ancillary services purchases made by or on behalf of LIPA, and any load control programs or measures adopted by LIPA.

**“T&D System”** means LIPA’s transmission and distribution systems and related facilities in which LIPA has an ownership or leasehold interest including NMP2 and other assets and systems related to the provision of all customer service functions to LIPA’s retail and wholesale electric customers, and related matters.

**“T&D System Site”** means the real property and interests therein upon which the components of the T&D System are and will be located.

**“Taxes”** has the meaning set forth in Section 5.2(A)(5) hereof.

**“Term”** has the meaning set forth in Section 2.1 hereof.

**“Term Extension Option Criteria”** means the criteria set forth in Appendix 6 hereto.

**“Termination Date”** means the date at which this Agreement terminates pursuant to its terms or the effective date of termination specified in a notice of termination as provided by this Agreement.

**“Third Party Claim”** means any claim, including Claims, brought against a Party by a third party other than claims made by a third party attributable to breach of a representation, warranty or covenant made herein with respect to Intellectual Property.

**“Total Costs”** means all costs of the Affiliate providing the relevant service calculated using (i) a fully allocated cost methodology in compliance with the relevant rules, regulations or orders of the State of New Jersey Board of Public Utilities that allocates the direct, indirect and other economic costs of all capital, equipment, vehicles, material, supplies, labor (including wages and salaries of employees), pensions, employee benefits (including fringe benefits) and related overheads, real estate, furniture, fixtures and other personalty and administration utilized, other assets utilized (including carrying costs) and costs incurred, directly or indirectly in providing services including the fees and other charges of contractors supplying goods and services and related expenses such as insurance and taxes or (ii) such other cost allocation methodology as may be required by other applicable regulatory requirements in lieu of the foregoing.

**“Transition Services Agreement”** has the meaning set forth in the Recitals to this Agreement.

**“Transitioned Employees”** has the meaning set forth in Section 4.5(C) hereof.

**“Transitioned Non-Union Employees”** has the meaning set forth in Section 4.5(C) hereof.

**“Transitioned Union Employees”** has the meaning set forth in Section 4.5(C) hereof.

**“Union Employees”** has the meaning set forth in Section 4.5(C) hereof.

**“Utility Intellectual Property”** has the meaning set forth in Section 10.3(C) hereof.

**“Wind-down Expenses”** means expenses incurred by the Service Provider directly related to the provision of the Back-End Transition Services.

**“Work Product”** has the meaning set forth in Section 10.3(A) hereof.