

PART 3

**FORM OF ENERGY SERVICE COMPANY
OPERATING AGREEMENT
AND
FORM OF AGGREGATOR
OPERATING AGREEMENT**

LONG ISLAND CHOICE PROGRAM

ENERGY SERVICE COMPANY OPERATING AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, _____, between the Long Island Lighting Company d/b/a LIPA (“LIPA”), a wholly owned subsidiary of the Long Island Power Authority, a corporate municipal instrumentality and political subdivision of the State of New York (“Authority”), and _____, a [corporation] [other form of business organization] licensed by the Authority as an Energy Service Company (“ESCO”). (LIPA and the ESCO may be referred to individually as a “Party” and collectively as the “Parties”).

WHEREAS, the Authority has established a retail choice program for the delivery of energy services to retail customers of LIPA (the “Long Island Choice Program” or “LI Choice”), and

WHEREAS, LI Choice is to be implemented in multiple phases, with up to 400 MW of retail customer load being made available for customer choice in the initial phase and additional amounts of customer load being made available in future phases, and

WHEREAS, ESCO desires to sell electric generation service to the retail customers of LIPA selected to participate in the Long Island Choice Program (“LI Choice Customers”), and

WHEREAS, the Authority has licensed ESCO to be eligible to participate in LI Choice,

NOW, THEREFORE, in consideration of the premises and mutual promises contained herein, LIPA and ESCO agree as follows:

- I. Terms and Conditions of Operation. LIPA and ESCO’s operating arrangements will be governed by the applicable terms and conditions of the documents (“Program Documents”) identified below. Each of these documents may be amended, modified, supplemented or superseded from time to time by action, as applicable, of the Authority, or other state or federal regulatory bodies. Only the provisions of the Program Documents which are in force at any time, as those documents change from time to time, are deemed to be incorporated herein and made a part hereof.
 - A. The following sections of LIPA’s Tariff for Electric Service: Sections I - VIII (the “Bundled Service Tariff”) and Section IX (the “LI Choice Tariff”).
 - B. The Authority’s LI Choice Program Operating Procedures.
 - C. LIPA’s Open Access Transmission Tariff.
 - D. Until the implementation of the New York Independent System Operator (“NYISO”), the tariffs, rules and procedures of the New York Power Pool related to the requirements for generation and transmission of electric capacity and

energy, capacity reserve requirements and the provision of ancillary services.

- E. After the implementation of the NYISO, the tariffs, rules and procedures of the NYISO, New York State Reliability Council and New York Power Exchange, if any, related to the requirements for the generation and transmission of electric capacity and energy, capacity reserve requirements and the provision of ancillary services.
- F. Decisions by the Authority or its Chairman involving the LI Choice Program.

II. Term. This Agreement shall be effective from the date set forth above through the occurrence of the earliest of the events set forth below:

- A. The termination of this Agreement by the ESCO upon 30 calendar days' advance written notice to LIPA and the Authority and by the ESCO's adherence to the provisions of the Operating Procedures and the LI Choice Tariff for transferring responsibility for service of the ESCO's customers;
- B. The termination of the Long Island Choice Program; or
- C. The revocation of ESCO's license by the Authority.

Provided, however, that the applicable provisions of this Agreement shall continue in effect after termination or cancellation of such Agreement to the extent necessary to provide for final billing, billing adjustments, payments, disposition of any outstanding claims, and related matters.

III. ESCO's Representations and Warranties. The ESCO makes the following representations and warranties to LIPA:

- A. The ESCO is in compliance with all of the requirements of the Long Island Choice Program set forth in the Program Documents and will adhere to same through the term of this Agreement.
- B. The ESCO shall notify LIPA and the Authority in writing within 5 business days of any material changes in the information provided in the license application submitted to, and used by, the Authority as the basis for approving the ESCO's license under LI Choice.
- C. The ESCO will not, either directly or indirectly, engage or participate in or encourage others to engage or participate in (1) the practice of transferring Long Island Choice Customers without authorization (slamming); (2) the practice of billing a LI Choice Customer for services not requested and authorized by the LI Choice Customer (cramming); or (3) other activities prohibited in the Operating Procedures.

IV. Limitation of Liability and Indemnification

A. Definitions. For purposes of Section IV of this Agreement, (1) the term “damages” shall mean all losses, direct and consequential damages (including economic loss), judgments, costs, expenses, claims and legal expenses (including reasonable attorneys and consulting fees), and (2) references to each of LIPA and the Authority shall be interpreted to include each of their respective Trustees, or Directors, officers, employees and agents.

B. Limitations of Liability.

1. The limitations of liability in the Bundled Service Tariff under Section I. C. 7 are hereby incorporated and shall apply as if fully set forth herein.
2. Neither LIPA nor the Authority shall be liable to the ESCO for any damages arising from the claims of either the ESCO, other ESCOs or a LI Choice Customer and relating to:
 - (a) LIPA’s or the Authority’s performance of its obligations under LI Choice pursuant to the Program Documents or this Agreement or any legal or regulatory requirement arising in connection with LI Choice; or
 - (b) a LI Choice Customer’s failure to satisfy its obligations under the Program Documents, its agreement(s) with the ESCO or under any other legal or regulatory requirements arising in connection with LI Choice.

C. Indemnification. The ESCO shall indemnify, defend and hold harmless LIPA and the Authority for any of the following.

1. Damages imposed upon LIPA or the Authority or both relating to the occurrence of any of the events described under Section IV. B. above.
2. Damages imposed upon LIPA or the Authority with respect to damages to a LI Choice Customer attributed to any of the following:
 - (a) the ESCO’s failure to comply with the Program Documents;
 - (b) equipment installed or actions taken by the ESCO;
 - (c) the ESCO’s acts or representations in connection with its solicitation of customers for service under the LI Choice Program or its failure to perform any commitment to a LI Choice Customer under any contract between the ESCO and a LI Choice Customer.

V. Miscellaneous.

A. Assignment.

1. The ESCO may not assign or transfer its rights or obligations under this Agreement without the prior written consent of the Authority except as provided in 2. below.
2. The ESCO may assign or transfer its rights and obligations under this Agreement to another ESCO that has been licensed by the Authority (and whose license is not suspended or revoked and is not in the process of being suspended or revoked) upon prior written notice to LIPA of the assignment that includes the assignee's written acceptance of all of the rights and obligations of this Agreement. Provided further that the ESCO shall be released from the obligations of this Agreement upon receipt from the assignee of the financial security required by LIPA pursuant to the Program Documents.
3. Any assignment or transfer of the rights and obligations of this Agreement by the ESCO, except as is specifically permitted herein, shall be null and void.
4. For the purposes of this Section V.A., an assignment or transfer includes (a) any restructuring of the assets of the ESCO, (b) any acquisition, consolidation, merger or other form of combination of the ESCO by, into, or with any person or entity, or (c) any change in the ownership interest of the ESCO of 25 percent or more.

- B. Notices. Any written notice to be provided by any Party to the other or to the Authority will be deemed given and delivered if it is addressed to the other Party or the Authority at the addresses set forth below (or at such other address as a Party or the Authority shall designate in writing to the others) and is (1) delivered by hand, (2) deposited for next business day delivery (fee prepaid) with a reputable overnight delivery service, (3) mailed by certified mail (return receipt requested), postage prepaid, addressed to the recipient at the address set forth below, or (4) provided by facsimile with proof of answerback. The addresses are as follows:

To LIPA: LIPA
Electric Sales & Marketing Department
175 E. Old Country Road
Hicksville, NY 11801
Fax: (516) 545-4207

Attention: Manager of Contracts and Administration

To ESCO: _____

Fax: _____

Attention: _____

To the Authority: Long Island Power Authority
333 Earle Ovington Boulevard, Suite 403
Uniondale, N.Y. 11553
Fax: (516) 222-9137

Attention: Vice President Power Markets

- C. No Partnership. No provision of this Agreement shall be construed as creating a partnership, joint venture, association or agency relationship or any other formal business association among the Parties.
- D. Integration. This Agreement contains the entire understanding of the Parties and supersedes all prior written and oral agreements among them.
- E. Modification and Waiver.

No modification, waiver or amendment of this Agreement shall be effective except pursuant to a writing signed by all Parties. Any waiver will be effective only for the particular event for which it is issued and will not be deemed a waiver with respect to any subsequent performance, default or matter.

- F. Applicable Law and Forum.
 - 1. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York except its conflict of laws provisions to the extent that they would require the application of the laws of any other jurisdiction.
 - 2. The ESCO irrevocably consents to the jurisdiction and venue of either a New York State court or a federal court located in the State of New York

for purposes of any legal action or proceeding arising under or relating to this Agreement that is not otherwise subject to the dispute resolution procedures of the LI Choice Tariff.

- G. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.
- H. Taxes. Each Party will be liable individually and not collectively to the appropriate state or federal tax authorities for sales, use, gross receipts or other applicable taxes imposed upon the revenues derived or services rendered by that Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective the date first mentioned above.

LIPA

By: _____

Title: _____

[ESCO]

By: _____

Title: _____

LONG ISLAND CHOICE PROGRAM

AGGREGATOR OPERATING AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, _____, between the Long Island Lighting Company d/b/a LIPA (“LIPA”), a wholly owned subsidiary of the Long Island Power Authority, a corporate municipal instrumentality and political subdivision of the State of New York (“Authority”), and _____, a [corporation] [other form of business organization] licensed by the Authority as an Aggregator (“Aggregator”). (LIPA and the Aggregator may be referred to individually as a “Party” and collectively as the “Parties”).

WHEREAS, the Authority has established a retail choice program for the delivery of energy services to retail customers of LIPA (the “Long Island Choice Program” or “LI Choice”), and

WHEREAS, LI Choice is to be implemented in multiple phases, with up to 400 MW of retail customer load being made available for customer choice in the initial phase and additional amounts of customer load being made available in future phases, and

WHEREAS, Aggregator desires to sell electric generation service to the retail customers of LIPA selected to participate in the Long Island Choice Program (“LI Choice Customers”), and

WHEREAS, the Authority has licensed Aggregator to be eligible to participate in LI Choice,

NOW, THEREFORE, in consideration of the premises and mutual promises contained herein, LIPA and Aggregator agree as follows:

- I. Terms and Conditions of Operation. LIPA and Aggregator’s operating arrangements will be governed by the applicable terms and conditions of the documents (“Program Documents”) identified below. Each of these documents may be amended, modified, supplemented or superseded from time to time by action, as applicable, of the Authority, or other state or federal regulatory bodies. Only the provisions of the Program Documents which are in force at any time, as those documents change from time to time, are deemed to be incorporated herein and made a part hereof.
 - A. The following sections of LIPA’s Tariff for Electric Service: Sections I - VIII (the “Bundled Service Tariff”) and Section IX (the “LI Choice Tariff”).
 - B. The Authority’s LI Choice Program Operating Procedures.
 - C. LIPA’s Open Access Transmission Tariff.
 - D. Decisions by the Authority or its Chairman involving the LI Choice Program.

- II. Term. This Agreement shall be effective from the date set forth above through the occurrence of the earliest of the events set forth below:
- A. The termination of this Agreement by the Aggregator upon 30 calendar days' advance written notice to LIPA and the Authority and by the Aggregator's adherence to the provisions of the Operating Procedures and the LI Choice Tariff for transferring responsibility for service of the Aggregator's customers;
 - B. The termination of the Long Island Choice Program; or
 - C. The revocation of Aggregator's license by the Authority.

Provided, however, that the applicable provisions of this Agreement shall continue in effect after termination or cancellation of such Agreement to the extent necessary to provide for final billing, billing adjustments, payments, disposition of any outstanding claims, and related matters.

- III. Aggregator's Representations and Warranties. The Aggregator makes the following representations and warranties to LIPA:

- A. The Aggregator is in compliance with all of the requirements of the Long Island Choice Program set forth in the Program Documents and will adhere to same through the term of this Agreement.
- B. The Aggregator shall notify LIPA and the Authority in writing within 5 business days of any material changes in the information provided in the license application submitted to, and used by, the Authority as the basis for approving the Aggregator's license under LI Choice.
- C. The Aggregator will not, either directly or indirectly, engage or participate in or encourage others to engage or participate in (1) the practice of transferring Long Island Choice Customers without authorization (slamming); (2) the practice of billing a LI Choice Customer for services not requested and authorized by the LI Choice Customer (cramming); or (3) other activities prohibited in the Operating Procedures.

- IV. Limitation of Liability and Indemnification

- A. Definitions. For purposes of Section IV of this Agreement, (1) the term "damages" shall mean all losses, direct and consequential damages (including economic loss), judgments, costs, expenses, claims and legal expenses (including reasonable attorneys and consulting fees), and (2) references to each of LIPA and the Authority shall be interpreted to include each of their respective Trustees, or Directors, officers, employees and agents.
- B. Limitations of Liability.

1. The limitations of liability in the Bundled Service Tariff under Section I. C. 7 are hereby incorporated and shall apply as if fully set forth herein.
 2. Neither LIPA nor the Authority shall be liable to the Aggregator for any damages arising from the claims of either the Aggregator, other Aggregators or a LI Choice Customer and relating to:
 - (a) LIPA's or the Authority's performance of its obligations under LI Choice pursuant to the Program Documents or this Agreement or any legal or regulatory requirement arising in connection with LI Choice; or
 - (b) a LI Choice Customer's failure to satisfy its obligations under the Program Documents, its agreement(s) with the Aggregator or under any other legal or regulatory requirements arising in connection with LI Choice.
- C. Indemnification. The Aggregator shall indemnify, defend and hold harmless LIPA and the Authority for any of the following.
1. Damages imposed upon LIPA or the Authority or both relating to the occurrence of any of the events described under Section IV. B. above.
 2. Damages imposed upon LIPA or the Authority with respect to damages to a LI Choice Customer attributed to any of the following:
 - (a) the Aggregator's failure to comply with the Program Documents;
 - (b) equipment installed or actions taken by the Aggregator;
 - (c) the Aggregator's acts or representations in connection with its solicitation of customers for service under the LI Choice Program or its failure to perform any commitment to a LI Choice Customer under any contract between the Aggregator and a LI Choice Customer.

V. Miscellaneous.

- A. Assignment. The Aggregator may not assign or transfer its rights or obligations hereunder without the prior written consent of the Authority for any reason including, but not limited to the following:
1. The Aggregator may not assign or transfer its rights or obligations under this Agreement without the prior written consent of the Authority except as provided in 2. below.

2. The Aggregator may assign or transfer its rights and obligations under this Agreement to another Aggregator or ESCO that has been licensed by the Authority (and whose license is not suspended or revoked and is not in the process of being suspended or revoked) upon prior written notice to LIPA of the assignment that includes the assignee's written acceptance of all of the rights and obligations of this Agreement. Provided further that the Aggregator shall be released from the obligations of this Agreement upon receipt from the assignee of the financial security required by LIPA pursuant to the Program Documents.
3. Any assignment or transfer of the rights and obligations of this Agreement by the Aggregator, except as is specifically permitted herein, shall be null and void.
4. For the purposes of this Section V.A., an assignment or transfer includes (a) any restructuring of the assets of the Aggregator, (b) any acquisition, consolidation, merger or other form of combination of the Aggregator by, into, or with any person or entity, or (c) any change in the ownership interest of the Aggregator of 25 percent or more.

B. Notices. Any written notice to be provided by any Party to the other or to the Authority will be deemed given and delivered if it is addressed to the other Party or the Authority at the addresses set forth below (or at such other address as a Party or the Authority shall designate in writing to the others) and is (1) delivered by hand, (2) deposited for next business day delivery (fee prepaid) with a reputable overnight delivery service, (3) mailed by certified mail (return receipt requested), postage prepaid, addressed to the recipient at the address set forth below, or (4) provided by facsimile with proof of answerback. The addresses are as follows:

To LIPA:

LIPA
Electric Sales & Marketing Department
175 E. Old Country Road
Hicksville, NY 11801
Fax: (516) 545-4207

Attention: Manager of Contracts and Administration

To Aggregator: _____

Fax: _____

Attention: _____

To the Authority: Long Island Power Authority
Vice President Power Markets
333 Earle Ovington Boulevard, Suite 403
Uniondale, N.Y. 11553
Fax: (516) 222-9137

Attention: Vice President Power Markets

- C. No Partnership. No provision of this Agreement shall be construed as creating a partnership, joint venture, association or agency relationship or any other formal business association among the Parties.
- D. Integration. This Agreement contains the entire understanding of the Parties and supersedes all prior written and oral agreements among them.
- E. Modification and Waiver. No modification, waiver or amendment of this Agreement shall be effective except pursuant to a writing signed by all Parties. Any waiver will be effective only for the particular event for which it is issued and will not be deemed a waiver with respect to any subsequent performance, default or matter.
- F. Applicable Law and Forum.
 - 1. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York except its conflict of laws provisions to the extent that they would require the application of the laws of any other jurisdiction.
 - 2. The Aggregator irrevocably consents to the jurisdiction and venue of either a New York State court or a federal court located in the State of New York for purposes of any legal action or proceeding arising under or relating to this Agreement that is not otherwise subject to the dispute resolution procedures of the LI Choice Tariff.
- G. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

H. Taxes. Each Party will be liable individually and not collectively to the appropriate state or federal tax authorities for sales, use, gross receipts or other applicable taxes imposed upon the revenues derived or services rendered by that Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective the date first mentioned above.

LIPA

By: _____

Title: _____

[Aggregator]

By: _____

Title: _____