Contract for the

Purchase & Sale of Renewable Energy, Related Capacity and Renewable Attributes

Between

Long Island Power Authority

and

***[Seller]***

[DATED: ]

***NOTE: THIS IS LIPA’S PREFERRED POWER PURCHASE AGREEMENT FOR ON-ISLAND RENEWABLE GENERATION (“PPA”). LIPA EXPRESSLY RESERVES THE RIGHT TO MODIFY OR OTHERWISE REVISE THIS DRAFT AS IT MAY DEEM NECESSARY OR ADVISABLE OR AS CIRCUMSTANCES MAY OTHERWISE WARRANT, INCLUDING IN RESPONSE TO QUESTIONS SUBMITTED BY RESPONDENTS.***

Contract for the Purchase & Sale of Renewable Energy, Related Capacity and Renewable Attributes Between Long Island Power Authority and ***[Seller]***

**TABLE OF CONTENTS**

Page

[article 1: GENERAL DEFINITIONS 2](#_Toc375310767)

[article 2: TERM 14](#_Toc375310768)

[2.1 Term 14](#_Toc375310769)

[2.2 Opinion of Counsel 14](#_Toc375310770)

[2.3 Early Termination by Buyer 14](#_Toc375310771)

[2.4 Effective Date 15](#_Toc375310772)

[article 3: OBLIGATIONS AND DELIVERIES 16](#_Toc375310773)

[3.1 Delivery and Sale of Products 16](#_Toc375310774)

[3.2 Conditions for Project COD 18](#_Toc375310775)

[3.3 COD Liquidated Damages 19](#_Toc375310776)

[3.4 Buyer’s Resale of Products 20](#_Toc375310777)

[3.5 Good and Marketable Title; No Encumbrances 20](#_Toc375310778)

[3.6 Seller’s Responsibility Related to Renewable Attributes 20](#_Toc375310779)

[3.7 Future Renewable Attributes 20](#_Toc375310780)

[3.8 Buyer’s Obligation Under the RPS Program 21](#_Toc375310781)

[3.9 Buyer’s Rights Related to Renewable Attributes 21](#_Toc375310782)

[3.10 Maintenance Outages 21](#_Toc375310783)

[3.11 Development of Operating Instructions 21](#_Toc375310784)

[3.12 Consistency with NYISO Rules 22](#_Toc375310785)

[3.13 Test Energy 22](#_Toc375310786)

[3.14 Station Service Energy 22](#_Toc375310787)

[3.15 No Immunity Claim 22](#_Toc375310788)

[3.16 Buyer’s Metering Device 22](#_Toc375310789)

[3.17 Adjustment for Inaccurate Meters 23](#_Toc375310790)

[3.18 Monitoring 24](#_Toc375310791)

[3.19 Change in Law 25](#_Toc375310792)

[3.20 Buyer’s Access to Records 25](#_Toc375310793)

[3.21 Seller as Owner of the Project 25](#_Toc375310794)

[article 4: INTERCONNECTION ARRANGEMENTS 26](#_Toc375310795)

[4.1 General 26](#_Toc375310796)

[4.2 Operation and Maintenance of Electrical Interconnection Facilities 26](#_Toc375310797)

[4.3 Reimbursement of Interconnection Costs 26](#_Toc375310798)

[article 5: CHRONIC UNDERPERFORMANCE OR OVERDELIVERY 27](#_Toc375310799)

[5.1 Definitions 27](#_Toc375310800)

[5.2 Remedies for Underperformance 27](#_Toc375310801)

[5.3 Overdelivery 27](#_Toc375310802)

[article 6: EVENTS OF DEFAULT; REMEDIES 28](#_Toc375310803)

[6.1 Seller Events of Default 28](#_Toc375310804)

[6.2 Buyer Events of Default 29](#_Toc375310805)

[6.3 Declaration of an Early Termination Date and Calculation of Termination Payment 29](#_Toc375310806)

[6.4 Notice of Payment of Termination Payment 30](#_Toc375310807)

[6.5 Disputes With Respect to Termination Payment 30](#_Toc375310808)

[6.6 Suspension of Performance 30](#_Toc375310809)

[article 7: PAYMENT 31](#_Toc375310810)

[7.1 Billing Period 31](#_Toc375310811)

[7.2 Invoices 31](#_Toc375310812)

[7.3 Timeliness of Payment 32](#_Toc375310813)

[7.4 Disputes and Adjustments of Invoices 32](#_Toc375310814)

[7.5 Payment Obligation 33](#_Toc375310815)

[article 8: LIMITATIONS 34](#_Toc375310816)

[article 9: SELLER SECURITY 35](#_Toc375310817)

[9.1 Seller Security 35](#_Toc375310818)

[9.2 Seller Security Replacement 35](#_Toc375310819)

[9.3 Draw on Seller Security 36](#_Toc375310820)

[9.4 Replenishment 36](#_Toc375310821)

[9.5 Expiration of Letter of Credit 37](#_Toc375310822)

[article 10: GOVERNMENTAL CHARGES 38](#_Toc375310823)

[10.1 Cooperation 38](#_Toc375310824)

[10.2 Governmental Charges 38](#_Toc375310825)

[article 11: INSURANCE 39](#_Toc375310826)

[11.1 Insurance Required 39](#_Toc375310827)

[11.2 Insurance Notice to Buyer 39](#_Toc375310828)

[article 12: MISCELLANEOUS 40](#_Toc375310829)

[12.1 Seller’s Representations and Warranties 40](#_Toc375310830)

[12.2 Buyer’s Representations and Warranties 41](#_Toc375310831)

[12.3 Indemnity 42](#_Toc375310832)

[12.4 Claims 43](#_Toc375310833)

[12.5 Additional Seller’s Warranties 43](#_Toc375310834)

[12.6 Governing Law 43](#_Toc375310835)

[12.7 Currency 44](#_Toc375310836)

[12.8 Notices 44](#_Toc375310837)

[12.9 General 44](#_Toc375310838)

[12.10 Audit 45](#_Toc375310839)

[12.11 Renewable Attribute Eligibility Audit 45](#_Toc375310840)

[12.12 Forward Contract 45](#_Toc375310841)

[12.13 Counterparts 46](#_Toc375310842)

[12.14 Amendment 46](#_Toc375310843)

[12.15 Compliance With Legal Requirements, Regulations and NYISO Rules 46](#_Toc375310844)

[12.16 Compliance With Manufacturer’s Requirements 46](#_Toc375310845)

[12.17 Waiver 46](#_Toc375310846)

[12.18 Agency 46](#_Toc375310847)

[12.19 Severability 46](#_Toc375310848)

[12.20 Negotiated Agreement 47](#_Toc375310849)

[12.21 Local Workers 47](#_Toc375310850)

[article 13: DISPUTE RESOLUTION 48](#_Toc375310851)

[13.1 Notice 48](#_Toc375310852)

[13.2 Response 48](#_Toc375310853)

[13.3 Resolution of Dispute 48](#_Toc375310854)

[13.4 Tolling Statute of Limitations 48](#_Toc375310855)

[article 14: FORCE MAJEURE EVENTS 49](#_Toc375310856)

[14.1 Definition of Force Majeure Event 49](#_Toc375310857)

[14.2 Force Majeure Event 49](#_Toc375310858)

[14.3 Due Diligence 50](#_Toc375310859)

[14.4 Extended Force Majeure Events 50](#_Toc375310860)

[14.5 Insurance Proceeds 50](#_Toc375310861)

[14.6 Right to Terminate or Discontinue Obligations 50](#_Toc375310862)

[14.7 Liability Following Termination 51](#_Toc375310863)

[article 15: ASSIGNMENT; LENDERS; CONTROL OF SELLER 52](#_Toc375310864)

[15.1 Assignment by Seller 52](#_Toc375310865)

[15.2 Assignment by Buyer 53](#_Toc375310866)

[15.3 Lender(s) 53](#_Toc375310867)

[15.4 Rights of Lender 54](#_Toc375310868)

[15.5 Cure Rights of Lender 54](#_Toc375310869)

[15.6 Control of Seller 55](#_Toc375310870)

[15.7 Sale of Project 55](#_Toc375310871)

[article 16: CONFIDENTIALITY 56](#_Toc375310872)

[16.1 Confidential Information 56](#_Toc375310873)

[16.2 Compliance with the Freedom of Information Law 56](#_Toc375310874)

[16.3 Executive Directive No.3 57](#_Toc375310875)

[16.4 Treatment of Otherwise Publicly Available Information 57](#_Toc375310876)

[16.5 Term of Confidentiality 57](#_Toc375310877)

[16.6 FERC 57](#_Toc375310878)

[16.7 SEC 57](#_Toc375310879)

[16.8 Confidential Treatment 58](#_Toc375310880)

**EXHIBITS AND SUPPLEMENTS**

EXHIBIT A: LIPA STANDARD PROCUREMENT FORMS A-1

EXHIBIT B: PROJECTED ENERGY DELIVERIES B-1

EXHIBIT C: CONTRACT PRICE C-1

EXHIBIT D: SAMPLE MONTHLY INVOICE D-1

EXHIBIT E: CERTIFICATION AND ASSIGNMENT OF RIGHTS FORM E-1

EXHIBIT F: ELIGIBILITY AND REQUIREMENTS OF THE RPS  
PROGRAM F-1

EXHIBIT G: INSURANCE REQUIREMENTS G-1

EXHIBIT H: FORM OF SELLER GUARANTY H-1

EXHIBIT I: FORM OF SELLER LETTER OF CREDIT I-1

EXHIBIT J: CHRONIC UNDERPERFORMANCE SAMPLE CALCULATION J-1

EXHIBIT K: MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE  
PROCEDURES K-1

EXHIBIT L: FORM OF INTERCONNECTION AGREEMENT among Seller, Connecting Transmission Owner and NYISO L-1

EXHIBIT M: DELIVERY POINT M-1

EXHIBIT N: SITE CONTROL N-1

SUPPLEMENT 1: STANDARD CLAUSES FOR LIPA’S  
CONTRACTS SuppLement 1 - 1

SUPPLEMENT 2: DESCRIPTION AND LOCATION OF  
THE Project Supplement 2 – 1

**Contract for the Purchase & Sale of Renewable Energy, Related Capacity and Renewable Attributes Between**

**Long Island Power Authority and *[Seller]***

This Contract for the Purchase & Sale of Renewable Energy, Related Capacity and Renewable Attributes (this “Agreement”), dated as of ***[INSERT DATE]***, is by and between the Long Island Power Authority, a corporate municipal instrumentality of the State of New York, having its principal place of business at 333 Earle Ovington Boulevard, Uniondale, NY 11553 (“Buyer”) and ***[SELLER]***, a [***INSERT ENTITY FORM]*** organized under the laws of the State of ***[INSERT STATE]*** having its principal place of business at \_\_\_\_\_\_\_\_\_\_ (“Seller”) (collectively, Buyer and Seller are also referred to herein as the “Parties”). This Agreement includes the general terms and conditions set forth herein, and any and all exhibits, schedules and any written supplements hereto. All capitalized terms shall have the meanings ascribed to them in this Agreement.

**WITNESSETH:**

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

WHEREAS, Seller intends to construct, own, operate and maintain a renewable energy generating facility with a nominal rating of [\_\_\_\_\_\_] MW, to be located at [**PROJECT LOCATION**] (the “Project”);

WHEREAS, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase from Seller, the Delivered Energy, Related Capacity and Renewable Attributes produced by the Project (“Products”), all in accordance with the provisions of this Agreement, and

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

NOW, THEREFORE, for and in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Buyer and Seller, each intending to be legally bound, agree as follows:

# GENERAL DEFINITIONS

“AC” means Alternating Current.

“AC Net MW” means Capacity of the Project measured at the Delivery Point in alternating current MW net of any Energy consumed by the Project when generating.

“Act” means the LIPA Act (Public Authorities Law of the State of New York § 1020 *et seq.*).

“Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person.

“Aggrieved Party” has the meaning set forth in Section 13.1.

“Agreement” has the meaning set forth in the preamble.

“Assignment” has the meaning set forth in Section 15.1.1.

“Attribute Deficiency Month” has the meaning set forth in Section 3.1.2

“Bankrupt” means, with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it which shall remain undismissed or unstayed for a period of sixty (60) days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, and if such appointment is sought by a party other than such entity, the proceeding in which such action is sought shall remain undismissed or unstayed for a period of sixty (60) days, or (iv) is generally not paying its debts as they fall due.

“Business Day” means any Day except a Saturday, Sunday, or holiday defined by NERC. A Business Day shall open at 0800 and close at 1700 local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

“Buyer” has the meaning set forth in the preamble.

“Buyer Event of Default” has the meaning set forth in Section 6.2.

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

“Capacity” means the capability to generate Energy measured in MW.

“Change in Law” means the enactment, adoption, promulgation, modification, suspension, repeal, or judicial determination, after the Execution Date, by any Governmental Authority of any Legal Requirements that materially affects the costs associated with a Party’s performance of its obligations hereunder.  For the avoidance of doubt, neither of the following shall be considered a Change in Law: (a) a new Legal Requirement imposed on the Project that is not applicable generally to electric generating facilities, or (b) a change in interpretation or enforcement of any existing Legal Requirement.

“Chronic Underperformance” shall have the meaning in Section 5.1.3.

“Claiming Party” has the meaning set forth in Section 14.3.

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

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

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

“Confidential Information” has the meaning set forth in Section 16.1.2.

“Confidential Parties” shall have the meaning set forth in Section 16.1.2.

“Connecting Transmission Owner” means Long Island Lighting Company d/b/a LIPA, a corporation organized under the laws of the State of New York and a wholly-owned subsidiary of Buyer.

“Connecting Transmission Owner’s Attachment Facilities” shall have the meaning assigned thereto in the Interconnection Agreement.

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

“Consent Agreement” has the meaning set forth in Section 15.3.

“Consents” means any approval, consent, permit, license, decree, certificate or other authorization that is required to own, construct, operate and maintain the Project, which needs to be received from any Governmental Authority having jurisdiction, including all applicable environmental certificates, licenses, permits and approvals.

“Consents Target Application Date” means ***[RESPONDENT TO INSERT]***.

“Consents Target Acquisition Date” means ***[RESPONDENT TO INSERT]***.

“Contract Capacity” means the aggregate installed Capacity of the Project at any time on and after Project COD, as determined in accordance with the NYISO Rules and measured in AC Net MW, which shall not exceed any of the following: (i) the Maximum Interconnection Capacity; (ii) the Project Capacity; (iii) the aggregate nameplate ratings of the Project’s AC generating or conversion equipment, as applicable; or (iv) the aggregate nameplate ratings of the Project’s direct current generating equipment, if applicable, adjusted for losses during conversion to AC.

“Contract Capacity Buy-Down Liquidated Damages” shall have the meaning set forth in Section 3.1.3.

“Contract Price” means the price in $/MWh (US$) set forth in Exhibit C to be paid by Buyer to Seller for the purchase of the Delivered Energy.

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

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement or entering into new arrangements which replace the terminated Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

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

“Credit Requirements” means, with respect to any Person, that such Person has a Credit Rating of (a)(1) “Baa2” or higher by Moody’s or (2) “BBB” or higher by S&P, or (b) if rated by both Moody’s and S&P, both (a)(1) and (a)(2).

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

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

“Delivered Energy” means Energy generated by the Project and delivered by Seller to Buyer at the Delivery Point measured by Buyer’s Metering Devices.

“Delivery Point” means the point of interconnection between Developer Attachment Facilities and the Connecting Transmission Owner’s Attachment Facilities, as shown in Exhibit M.

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

“Disclosing Party” has the meaning set forth in Section 16.1.2.

“Early Termination Date” has the meaning set forth in Section 6.3.

“Effective Date” means the first date on which all of the following shall have occurred: (1) this Agreement has been executed by both Seller and Buyer; and (2) the executed Agreement has been (a) approved in writing by both (i) the New York State Attorney General (as to form), and (ii) the State Comptroller and (b) filed in the office of the State Comptroller (as provided for in Supplement 1).

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

“Energy” means three-phase, 60-cycle AC electric energy, expressed in MWh.

“Energy Charge Adjustments” for each Monthly Invoice shall mean amounts due from Buyer to Seller for which Buyer has agreed to pay to Seller under this Agreement and which is not otherwise included in the definition of Monthly Energy Charge.

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

“Equitable Defenses” means any defense to an obligation arising under bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally of which may be allowed in the discretion of a court before which such bankruptcy, insolvency or creditors rights proceedings may be pending.

“Excess Energy” has the meaning set forth in Section 5.3.

“Escrow” means the placing of an amount of U.S. currency with an escrow agent (and pursuant to an escrow agreement) reasonably acceptable to the Parties that provides for draws by a Party in accordance with Article 9 of this Agreement, the costs of which shall be borne by the Party providing the funds being placed in escrow.

“Excused Failure Day” shall mean a Day on which (a) Seller has failed or been unable to perform its obligations under this Agreement resulting directly from (a) any Force Majeure Event affecting Seller; and (b) any other failure by Seller occurs that is otherwise excused under the terms of this Agreement.

“Execution Date” means the date on which Seller executes this Agreement.

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

“FERC” means the Federal Energy Regulatory Commission and its successors or assigns.

“FOIL” has the meaning set forth in Section 16.2.

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

“Force Majeure Remedy Plan” has the meaning set forth in Section 14.4.1.

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

“Governmental Authority” means (i) any federal, state, local, municipal, or other government, (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power (including, for the avoidance of doubt, LIPA and the NYISO), and (iii) any court or governmental tribunal.

“Governmental Charges” has the meaning set forth in Section 10.2.

“Guaranteed Performance” has the meaning set forth in Section 5.1.1.

“Guarantor” means the guarantor, if any, providing a Guaranty hereunder. The initial Guarantor for Seller shall be ***[RESPONDENT TO INSERT]***.

“Guaranty” means the instrument obligating the Guarantor to unconditionally guarantee the payment obligations of Seller which shall be in substantially the form of Exhibit H.

“Indemnifying Party” has the meaning set forth in Section 12.3.1.

“Installed Capacity” has the meaning set forth in NYISO Rules.

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

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

“Interest Rate” means the effective interest rate as established by Section 2880 of the Public Authorities Law of the State of New York, and any successor thereto.

“Intermittent Power Resource” has the meaning set forth in the NYISO Rules.

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

“Lender” means any Person providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Project, whether that financing or refinancing takes the form of private debt, public debt or any other form (including debt financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity and tax investor directly or indirectly providing financing or refinancing for the Project or purchasing equity ownership interests of Seller and/or its Affiliates, any Person providing any interest rate protection agreements to hedge any of the foregoing obligations, and any trustee or agent acting on behalf of one or more of the foregoing Persons.

“Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit governed by the International Standby Practices 1998 (ISP 98) issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having at all times a Credit Rating of at least “A-” from S&P or “A3” from Moody’s or such lower Credit Rating as is acceptable in accordance with customary market practice at the time of issuance of the letter of credit for standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch for credit support on large-scale infrastructure projects, in a form acceptable to the Party in whose favor the letter of credit is issued, which may be drawn at a location in the City of New York, New York. A Letter of Credit will be in an acceptable form if substantially similar to the form attached as Exhibit I hereto.

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

“Losses” means, with respect to a Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement pursuant to Section 6.3, determined by such Non-Defaulting Party in a commercially reasonable manner.

“Make-Whole Payment” has the meaning set forth in Section 5.2.

“Maximum Interconnection Capacity” means the design Capacity of the Electrical Interconnection Facilities, as established pursuant to the Interconnection Agreement.

“Month” or “Monthly” means a period commencing with the start of the hour ending 0100 EPT on the first Day of a calendar month and closing at the end of the hour ending 2400 EPT on the last Day of that calendar month.

“Monthly Energy Charge” means, for purposes of the Monthly Invoice to be submitted by Seller to Buyer after the end of each Month pursuant to Section 7.2.3, the amount due and payable by Buyer to Seller for all Energy delivered in such Month, calculated by multiplying the MWh of Delivered Energy in such Month by the applicable Contract Price set forth in Exhibit C, plus all amounts becoming due in such Month which may comprise the Energy Charge Adjustments, credits for Attribute Deficiency Month and charges for Test Energy, and consistent with the sample Monthly Invoice set forth in Exhibit D, which shall be the consideration for the Products delivered in such Month.

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

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

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

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

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

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

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

“Non-Defaulting Party” means the Party that is not the Defaulting Party.

“Noticed Party” has the meaning set forth in Section 13.1.

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

“NYISO Markets” means markets administered by the NYISO.

“NYISO Rules” means the NYISO Tariff, and all NYISO manuals, rules, procedures, agreements or other documents governing the participation of market participants in the NYISO Markets as in effect from time to time.

“NYISO Tariff” means the NYISO Open Access Transmission Tariff and/or the NYISO Market Administration and Control Area Services Tariff or any other tariff applicable to the NYISO, as in effect on the Execution Date.

“Operating Instructions” means those procedures developed by the Parties pursuant to Section 3.11.

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

“Parties” has the meaning set forth in the preamble.

“Party” means each of the Parties.

“Performance Bond” means a bond, in a form reasonably acceptable to Buyer, issued by a licensed surety company or insurance company with an A.M. Best rating of “A” or better to protect Buyer against loss in case the terms of this Agreement are not fulfilled such that the surety company or insurance company assumes liability for Seller’s non-performance.

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

“Products” has the meaning set forth in the preamble.

“Project” means the renewable Energy generating facility as described in Supplement 2.

“Project Capacity” means \_\_\_\_\_ MW (AC Net MW), which is the quantity of Contract Capacity that Seller intends for the Project to be able to produce [***RESPONDENT TO INSERT***].

“Project COD” has the meaning set forth in Section 3.2.

“Project COD Target Date” means ***[RESPONDENT TO INSERT DATE]***, or such later date to which the Project COD Target Date shall be extended in accordance with Section 3.2.3.

“Projected Energy Deliveries” are set forth in Exhibit B as may be adjusted pursuant to Section 3.1.3.

“Prudent Utility Practice(s)” means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the renewable energy electric power generation industry in the Northeast region and/or NERC) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Legal Requirements, regulation, permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, good business practices and expedition. Prudent Utility Practice(s) are not intended to be limited to the optimum practice, method or act to the exclusion of others. With respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

A. equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project’s needs;

B. sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Project properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions whether caused by events on or off the Site;

C. preventive, routine, and non-routine maintenance and repairs are performed on a basis that is reasonably expected to result in reliable, long term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

D. appropriate monitoring and testing are performed in a manner that is reasonably expected to result in equipment functioning as designed;

E. equipment is not operated in a reckless manner, in violation of manufacturer’s guidelines and warranties or in a manner unsafe to workers, the general public, or the interconnected system or contrary Legal Requirements, including any environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive loading, frequency, polarity, synchronization, and/or control system limits;

F. equipment and components meet or exceed the standard of durability that is generally used for electric generation operations in the region and designed to function to the maximum extent possible over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions; and

G. equipment, components, and processes are appropriately permitted with any Governmental Authority and are operated and maintained in accordance with Legal Requirements.

“Receiving Party” has the meaning set forth in Section 16.1.2.

“Regulatory Event” has the meaning set forth in Section 12.9.

“Related Capacity” means any Installed Capacity and/or Unforced Capacity, recognized by NYISO with respect to the Project.

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

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

“RPS Program” means the portion of the New York State Renewable Portfolio Standard program pertaining to the Project as set forth in Exhibit F, including each component requirement thereof listed in Exhibit F as of the Execution Date.

“S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“SEC” has the meaning set forth in Section 16.7.

“Security Amount” has the meaning set forth in Section 9.1.

“Seller” has the meaning set forth in the preamble.

“Seller Event of Default” has the meaning set forth in Section 6.1.

“Seller Security” has the meaning set forth in Section 9.1.

“Seller’s Conditions” means the conditions for Project COD, as set forth in Section 3.2.

“Seller’s Metering Devices” has the meaning set forth in Section 3.17.1.

“Site” means the Project premises described in Supplement 2.

“Site Control” is described in Exhibit N.

“State Comptroller” means the New York State Office of the State Comptroller.

“Station Service Energy” means electrical energy consumed by the Project.

“Substitute Owner” has the meaning set forth in the Consent Agreement.

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

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

“Test Energy” means Energy to be generated by the Project before the Project COD.

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

“Termination Payment” has the meaning set forth in Section 6.3.

“Title” has the meaning set forth in Section 3.6.

“Unforced Capacity” has the meaning set forth in the NYISO Rules.

# TERM

## Term

This Agreement shall become effective on the Effective Date. Buyer shall give Seller written notice within five (5) Business Days after the occurrence of the Effective Date. The term of this Agreement shall begin on the Effective Date and shall remain in effect until the twentieth (20th) anniversary of the Project COD unless terminated earlier in accordance with the terms hereof (the “Term”); provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination and, provided further, that this Agreement and any other documents executed and delivered hereunder shall remain in effect until both Parties have fulfilled all of their obligations hereunder unless such obligations have been terminated as provided herein.

2.1.2 Buyer’s obligation to purchase and receive Energy during the Term shall be subject (i) prior to Project COD, to Seller's deliveries of Test Energy in accordance with the provisions of this Agreement; and (ii) subsequent to Project COD, to Seller's delivery of Products in accordance with the provisions of this Agreement.

## Opinion of Counsel

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

## Early Termination by Buyer

In addition to the right to terminate upon a Seller Event of Default as provided in Article 6, Buyer shall have the right to terminate this Agreement by written notice to Seller within fifteen (15) Business Days after any of the following:

Seller fails to submit complete applications for all Consents required for commencement of development of the Project by the Consents Target Application Date;

Seller fails to obtain all Consents required to commence development of the Project by the Consents Target Acquisition Date, free of material conditions reasonably unacceptable to Seller;

2.3.3 Seller has not **[RESPONDENT TO INSERT CONSTRUCTION MILESTONE]** at the Site within [**RESPONDENT TO INSERT NUMBER]** Days after the Effective Date; or

2.3.4 Seller fails to achieve Project COD having Contract Capacity of at least eighty percent (80%) of the Project Capacity on or before the Project COD Target Date.

In the event Buyer elects to terminate this Agreement as a consequence of the conditions described in Section 2.3, Buyer’s sole remedies shall be (i) a liquidated damages payment of $600,000 multiplied by the Project Capacity in the case of a termination with respect to Section 2.3.1, or 2.3.3, or (ii) COD Liquidated Damages pursuant to Section 3.3.1 in the case of a termination with respect to Section 2.3.4, provided, however, that if a Seller Event of Default has occurred, then in addition to the foregoing remedies, Buyer may also pursue its remedies pursuant to Sections 6.3 and 6.4. For avoidance of doubt, Seller shall not be obligated to pay Liquidated Damages in the event of termination as a consequence of the conditions described in Section 2.3.2.

## Effective Date

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

# OBLIGATIONS AND DELIVERIES

## Delivery and Sale of Products

Seller shall, in accordance with Sections 3.1.1 and 3.1.2, as applicable, sell and deliver to Buyer at the Delivery Point all Energy produced by the Project during the Term, and convey to Buyer all Related Capacity and Renewable Attributes associated with and attributable to such Energy, and Buyer shall purchase all such Energy.Buyer shall pay Seller the applicable Contract Price set forth in Exhibit C for Delivered Energy in the corresponding Contract Year, subject to the provisions of Sections 5.2 and 5.3. For the avoidance of doubt, there shall be no additional charge to Buyer for Renewable Attributes or any Related Capacity.

### Delivered Energy

Title to and risk of loss for all Delivered Energy shall pass from Seller to Buyer at the Delivery Point. Seller shall be responsible for any costs or charges related to the Seller’s transmission and delivery of Energy up to the Delivery Point, and Buyer shall be responsible for any costs or charges related to the transmission and receipt of Energy at and after the Delivery Point.

### Renewable Attributes

(i) For each Month during the Term, all Renewable Attributes associated with the Energy made available by Seller during such Month shall be transferred from Seller to Buyer through their inclusion on the Certification and Assignment of Rights Form (attached as Exhibit E), which shall accompany each Monthly Invoice. Should Buyer create, sanction, adopt or begin participation in a tracking system for accounting for generation attributes or certificates associated with generation in the New York Control Area, Buyer shall give Seller written notice thereof, together with instructions and any necessary forms, and thereafter such transfer will also include the delivery of the attributes or certificates associated with each Renewable Attribute, at the earliest time such certificates or attributes become available for delivery, to Buyer.

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

### Failure to Achieve Project Capacity on Project COD

##### In the event that on or before the Project COD Target Date, Seller’s Conditions set forth in Section 3.2.1 have occurred but the Contract Capacity is less than the Project Capacity, Seller shall pay liquidated damages in the amount of $600,000, multiplied by the number of MW by which the Contract Capacity is below the Project Capacity (“Contract Capacity Buy-Down Liquidated Damages”), in which event Seller shall provide to Buyer a revised Exhibit B which shall thereafter constitute “Exhibit B” for all purposes of this Agreement, reflecting such adjustment to the Project Capacity, and Seller may make conforming revisions to the Guaranteed Performance MWh figures.

##### After Project COD, if Seller is required by any Force Majeure Event, regulatory requirements or other circumstances beyond Seller’s control to make any material modification of the Project that is expected to result in a change in the Contract Capacity, Seller shall provide Buyer with written notice and will provide to Buyer a written description of the planned modification.  Subsequent to completion of such modification, Seller shall provide to Buyer a revised Exhibit B which shall thereafter constitute “Exhibit B” for all purposes of this Agreement, reflecting such adjustment to the Contract Capacity, and Seller may make conforming revisions to the Guaranteed Performance MWh figures.

### Installation, Operation and Maintenance

Seller shall proceed with engineering, construction and implementation of the Project using Prudent Utility Practices and in a manner that will allow for achievement of Project COD by the Project COD Target Date. Seller shall be solely responsible for obtaining all Consents, the development, construction, installation, operation and maintenance of the Project, including provision of necessary workforce, equipment, spare parts and supplies. [If applicable, Seller shall provide all fuel and materials and any emissions credits or other allowances required for operation of the Project.] Seller shall maintain the Project in good operating condition in accordance with Prudent Utility Practices. Seller shall ensure that the Project and its provision of Energy and Related Capacity under this Agreement conforms to all applicable NYISO Rules, all applicable rules for the Connecting Transmission Owner’s Electrical System, and the Operating Instructions.

### Site Control

##### Seller shall be solely responsible to obtain all necessary easements or licenses to effectuate Site Control for the Project and the Developer Attachment Facilities throughout the Term. Documents necessary for Site Control are provided in Exhibit N.

## Conditions for Project COD

The commercial operation date of the Project (“Project COD”) shall occur on the first Day of the Month following the Month in which the following Seller’s Conditions occur, provided, if Seller’s Conditions occur fewer than ten (10) Days prior to the end of a Month, Project COD shall be the first Day of the second Month following the Month in which the following Seller’s Conditions occur:

3.2.1. Seller's Conditions

##### Delivery of written certificate from an officer of Seller to Buyer subject to reasonable and prompt verification by Buyer, that (a) Seller has obtained all Consents necessary to install and operate such Project; (b) Seller has successfully completed all tests required prior to such Project being placed in service under the engineering, procurement and construction contract entered into by Seller, the Operating Instructions for such Project, and all tests required by the manufacturer(s) of the Project components for warranty compliance, except for such testing that is either required by Legal Requirements, or order of a Governmental Authority to be conducted after the Project COD or is customarily performed after commercial operation; (c) such Project and the Renewable Attributes to be produced thereby meet the RPS Program eligibility rules and requirements as in effect on the Execution Date; (d) Seller has complied with all applicable NYISO Rules (including those for Intermittent Power Resources) relating to the delivery of Related Capacity and Energy; (e) Such Project has provided Delivered Energy of at least \_\_\_\_ percent (\_\_%) of Project Capacity ***[RESPONDENT TO INSERT]***, for at least a minimum of four (4) hours during a test period of continuous operation; and (f) such Project is capable of operation in accordance with Prudent Utility Practices, all Legal Requirements, and all equipment manufacturers’ instruction manuals and warranties;

##### Delivery by Seller to Buyerof certificates of insurance coverage or proof of insurance policies, as required pursuant to Article 11 and Exhibit G of this Agreement;

##### (a) Such Project has been interconnected with Connecting Transmission Owner’s Electrical System, and (b) Seller has executed the Interconnection Agreement for the Project in substantially the form of Exhibit L hereto, providing for a term commencing on or before the Project COD and ending no earlier than the last day of the Term and has used commercially reasonable efforts to obtain NYISO execution of the Interconnection Agreement;

##### Written notice by Seller to Buyer that the Operating Instructions have been completed with respect to the Project;

##### Such Project is capable of providing Contract Capacity of at least eighty percent (80 %) of Project Capacity;

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

##### Seller has made all arrangements and executed all agreements, including any necessary easements or licenses to effectuate Site Control required to deliver the Energy from the Project to the Delivery Point in accordance with the provisions of this Agreement.

### Progress Reports

Seller shall notify Buyer immediately of any events which may reasonably be expected to adversely affect Seller’s ability to achieve Project COD by the Project COD Target Date. Within ten (10) Days after the end of each Month during the construction phase of the Project, Seller shall deliver a written report to Buyer describing the progress of construction of the Project, including any events of material significance to Seller’s ability to meet the Project COD Target Date.

### Extension of Project COD Target Date

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

## COD Liquidated Damages

### (i) If Seller does not achieve Project COD by the Project COD Target Date, Buyer may terminate the Agreement in accordance with Section 2.3.4 and Seller shall pay to Buyer as liquidated damages the amount of $600,000 multiplied by the Project Capacity (“COD Liquidated Damages”).

##### (ii) Buyer’s termination rights set forth in Section 2.3 and/or liquidated damages payable under Section 3.3.1 shall be the sole remedies if Seller fails to achieve Project COD by the Project COD Target Date, provided, however, that if a Seller Event of Default has occurred, then in addition to the foregoing remedies, Buyer may also pursue its remedies pursuant to Sections 6.3 and 6.4.

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

## Buyer’s Resale of Products

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

## Good and Marketable Title; No Encumbrances

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

## Seller’s Responsibility Related to Renewable Attributes

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

## Future Renewable Attributes

The Parties acknowledge and agree that as of the Effective Date Seller is committing to furnish to Buyer and Buyer is committing to accept all available Renewable Attributes, but the presently-available Renewable Attributes include only the RECs related to the RPS Program; however, Future Renewable Attributes may be recognized by a Governmental Authority after the Execution Date. In such event, such Future Renewable Attributes shall be transferred by Seller and accepted by Buyer pursuant to the terms and conditions set forth in this Agreement at no increase in the Contract Price.

The Parties agree to cooperate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer and receipt of such Future Renewable Attributes prior to any such transfer and receipt, including agreement with respect to appropriate transfer, receipt, delivery and risk of loss mechanisms; provided that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

Seller shall not sell, transfer or pledge Future Renewable Attributes to any Person other than Buyer.

## Buyer’s Obligation Under the RPS Program

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

## Buyer’s Rights Related to Renewable Attributes

Buyer shall have sole, exclusive and perpetual ownership of all Renewable Attributes associated with Delivered Energy and shall be free to sell, assign, transfer, retire, or otherwise subject to any encumbrance, any of the Renewable Attributes or the right, title and interest to the Renewable Attributes Buyer shall acquire under this Agreement, at any time and from time to time to any entity and on such terms and conditions as Buyer may desire. Any financial or other consideration received by Buyer from any such action shall inure solely to Buyer’s benefit, and shall not affect the Seller’s obligations under the terms of this Agreement. Buyer’s rights shall include exclusive rights to claim, consistent with the RPS Program that (i) the Energy associated with Renewable Attributes was generated by the Project and matches on a Monthly basis, and (ii) Buyer receives credit for the reductions in emissions and/or pollution resulting from the generation of the Energy and Renewable Attributes.

## Maintenance Outages

The Parties shall make commercially reasonable efforts to coordinate scheduled maintenance Outages. Seller will coordinate scheduling of maintenance with Connecting Transmission Owner and Seller will ensure Project availability during peak periods consistent with Prudent Utility Practices.

## Development of Operating Instructions

Buyer and Seller shall jointly develop the written Operating Instructions for the Project by no later than ninety (90) Days prior to the Project COD Target Date. The Operating Instructions shall be consistent with this Agreement, and shall conform to the Project’s and Connecting Transmission Owner’s Electrical System operating parameters and characteristics that are in effect on or after the date of this Agreement and the NYISO Rules. The Operating Instructions may be revised from time to time to the extent mutually agreed in writing by the Parties. Buyer shall be responsible for all communications and transactions with NYISO relating to the Project, and Seller shall provide such information regarding the Project or its operation that Buyer may be required to report to the NYISO. The Operating Instructions shall contain a level of detail reasonably required by Buyer and Seller to perform their respective obligations under this Agreement.

## Consistency with NYISO Rules

The Parties recognize that the provisions of this Article 3 and of Article 4 are subject to NYISO Rules and may be periodically overridden by NYISO and to the extent there is an inconsistency between Article 3 and Article 4 and the NYISO Rules, the NYISO Rules shall apply.

## Test Energy

To the extent Seller delivers Test Energy to Buyer at the Delivery Point prior to Project COD, Buyer shall pay the Seller the price received by Buyer from the NYISO for such Test Energy. To the extent any Renewable Attributes are generated with such Test Energy, such Renewable Attributes will be transferred to Buyer in the manner provided for in this Agreement.

## Station Service Energy

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

## No Immunity Claim

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

## Buyer’s Metering Device

The Buyer’s Metering Device used to measure the Delivered Energy sold by Seller to Buyer under this Agreement and to monitor and coordinate operation of the Project shall be owned, installed, and maintained by Buyer. Buyer shall provide Seller access, for Seller’s use only and subject to Article 16 hereof, to Buyer’s Metering Device during Business Days upon reasonable advance notice. Buyer’s Metering Device shall be located at the Delivery Point. Buyer shall inspect and test Buyer’s Metering Device upon installation and at least annually thereafter. Buyer shall provide Seller with reasonable advance notice of, and permit a representative of Seller to witness and verify, such inspections and tests, provided, however, that Seller shall not unreasonably interfere with or disrupt the activities of Buyer and shall comply with all of Buyer’s safety standards. Upon request by Seller, Buyer shall perform additional inspections or tests of Buyer’s Metering Device and shall permit a qualified representative of Seller to inspect or witness the testing of Buyer’s Metering Device; provided, however, that Seller shall not unreasonably interfere with or disrupt the activities of Buyer and shall comply with all of Buyer’s safety standards. The actual expense of any such requested additional inspection of testing shall be borne by Seller, unless upon such inspection or testing Buyer’s Metering Device is found to register inaccurately by more than the allowable limits established in Section 3.17, in which event the expense of the requested additional inspection or testing shall be borne by Buyer. If requested by Seller in writing, Buyer shall provide copies of any inspection or testing reports to Seller. Seller may elect to install and maintain, at its own expense, metering devices (the “Seller’s Metering Devices”) in addition to the Buyer’s Metering Device installed and maintained by Buyer, which installation and maintenance shall be performed in a manner acceptable to Buyer. Seller, at its own expense, shall inspect and test the Seller’s Metering Devices upon installation and at least annually thereafter. Seller shall provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify, such inspections and tests; provided, however, that Buyer shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller’s safety standards. Upon request by Buyer, Seller shall perform additional inspections or tests of the Seller’s Metering Devices and shall permit a qualified representative of Buyer to inspect or witness the testing of Seller’s Metering Devices, provided, however, that Buyer shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller’s safety standards. The actual expense of any such requested additional inspection or testing shall be borne by Buyer, unless, upon such inspection or testing, Seller’s Metering Devices are found to register inaccurately by more than the allowable limits established in Section 3.17, in which event the expense of the requested additional inspection or testing shall be borne by Seller. If requested by Buyer in writing, Seller shall provide copies of any inspection or testing reports to Buyer. If Buyer’s Metering Device, or Seller’s Metering Devices, is found to be defective or inaccurate outside the bounds of the selected device’s manufacturer’s performance standards, they shall be adjusted, repaired, replaced and/or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party’s expense.

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

## Adjustment for Inaccurate Meters

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

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

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

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

## Monitoring

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

## Change in Law

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

## Buyer’s Access to Records

At Buyer’s request, Seller shall make available all records pertaining to production and sale of Delivered Energy and conveyance of Renewable Attributes to Buyer, as well as any financial records required to support the reimbursement of any amounts due to Seller from Buyer under this Agreement.

## Seller as Owner of the Project

Seller shall at all times retain title to and be the legal and beneficial owner of the Project and the Project shall remain the property of the Seller or Seller’s permitted assigns. The Parties specifically acknowledge and agree that Seller shall be the owner of the Project for federal income tax purposes and, in that connection, shall be entitled to the depreciation deductions associated with the Project as well as any tax credits or other income tax benefits provided under the Code to which the Project may be entitled.

# INTERCONNECTION ARRANGEMENTS

## General

The Parties shall cooperate to make all arrangements, execute all agreements, and make commercially reasonable efforts to cause the Electrical Interconnection Facilities to be completed within ***[RESPONDENT TO PROPOSE]*** ***[\_\_\_\_\_\_\_\_\_ (\_\_\_)]*** Days after the Effective Date. Buyer shall make commercially reasonable efforts to take those actions within its regulatory authority to cause the Connecting Transmission Owner to execute the Interconnection Agreement with a term ending no earlier than the last day of the Term. Seller shall cooperate with all reasonable requests of Buyer to provide information with respect to the interconnection process.

## Operation and Maintenance of Electrical Interconnection Facilities

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

## Reimbursement of Interconnection Costs

Seller shall be responsible for timely payment of all Interconnection Costs as and when incurred and invoiced. Buyer shall reimburse Seller upon the Project COD for Interconnection Costs paid by Seller to the Connecting Transmission Owner, pursuant to invoices submitted by Seller in accordance with Article 7.

# CHRONIC UNDERPERFORMANCE OR OVERDELIVERY

## Definitions

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

### “Guaranteed Performance” means delivery by the Project of at least \_\_\_\_\_\_\_\_\_***[RESPONDENT TO INSERT]*** MWh of Energy in each Contract Year. For avoidance of doubt, Guaranteed Performance shall be without regard to availability of [wind][solar] resource, temperature, humidity, weather conditions and any other applicable ambient conditions, or any Outages except Outages arising from Force Majeure Events, and the Guaranteed Performance is agreed to include a reasonable allowance for all scheduled or unscheduled maintenance and any forced Outages, weather conditions and other occurrences.

### “Shortfall” means the failure of the Project to achieve Guaranteed Performance in any Contract Year.

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

## Remedies for Underperformance

If a Shortfall has occurred in any Contract Year, Seller shall compensate Buyer (the “Make-Whole Payment”) for such Contract Year equal to the number of MWh of Shortfall in Delivered Energy below the Guaranteed Performance level for such Contract Year multiplied by $30/MWh. Buyer shall have the right to terminate this Agreement pursuant to Section 6.3 in the event Chronic Underperformance has occurred, by giving Seller notice of termination within one hundred twenty (120) Days following such occurrence.

## Overdelivery

In the event that Seller delivers quantities of Delivered Energy equal to or in excess of one hundred and five percent (105%) of the Projected Energy Deliveries as set forth on Exhibit B (“Excess Energy”) during any Contract Year, the Contract Price for each delivered MWh of Energy after Seller’s deliveries exceed the annual quantity in Exhibit B for such Contract Year shall be the then-applicable Energy price set forth in Buyer’s SC-11 Tariff (or any replacement tariff). For avoidance of doubt, Buyer will be entitled to all Related Capacity and Renewable Attributes associated with such Excess Energy.

# EVENTS OF DEFAULT; REMEDIES

## Seller Events of Default

A “Seller Event of Default” shall mean, with respect to Seller, the occurrence of any of the following:

the failure by Seller to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Daysafter written notice from Buyer;

any representation or warranty made by Seller herein or in any certificate delivered to Buyer pursuant to this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

the failure by Seller to perform any material covenant or obligation set forth in this Agreement (except and to the extent such failure (a) constitutes a separate Seller Event of Default, (b) consists of Seller’s failure to reach Project COD by the Project COD Target Date, or (c) consists of Seller’s failure to perform obligations to provide Delivered Energy after Project COD) if such failure is not remedied within thirty (30) Business Days after written notice; provided that if such failure is not reasonably capable of being cured within thirty (30) Business Days, and if Seller is exercising diligent efforts to remedy such failure, then such additional period of time, not to exceed ninety (90) additional Business Days, as shall be required to remedy such failure with the exercise of diligent efforts;

Seller becomes Bankrupt;

Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement if such failure is not remedied within sixty (60) Business Days after written notice;

Chronic Underperformance has occurred and is continuing;

failure by Seller to transfer rights to Buyer for the RECs, Renewable Attributes and/or Future Renewable Attributes in conformity with this Agreement and such failure is not remedied within fifteen (15) Business Days (or within a reasonable commercial period of time if such transfer cannot reasonably be accomplished within fifteen (15) Business Days and Seller is exercising diligent efforts to promptly comply with the requirements applicable to any such transfer);

failure of the Project to maintain eligibility consistent with the RPS Program requirements as of the Execution Date in conformity with Section 3.8;

any sale of Products during the Term to any entity other than Buyer; or

failure to provide Seller Security in accordance with Article 9 or insurance in accordance with Article 11.

## Buyer Events of Default

A “Buyer Event of Default” shall mean, with respect to Buyer, the occurrence of any of the following:

the failure by Buyer to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice from Seller;

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

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

Buyer becomes Bankrupt; or

Buyer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Buyer under this Agreement if such failure is not remedied within sixty (60) Business Days after written notice.

## Declaration of an Early Termination Date and Calculation of Termination Payment

If a Seller Event of Default or a Buyer Event of Default shall have occurred and is continuing, the Non-Defaulting Party shall have the right, upon providing written notice to the Defaulting Party within thirty (30) Days of learning of such Seller Event of Default or Buyer Event of Default, (i) to designate a Day, no earlier than the Day such notice is effective and no later than twenty (20) Days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to determine in a commercially reasonable manner the Non-Defaulting Party’s Losses and Costs, which shall be the termination payment payable by the Defaulting Party hereunder (the “Termination Payment”), and terminate this Agreement, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance in accordance with Section 6.6. For the avoidance of doubt, a Defaulting Party shall not be entitled to receive payment of any Termination Payment.

## Notice of Payment of Termination Payment

As soon as practicable after an Early Termination Date has been establishedpursuant to Section 6.3, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount and a calculation of the Termination Payment due to the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Defaulting Party to the Non-Defaulting Party within five (5) Business Days after such notice is effective.

## Disputes With Respect to Termination Payment

If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Such dispute shall be settled in accordance with the dispute resolution process set forth in Article 13.

## Suspension of Performance

Notwithstanding any other provision of this Agreement, if a Seller Event of Default or a Buyer Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement provided, however, in no event shall any such suspension continue for longer than twenty (20) Business Days unless an early Termination Date shall have been declared and notice thereof given pursuant to Section 6.3, and (ii) to the extent a Seller Event of Default or a Buyer Event of Default, as applicable, shall have occurred and be continuing, to exercise any remedy available at law or in equity.

# PAYMENT

## Billing Period

Unless otherwise specifically agreed upon by the Parties, the calendar Month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each Month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding Month.

## Invoices

All invoices presented by either of the Parties shall be in the form of the sample Monthly Invoice as set forth in Exhibit D.

### Liquidated Damages

##### Early Termination Liquidated Damages Amounts. Buyer shall prepare and submit an invoice to Seller for any liquidated damage amounts due and payable to Buyer from Seller providing sufficient detail to show the amounts due pursuant to Sections 2.3.1, 2.3.3 or 2.3.4.

##### Contract Capacity Buy-Down Liquidated Damages Amounts. Buyer shall prepare and submit an invoice to Seller for any liquidated damage amounts due and payable to Buyer from Seller providing sufficient detail to show the amounts due pursuant to Section 3.1.3(i).

##### COD Liquidated Damages and Other Amounts. Buyer shall prepare and submit an invoice to Seller for such amounts due and payable to Buyer from Seller providing sufficient detail to show the amounts due pursuant to Section 3.3.1(i) for COD Liquidated Damages or liquidated damages due pursuant to Section 3.3.1(ii), or Make-Whole Payments in accordance with Section 5.2, as the case may be.

### Interconnection Costs

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

### Monthly Invoice

##### Monthly Energy Charge. Commencing with the Month in which the Project COD occurs and continuing throughout the Term, Seller shall prepare and submit to Buyer a Monthly Invoice for Delivered Energy. Each Monthly Invoice that includes the Monthly Energy Charge shall be accompanied by the calculation thereof in accordance with Exhibit C and Exhibit D. As specified in Section 3.1.2, all such invoices that include a Monthly Energy Charge shall be accompanied by a completed Certification and Assignment of Rights Form provided as Exhibit E hereto which shall be deemed to satisfy the eligibility requirements under the RPS Program and Seller must otherwise demonstrate the transfer of the Renewable Attributes as reasonably requested by Buyer at Buyer’s expense.

##### Energy Charge Adjustments. To the extent that any Energy Charge Adjustments arise, Seller shall include on the Monthly Invoice to Buyer such Energy Charge Adjustment amounts as separate line items detailing the nature and amount due and payable to Seller from Buyer.

##### Attribute Deficiency Month Adjustment. To the extent that any Attribute Deficiency Month credit arises as set forth in Section 3.1.2(ii), Seller shall include on the Monthly Invoice to Buyer such credit as a separate line item detailing the nature and amount to be credited by Seller to Buyer.

##### Test Energy. To the extent Seller delivers Test Energy to Buyer from the Project as set forth in Section 3.13, Buyer shall report to Seller the price Buyer receives from the NYISO for such Test Energy and Seller shall furnish to Buyer in the Monthly Invoice the amounts of such Test Energy together with a calculation of the amount due to Seller pursuant to Section 3.13.

### Other Costs

After the Effective Date, each Party shall submit to the other Party an invoice for any amount due and payable to such Party under this Agreement which is not otherwise subject to reimbursement or payment in Section 7.2.1 through Section 7.2.3.

## Timeliness of Payment

Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the thirtieth (30th) Day after receipt of the invoice or, if such Day is not a Business Day, then on the next Business Day. For the avoidance of doubt, such thirtieth (30th) Day after receipt of the invoice, or such following Business Day, shall be the date on which the amounts invoiced therein shall be due for all purposes of this Agreement. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

## Disputes and Adjustments of Invoices

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within six (6) years of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. If an invoice is not rendered within twelve (12) Months after the close of the Month during which performance occurred, the right to payment for such performance is waived.

## Payment Obligation

Each Party shall pay the other Party all amounts owed in full when due except for amounts in dispute in accordance with Section 7.4.

# LIMITATIONS

THE PARTIES AGREE THAT SELLER’S WARRANTIES SPECIFICALLY SET FORTH IN THIS AGREEMENT CONSTITUTE BUYER’S SOLE REMEDY AND SELLER’S SOLE LIABILITY WITH RESPECT TO WARRANTY CLAIMS AND ARE IN LIEU OF ANY OTHER WARRANTIES AVAILABLE AT LAW OR IN EQUITY. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS, AND NOT A PENALTY.

# SELLER SECURITY

## Seller Security

### As security for Seller’s obligations under or related to this Agreement, within five (5) Business Days of receipt of notice from Buyer in accordance with Section 2.1 that the Effective Date has occurred, Seller shall deliver to Buyer and shall thereafter maintain security consisting of Letters of Credit, Performance Bonds and/or money in Escrow (the “Seller Security”) in an aggregate amount through Project COD equal to the product of (a) the Project Capacity and (b) $600,000 per MW (the “Security Amount”). The initial Seller Security may not include a Guaranty, and may only be in the form of a Letter of Credit, Performance Bond, and/or money in Escrow or combination thereof, but after Project COD has been achieved, Seller may provide or substitute Guaranties, Letters of Credit, Performance Bonds and/or money in Escrow as provided in Section 9.2.1. Seller shall maintain the Seller Security in the Security Amount, at Seller’s sole cost and expense, until the latest of (x) the end of the Term, (y) completion of all payments Seller is obligated to make to Buyer at any time, including any Termination Payment, Make-Whole Payment and/or Liquidated Damages, or (z) in the event any payment has been made by Seller to Buyer within ninety-eight (98) Days prior to the end of the Term or any payment is due by Seller to Buyer as of the end of the Term, the date of which is ninety-eight (98) Days following the date on which the last such payment is made.

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

## Seller Security Replacement

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

If the applicable substitute Seller Security shall be replacing a Letter of Credit, then Buyer shall promptly mark such Letter of Credit as “cancelled” and return the original of same to Seller and shall take such other actions as reasonably may be requested by the issuer of such letter of credit to evidence the cancellation thereof. If the applicable substitute Seller Security shall be replacing a Guaranty, then Buyer shall execute such release documentation as may be reasonably requested by Seller. If the applicable substitute Seller Security shall be replacing a Performance Bond, then Buyer shall promptly mark such Performance Bond as “cancelled” and return the original of the same to Seller and shall take all such other actions as reasonably may be requested by the issuer of such Performance Bond to evidence cancellation thereof. If the applicable substitute Seller Security shall be replacing cash collateral, then Buyer shall execute such documentation releasing and terminating its rights (including contract rights) with respect thereto, and shall take any other steps necessary to transfer such cash collateral back to Seller, in each case as may be reasonably requested by Seller. If Seller shall have previously provided, but shall no longer be required to maintain, certain Seller Security hereunder, then Buyer shall return, in the same manner as described above, the applicable Seller Security previously posted on behalf of Seller but which is no longer required to be maintained.

## Draw on Seller Security

Buyer may draw upon or make a claim on Seller Security (a) to satisfy any amounts owed by Seller to Buyer under this Agreement (other than disputed amounts) that are not satisfied within ten (10) Days following the date on which such amounts become due and owing pursuant to Section 7.3, or, (b) in the entire amount of such Seller Security if any Guaranty, Letter of Credit, Performance Bond or Escrow or other form of Seller Security instrument is due to expire by its terms within thirty (30) Days and has not been replaced, and Seller continues to be required to provide such Seller Security, in which instance Buyer may hold the proceeds of such draw as a cash balance to secure Seller’s obligations but shall return such to Seller upon Seller’s provision of substitute Seller Security in accordance with this Agreement. Upon termination of this Agreement by reason of a Seller Event of Default, Buyer shall have the right to draw upon or make a claim on Seller Security for any undisputed amounts owed to Buyer under this Agreement. In the event Seller becomes Bankrupt, if any payment has been made by Seller to Buyer within the period prior to Seller becoming Bankrupt in a manner that such Seller payment to Buyer could be challenged or recovered as a preference or fraudulent conveyance in bankruptcy, Buyer may, at any time prior to expiry of Seller Security, draw upon or make a claim on such Seller Security in an amount equal to the potentially recoverable prior payment and hold such amount in Escrow until the later of (i) the last date on which any trustee or party may assert claims seeking to recover such payment, if no such claim has been asserted, or (ii) final adjudication of any asserted claim as to such payment, provided, if no such claim for recovery of such payment has been timely asserted, or if such claim is finally adjudicated and found not recoverable from Buyer, the amount in Escrow shall be promptly paid to Seller, and if the payment is recovered from Buyer, such amount may be retained by Buyer.

## Replenishment

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

## Expiration of Letter of Credit

If a Letter of Credit is serving as Seller Security, Seller shall replace such Letter of Credit with other Seller Security (which may be another Letter of Credit) more than five (5) Business Days before the expiration of the Letter of Credit. If Seller fails to provide such substitute Seller Security more than five (5) Business Days before the expiration of the Letter of Credit, Buyer may draw the full amount of the Letter of Credit and hold the proceeds until Seller Security satisfying the requirements of this Agreement is provided by Seller to Buyer. Buyer may at any time thereafter apply such proceeds to satisfy any amounts owed by Seller to Buyer under this Agreement (other than disputed amounts) that are not satisfied within ten (10) Days following the date on which such amounts become due and owing pursuant to Article 7, or any amount Buyer is entitled to draw in the event a Seller Event of Default has occurred and is continuing.

# GOVERNMENTAL CHARGES

## Cooperation

Each Party shall use commercially reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

## Governmental Charges

Seller shall pay or cause to be paid all taxes imposed by any government authority (“Governmental Charges”) on or with respect to the Project and the Products arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Products at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of Energy or the conveyance of Renewable Attributes and are, therefore, the responsibility of the Seller). In the event Seller is required by Legal Requirements to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Legal Requirements to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 7 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Legal Requirements.

# INSURANCE

## Insurance Required

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

## Insurance Notice to Buyer

Seller’s insurance certificates or other applicable documents shall provide that underwriters undertake to inform Buyer thirty (30) Days in advance of any cancellation or material change in coverage. Seller shall promptly notify Buyer in the event of underwriters’ cancellation, termination or substantive modification of any of Seller’s insurance coverages required under Article 11. If Seller enters into arrangements with any Lender that requires Seller’s underwriters to notify such Lender in the event of policy cancellation, termination or substantive modification, Seller will arrange to have such underwriters also provide such notice to Buyer at the time Lender is notified.

# MISCELLANEOUS

## Seller’s Representations and Warranties

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

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

it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, other than any such authorizations and approvals that are not required to be obtained on and as of the Effective Date;

the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

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

it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

no Seller Event of Default has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

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

with respect to the purchase or sale of the Energy and the conveyance or acceptance (as applicable) of Renewable Attributes, not later than the Project COD, it will be a producer, processor, commercial user or merchant handling the Products, and it is entering into this Agreement for purposes related to its business as such.

## Buyer’s Representations and Warranties

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

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

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

the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

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

it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

there is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

no Buyer Event of Default has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

it is acting for its own account for its customers as a load-serving entity, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

all acts necessary to the valid execution, delivery and performance of this Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act;

all persons making up Buyer’s Board of Trustees are the duly appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other Legal Requirements;

entry into and performance of this Agreement by Buyer are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and Legal Requirements; and

the Term does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and Legal Requirements.

## Indemnity

Each Party (the “Indemnifying Party”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, trustees, officers, employees and agents (collectively, the “Indemnified Party”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, trustees, officers, employees, or agents.

Seller, as Indemnifying Party, agrees to indemnify, defend and hold harmless the Buyer and its Affiliates, directors, trustees, officers, employees and agents (each being an Indemnified Party), from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) (i) arising out of or relating to the construction, operation and maintenance of the Project, and (ii) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of or relating to the construction, operation and maintenance of the Developer Attachment Facilities.

Nothing in this Section 12.3 shall relieve Seller or Buyer of any liability to the other for any breach of this Agreement. This indemnification obligation shall apply notwithstanding the negligence or willful misconduct of the Indemnified Party, but the Indemnifying Party’s liability to pay damages to the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party’s negligence or willful misconduct contributed to the claim giving rise to, or increased the level of, the damages. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

## Claims

Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 12 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer shall pay such costs. The Indemnified Party may not make any admission or offer or accept any settlement or compromise without prior written consent of the Indemnifying Party.

## Additional Seller’s Warranties

Additionally, Seller warrants at all times during the Term (except as expressly provided in this Agreement):

solely on and as of the Execution Date, that the Renewable Attributes, as to which right and title is to be transferred to Buyer, are eligible and compliant with the RPS Program eligibility rules and requirements as set forth in Exhibit F;

that Seller will have good and marketable title to the Renewable Attributes as to which right and title are being transferred to Buyer and that the Renewable Attributes are free and clear of any liens, encumbrances and/or defects of title; and

that as to Renewable Attributes, the right and title of which are transferred to Buyer, Seller shall not have sold, retired, claimed or represented such Renewable Attributes to have been part of electricity output or sales, or used such Renewable Attributes to satisfy obligations in any other jurisdiction or any voluntary renewable program or standard.

## Governing Law

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. THE PARTIES HERETO AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE IN THE SUPREME COURTS OF NEW YORK LOCATED IN NASSAU COUNTY AND SUFFOLK COUNTY NEW YORK, OR THE FEDERAL COURTS IN AND FOR THE EASTERN DISTRICT OF NEW YORK, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE, AND THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING. SERVICE OF PROCESS MAY BE MADE IN ANY MATTER RECOGNIZED BY SUCH COURTS. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

## Currency

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

## Notices

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

If to Seller: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If to Buyer: Long Island Power Authority

333 Earle Ovington Blvd. Suite 403

Uniondale, New York 11553

Attn: Director of Power Markets Contracts

Tel: (516) 719-7517

Fax: (516) 719-8602

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

## General

This Agreement (including the exhibits, schedules and any written supplements hereto), constitutes the entire agreement between the Parties relating to the subject matter. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) Months. This Agreement shall be binding on each Party’s successors and permitted assigns. References to any Person herein shall include such Person’s permitted successors and assigns.

## Audit

Each Party has the right (at its sole expense during normal working hours and provided that such Party has given reasonable prior notice) to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Energy delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) Months from the rendition thereof, and thereafter any objection shall be deemed waived.

## Renewable Attribute Eligibility Audit

Buyer may require (at Buyer’s sole cost and expense and provided that Buyer has given Seller reasonable prior notice) periodic inspections of the Project to verify that the Project remains eligible under the eligibility rules and requirements of the RPS Program as set forth in Exhibit F and in effect on the Effective Date; provided, however, that (i) such inspection rights shall not be exercised more than once per year, (ii) any such inspection shall be undertaken during Seller’s normal business hours at a time agreeable to the Seller, (iii) in performing any such inspection Buyer shall comply with Seller’s safety and security protocols, and (iv) Buyer shall not have any right to review any of Seller’s information that is subject to the attorney-client privilege or work product doctrine or is proprietary or confidential in nature.

## Forward Contract

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

## Counterparts

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

## Amendment

No amendment or modification to this Agreement shall be enforceable unless reduced to writing, executed by both Parties, and approved by the State Comptroller.

## Compliance With Legal Requirements, Regulations and NYISO Rules

Each Party will comply with Legal Requirements, regulations and NYISO Rules at all times, provided that failure of a Party to do so shall not constitute a Seller Event of Default or a Buyer Event of Default unless such failure has, or with the passage of time or upon initiation of enforcement actions by any Governmental Authority is reasonably expected to have, a material adverse impact on the other Party’s realization of benefits for which this Agreement provides.

## Compliance With Manufacturer’s Requirements

Seller shall comply at all times with requirements of manufacturers in order to maintain all rights available under warranty provisions.

## Waiver

The failure of either Party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any of the provisions hereof; shall in no way be construed to be a waiver of such provisions, or in any way to affect the validity of this Agreement or any part hereof or the right of such Party hereafter to enforce every such provision. No modification or waiver of all or any part of this Agreement shall be valid unless it is reduced to a writing, signed by both Parties, that expressly states that the Parties agree to a waiver of modification, as applicable. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

## Agency

This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party, except as provided for herein. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or be an agent or representative of, or to otherwise bind, the other Party.

## Severability

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

### If any term or provision of this Agreement or the application thereof to any Party, or circumstance, shall to any extent be invalid or unenforceable and if this results in one Party being materially affected compared to the other Party, or being deprived of a material element of its original bargain, then the Parties shall negotiate in good faith to restore as nearly as possible or rebalance the benefits of this Agreement to those existing prior to the term or provision being determined to be invalid or unenforceable.

## Negotiated Agreement

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against any one Party or the other as a result of the preparation, substitution or other event of negotiation, drafting or execution hereof.

## Local Workers

To the extent possible and subject to the collective bargaining agreement of Seller and/or its Affiliates, if any, Seller shall make a good faith effort given its commercial requirements to hire local workers (such as local unionized workforce and minority and women-owned business enterprises) during construction of the Project and as permanent employees for the operation of the Project and performance of Seller’s obligations under the terms of this Agreement. Notwithstanding the foregoing, Seller shall be responsible to manage relations among Seller, its Affiliates, its contractors and subcontractors and local unionized workforce and other local workers.

# DISPUTE RESOLUTION

## Notice

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

## Response

Noticed Party shall respond to Aggrieved Party’s written notice within ten (10) Days after receipt. If Noticed Party agrees with Aggrieved Party’s concern, Noticed Party shall promptly take appropriate action to correct such failure and include in its response a description of the action taken and a good faith estimate of the time necessary to correct the failure. In such circumstance, Noticed Party shall bear all costs incurred by both Parties associated with the corrective action.

## Resolution of Dispute

If Noticed Party disagrees with Aggrieved Party’s concern, each Party shall designate a member or members of senior management to discuss the matter and attempt to resolve the dispute. The representatives of the Parties shall meet in a location mutually agreed upon by the Parties within ten (10) Days after Noticed Party’s response to Aggrieved Party’s notice. The Parties agree to meet promptly (and in any event not more than seven (7) Days after such response) and use their commercially reasonable efforts to settle promptly any disputes or Claims arising out of or related to this Agreement through their respective representatives, and shall negotiate in good faith to resolve the dispute. All negotiations and discussions pursuant to this Section 13.3 shall be confidential, subject to Legal Requirements, and shall be treated as compromise and settlement negotiations for purposes of Federal Rule of Evidence 408 and applicable state rules of evidence. If at any time at least thirty (30) Days after Noticed Party’s response to Aggrieved Party’s notice, either Party believes that continued discussions will not result in a resolution of the dispute, then such Party may pursue its rights and remedies at law.

## Tolling Statute of Limitations

All applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while the discussions specified in this Article 13 are pending. The Parties will take such action, if any, required to effectuate such tolling. Without prejudice to the procedures specified in this Article 13, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. Notwithstanding such action, the Parties will continue to participate in good faith in the procedures specified in this Article 13, subject, however, to the rights of the Parties under the last sentence of Section 13.3.

# FORCE MAJEURE EVENTS

## Definition of Force Majeure Event

The term “Force Majeure Event” as used herein, shall mean those events, acts, omissions or circumstances which are outside of the affected Party’s control and which could not have been avoided by the affected Party through the employment of Prudent Utility Practices, arising out of or from any act of God, an act or threatened act of the public enemy, war (imminent, declared or otherwise) blockade, accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to, or adjuncts of, shipping or navigation, perils of the sea, air crash, shipwreck, train wrecks or other failures or delays of transportation, nuclear emergency, radioactive contamination, cyber attack, ionizing radiation, release of hazardous waste or materials, sabotage, terrorist acts, invasion, insurrection, riot, non-site specific industrial disturbance by a union or organized labor (including any non-site specific strike or boycott), fire, flood, lightning, earthquake, hurricane, tornado, winds of extreme force, extreme accumulation of snow or ice, naturally occurring epidemic, explosion or any similar cataclysmic occurrence, acts or restraints of a Governmental Authority other than Buyer (which do not constitute a Change in Law) which temporarily or permanently prevent required performance under this Agreement. Neither Party may claim a Force Majeure Event for any delay or failure to perform or carry out any provision of this Agreement to the extent that such Party has been negligent or has engaged in willful misconduct and such negligence or willful misconduct contributed to that Party’s delay or failure to perform or carry out its duties and obligations under this Agreement. Neither (i) economic hardship of a Party, (ii) curtailment or reduction in deliveries of Energy at the direction of the Connecting Transmission Owner or unavailability of Buyer’s transmission capability, (iii) Seller’s ability to sell Products at a price greater than that for which such is herein contracted, (iv) Buyer’s ability to purchase Products at a price less than that for which such is herein contracted, (v) inability of a Party to obtain financing, arrange credit support or make payments, nor (vi) loss of Seller’s supply including any breakdown of machinery or equipment, shall constitute a Force Majeure Event.

## Force Majeure Event

Except as specifically provided elsewhere in this Agreement, if a Force Majeure Event causes either Party to be wholly or partially unable to perform its obligations under this Agreement, that Party shall be excused from performance (other than payment obligations); provided that, if such Force Majeure Event affects the Electrical Interconnection Facilities and/or Connecting Transmission Owner’s Electrical System such that Buyer is unable to receive and use all of the Energy, Buyer shall be relieved of its obligation to receive and pay for Delivered Energy and Seller shall be relieved of its obligation to deliver Products. The suspension of performance (or payment) due to a Force Majeure Event shall be of no greater scope (or amount) and of no longer duration than is required by such Force Majeure Event and the Claiming Party (as defined below) shall not be construed to be in default with respect to any obligation hereunder for so long as, but only to the extent that, failure to perform such obligation (or make such payment) is due to a Force Majeure Event. No Force Majeure Event shall extend this Agreement beyond the Term.

## Due Diligence

A Party claiming a Force Majeure Event (“Claiming Party”) shall: (a) provide oral notice as promptly as practicable followed by written notice to the other Party (“Non-Claiming Party”) within two (2) Business Days after such Claiming Party becomes aware of such Force Majeure Event, giving the Non-Claiming Party a detailed written explanation of the event and an estimate of its expected duration and probable effect on the performance of the Claiming Party’s obligations hereunder, (b) use commercially reasonable efforts in accordance with Prudent Utility Practices to remedy the condition that prevents performance and to mitigate the effects of same in order to continue to perform its obligations under this Agreement, and (c) provide the Non-Claiming Party with weekly status reports of all efforts to mitigate and remedy the Force Majeure Event.

## Extended Force Majeure Events

If the Claiming Party has reason to believe that a Force Majeure Event will prevent it from performing its obligations under this Agreement for one (1) Month or longer (“Extended Force Majeure Event”), it shall notify the Non-Claiming Party in writing within fifteen (15) Days from the beginning of said Force Majeure Event and shall submit a plan to remedy the impact of such Force Majeure Event(s) (a "Force Majeure Remedy Plan") to the Non-Claiming Party within ten (10) Days of such notification.

While the Force Majeure Remedy Plan is in effect, the Claiming Party shall provide (a) weekly status reports notifying the Non-Claiming Party of the steps which have been taken to remedy the Extended Force Majeure Event, and (b) the expected remaining duration of its inability to perform hereunder.

## Insurance Proceeds

In the event Seller obtains insurance proceeds to restore an Project or its related facilities and equipment that has been damaged as a result of a Force Majeure Event, Seller shall apply such proceeds to the restoration of the damaged facility; provided that, (a) such proceeds shall be required to be so applied only if (i) such Force Majeure Event occurs during the first ten (10) years after Project COD, and (ii) such proceeds alone are sufficient to complete such restoration without the addition of any capital investment beyond such insurance proceeds, (b) the requirements of this Section 14.5 shall be subject and subordinate to the rights of the Lenders under the Seller’s financing or financial arrangements, and (c) if Seller notifies Buyer that it proposes to restore the Project pursuant to this Section 14.5, Buyer’s rights under Section 14.6 to terminate this Agreement as a result of such Force Majeure Event shall be deemed to have been waived and shall be of no force and effect.

## Right to Terminate or Discontinue Obligations

Either Party may terminate this Agreement if the Claiming Party remains unable to perform its obligations hereunder for eighteen(18)consecutive Months following the date of a Force Majeure Event; provided, that (i) subject to (ii) below, neither Party shall be entitled to terminate this Agreement if the Party affected by the Force Majeure Event (a) has commenced to remedy the Force Majeure Event and (b) is diligently pursuing such remedy; and (ii) if a Force Majeure Event occurs which is not curable within eighteen (18) Months through commercially reasonable efforts of the affected Party, the affected Party shall have the right to terminate this Agreement immediately upon written notice to the other Party. Notwithstanding the foregoing, if the Project or any portion of the Electrical Interconnection Facilities (or both, as the case may be) are damaged or destroyed by a Force Majeure Event, Seller or Buyer (as applicable) may rebuild the Project (subject to Section 14.5) or the Electrical Interconnection Facilities and recommence performance as soon as commercially practicable after the Force Majeure Event; provided however, that (1) if the Project shall be damaged or destroyed by a Force Majeure Event, Seller shall not be required to rebuild the Project (subject to Section 14.5), and if it elects not to rebuild the Project, then Buyer shall have no obligation to rebuild the Electrical Interconnection Facilities; and (2) if the Electrical Interconnection Facilities are damaged or destroyed and either the Project is not damaged or destroyed, or the Project is damaged or destroyed and Seller elects to rebuild the Project, then Buyer shall be obligated to rebuild the Electrical Interconnection Facilities (other than the Developer Attachment Facilities).

## Liability Following Termination

Upon termination of this Agreement as provided in Section 14.6, the Parties shall have no further liability or obligation to each other as a consequence of such termination, except for any obligation accruing prior to the occurrence of such Force Majeure Event.

# ASSIGNMENT; LENDERS; CONTROL OF SELLER

## Assignment by Seller

Prior to Project COD, Seller may not, without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed, sell, transfer or assign its rights, obligations or interest in this Agreement (“Assignment”) to a third party (other than an Affiliate of Seller) or sell, transfer or assign its rights, obligations or interest in this Agreement to any Person succeeding to all or substantially all of the assets of Seller. After Project COD and upon forty-five (45) Days’ advance written notice by Seller to Buyer, Seller may sell, transfer or assign this Agreement to a Person (i) who complies with the requirements of Section 15.1.2 and the second sentence of Section 15.7, and (ii) who complies with the requirements of Section 15.1.3, upon demonstrating such compliance with (i) and (ii) above to Buyer’s reasonable satisfaction.

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

With respect to any permitted Assignment of this Agreement in compliance with this Article 15, including any assignment of this Agreement to any transferee that acquires Seller’s interest in the Project in accordance with Section 15.7, other than an Assignment to a Lender in connection with a financing or sale or transfer of the Project to a Substitute Owner in compliance with the terms of the Consent Agreement (as provided in 16.3), the assignee or transferee or successor entity shall assume all of the duties and obligations of Seller under this Agreement pursuant to an assignment and assumption agreement in which the assignee, transferee or successor entity unconditionally assumes and agrees to be bound by all of the terms and conditions of this Agreement as Seller, including providing Seller Security as provided for in Article 9, and whereby the assignee makes certain additional representations and warranties as appropriate for such assignee that are substantially similar to those contained in Section 12.1 and such assignee delivers such enforceability assurance as Buyer may reasonably request. Following any Assignment in compliance with this Article 15 (including Section 15.1), Seller shall be, without further action by Buyer, released and discharged from all obligations under this Agreement arising after the effective date of such Assignment. Seller agrees to compensate Buyer for Buyer’s reasonable costs and expenses incurred by its use of outside attorneys, consultants, accountants and advisors in connection with this Agreement in response to Seller’s requests made pursuant to Section 15.1 (including this Section 15.1.3). Buyer shall provide an invoice to Seller for such charges, with appropriate documentation, and Seller shall pay such invoice within thirty (30) Days.

## Assignment by Buyer

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

With respect to any permitted assignment or transfer of this Agreement in compliance with Section 15.2.1 above, the assignee or transferee or successor entity shall assume all of the duties and obligations of Buyer under this Agreement pursuant to an assignment and assumption agreement in which the assignee, transferee or successor entity unconditionally assumes and agrees to be bound by all of the terms and conditions of this Agreement as Buyer and whereby the assignee makes certain additional representations and warranties as appropriate for such assignee that are substantially similar to those contained in Section 12.2. Upon any permitted assignment or transfer by Buyer pursuant to Section 15.2.1, Buyer shall be, without further action by Seller, released and discharged from all obligations under this Agreement arising after the effective date of such assignment or transfer. Buyer agrees to compensate Seller for Seller’s reasonable costs and expenses incurred by its use of outside attorneys, consultants, accountants and advisors in connection with this Agreement in response to Buyer’s requests made pursuant to Section 15.2 (including this Section 15.2.2). Seller shall provide an invoice to Buyer for such charges, with appropriate documentation, and Buyer shall pay such invoice within thirty (30) Days.

## Lender(s)

Notwithstanding Section 15.1 and the non-assignment provisions in Supplement 1, Seller may, without the consent of Buyer, collaterally assign, or grant as security, beneficially or otherwise, its rights under this Agreement to Lenders for collateral security purposes in connection with any financing of the Project or other financing arrangement; provided, however, that Seller’s obligations under this Agreement shall continue in their entirety in full force and effect as the obligations of a principal and not as a surety, and Seller shall remain fully liable for all of its obligations under or relating to this Agreement. Each such collateral assignment and any assignee, purchaser or transferee shall be subject to Buyer’s rights and defenses hereunder and under Legal Requirements. Seller shall provide prior notice to Buyer of any such collateral assignment. Buyer shall execute such consents, agreements or similar documents with respect to a collateral assignment hereof to Lender(s) as Lender(s) may reasonably request in connection with the documentation of the financing of the Project(s), including a consent to collateral assignment (“Consent Agreement”) in a form reasonably acceptable to Buyer. Seller agrees to pay for Buyer’s costs and expenses incurred in response to Seller’s and Lender’s requests, including attorney and consultant fees. Promptly after granting any such interest, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which Seller’s interest under this Agreement has been assigned. Such notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

## Rights of Lender

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

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

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

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

## Cure Rights of Lender

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

## Control of Seller

At all times prior to and following Project COD, the managing member or manager of the Seller shall be a Person that is qualified, financially sound and has at least two (2) years experience and capability involving the ownership and/or operation of utility scale renewable energy facilities comparable to the Project.

## Sale of Project

Prior to Project COD, Seller may not, without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed, sell, transfer or assign its interest in the Project to a third party (other than an Affiliate of Seller that assumes all obligations to perform this Agreement and complies with the requirements of Sections 15.1.2 and 15.1.3) or sell, transfer or assign its interest in the Project to any Person succeeding to all or substantially all of the assets of Seller, and any such consent by Buyer may be conditioned upon such transferee assuming all obligations to perform this Agreement and complying with the requirements of Sections 15.1.2 and 15.1.3. After Project COD and upon forty-five (45) Days’ advance written notice by Seller to Buyer, Seller may sell, transfer or assign its interest in the Project to a Person that is qualified, financially sound and has at least two (2) years’ experience and capability involving the ownership and/or operation of utility scale renewable energy facilities comparable to the Project who assumes all obligations to perform this Agreement and complies with the requirements of Sections 15.1.2 and 15.1.3.

# CONFIDENTIALITY

## Confidential Information

The Parties agree that the following sections of this Agreement consist of rate, cost, financial, and other economic and material terms the disclosure of which would cause substantial injury to the competitive position of both Buyer and Seller:

##### Articles (Sections) [IDENTIFY ARTICLE NO(S).]

##### Exhibits [IDENTIFY EXHIBIT NO(S).]

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

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

## Compliance with the Freedom of Information Law

Seller expressly acknowledges that Buyer is subject to the requirements of New York’s Freedom of Information Law (“FOIL”) and must comply therewith. If Buyer is requested by a third party to disclose the marked Confidential Information that it has received from Seller, Buyer will, to the extent it is consistent with the requirements in Article 6 of the New York State Public Officers Law, (i) notify Seller of the request, (ii) provide Seller the opportunity to provide information regarding the need for confidential treatment, (iii) evaluate the third party’s request for disclosure and Seller’s request for confidential treatment, and (iv) determine if the marked Confidential Information is subject to disclosure under FOIL. If Buyer determines that the marked Confidential Information is subject to disclosure, it will provide prompt written notice of such determination to Seller so that Seller may seek a protective order or other appropriate remedy. If Seller does not obtain a protective order within ten (10) Days after Buyer provides notice to Seller of its intent to make public the marked Confidential Information, the Buyer may disclose such information with no liability or further obligation to Seller.

## Executive Directive No.3

Notwithstanding any other provision in this Agreement and consistent with its Executive Directive No. 3 issued by Buyer on January 12, 2009, Buyer may have disclosed to the public the estimated total contract value associated with this Agreement prior to Buyer’s board of trustees authorization of the execution of this Agreement, which value shall be an aggregated amount. Furthermore, Buyer may disclose certain Confidential Information in furtherance of Buyer’s requirements to receive approval to execute this Agreement or to seek State Comptroller approval.

## Treatment of Otherwise Publicly Available Information

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

## Term of Confidentiality

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

## FERC

The Parties agree to seek confidential treatment of the Confidential Information in this Agreement from FERC, but acknowledge that certain Confidential Information may need to be disclosed in Seller’s rate filing or reporting with FERC or in any other regulatory filings to the FERC required to be made by Seller that will be publicly available.

## SEC

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

## Confidential Treatment

Seller shall request confidential treatment of the Confidential Information in this Agreement in connection with filings under Sections 16.6 and 16.7; provided, however, that the Parties acknowledge that such request may be denied in whole or in part, and accordingly, that confidential treatment may not be afforded to such information.

[signatures on next page]

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

***[INSERT SELLER NAME]* LONG ISLAND POWER AUTHORITY**

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

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

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

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

Approved as to Form: Approved:

Office of the Attorney General Office of the State Comptroller

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

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

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

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

STATE OF ***[INSERT STATE]*** )

ss.:

COUNTY OF ***[INSERT COUNTY]*** )

On the \_\_\_ day of \_\_\_\_\_\_\_\_, \_\_\_\_ before me personally came \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the individual who executed the foregoing instrument in his authorized capacity on behalf of ***[INSERT SELLER NAME]***, the ***[SELLER INSERT ENTITY TYPE]*** described in and which executed the foregoing instrument, who being duly sworn did acknowledge that ***[he/she]*** executed same on behalf of, and that ***[he/she]*** was authorized to execute same on behalf of the aforementioned entity.

I certify under PENALTY OF PERJURY under the laws of the State of [INSERT STATE] that the foregoing paragraph is true and correct.

**WITNESS MY HAND AND OFFICIAL SEAL**

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

Notary Public

STATE OF NEW YORK )

ss.:

COUNTY OF NASSAU )

On the \_\_\_ day of \_\_\_\_\_\_\_\_, \_\_\_\_ before me personally came ***[INSERT LIPA SIGNATORY]***, to me known to be the individual described in the foregoing instrument in [his/her] capacity as ***[INSERT TITLE]*** of the Long Island Power Authority, the corporate municipal instrumentality and political subdivision of the State of New York described in and which executed the foregoing instrument, who being duly sworn did acknowledge that ***[he/she]*** executed same on behalf of, and that he was authorized to execute same on behalf of the aforementioned entity.

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

Notary Public

**EXHIBIT A**

**LIPA STANDARD PROCUREMENT FORMS**

Forms include:

 Non-Collusive Bidding Certification

 Vendor Responsibility Questionnaire

 MacBride Fair Employment Principles

 Contingent Fee Certification

 Contractor Certification

 Contractor Certification to Covered Agency

 Affirmation of Understanding of Guidelines Regarding Procurement Lobbying

 Offerer Disclosure of Prior Non-Responsibility Determinations

[EXECUTED VERSIONS TO BE ATTACHED]

**EXHIBIT B**

**ProjectED ENERGY DELIVERIES**

***[RESPONDENT TO INSERT AS APPLICABLE]***

The tables in this Exhibit B represent the Projected Energy Deliveries in MWh, consisting of the sum of all MWh projected to be delivered in the indicated hour of the Day (Hour Ending “1” is the hour ending at 0100 hours, etc.) for all Days in the indicated Month.  Respondent shall provide data for all Months of all Contract Years during the proposed Term. For purposes of calculations associated with this Agreement, the MWhs for an indicated hour of the Day shall be considered to be equally distributed among all Days of a Month.

This Exhibit B has been developed based upon a planned installation of the Project, ***[RESPONDENT TO INSERT SIZE AND TYPE OF PROJECT, AS APPLICABLE]***, with a Project Capacity of approximately ***[RESPONDENT TO INSERT]*** MW; with the Project COD occurring on ***[RESPONDENT TO INSERT DATE]***.

**EXHIBIT C**

**CONTRACT PRICE**

***[RESPONDENT TO INSERT PRICING]***

|  |  |  |
| --- | --- | --- |
| **Contract Year** | | **Contract Price ($/MWh)** |
| 1 | |  |
| 2 |  |
| 3 |  |
| 4 |  |
| 5 |  |
| 6 |  |
| 7 |  |
| 8 |  |
| 9 |  |
| 10 |  |
| 11 |  |
| 12 |  |
| 13 |  |
| 14 |  |
| 15 | |  |
| 16 | |  |
| 17 |  |
| 18 |  |
| 19 |  |
| 20 |  |

**EXHIBIT D**

**SAMPLE MONTHLY INVOICE**

**[RESPONDENT TO INSERT]**

**EXHIBIT E**

**CERTIFICATION AND ASSIGNMENT OF RIGHTS FORM**

Buyer Agreement No. \_\_\_\_\_\_\_\_

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

Name of Project: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Invoice Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Serial Number(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Total Number of Renewable Attributes: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Total Number of RECs: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Total Number of MWh (Delivered Energy): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Seller \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereby assigns, conveys and delivers to Buyer all right, title and interest in the Renewable Attributes, such Renewable Attributes having been created in the month of \_\_\_\_\_\_\_\_, in the year \_\_\_\_\_, and being associated with Delivered Energy for which payment is to be made pursuant to Invoice No. \_\_\_\_\_\_\_\_ relating to Energy being sold under Buyer Agreement No. \_\_\_\_\_\_\_\_, and a copy of which invoice is attached hereto. Such right, title and interest shall include perpetual and exclusive rights to the Renewable Attributes associated with the Delivered Energy for which payment is requested, including but not limited to the exclusive rights to claim, consistent with RPS Program: (i) that the Delivered Energy associated with these Renewable Attributes was generated by the Project; and (ii) that Buyer is responsible for the reductions in emissions and/or other pollution resulting from the generation of that portion of the Project’s Delivered Energy that is associated with these Renewable Attributes. Terms used in this Certificate are used with the meanings given to such terms in the referenced Buyer Agreement.

Seller further certifies and guarantees that all of the information provided on the attached invoice requesting payment from Buyer is true and accurate; that the Renewable Attributes to which all right, title and interest is transferred to Buyer by this instrument are free and clear of all liens, judgments, encumbrances and similar restrictions created by or on behalf of Seller or any party claiming through Seller, created by or on behalf of Seller or any party claiming through Seller, and have not otherwise been, nor will be, sold, retired, claimed or represented by or on behalf of Seller or any party claiming through Seller, as part of electricity output or sales, or used by or on behalf of Seller or any party claiming through Seller, to satisfy obligations in any other jurisdiction.

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

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

Signature of Seller’s Authorized Officer

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

**EXHIBIT F**

**ELIGIBILITY AND REQUIREMENTS OF THE RPS PROGRAM**

**[Parties to revise/update as of Execution Date to reflect any applicable RPS changes]**

*Eligibility Requirements for all Projects:*

(1) To be eligible the generating facility should not have been included in the baseline electric generation sources of any New York State Renewable Portfolio Standard program, as of the Execution Date; and

(2) The Project must demonstrate that it has not made use of other renewable programs available to it, such as New York State Executive Order 111 “Green and Clean” program, voluntary green market programs, or any State (New York or other) program that would result in a “double counting” of the Renewable Attributes, as of the Execution Date; and

(3) Product shall be from a renewable energy generating facility that meets or is expected to meet the generation type and fuel source eligibility requirements of New York Retail Renewable Portfolio Standard Main Tier Eligible Electric Generation, defined by the New York Public Service Commission and as in effect on the Execution Date, specific to the fuel source utilized in the generating facility; and [[1]](#footnote-1)

(4) Main Tier projects are grid connected and are typically medium to large-scale electric generation facilities; and

(5) Eligible fuel sources for Main Tier generating facilities include: biogas, biomass, liquid biofuel, fuel cells, hydroelectric, photovoltaics, ocean or tidal power, and wind.

*Eligibility Requirements for Specific Fuel Sources:*

* For a solar generating facility:

Source includes: photovoltaics.

* For a fuel cell generation facility:

Sources include: solid oxide fuel cells (SOFC), molten carbonate fuel cells (MCFC), proton exchange membrane cells (PEM), phosphoric acid fuel cells (PAFC).

* For a wind generating facility:

Source includes: wind turbines.

* For a biogas generating facility:

Sources include: landfill gas (methane) reciprocating/ internal combustion engine, sewage gas (methane) reciprocating/internal combustion engine, manure digestion (methane) reciprocating/internal combustion engine, anaerobic digestion (other biogas digestion using agricultural or food processing residues and by-products), biomass thermochemical gasification (syngas), biogas (from eligible sources of biomass feedstock) combined heat and power, biogas (from eligible sources of biomass feedstock) co-fired with existing fossil-fuel combustion.

All required permits must be acquired in accordance with the New York State Pollutant Discharge Elimination System and New York State Department of Environmental Conservation (“NYSDEC”) regulations.

For biomass and biogas sources - facilities utilizing unadulterated biomass must demonstrate that all feedstocks that are not source separated in fact come from NYSDEC-permitted solid waste facilities that pay for NYSDEC-provided monitors to ensure that their biomass processing is consistently within their facility permits and conditions.

* For a biomass generating facility:

Sources include: biomass direct combustion, biomass combined heat & power, biomass co-fired with existing fossil fuel combustion.

Eligible biomass sources include: agricultural residue, harvested wood, mill residue wood, pallet waste, refuse derived fuel, site conversion waste wood, silvicultural waste wood, sustainable yield wood (woody or herbaceous) and urban wood and related waste.

* For a liquid biofuel generating facility:

Biomass liquefaction through acid or enzymatic hydrolysis (ethanol), biomass esterfication (biodiesel, methanol), biomass thermochemical pyrolysis (bio-oil), biomass hydrothermal liquefication, liquid biofuel (from eligible sources of biomass feedstock) combined heat & power, liquid biofuel (from eligible sources of biomass feedstock) co-fired with existing fossil-fuel combustion

* For a hydroelectric generating facility:

Sources include: hydroelectric upgrades and new low-impact run-of-river hydroelectric.

For hydroelectric upgrades - no new storage impoundment, eligibility limited to incremental production associated with the upgrade.

For new low-impact run-of-river hydroelectric - facility capacity limited to 30 MW or less with no new storage impoundment.

* For a tidal power generating facility:

Sources include: tidal turbine, ocean wave turbine, ocean current wave turbine, ocean thermal pumped storage hydro powered by tidal.

**EXHIBIT G**

**INSURANCE REQUIREMENTS**

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

1. Insurance Policies and Limits:

1.1 Workers’ Compensation/Employer’s Liability:

Workers’ Compensation insurance including coverage for occupational disease, covering all employees in compliance with all applicable state and federal laws, and Employer’s Liability Insurance of not less than $1,000,000 each accident/$1,000,000 disease per employee/$1,000,000 disease policy limit.

1.2 Automobile Liability:

Automobile Liability Insurance covering all owned, non-owned and hired vehicles with a Combined Single Limit for Bodily Injury and Property Damage Liability in an amount not less than $5,000,000 each accident.

1.3 Third Party Liability:

Third Party Liability insurance including contractual liability coverage for the indemnity provisions of this Agreement with a Combined Single Limit for Bodily Injury, Personal Injury and Property Damage Liability in amounts no less than $5,000,000 each occurrence and in the aggregate each policy year.

1.4 Umbrella or Excess Liability:

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

1.5 Property Insurance:

From and after the date that Seller or its contractors commence construction at the Site, Property Insurance providing coverage for all risks of direct physical loss or damage to, and for the maximum foreseeable loss to, all property and equipment of Seller used for or in connection with the Products supplied under this Agreement. Such coverage shall provide the costs of continuing expenses and additional expenses necessary to continue operations, insofar as reasonably possible, following loss of or damage to the property and equipment of Seller.

2. General Provisions.

2.1 Evidence of Coverage:

Seller shall, prior to supplying Products under this Agreement, and within ten (10) Days after each reasonable request by Buyer, provide certificates of insurance to Buyer’s insurance consultant for all insurance policies required hereunder.

2.2 Additional Insureds:

With the exception of Workers’ Compensation/Employer’s Liability and Property Insurance, Buyer and any other party reasonably requested by Buyer shall be included as an additional insured on the policies required by this Exhibit.

2.3 Waiver of Subrogation:

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

2.4 Severability of Insureds:

Each policy under which Buyer is required by this Exhibit to be named as an additional insured shall provide that (i) inclusion of more than one person or organization as insured hereunder shall not in any way affect the rights of any such person or organization as respects any claim, demand, suit or judgment made, brought or recovered, by or in favor of any other insured, or by or in favor of any employee of such other insured, and (ii) each person or organization is protected thereby in the same manner as though a separate policy had been issued to each, but nothing therein shall operate to increase the insurance company’s liability as set forth elsewhere in the policy beyond the amount for which the insurance company would have been liable if only one person or interest had been named as insured.

2.5 Primary Insurance:

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

2.6 Notice of Cancellation:

Seller shall provide Buyer with copies of any notices of cancellation or material alteration of any insurance policy required by this Exhibit, within thirty (30) Business Days of receipt of such notice by Seller.

2.7 Deductibles:

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

**EXHIBIT H**

**FORM OF SELLER GUARANTY**

***[NOTE TO RESPONDENT: THIS FORM IS TO BE USED BY SELLER FOR THE GUARANTY REQUIRED TO SATISFY GUARANTy OF SELLER***’***S PAYMENT OBLIGATIONS]***

This GUARANTY (this “Guaranty”), effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_ (the “Effective Date”), is made and entered into by \_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_ (the “Guarantor”), in favor of the LONG ISLAND POWER AUTHORITY, a corporate municipal instrumentality and political subdivision of the State of New York (the “Buyer”).

**W I T N E S S E T H:**

WHEREAS, ***[RESPONDENT ENTITY NAME]***, a ***[INSERT STATE AND ENTITY FORM]***, (the “Seller”), a subsidiary of the Guarantor, and the Buyer have previously entered into that certain Contract for the Purchase & Sale of Renewable Energy, Related Capacity, and Renewable Attributes dated as of ***[RESPONDENT TO INSERT]*** (as the same may be modified, amended, supplemented or extended, the “Purchase Agreement”), pursuant to which the Seller has agreed to sell to the Buyer, and the Buyer has agreed to purchase from the Seller, certain capacity of and electricity generated by the Seller’s electric generating facility located in ***[RESPONDENT TO INSERT]*** County, New York (the “Project”) (capitalized terms used herein and not defined herein shall have the meanings given such terms in the Purchase Agreement); and

WHEREAS, the Guarantor will directly or indirectly benefit from the transactions to be entered into between the Seller and the Buyer pursuant to the provisions of the Purchase Agreement;

NOW THEREFORE, in consideration of the Buyer entering into the Purchase Agreement and as an inducement therefor, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Guarantor hereby covenants and agrees as follows:

1. GUARANTY. Subject to the provisions hereof, the Guarantor hereby irrevocably and unconditionally guarantees to the Buyer the timely payment when due of all of the obligations of the Seller to the Buyer arising out of, under or pursuant to the Purchase Agreement, whether now existing or hereafter incurred or existing from time to time (the “Obligations”). This Guaranty shall constitute a guarantee of payment and not of performance or collection. Notwithstanding any provision to contrary set forth herein, the liability of the Guarantor under this Guaranty shall be subject to the following limitations:

(a) the maximum recovery which may be collected pursuant to the provisions of this Guaranty shall not exceed U.S. $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_\_\_\_\_\_\_\_\_\_***[RESPONDENT TO INSERT AMOUNT THAT IS $100,000 per MW of PROJECT CAPACITY]*** United States dollars) in the aggregate, excluding collection and enforcement costs payable hereunder; and

(b) the Guarantor’s liability hereunder shall be and is specifically limited to payments expressly required to be made under Section 9.3 of the Purchase Agreement (even if such payments are deemed to be damages) as well as successful costs of collection and enforcement of this Guaranty (including attorneys’ fees) to the extent reasonably and actually incurred by the Buyer, but, except to the extent specifically provided herein or in the Purchase Agreement, the Guarantor will not be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive or tort damages, or, any other damages (except to the extent any such damages constitute third party claims that Seller is liable for under the Purchase Agreement).

2. DEMANDS AND NOTICE. If the Seller fails or refuses to timely pay any Obligation, and the Buyer has elected to exercise its rights under this Guaranty, the Buyer shall make a demand upon the Guarantor (hereinafter referred to as a “Demand”). A Demand shall be in writing and shall specify in what manner and what amount the Seller has failed to pay and an explanation of why such payment is due. The Guarantor shall pay the Obligations set out in the Demand within five (5) Business Days after its receipt of the Demand. A single written Demand shall be effective as to any specific default during the continuance of such default, until the Seller or the Guarantor has cured such default, and additional written demands concerning such default shall not be required until such default is cured. As used herein, the term “Business Day” shall mean a day on which commercial banks or financial institutions are open for business in the State of New York.

3. REPRESENTATIONS AND WARRANTIES. The Guarantor represents and warrants that:

(a) it is a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ duly organized and validly existing under the laws of State of \_\_\_\_\_\_\_\_\_\_\_\_ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guaranty;

(b) the execution, delivery and performance of this Guaranty by the Guarantor have been duly authorized by all necessary corporate action and approvals;

(c) no approval of any Governmental Authority having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty;

(d) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and by general principles of equity;

(e) neither the making nor performance by the Guarantor of this Guaranty violates or will violate (i) any provision of law or regulation applicable to the Guarantor or any of its properties or assets; (ii) any writ, order or decree of any Governmental Authority applicable to the Guarantor or any of its properties or assets; (iii) any governmental approval applicable to the Guarantor; or (iv) any provision of the organizational or constituent documents of the Guarantor, and such actions do not, and will not, result in a breach of, constitute a default under, require consent under, or result in the creation of any lien, charge or encumbrance upon any property or assets of the Guarantor under, any instrument or agreement to which the Guarantor is a party or by which the Guarantor or any of the Guarantor’s properties or assets are bound or affected;

(f) after giving effect to this Guaranty and the contingent obligation evidenced hereby, Guarantor is solvent and has assets which, fairly valued, exceed its liabilities and has assets sufficient to satisfy and repay its obligations and liabilities; and

(g) Guarantor’s financial statements delivered to Buyer on or before the date of this Guaranty fairly present in all material respect the financial position of the Guarantor as of the date thereof and the results of the operations of Guarantor for the periods indicated therein.

4. SETOFFS AND COUNTERCLAIMS. The Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which the Seller is or may be entitled arising from or out of the Purchase Agreement, except for defenses arising out of the Bankruptcy (as hereinafter defined) of the Seller or the lack of power or authority of the Seller to enter into and/or perform the Purchase Agreement or the items described in Section 6(c)(i)-(v).

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by the Guarantor and the Buyer. Any such amendment, waiver or consent which is so granted by the Buyer shall apply only to the specific occasion which is the subject of such amendment, waiver or consent and shall not apply to the occurrence of the same or any similar event on any future occasion.

6. WAIVER.

(a) Except as required in Section 2 above, the Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) notice of any default or event of default under the Purchase Agreement or with respect to any of the Obligations or notice of any other adverse change in the Seller’s financial condition or means or ability to pay any of the Obligations; (iii) presentment, demand, protest and notice of dishonor or nonpayment concerning the liabilities of the Guarantor or the Seller; and (iv) any right to require that any action or proceeding be brought against the Seller or any other Person, or to require that the Buyer seek enforcement of any performance against the Seller or any other Person, prior to any action against the Guarantor under the terms hereof.

(b) No delay of the Buyer in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of the Guarantor from any obligations hereunder. Except as provided herein, no notice to or demand on the Guarantor in any case by the Buyer hereunder shall entitle the Guarantor to any further notice or demand in any similar or other circumstances or constitute a waiver of the rights of the Buyer to take any other or future action in any circumstances without notice or demand.

(c) Except as otherwise provided in Section 4 above, the Guarantor shall not be released from any of its obligations under this Guaranty as a consequence of, and this Guaranty shall be effective and binding on the Guarantor despite (i) any lack of or limitation in the power or status of the Seller or the directors, officers or agents thereof, (ii) any lack of validity, legality or enforceability of any of the Obligations or the Purchase Agreement or any other document, instrument or agreement referred to therein, (iii) any indulgence which the Buyer may from time to time grant to the Seller, (iv) any exchange or release of, or any failure to perfect or otherwise protect an interest in, any collateral held by the Buyer or any furnishing to the Buyer of any additional collateral for any of the Obligations, (v) except for any applicable statute of limitation, any failure, delay or lack of diligence by the Buyer or any other Person to enforce, assert or exercise any right, privilege, power or remedy conferred on the Buyer under the Purchase Agreement or at law, or any action by the Buyer or such other Person granting indulgence or extension of any kind, (vi) the settlement, release or compromise of any Obligation, (vii) any change of status, composition, structure or name of the Seller by reason of bankruptcy, liquidation, insolvency, merger, dissolution, consolidation or reorganization (“Bankruptcy”), or otherwise, or (viii) except for full and final payment of any amounts owed under this Guaranty, any other circumstance which might otherwise constitute a defense against, or a legal or equitable discharge of, the Guarantor’s liability under this Guaranty.

(d) The Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Purchase Agreement, in any such case without notice to or consent of the Guarantor.

(e) The Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment of any of the Obligations guaranteed hereby is at any time avoided or rescinded or must otherwise be restored or repaid by the Buyer as a result of the Bankruptcy of the Seller or otherwise, all as though such payments had not been made.

7. NOTICE. Any Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called “Notice”) shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by nationwide courier service, as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| To Buyer: | Long Island Power Authority  333 Earle Ovington Boulevard, Suite 403  Uniondale, New York 11553  Attn: Vice President of Power Markets  Phone: (516) 222-7700  Facsimile: (516) 222-9137  With a copy to:  Long Island Power Authority  333 Earle Ovington Boulevard  Uniondale, New York 11553  Attn: General Counsel  Phone: (516) 222-7700  Facsimile: (516) 222-9137 | To Guarantor: | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] |

Notice given by personal delivery shall be effective upon actual receipt. Notice given by mail or courier service shall be effective upon actual receipt if received during the recipient’s normal business hours, or at the beginning of the recipient’s next Business Day after receipt if not received during the recipient’s normal business hours. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

8. SUBROGATION. The Guarantor will not exercise any rights which it may acquire by way of subrogation under this Guaranty by any payment made hereunder or otherwise, until all the Obligations guaranteed hereunder have been paid in full or otherwise satisfied. If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all the Obligations guaranteed hereunder shall not have been paid in full or otherwise satisfied, such amount shall be held in trust for the benefit of the Buyer and shall forthwith be paid to the Buyer to be credited and applied to the Obligations of the Seller.

9. COLLECTION COSTS. In addition to any other obligation or indebtedness of the Guarantor pursuant to this Guaranty, the Guarantor shall be liable to the Buyer for, and shall pay to the Buyer on demand, all reasonable costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses (including those for appellate proceedings)) incurred by the Buyer in enforcing performance of or collection of this Guaranty.

10. MISCELLANEOUS.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws (other than §5-1401 of the New York General Obligations Law).

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

(c) This Guaranty embodies the entire agreement and understanding between the Guarantor and the Buyer and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof.

(d) Time is of the essence of this Guaranty. The remedies provided to the Buyer in this Guaranty are cumulative and not exclusive of any other remedies provided by law.

(e) Words importing the singular number hereunder shall include the plural number and vice versa and any pronouns used herein shall be deemed to cover all genders. The term “person” as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

(f) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11. TERM & TERMINATION. Subject to the terms of Section 6(e), this Guaranty shall be and continue to be in full force and effect from the Effective Date until the earlier of the date that the Purchase Agreement (a) terminates or (b) is terminated by either party thereto and all obligations of the Seller to the Buyer thereunder shall have been paid and satisfied in full. Thereafter, subject to the terms of Section 6(e), this Guaranty shall terminate and no claim may be made against the Guarantor under this Guaranty. In addition to the foregoing, this Guaranty shall be terminated and released upon and to the extent that there shall have been a substitution under the Purchase Agreement of substitute Seller Security satisfying the requirements of the Purchase Agreement, to the extent permitted by the Purchase Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_, but it is effective as of the Effective Date.

[GUARANTOR]

By:   
Name:   
Title:

LONG ISLAND POWER AUTHORITY

By:   
Name:   
Title:

**EXHIBIT I**

**FORM OF SELLER LETTER OF CREDIT**

[Issuing Bank Name]

Irrevocable Nontransferable Standby

Letter of Credit No. \_\_\_\_\_\_\_\_\_

DATE:

BENEFICIARY: APPLICANTS:

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

333 Earle Ovington Boulevard, Suite 403

Uniondale, New York 11553

Attn: Vice President, Power Markets

INITIAL AMOUNT: USD $ ***[RESPONDENT TO INSERT AMOUNT THAT IS $100,000 PER MW OF PROJECT CAPACITY]***

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

PLACE OF EXPIRY: At our Counters

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

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

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

(1) the original of this Letter of Credit and all amendments; and

(2) your sight draft drawn on us; and

(3) either:

(i) Beneficiary’s Certificate issued in the form of Annex I attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary; or

(ii) Beneficiary’s Certificate issued in the form of Annex II attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary.

Drafts drawn under this Letter of Credit must contain the clause: “Drawn under [Issuing Bank Name] Irrevocable Nontransferable Standby Letter of Credit No. \_\_\_\_\_\_\_\_\_, dated , \_\_\_\_.”

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

This Letter of Credit may not be transferred or any of the rights hereunder assigned. Any purported transfer or assignment shall be void and of no force or effect.

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

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

Except so far as otherwise stated, this Letter of Credit is subject to the “International Standby Practices ISP98” of the International Chamber of Commerce as in effect on the date of issuance thereof (the “ISP98”). As to matters not covered by the ISP98, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of conflicts of laws thereunder.

[Issuing Bank Name]

By:

Authorized Signature

Address: [                    ]

[                    ]

[                    ]

ANNEX I TO [Issuing Bank Name]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_\_\_\_\_

[Issuing Bank Name] Date: \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_

[                                    ]

[                                    ]

[                                    ]

Ladies and Gentlemen:

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

1. The Beneficiary is a party to that certain Contract for the Purchase & Sale of Renewable Energy, Related Capacity and Renewable Attributes dated as of \_\_\_\_\_\_\_\_\_\_\_\_(as amended from time to time, the “Agreement”), between the Beneficiary and Seller.

2. The Beneficiary has not heretofore disposed of its right, title or interest in or to the Agreement.

3. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to $\_\_\_\_\_\_\_, pursuant to the provisions of Section 9.3 or 9.5 of the Agreement because [indicate applicable reason]:

[   ] The amount drawn hereunder constitutes undisputed amounts that are owed to Beneficiary by Seller under the Agreement and that remain unsatisfied for at least ten (10) Days (as defined in the Agreement) of becoming due and payable.

[   ] The amount drawn hereunder constitutes undisputed amounts that are owed to Beneficiary by Seller under the Agreement as a result of a declaration of an early termination date by Beneficiary as a result of a Seller Event of Default (as defined in the Agreement).

[   ] The Seller is Bankrupt (as defined in the Agreement) and the amount drawn hereunder constitutes not less than the amounts paid by Seller to Beneficiary that could be challenged or recovered as a preference or fraudulent conveyance.

[   ] The Letter of Credit is to expire in five (5) Business Days (as defined in the Agreement) or less and Beneficiary has not been provided substitute Seller Security (as defined in the Agreement), permitting Beneficiary to draw the entire amount of the Letter of Credit.

4. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND /100ths (U.S.$ ), which amount does not exceed (i) the amount set forth in Paragraph 3, above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

5. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 4 above. The date of the sight draft is the date hereof, which is not later than the Expiration Date or any New Expiration Date.

6. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

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

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

Beneficiary: LONG ISLAND POWER AUTHORITY

By:   
Name:  
Title:

ANNEX II TO [Issuing Bank Name]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_\_\_\_\_

[Issuing Bank Name] Date: \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_

[                                    ]

[                                    ]

[                                    ]

Ladies and Gentlemen:

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

1. The Beneficiary is a party to that certain Contract for the Purchase & Sale of Energy, Related Capacity and Renewable Attributes dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_(as amended from time to time, the “Agreement”), between the Beneficiary and Seller.

2. The Beneficiary has not heretofore pledged, assigned, transferred or disposed of any of its right, title or interest in or to the Agreement.

3. The Beneficiary has not heretofore disposed of its right, title or interest in or to the Agreement.

4. The Beneficiary has provided at least forty (40) days’ prior written notice to the Applicants of the Bank’s intent not to renew the Letter of Credit following the present Expiration Date or any New Expiration Date.

5. The Applicants have failed to provide the Beneficiary with a substitute letter of credit substantially in the same form as the Letter of Credit within the forty (40) day period referred to in Paragraph 4 above.

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

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

8. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

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

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

Beneficiary: LONG ISLAND POWER AUTHORITY

By:   
Name:  
Title:

**EXHIBIT J**

**CHRONIC UNDERPERFORMANCE Sample CALCULATION**

Section 5.2. Chronic Underperformance Calculation: [RESPONDENT to Insert]

**EXHIBIT K**

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PROCEDURES**

I. DECLARATION OF POLICY AND STATEMENTS OF GOALS. It is the policy of the Long Island Power Authority (Authority) to provide Minority and Women-Owned Business Enterprises (M/WBEs) the greatest practicable opportunity to participate in the Authority’s contracting activity for the procurement of goods and services. To effectuate this policy, the Contractor shall comply with these provisions and the provisions of Article 15-A of the New York Executive Law. The Contractor will use its best efforts to achieve the below-stated M/WBE Goals set for the Contract, and will cooperate in any efforts of the Authority, or any government agency which may have jurisdiction, to monitor and assist Seller’s compliance with the Authority’s M/WBE program.

Minority-Owned Business Enterprise (MBE) Subcontracting Goal 0 %

Women-Owned Business Enterprise (WBE) Subcontracting Goal 0%

II. DEFINITIONS.

(1) CERTIFICATION. The process conducted by the New York State Department of Economic Development, Minority and Women’s Business Division to verify that a business enterprise qualifies for New York State Minority or Women-Owned Business Enterprise status. To initiate the certification process, contact one of the offices listed below.

ALBANY OFFICE: (518) 292-5250

30 South Pearl Street

Albany, New York 12245

NEW YORK CITY OFFICE: (212) 803-2200

633 Third Avenue

New York, New York 10017

(2) CERTIFIED BUSINESS. A business enterprise which has been approved by the Director for status as a MBE or WBE subsequent to verification that the business enterprise is owned, operated, and controlled by Minority Group Members, or women.

(3) CONTRACT.

(a) A written agreement or purchase order instrument, or amendment thereto, providing for a total expenditure in excess of twenty-five thousand dollars ($25,000), whereby the Authority is committed to expend or does expend funds in return for labor, services, supplies, equipment materials or any combination of the foregoing, to be performed for, or rendered or furnished to, the Authority; or

(b) A written agreement in excess of one hundred thousand dollars ($100,000), whereby the Authority is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.

(4) CONTRACTOR. An individual, a business enterprise including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to an Authority contract, or a bidder in conjunction with the award of an Authority contract or a proposed party to an Authority contract.

(5) CONTRACT SCOPE OF WORK. For purposes of this section, this means:

(a) Specific tasks required by the Contract;

(b) Services or products which must be provided to perform specific tasks required by the Contract; and

(c) Components of any overhead costs billed to the Authority pursuant to the Contract.

(6) DAY. A calendar state business day unless otherwise specified.

(7) DIRECTOR. New York State Department of Economic Development, Minority and Women’s Business Division.

(8) DIRECTORY. The Directory of Certified Businesses, prepared by the Director.

(9) GOAL. A percentage of participation, which is not a set aside or quota, that represents a target toward which the prime Contractor must aim in expending good faith efforts to subcontract with or otherwise ensure the commercial involvement of minority and women-owned businesses on specific Authority contracts.

(10) NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT, MINORITY AND WOMEN’S BUSINESS DIVISION. Office in the Executive Department created by Article 15-A of the Executive Law (hereinafter referred to as the “Office”).

(11) MINORITY GROUP MEMBER. A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

(a) Black persons having origins in any of the Black African racial groups;

(b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic Origin, regardless of race;

(c) Native American or Alaskan native persons having origins in any of the original peoples of North America;

(d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; or

(e) Other groups which the Office may determine to be eligible for M/WBE status.

(12) MINORITY-OWNED BUSINESS ENTERPRISE. A business enterprise, including a sole proprietorship, partnership or corporation that is:

(a) At least fifty-one percent owned by one or more Minority Group Members;

(b) An enterprise in which such minority ownership is real, substantial and continuing;

(c) An enterprise in which such minority ownership has, and exercises the Authority to control independently, the day-to-day business decisions of the enterprise; and

(d) An enterprise authorized to do business in New York State and is independently owned and operated.

(13) SUBCONTRACT. An agreement in which a portion of a Contractor’s obligation under an Authority contract is under-taken or assumed.

(14) WOMEN-OWNED BUSINESS ENTERPRISE. A business enterprise, including a sole proprietorship, partnership or corporation that is:

(a) At least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;

(b) An enterprise in which the ownership interest of such women is real, substantial and continuing;

(c) An enterprise in which such women ownership has, and exercises the Authority to control independently, the day-to-day business decisions of the enterprise; and

(d) An enterprise authorized to do business in New York State and is independently owned and operated.

III. BIDDING PROCESS PROCEDURES

(1) Each bidder shall search for, assess the capabilities of and generally deal with potential M/WBE subcontractors in a fair and responsive manner, allowing them the opportunity to participate in the Contract Scope of Work.

(2) Each bidder will designate, and make known to the Authority, an M/WBE Officer who will have the responsibility for and authority to effectively administer the M/WBE Program.

(3) As a part of its proposal, each bidder shall submit its Preliminary Subcontracting Plan, which shall identify the Certified Businesses it will utilize to meet its M/WBE Contract Goals. Approval of any such firm is solely within the discretion of the Authority.

The bidder will also designate an M/WBE Officer who will have the responsibility for, and authority to, effectively administer these procedures. If any bidder believes it may be unable to meet the Goals, the reasons shall be submitted in writing.

(4) To help prospective bidders with M/WBE participation, they may inspect the current New York State Certification Directory of Minority and Women Owned Businesses, prepared for use by state agencies and contractors in complying with Executive Law Article 15-A, (the “Directory”) at the same location where the Authority’s bid document or request for proposals may be obtained or inspected and also at the Authority’s office at 333 Earle Ovington Boulevard, Suite 403, Uniondale, NY 11553. In addition, printed or electronic copies of the Directory may be purchased from the New York State Department of Economic Development, Minority and Women’s Business Division.

(5) Firms certified as both MBE and WBE may count toward either the MBE or WBE Goal on a single contract, but not both, regardless of whether either Goal is thus exceeded. The Bidder must choose the Goal to which the participation value is to be applied in the Preliminary Subcontracting Plan.

IV. PROCEDURES AFTER CONTRACT AWARD

(1) Within ten (10) days after contract award the Contractor may submit a complete Utilization Plan, which shall include identification of the M/WBEs which the Contractor intends to use; the dollar amount of business with each such M/WBE; the Contract Scope of Work which the Contractor intends to have performed by such M/WBEs; and the commencement and end dates of such performance. The Authority will review the plan and, within twenty (20) days of its receipt, issue a written acceptance of the plan or comments on deficiencies in the plan.

(2) The Authority shall consider a partial or total waiver of Goal requirements only upon the submission of a written request for a waiver following Contractor’s unsuccessful good faith efforts at compliance. (See Section VI, below.) Such waiver request may be made simultaneously with the submission of the Utilization Plan.

(3) The Contractor shall include in each Subcontract, in such a manner that the provisions will be binding upon each Subcontractor, all of the provisions herein including those requiring Subcontractors to make a good faith effort to solicit participation by M/WBEs.

(4) The Contractor shall keep records, canceled checks and documents for at least one (1) year following completion of the Contract. These records, and canceled checks, documents or copies thereof will be made available at reasonable times upon written request by the Authority or any other authorized governmental entity.

(5) The Contractor shall submit monthly compliance reports regarding its M/WBE utilization activity. Reports are due on the first business day of each month, beginning thirty (30) days after Contract award. A monthly compliance form has been provided in this Exhibit.

(6) The Authority will conduct compliance reviews for determination of the Contractor’s performance relative to meeting the specified M/WBE Goal which may include review and inspection of documents pertaining to the Contractor’s efforts towards meeting the Goals and on-site interviews with personnel of Contractor and its Subcontractors. The Contractor will fully cooperate to assist the Authority in this endeavor.

(7) The Contractor shall not use the requirements of this section to discriminate against any qualified company or group of companies.

V. CONDITIONS FOR SATISFYING M/WBE GOALS. M/WBE participation will be counted toward the total Contract M/WBE Goals subject to the following conditions:

(1) If the Contractor is unable to meet the Goals with Certified Businesses by making all of the good faith efforts defined herein (under section VI), the Contractor shall actively solicit uncertified M/WBEs to satisfy the Goals. Uncertified firms will be required to submit an application for certification (to the New York State Department of Economic Development, Minority and Women’s Business Division) and will be counted as contributing towards the contract Goals only after they have been certified.

(2) The Contractor must keep records of efforts to utilize certified M/WBE’s including:

(a) The firm’s name, address and telephone number.

(b) A description of the information provided to the M/WBE.

(c) A written explanation of why an agreement with the M/WBE was not obtained.

(3) Price alone will not be an acceptable basis for rejecting M/WBE bids if any of the bids are reasonable.

(4) Geographical limitation in the M/WBE search is not an acceptable reason for not meeting the M/WBE goal when traditionally non-local firms have been generally utilized.

(5) The Authority reserves the right to reject any firm as counting toward meeting the Contractor’s M/WBE goal if, in the opinion of the Authority, the facts as to that firm’s business and technical organization and practices justify the rejection.

VI. CONTRACTOR’S GOOD-FAITH EFFORTS. To satisfy the M/WBE participation requirements, the Contractor agrees to make the following good-faith efforts in a timely manner:

(1) Submission of a completed, acceptable Utilization Plan as described herein.

(2) Advertising in appropriate general circulation, trade and minority and women-oriented publications.

(3) Written solicitations made in a timely manner of certified minority and women-owned business enterprises listed in the Directory.

(4) Attendance at pre-bid, pre-award, or other meetings, if any, scheduled by the Authority with certified M/WBEs capable of performing the contract scope of work.

(5) Written notification to M/WBE trade associations located within the region where the contract scope of work will be performed.

(6) Structuring the Contract Scope of Work for purposes of subcontracting with certified M/WBEs.

(7) Where certified M/WBEs have expressed an interest to the Contractor in performing work that the Contractor normally performs with its own forces and the contract scope of work has not been fully performed, the Contractor shall consider subcontracting such work or portions of it to meet the M/WBE Goals.

**EXHIBIT L**

**FORM OF INTERCONNECTION AGREEMENT among Seller, Connecting Transmission Owner AND NYISO**

[Attached]

**EXHIBIT M**

**DELIVERY POINT**

[ATTACHED]

**EXHIBIT N**

**SITE CONTROL**

**EXHIBIT N-1**

***[RESPONDENT TO INSERT Easement/Lease/License or Other Real Estate Entitlement Details]***

**EXHIBIT N-2**

***[If Applicable, Additional Real Estate Entitlements Establishing Seller Site Control]***

[Attached]

**SUPPLEMENT 1: STANDARD CLAUSES FOR LIPA’S CONTRACTS**

For the purposes of this Supplement, the Long Island Power Authority and its operating subsidiary the Long Island Lighting Company d/b/a LIPA are hereinafter referred to as “LIPA.”

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Contractor” herein refers to any party other than LIPA, whether a contractor, consultant, licensor, licensee, lessor, lessee or other party):

**NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of LIPA, and any attempts to assign the contract without LIPA’s written consent are null and void. Contractor may, however, assign its right to receive payment without LIPA’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the New York State Finance Law (the “State Finance Law”), this Agreement shall not be valid, effective or binding upon LIPA until it has been approved by the State Comptroller and filed in his office.

**WORKER’S COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this Agreement shall be void and of no force and effect unless Contractor provides and maintains coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

**NON-DISCRIMINATION REQUIREMENTS.** In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other New York State and Federal statutory and constitutional non–discrimination provisions, Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability, marital status, sexual orientation, genetic predisposition or carrier status. Furthermore, in accordance with Article 220–e of the New York Labor Law, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, national origin, sexual orientation, genetic predisposition or carrier status; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee for the performance of work under this Agreement.

**WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

**NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 2878 of the Public Authorities Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to LIPA a non-collusive bidding certification on Contractor’s behalf.

**INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, Contractor agrees, as a material condition of the contract, that neither Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC app. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract’s execution, such contract, amendment or modification thereto shall be rendered forfeit and void. Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (NYCRR 105.4).

**SET-OFF RIGHTS.** LIPA shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, LIPA’s option to withhold for the purposes of set-off any moneys due to Contractor under this contract up to any amounts due and owing to LIPA with regard to this contract, any other contract with LIPA, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to LIPA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. LIPA shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by LIPA, its representatives, or the State Comptroller.

**RECORDS.** Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, “the Records”). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. LIPA shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the “Statute”) provided that: (i) Contractor shall timely inform LIPA in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State’s right to discovery in any pending or future litigation.

**EQUAL EMPLOYMENT FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the New York Executive Law: (i) Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status and shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation; (ii) at the request of LIPA, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status and that such union or representative will affirmatively cooperate in the implementation of Contractor’s obligations herein; and (iii) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of this Agreement, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status. Contractor shall include the provisions of (i), (ii) and (iii) above, in every subcontract over twenty–five thousand dollars ($25,000.00) for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the “Work”) except where the Work is for the beneficial use of Contractor.

**CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Supplement 1, the terms of this Supplement 1 shall control.

**GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Section 2880 of the Public Authorities Law and the guidelines adopted by LIPA thereto.

**PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.**  Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of Contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of Contractor to meet with the approval of the State.

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the New York Laws of 1992), Contractor hereby stipulates that Contractor either (i) has no business operations in Northern Ireland, or (ii) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Article 165 of, the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development

Division for Small Business

One Commerce Plaza

Albany, New York 12245

A directory of certified minority and women–owned business enterprises is available from:

NYS Department of Economic Development

Minority and Women’s Business Development Division

One Commerce Plaza

Albany, New York 12245

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

(a) Contractor has made commercially reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and woman–owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92–261), as amended; and

(c) Contractor agrees to make commercially reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. Contractor agrees to document these efforts and to provide said documentation to the State upon request.

(d) Contractor acknowledges that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**RECIPROCITY AND SANCTIONS PROVISIONS.**  Contractor is hereby notified that if its principal place of business is located in a state that penalizes New York State vendors, and if the goods or services it offers are substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 amendments (Chapter 684, Laws of 1994) require that Contractor be denied contracts which it would otherwise obtain.

**CONTRACTOR CERTIFICATION OF COMPLIANCE WITH STATE FINANCE**

**LAW SECTION 139-j.** Contractor certifies and affirms that it understands and agrees to comply with the procedures of the Buyer relative to permissible contacts as required by the State Finance Law § 139-j (3) and § 139-j (6)(b).

**OPTIONAL TERMINATION BY THE AUTHORITY.** LIPA reserves the right to terminate this contract in the event it is found that the certification filed by Contractor in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, LIPA may exercise its termination right by providing written notification to Contractor in accordance with the written notification terms of the contract.

**CONTINGENT FEES.** Seller hereby certifies and agrees that (a) Contractor has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any LIPA contract or any amendment or modification thereto pursuant to any agreement or understanding for receipt of any form of compensation which in whole or in part is contingent or dependent upon the award of any such contract or any amendment or modification thereto; and (b) Contractor will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by LIPA.

**SUPPLEMENT 2: DESCRIPTION AND LOCATION OF THE PROJECT**

***[RESPONDENT TO INSERT PROJECT DETAILS]*** Pursuant to the terms of the Agreement, ***[RESPONDENT TO INSERT]*** is planning to construct a . . . . ***[RESPONDENT TO INSERT]*** project at ***[RESPONDENT TO INSERT]*** referred to as “***[RESPONDENT TO INSERT]***” (a project sized at up to ***[RESPONDENT TO INSERT]*** MW AC). “***[RESPONDENT TO INSERT]***” is approximately ***[RESPONDENT TO INSERT]*** acres in size.

[SITE MAP ATTACHED]

1. The RPS Program’s generating facility requirements are consistent with those established by the New York Public Service Commission for eligible renewable energy facilities in Case 03-E-0188, *Renewable Portfolio Standard (RPS)*, Order Regarding retail Renewable Portfolio Standard (issued Sept. 24, 2004); Case 03-E-0188, *Renewable Portfolio Standard (RPS)*, Order Approving Implementation Plan Adopting Clarifications, and Modifying the Environmental Disclosure Program (issued April 14, 2005) and Case No. 03-E-0188, *Renewable Portfolio Standard (RPS)*, Order Approving Modifications to Maintenance Resource Category (issued Oct. 31, 2005) and any subsequent modifying orders. [↑](#footnote-ref-1)